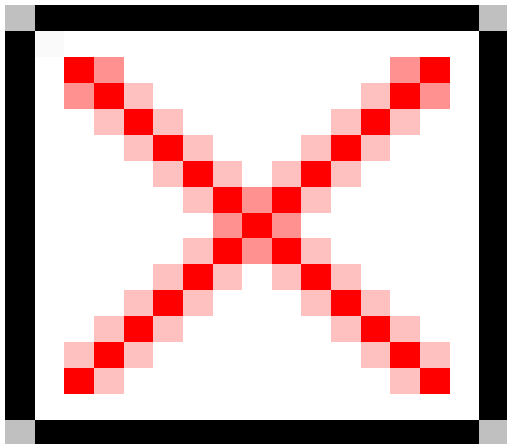


Detention by Customs/DRI - No fault of importer - Demurrage and Shipping Line Charges to be paid by Customs/DRI - Cost Imposed



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CUSTOMS

Department, prodded by DRI did not allow imported goods to be cleared for nearly a year and the demurrage and shipping line charges ran into huge amounts exceeding not only the value of the imported goods, but the value of the container too. But who will pay these charges? This is not an isolated incidence. With routine regularity, hundreds of such cases occur across the country where hapless importers run from pillar to post to get their goods cleared from Customs and when the goods are finally allowed to be cleared, are stuck with huge demands of demurrage charges. It is not worth clearing the goods if they have to pay the demurrage.

In a landmark decision on Friday the Punjab and Haryana High Court came down heavily on the Customs and DRI and imposed costs recoverable from guilty officers.

The petitioner imported defective/secondary cold rolled steel between 4.12.2015 and 11.12.2015. The DRI thought it was hot rolled and heat was let loose. It was difficult to find somebody who could scientifically certify whether the goods were hot rolled or cold rolled. They finally found a chartered engineer who certified that the goods were cold rolled, but this was not in favour of Customs/DRI; What do they do when they get a report that is not favourable to them? They change the reporter and often without even telling the importer! So, they got it tested by another engineer who certified that the goods were hot rolled and not cold rolled. On the directions of the High Court, fresh samples were sent to Bokaro Steel Plant which certified that the material was cold rolled steel. After eight months, Customs allowed the clearance but then came the bomb of demurrage and Shipping Line charges. The case travelled to several stages - even the Supreme Court, before the Punjab and Haryana High Court gave its judgement last Friday.

The High Court observed:

1. It is clear that stand of the DRI and Customs had never been that the goods being imported by the petitioner were prohibited goods, which could not be imported. The only suspicion DRI had that the consignments contained material, which is hot rolled steel.
2. The net result of the action/in-action of the authorities is that parties have been involved in avoidable litigation resulting in levy of detention and demurrage charges, part of which may go to Shipping Line, which is a foreign company.

3. There is no justification available and could not possibly be as to why the officers of the department sent the samples for testing to a laboratory, which did not have requisite facility. The apparent object may be to harass in the garb of testing of samples.

4. The whole process of testing and examination, which could be over within a week or 10 days of landing of goods at the port, was not completed even in months together. The correspondence between DRI, Ludhiana and Customs went in circles. Even at the time of arguments, blame was sought to be put on each other, but the fact of the matter is that the petitioner cannot be said to be at fault for detention of goods. For that, DRI, Ludhiana and customs are to be blamed.

5. Though there was no good reason for detention of goods for so long, if seen in the light of the instructions issued by the department, but still if required, the petitioners should have been given opportunity to get it de-stuffed immediately, which was not given immediately.

6. It was the illegal action of customs and DRI, Ludhiana on account of which goods remained in their custody. De-stuffing was not offered and allowed immediately, as a result of which detention and demurrage charges have accumulated, which are much more than even the value of the goods.

7. The case in hand is not in isolation, where the conduct of the department in delaying the process of release of goods despite the same being not prohibited has been commented upon.

8. Things could have been taken in right perspective with positive attitude ensuring that neither the revenue suffers any loss nor the importer on account of merely delay of clearance of goods. The instructions issued by the department, time and again, were blatantly violated. The stand taken by the petitioner was vindicated when finally the goods were found to be cold rolled steel.

9.
Once it is found that detention of goods was not on account of any fault of the petitioner, rather, found to be illegal action on the part of DRI and customs, the petitioner cannot be burdened for detention and demurrage charges and the liability has to be put on customs department.

The High Court ordered release of the goods, held that the Port Trust cannot charge demurrage and that the charges demanded by the Shipping Line shall be borne by DRI and/or customs and imposed a cost of Rs. 50,000 to be paid by the Department with liberty to recover from the guilty officer/official(s).

What did the Customs and DRI achieve in this case? No revenue! Huge costs. Irreparable damage to credibility and image causing a terrible loss of faith in the system and a possibility (remote, though) of costs being recovered from the officers whom the court has called guilty!

Tailspark: In this case, the Customs argued in the Court,

"Customs is not responsible for any delay in the process as the consignments were put on hold on the directions of DRI and all actions were being taken as guided by them." The DRI argued,

"DRI being not at fault and acted in discharge of official duty is not responsible for any delay whatsoever. It is a case in which the petitioner is responsible for the entire delay, which he caused for the reasons best known to him."

For more details, please see [Breaking News](#)

No Proposal to impose Capital Gains Tax - FM

INAUGURATING the National Institute of Securities Markets campus at Patalganga on 24.12.2016, the Prime Minister said,

Those who profit from financial markets must make a fair contribution to nation-building through taxes. For various reasons, the contribution of tax from those who make money on the markets has been low. To some extent, it may be due to illegal activities and fraud. To stop this, SEBI has to be extremely vigilant. To some extent, the low contribution of taxes may also be due to the structure of our tax laws.

Low or zero tax rate is given to certain types of financial income

. I call upon you to think about the contribution of market participants to the exchequer. We should consider methods for increasing it in a fair, efficient and transparent way. Earlier, there was a feeling that some investors were getting an unfair deal by using certain tax treaties. As you know, those treaties have been amended by this government. Now it is time to re-think and come up with a good design which is simple and transparent, but also fair and progressive .

Finance Minister Arun Jaitley was present at the meeting.

The media interpreted the PM's remarks as an indication that the government proposes to impose long term capital gains tax in the ensuing budget.

The ***Economic Times*** headlined, ***PM Narendra Modi hints at long term capital gains tax in budget***. The Paper commented, ***"This could be an indication that the government might be considering a revival of the long term capital gains tax."***

The banner headline in the Times of India was, ***Prime Minister Narendra Modi hints at higher taxes on income from stock market*** and the paper commented,

"Coming from the PM a little over a month before the Budget, financial sector players feel tax on long-term capital gains may be imposed. The remark assumes added significance since finance minister Arun Jaitley and his deputy, Arjun Meghwal, were present at the (meeting)."

Finance Minister Arun Jaitley assured that there was no such proposal and the PM did not make any such remarks. The FM said,

The speech has been misinterpreted in some sections of the media which have started speculating that this is an indirect reference to the fact that there could be long-term capital gains tax on securities transactions.

Now, this interpretation is absolutely erroneous, the Prime Minister has made no such statement directly or indirectly... and therefore I wish to absolutely clarify that there is no occasion or opportunity for anybody to reach such a conclusion because this is not what the Prime Minister said, nor is the intention of the government as has been reported.

Let us wait for the budget to know what really will happen or see today's stock market to know what the pundits think will happen.

Course for Commissioners (Appeals) to sensitize them about need for passing judicious, reasoned & proper orders

THE

National Academy of Customs, Excise and Narcotics (NACEN), Faridabad is organising specialized course for Commissioners (Appeals) on 6th February, 2017. The training is being organized in coordination with the Directorate of Legal Affairs, CBEC. The course, ***inter alia***, will cover topics relevant for the Commissioners (Appeals). It will cover various topics like ***noscitur a sociis/ejusdem generis*** in indirect tax laws, legal personality, nature and types of penalties & limits of natural justice etc.

May I gently remind NACEN that it is not ***noscitur a sociis***, but ***noscitur a sociis***.

[F.No.II\(11\)84/2016-NACEN., Dated: December 22, 2016](#)

Difference between 'noscitur a sociis' and 'ejusdem generis'

The expression *noscitur a sociis* simply means that the meaning of a word is to be judged by the company it keeps. **"This rule, according to Maxwell, means that, when two or more words which are susceptible of analogous meaning are coupled together they are understood to be used in their cognate sense. They take as it were their colour from each other, that is, the more general is restricted to a sense analogous to a less general. The same rule is thus interpreted in "Words and Phrases" (Vo. XIV, p. 207):**

"Associated words take their meaning from one another under the doctrine of noscitur a sociis, the philosophy of which is that the meaning of a doubtful word may be ascertained by reference to the meaning of words associated with it; such doctrine is broader than the maxim *Ejusdem Generis*." In fact the latter maxim

"is only an illustration or specific application of the broader maxim noscitur a sociis" - from [2015-TIOL-151-SC-CX](#)

When particular words pertaining to a class of genus are followed by general words, the latter, namely, the general words are construed as limited to the things of the same kind as those specified, and this is known as the rule of ejusdem generis reflecting an attempt to reconcile incompatibility between the specified and general words. - from [2016-TIOL-16-SC-MISC](#)

Nositur a Sociis means that when two words are capable of being analogously defined, then they take colour from each other. The term *ejusdem generis* is a facet of **Nositur a Sociis**

. The aforesaid principle means that the general words following certain specific words would take colour from the specific words. - [2011-TIOL-39-SC-CT](#)

One should not be carried away by labels and Latin maxims when the word to be interpreted is clear and has a wide meaning.from - [2015-TIOL-151-SC-CX](#)

Please also see [DDT 293 31 01 2006](#)

No Discussion on Official Matters in Social Media - CBDT Chief

THE CBDT Chairman Sushil Chandra has noticed that some officers of the Department are frequently discussing official decisions, including minutes of in-camera meetings on social media platforms like Whatsapp, Twitter, Facebook and others.

He says,

"Such discussion / circulation of official material without authorization of the Competent Authority is to be avoided.

It is reiterated that specific officers are authorized for posting information on these social media platforms on behalf of the Income Tax Department. Unauthorised / unofficial circulation of minutes of meetings, official discussions of any kind on social media must be avoided at all costs."

In March 2016, the Moscow Police Chief officially banned police officers from exchanging work-related information on social networks and messaging apps. Any and all information connected to the professional activity of Moscow Police is now barred from social networks like VKontakte, Odnoklassniki, Facebook, Instagram or Twitter. Additionally, personal messaging apps such as Telegram, Viber, WhatsApp and the video conferencing/VoIP software Skype are also on the list of platforms where police are not allowed to discuss their work.

DDT - The Last Over

THIS

week DDT will be completing 3000 editions. The long innings will come to an end with the last over this week - the last DDT will come on 30th December. A **concerned**

Netizen called me up on Friday night to inform me that the P&H High Court had passed an order that when detention was illegal, demurrage charges need not be paid by the importer. He wanted me to cover the case in DDT and he had another request, **"please don't stop DDT."**

Sir, I am happy to accede to your first request.

Until Tomorrow with more **DDT**

Have a nice day.

Mail your comments to vijaywrite@tiol.in