

## **CESTAT set aside the penalty imposed by Revenue Department due to lack of evidence**

In *M/s. Air India Ltd. v. Commissioner of Customs [Custom Appeal No. 40035 of 2021 – SM dated July 09, 2021]*, M/s Air India Ltd. (“**the Appellant**”) was granted custodianship permission for the export of cargo. The Appellant, as a custodian, are duty bound to comply with the provisions of Customs Act, 1962 (“**the Customs Act**”) and allied rules i.e., the Handling of Cargo in Customs Area Regulations, 2009 (“**the HCCAR**”).

The Commissioner of Customs (“**the Respondent**”), made a surprise check at the export shed of the Appellant on August 01, 2019, the Appellant had allowed cargo to move in sterile area without checking the status of Custom clearance i.e. without checking whether ‘Let Export Order’ (“**LEO**”) given or not.

The Respondent opined that there are shortcomings in the function of the Appellant as custodian like in case of seizure of ‘Star Tortoise’ dated November 07, 2018 and of ‘Red Sander’ dated July 29, 2019.

The Respondent issued a Show Cause Notice (“**SCN**”) alleging violation of Rule 5 and Rule 6 of the HCCAR and proposing to revoke the appointment as custodian and imposed penalty of Rs 50,000/- under Regulation 12(8) of the HCCAR on the Appellant.

The CESTAT opined that, the allegation by the Respondent in SCN about smuggling of ‘Star Tortoise’ dated November 07, 2018 is false, untrue and without any basis. There is no evidence to show that the Appellants have any connection to such seizure of ‘Star Tortoises’.

Further, w.r.t. ‘Red Sanders’ noted that the cargo had reached for scanning at 16:45 hrs, the same was detained without conducting the X-Ray scan. It was again scanned only at 17:27 hrs, after the sanction of LEO. The department does not allege that the appellant has done the same with any wrongful intention. There is no allegation with regard to the goods exported under the shipping bill. Therefore, the small time difference which is a shortcoming indeed made by the Government of India carrier, is a condonable lapse.

Thus, allowed the appeal and set aside the penalty.

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