CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE

REGIONAL BENCH - COURT NO. 2

Customs Appeal No. 20415 of 2022

(Arising out of Letter No. C. No. CUS/BOND/EXTN/354/2021-WHB-ICD-Whitefield dated 20.12.2021 passed by the Additional Commissioner of Customs, Bengaluru City Customs Commissionerate, Bengaluru.)

M/s. Nuance Group (India) Ltd.
Bengaluru International Airport,
Alpha 3, Airline Building, 1st Floor,
Devanahalli,
Bengaluru – 560 300. ....**Appellant(s)**

VERSUS

Commissioner of Customs,
City Customs Commissionerate,
C.R. Building, P.B No.5400,
Queens Road,
Bengaluru-560 001. ....**Respondent(s)**

WITH

(i) Customs Appeal No. 20416 of 2022

(Arising out of Letter No. C. No. CUS/BOND/EXTN/354/2021-WHB-ICD-Whitefield dated 20.12.2021 passed by the Additional Commissioner of Customs, Bengaluru City Customs Commissionerate, Bengaluru.)

(ii) Customs Appeal No. 20417 of 2022

(Arising out of Letter No. C. No. CUS/BOND/EXTN/312/2021-WHB-ICD-Whitefield dated 10.12.2021 passed by the Additional Commissioner of Customs, Bengaluru City Customs Commissionerate, Bengaluru.)

(iii) Customs Appeal No. 20418 of 2022

(Arising out of Letter No. C. No. CUS/BOND/EXTN/322/2021-WHB-ICD-Whitefield dated 22.12.2021 passed by the Additional Commissioner of Customs, Bengaluru City Customs Commissionerate, Bengaluru.)

APPEARANCE:

Mr. Tarun Kumar Govil, Advocate for the Appellant.
Mr. Maneesh Akhoury, Asst. Commissioner (AR) for the Respondent.

CORAM:

Hon'ble Mr. P.A. Augustian, Member (Judicial)
Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)

Final Order Nos. 20883-20886 /2026

Date of Hearing: 08.01.2026
Date of Decision: 07.07.2026

PER: P. A. AUGUSTIAN

The issue in the present appeal is regarding extension of warehousing period under Section 61(1)(b) of the Customs Act, 1962

2. The brief facts are, in the regular course of business, Appellant imported various consignments and warehoused in Public Bonded Warehouses. The appellant is required to execute a warehousing bond along with bank guarantee for each consignment. Due to covid and due to closer of international flights, the goods could not be sold as scheduled, hence a request was made for extension of warehousing period. However, it was rejected on the ground that application for the extension of the warehousing period was not made well in advance and the rejection order passed by the Commissioner was communicated to the Appellant vide impugned letters/ orders dated 10.12.2021/ 20.12.2021/ 22.12.2021. Since the order giving the reasons for rejection issued by the Adjudication Authority was not communicated to the Appellant, Appellant filed present appeals on the basis of said communication. Details of appeals are: -

Sl. No	Appeal No.	Order/ letter No. and date	Bond No. and Date
1	C/20415/2022-DB	CUS-Bond-Extn-354-2021-WHB- ICD-Whitefield dated 20.12.2021	2421 dated 09.10.2019
2	C/20416/2022-DB	CUS-Bond-Extn-354-2021-WHB- ICD-Whitefield dated 20.12.2021	2471 dated 14.102019
3	C/20417/2022-DB	CUS-Bond-Extn-312-2021-WHB- ICD-Whitefield dated 10.12.2021	1054 dated 07.05.2019
4	C/20418/2022-DB	CUS-Bond-Extn-322-2021-WHB- CD-Whitefield dated 22.12.2021	954 dated 23.04.2019

3. When the appeal came up for hearing, Learned Counsel for the Appellant submits that the Appellant is engaged in the business of operating Duty-Free Shop at the Bengaluru International Airport as per the DFS License No. 01/2016 dated 07.10.2016. In regular course of business, the appellant imported various consignments of assorted liquor and warehoused in the Public Bonded Warehouse, ICD, CONCOR, Whitefield, Bangalore and executed Bonds consignment wise. Due to Covid induced lockdowns and closure of international flights during March 2020 till March 2022, the goods could not be sold as scheduled international flights were stopped, the appellant approached the respondent for extension of the warehousing period, the first extension of warehousing period was granted. However, the request for second extension was rejected on the ground that the application was not made well in advance. No show cause Notice or opportunity for personal hearing was granted. Despite repeated representations to customs authorities requesting to reconsider the matter due to Covid pandemic induced difficulties, no reply from department was received.

4. Learned Counsel submits that the impugned rejection order passed by Learned Commissioner of Customs as communicated vide communication dated 10.12.2021/ 20.12.2021/ 22.12.2021 are bad in law as the same have rejected the applications for extensions without giving any show cause notice, without giving any personal hearing and therefore in violation of the principles of natural justice. Learned Counsel further submits that the issue is covered by the decision of the Tribunal in the case of **Anand Laminates Ltd Vs. Collector of Customs [1993 (64) ELT (255) -Tri.),** wherein it is held that "*On going through the wordings of Section 61(1)(b) proviso (ii), we find that extension or rejection is subject to the 'sufficient cause' being shown. Since the power of extension was quasi-judicial and required judicial approach and on sufficient cause being shown refers to an opportunity of being heard must be given before passing an order, such an order cannot be considered to be an administrative act of the authority*". Thus, Adjudication Authority committed a gross error in law by rejecting

request for extension of warehousing period on the ground that the extension was not sought well in advance.

5. Learned Counsel further submits that Section 61 does not stipulate any time within which period an application for extension of warehousing period should be submitted. There is nothing in the statute requiring application for extension to be filed well in advance. The law only provides that Principal Commissioner of Customs or Commissioner of Customs, on sufficient cause being shown, may extend the warehousing period by not more than one year at a time. Learned Counsel also submits that it is a settled position in law that application for extension of warehousing period is to be considered even though the application is filed belatedly. In this regard, the Appellant refers to the decision of the Hon'ble Bombay High Court in the case of **Sunil Jugal Kishore Gupta Vs. UOI [1988 (36) ELT 75]** wherein Hon'ble High Court held that the authorities are under an obligation to consider the application for extension despite the same having been preferred after the expiry of the permitted warehousing period. Further following the above, Hon'ble High Court of Madras in the case of **Commissioner of Customs (Import) Chennai Vs CESTAT, Chennai [2017(353) ELT 398(Mad)]** held that, *"There is nothing in Section 61(1)(b)(i)(B), which is suggestive of the fact, that an application, for that purpose, was required to be moved, prior to the expiry of the initial period of warehousing"*. Further, this Tribunal also considered the issue in the case of the **Pradeep Ullal Vs. Commissioner of Customs, Bangalore [2001 (133) ELT 428(Tri-Bang)].** Learned Counsel further submits that Section 61 of the Act has been substituted vide Finance Act, 2016 with effect from 14.05.2016. Although in the above decisions, pre-substituted provision of section 61 of the Act has been referred to, but in the extant provision of Section 61 also, there is nothing requiring application for extension to be filed well in advance nor there is any dispensation requiring application for extension of warehousing period to be submitted before expiry the warehousing period. The Circular No. 47/2002-Customs dated 29.7.2002 states that application for extension should be filed as far as possible prior to

fifteen days of expiry of warehousing period. From the very language of the Circular, it is evident that it is not mandatory to submit request for extension prior to expiry of the warehousing period. The guidance of 15(fifteen) days advance period has to be ignored due to Covid induced lockdown restrictions. Further submits that the intention of the Government to grant extension of warehousing period liberally is evident from the Circular No. 47/2002-Customs dated 29.7.2002. At Para 6 of the Circular, it may be seen that CBEC had clarified that requests for grant of extension of warehousing period can be considered even after the expiry of initial or extended period of warehousing after taking into consideration exceptional circumstances, rate of duties, etc. Appellant submitted the application for grant of extension of warehousing period before expiry of the warehousing period. Section 61 of the Act has been substituted vide Finance Act, 2016 with effect from 14.05.2016. Further, although in the above decisions, pre-substituted provision of section 61 of the Act has been referred to, but in the extant provision of Section 61 also, there is nothing requiring application for extension to be filed well in advance nor there is any dispensation requiring application for extension of warehousing period to be submitted before expiry the warehousing period. Thus, the ratio of the above cited decisions squarely applies in the present case. Being the jurisdictional Tribunal, the above decision of CESTAT has a binding precedent and the impugned order needs to be set aside.

6. Learned Counsel further submits that during the relevant period of time the country was in the grip of severe pandemic and there were surges of COVID cases. Lockdown was clamped everywhere. The Appellant's establishment was closed, and staff was not coming to office. Even in such a pressing situation, the Appellant managed to submit the application before expiry of the extended warehousing period. Even the required Bank guarantees for seeking extension could be obtained against all adversities as it took time for banks to give guarantees in the wake of losses of the appellant due to Covid induced stoppages. Even after submitting the Bank Guarantee (BG) on 09.11.2021, the application was rejected in December 2021 without

giving any reasons or opportunities to explain in person. The scheduled commercial international passenger flight services were resumed only on 27.03.2022, vide Circular dated 08.03.2022 issued by Directorate General of Civil Aviation (DGCA), New Delhi. The Learned Commissioner of Customs ought to have considered this as a special case.

7. Learned Counsel also draws our attention to large number of communication and submits that pursuant to issue of impugned orders, independent proceedings were initiated against each Bond and details of Bonds are 954 dated 23.04.2019, 1054 dated 07.05.2019, 2521 dated 09.10.2019 and 2471 dated 14.10.2019. Adjudication authority has issued Order-in-Original confirming the demand along with interest, imposed redemption fine and penalty with an option to re-export. Appellant had filed appeal before the Commissioner (Appeals) and Commissioner (Appeals) as per the **Order-in-Appeal No.2036/2022 dated 08.01.2024** set aside the impugned orders with the following observation.

> *"8. I find that, with regard to the submissions of the appellant, the Appellant made application seeking second extension of warehousing period vide application dated 21.04.2021 Bond No.954/2019, dated 30.04.2021 Bond No.1054/2019, dated 07.10.2021 Bond No.2421/2019 and dated 07.10.2021 Bond No.2471/2019, and BG submitted on 09.11.2021 and 26.11.2021 of above said bonds, due to COVID-19 pandemic restrictions, the international flights were closed till March 2022, could not clear the bonded goods during the extended period and were forced to request for 2nd extension due to forces beyond our control. Which was rejected by the Department on 22.12.2021, 10.12.2021 and 20.12.2021.*
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> *7. It is seen from the Order-in-Original and Personal Hearing records, the respondent conducted personal hearing on 21.06.2022 and taken on additional submission submitted by the appellant and considered the request for extension of time for*

filing reply or to appear for personal hearing. The adjudicating authority has passed the order on the next day of Personal Hearing and passed the impugned order i.e., 22.06.2022 and issuing on 06.07.2022 without consideration of the appellant request for extension of time for filing reply or to appear for personal hearing. It is construed that Principal of Natural justice not followed as the Appellant has not been provided opportunity to be heard in person as well as to submit the reply against the SCN."

8. Learned Counsel also draws our attention to the judgment of the Hon'ble Supreme Court in **MA No. 21/2022 in SUO MOTO WP (C) No 3 of 2020** while taking cognizance of difficulties due to covid pandemic, has extended limitations under various general as well as special laws of the country. For ease of reference the operative part of order is as follows:-

"5. Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of MA No 21/2022 with the following directions:

i. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dt 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

ii. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.

iii. In cases where the limitation would have expired during the period 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 1.3.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.

iv. It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23(4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and proviso (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings".

9. Learned Counsel submits that the period of COVID i.e. 15.03.2020 till 28.02.2022 should not be counted for the purposes of the limitation of the warehousing period for all the 4(four) Bonds. Accordingly, validity of the second extension of all the 4(four) Bonds should be deemed to begin from 01.03.2022 up till 28.02.2023. It is already a settled position that extension of warehousing period is a quasi-judicial proceedings (Anand Laminates Ltd vs Collector of Customs [1993 (64) ELT (255) -Trib].), the expiry of which gives rise to institution of proceedings to demand duty, to confiscate goods and to impose penalty which has already been instituted in the case of the Appellant wherein show cause notice (SCN) dated 06.05.2022 was issued, demand of duty was confirmed along with interest, goods were confiscated with option to redeem on a fine and a penalty was also imposed, vide Orders-in-Original dated 06.07.2022 which has since been set aside and remanded vide Order-in-Appeal dated 08.01.2024.

10. Learned Counsel submits that the Adjudication Authority has not considered the above direction of the Hon'ble Supreme Court while considering the request for extension of warehousing period.

11. Learned Authorized Representative (AR) for the Revenue submits that since the Adjudication authority has taken a view regarding extension of warehousing period after considering the entire submissions made by the Appellant and considering the fact that the impugned order is not an appealable order which is issued under the administrative capacity of the Commissioner, appeal is not maintainable.

12. Learned AR strongly contended that the Appeals are not maintainable, since the impugned orders/ letters are not orders issued by the Adjudication authority and in the absence of the impugned orders, the appeals are not maintainable.

13. Heard both sides and perused the records.

14. We find that the issue involved in the present appeals is regarding warehousing period and for denial of extension of warehousing period, appropriate proceedings have to be initiated by way of adjudication and Commissioner is required to issue an appealable order giving reasons for denying the extension of the warehousing period. However, we find that the impugned letters/orders produced by the Appellant are only a communication and there is no finding or justification disclosed for denying the extension of the warehousing period. Further we find that on receipt the impugned letters/orders, further proceedings were initiated by the department against the Appellant against each Bond and Appellate authority has rightly remanded the matter to comply with the principles of natural justice.

15. Considering the facts and circumstances of the case, the impugned letters/ orders rejecting the extension of warehousing period is prima facie unsustainable, since the details as to whether the Adjudication authority considered the issue by considering the judgment

of the Hon'ble Supreme Court and the decisions of this Tribunal. We find that it is a fit case for remanding the matter to Adjudication Authority to consider the issue afresh. Needless to say, that reasonable opportunity should be given to the Appellant intimating the reasons for denial of the extension of the warehousing period and only after receipt of a reply and after extending opportunity for personal hearing, Adjudication order should be issued. In the meantime, all the proceedings initiated pursuant to the impugned letters/ orders denying the extension of warehousing period should be kept in abeyance.

16. Accordingly, the Appeals are disposed in the above terms.

(Order was pronounced in Open Court on 07.07.2006)

(P. A. AUGUSTIAN)
MEMBER (JUDICIAL)

(PULLELA NAGESWARA RAO)
MEMBER (TECHNICAL)

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