

OPINION

1. Queriest :

M/s. J.K. Fenner (India) Limited,
Khivraj Complex II, 5th Floor,
No.480, Anna Salai, Nandanam,
Chennai – 600 035.

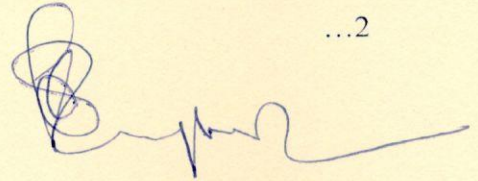
2. Facts :

- 2.1 Queriest has been importing raw materials from various countries. The imported raw materials were stored in a Public bonded warehouse at GRR Logistics Pvt. Ltd., Madhavaram (customs licenced warehouse), Chennai (21 consignments).
- 2.2 The raw materials stored at Bonded warehouse were completely destroyed due to fire accident at Bonded warehouse (GRR Logistics) on 29.02.2020. Information related to claim and monetary claim has been submitted to Bonded warehouse, Customs authority and insurance company.
- 2.3 Bonded warehouse (GRR Logistics) has fire insurance coverage for value of cargo stored and duties by way of individual policy cover. Queriest has made available copies of 2 policies.
- 2.4 As per procedure, the queriest submitted bond with customs authority for all the raw materials stored at bonded warehouse during inward.
- 2.5 Queriest has submitted request for cancellation of bond with customs authority, as the raw materials were destroyed in fire accident. Subsequently queriest sent a reminder and intimated Customs to claim duties from insurance company with whom they have an insurance cover specific for duties. Queriest has made available copies of both the letters (for bond cancellation and reminder).

3. Query :

Queriest wants to confirm whether they are liable to pay duties for damaged cargo to customs and the procedure for cancellation of bonds.

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4. **Opinion :**

4.1 When further information was called for, the queriest provided the following details.

- i. The bonded warehouse has not settled the claim made by the queriest for the loss of the goods.
- ii. The Customs have assessed the loss and sent the request to the insurance company for duty payment and it appears that the payment is yet to be made.

4.2 Based on the information provided as above, the liability to pay the duty by the queriest can be examined with reference to Section 23 as well as Section 72 of Customs Act 1962.

4.3 Section 72 mentioned above reads as follows:

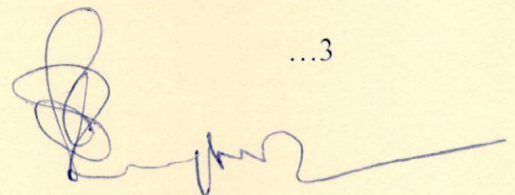
“SECTION 72. Goods improperly removed from warehouse, etc. — (1) In any of the following cases, that is to say, -

- (a) where any warehoused goods are removed from a warehouse in contravention of section 71;
- (b) where any warehoused goods have not been removed from a warehouse at the expiration of the period during which such goods are permitted under section 61 to remain in a warehouse;
- (c)
- (d) where any goods in respect of which a bond has been executed under section 59 and which have not been cleared for home consumption or export are not duly accounted for to the satisfaction of the proper officer,

the proper officer may demand, and the owner of such goods shall forthwith pay, the full amount of duty chargeable on account of such goods together with interest, fine and penalties payable in respect of such goods.

(2) If any owner fails to pay any amount demanded under sub-section (1), the proper officer may, without prejudice to any other remedy, cause to be detained and sold, after notice to the owner (any transfer of the goods notwithstanding) such sufficient portion of his goods, if any, in the warehouse, as the said officer may deem fit.”

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4.4 From the above section it will be evident that the owner of the goods is liable to pay the duty, in case, the goods are not duly accounted for to the satisfaction of the proper officer in terms of the bond executed.

4.5 At the same time, Section 23 of Customs Act mentioned above provides for remission of duty on goods destroyed. This section reads as follows:

“SECTION 23. Remission of duty on lost, destroyed or abandoned goods.

— (1) Without prejudice to the provisions of section 13, where it is shown to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs that any imported goods have been lost (otherwise than as a result of pilferage) or destroyed, at any time before clearance for home consumption, the Assistant Commissioner of Customs or Deputy Commissioner of Customs shall remit the duty on such goods.

(2) The owner of any imported goods may, at any time before an order for clearance of goods for home consumption under section 47 or an order for permitting the deposit of goods in a warehouse under section 60 has been made, relinquish his title to the goods and thereupon he shall not be liable to pay the duty thereon:

Provided that the owner of any such imported goods shall not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force.”

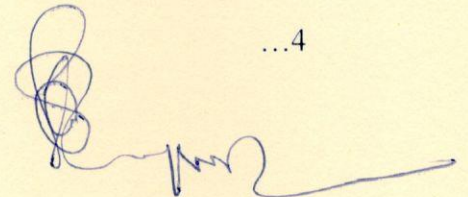
4.6 A combined reading of Sections 23 and 72 will show that when the goods stored in the warehouse are lost by way of destruction other than as a result of pilferage at any time before clearance for home consumption, then, the importer will be entitled to claim remission of duty on such goods. Or in other words, no duty will be payable on such goods.

4.7 However, for failure to store the goods properly and account them, the warehouse will be responsible and the insurance cover taken by them will cover the duty payable to the customs department.

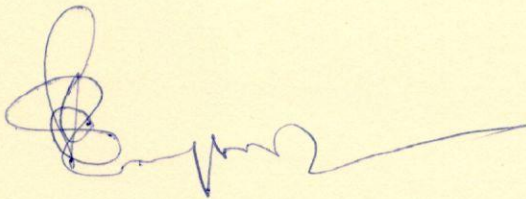
4.8 It is seen that from the Policy No.0108042619P112262577 dated 23.12.2019 the customs duty portion is covered under “Risk” and the policy is taken in favour of the President of India.

4.9 Accordingly, the insurance company will be under obligation to settle the claim and pay the duty to the customs department.

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- 4.10 As far as the queriest is concerned, a formal application for remission of duty is to be made on the ground that before clearance of the goods they have been destroyed and therefore the duty payable by them otherwise, is to be remitted. This will regularise any liability on the part of the importer / queriest.
- 4.11 It may be noted that without getting reimbursement of the duty from the insurance company / warehouse, customs may not cancel the bond given by the queriest. Once the duty leviable on these goods have been recovered from the insurance company then there will not be any requirement to keep the bond alive.
- 4.12 Accordingly, the queriest also should pursue the matter with the warehouse and request them to ask the insurance company to settle the customs claim at the earliest. This will ensure that the bond given by the queriest is cancelled and also the remission of duty that is payable by the queriest is granted and the loss of goods regularised.



S. MURUGAPPAN

sm/ss

Disclaimer:- The above opinion is provided based on the information and documents made available to us by the queriest and further based on the laws and rules prevalent as on date and the understanding of such provisions by the author and is meant for the private use of the person to whom it is provided without assuming any liability for any consequential action taken based on the views expressed here.