



Dimensions – 54th Edition

Ruling / judgment under Pre-GST era:

1. Union of India & Ors. v. M/s Associated Container Terminal Ltd¹

Issue for Consideration	In case of auction of uncleared goods, whether the computation of customs duty would be done basis the date of deemed removal of goods from the warehouse or the date of sale as the importer has failed to clear the imported goods?
Discussion & Judgment	<p>Discussion:</p> <ul style="list-style-type: none"> The Respondent invited tenders to dispose of the unclaimed imported goods lying in the warehouse through auction sale. The Customs department, post successful bidding by an auction purchaser, permitted the auctioned goods to be released on furnishing Bank Guarantee (BG) and payment of sale expenses and duty. The Respondent deducted the expenses on sale from the sum recovered in the auction. Thereafter, the Customs department stated that the auction sale conducted by the Respondent is not acceptable and insisted that the entire auction proceeds should first be adjusted towards the Customs duty as per section 150 of the Customs Act, 1962. The department relying on the Board’s clarification dated February 17, 2005, also invoked the BG to recover the outstanding arrears of the Customs duty by computing Customs duty as it was payable on the date of filing of Bill of entry or deemed expiration of permitted warehousing period. Aggrieved, the Respondent filed a Writ Petition before the Hon’ble Delhi High Court which ruled the matter in favour of the Respondent with a direction to refund the impugned amount along with applicable interest. The Customs department challenged the said order before the Hon’ble Supreme Court.

¹ 2020-VIL-07-SC-CU - The Hon’ble Supreme Court of India



	<ul style="list-style-type: none">• The department argued that the right to recover Customs duty is greater than the right to recover warehouse charges as per the section 150 of the Customs Act, 1962.• The Hon'ble Supreme Court observed as under:<ul style="list-style-type: none">- The instant case does not deal with deemed removal of warehoused goods and assessment of Customs duty in the hands of importer. Hence the judgment relied upon by the department in case of <i>Kesoram Rayon v. Collector of Customs, Calcutta</i>² is not applicable.- CBEC Manual read with circular issued by CBEC dated November 28, 2001 deals with disposal of unclaimed / uncleared goods and the manner in which the sale proceeds recovered from such disposal is to be appropriated. The Court observed that the Customs duty should be calculated on the sale proceeds from auction goods as cum-duty price and not the duty as is payable on the date of deemed expiration of permitted period of warehouse. Further, the sale proceeds from the auction must be appropriated basis the priority specified under section 150(2) of the Customs Act, 1962. <p>Judgment:</p> <p>The appeal was disposed of directing the Appellants to refund the impugned amount along with interest within 3 months after making due adjustments of the sale proceeds in terms of section 150(2) of the Customs Act, 1962.</p>
Dhruva Comments / Observations	Considering the divergent practice being followed by Customs authorities with regard to apportionment of auction proceeds, the Larger Bench judgment is a welcome one.

² 1996-VIL-46-SC-CU - The Hon'ble Supreme Court of India



ADDRESSES

Mumbai

11th Floor,
One IndiaBulls Centre, Tower 2B,
841, Senapati Bapat Marg,
Elphinstone Road (West),
Mumbai 400 013
Tel: +91 22 6108 1000 / 1900

Ahmedabad

B3, 3rd Floor, Safal Profitaire,
Near Auda Garden,
Prahlanagar, Corporate Road,
Ahmedabad - 380 015
Tel: +91-79-6134 3434

Bengaluru

Prestige Terraces, 2nd Floor
Union Street, Infantry Road,
Bengaluru 560 001
Tel: +91-80-4660 2500

Delhi / NCR

101 & 102, 1st Floor, Tower 4B
DLF Corporate Park
M G Road, Gurgaon
Haryana - 122 002
Tel: +91-124-668 7000

Pune

305, Pride Gateway, Near D-Mart, Baner,
Pune - 411 045
Tel: +91-20-6730 1000

Kolkata

4th Floor, Unit No 403, Camac Square,
24 Camac Street, Kolkata
West Bengal – 700016
Tel: +91-33-66371000

Singapore

Dhruva Advisors (Singapore) Pte. Ltd.
20 Collyer Quay, #11-05
Singapore 049319
Tel: +65 9105 3645

Dubai

WTS Dhruva Consultants
U-Bora Tower 2, 11th Floor, Office 1101
Business Bay P.O. Box 127165
Dubai, UAE
Tel: + 971 56 900 5849

New York

Dhruva Advisors USA, Inc.
340 Madison Avenue, 19th Floor, New York,
New York 10173 USA
Tel: +1-212-220-9494

KEY CONTACTS

Dinesh Kanabar (Mumbai)

Chief Executive Officer
dinesh.kanabar@dhruvaadvisors.com

Ritesh Kanodia (Mumbai)

ritesh.kanodia@dhruvaadvisors.com

Niraj Bagri (Mumbai)

niraj.bagri@dhruvaadvisors.com

Ranjeet Mahtani (Mumbai)

ranjeet.mahtani@dhruvaadvisors.com

Amit Bhagat (Delhi / NCR)

amit.bhagat@dhruvaadvisors.com



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