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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. I

Customs Appeal No. 51454 of 2022

(Arising out of Order-in-Appeal No. CC(A) CUS/D-II/ICD/TKD/IMP/1093/2020-21 dated 08.12.2020 passed by the Commissioner (Appeals), New Delhi)

M/s Classic Interiors **Appellant**
R-I, Cheeka Kaithkal,
Haryana-136207.

VERSUS

Commissioner of Customs, New Delhi **Respondent**
Customs Commissionerate,
ICD Tughlakabad, New Delhi

Appearance

Shri Saurabh Kapoor and Shri Abhishek Choudhary, Advocates – for the Appellant.

Shri Rakesh Kumar, Authorized Representative – for the Respondent.

CORAM : **HON'BLE MR JUSTICE DILIP GUPTA, PRESIDENT**
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

DATE OF HEARING : 22/12/2022
DATE OF DECISION : 12/01/2023

Final Order No. 50023/2023

P.V. Subba Rao

M/s Classic Interiors, Haryana[1] filed this appeal to assail the order-in-appeal[2] dated 09.12.2020 passed by the Commissioner of Customs (Appeals) whereby he partially allowed the appellant's appeal and modified the provisional release order dated 06.08.2020 passed by the Additional Commissioner of Customs, Inland

1 Appellant
2 Impugned order

Container Depot[3], Tughlakabad[4] to the extent of reducing the bank guarantee for provisional release of the seized goods to 10% of the value of goods.

2. The facts of the case are that the appellant imported some goods. Directorate of Revenue Intelligence[5] received intelligence that the goods were mis-declared in terms of value and also in terms of percentage of polyvinyl chloride[6]. During investigation, the goods were seized under section 110 of the Customs Act, 1962[7] by Seizure Memo dated 26.07.2019; the appellant sought provisional release of the goods under section 110A. The appellant had also filed writ petitions No. 34716 and 34855 of 2019 before the Hon'ble High Court of Punjab & Haryana in which an order dated 20.12.2019 was passed as follows:

> "Learned counsel for the customs has produced two separate orders dated 19.12.2019 in respect of two bills of entry whereby the provisional release of the goods seized has been ordered subject to certain terms and conditions.
>
> Learned counsel for the petitioner(s) submits that the said terms and conditions of seeking bank guarantee, restraining of challenge to valuations etc. are arbitrary and contrary to law in view of the law laid down by this Court in the cases of Bajrangbali Trading Company v. Union of India: 2012 (275) ELT 311 (P&H); Amit Enterprises v. Union of India; 2011 (269) ELT 314 (P&H); Shilpi Crafts v. Union of India; 2014 (314) ELT 48 (P&H); ERA International v. Union of India; 2011 (274) ELT 6 (P&H); Gaurav Electronics v. Addl. Commissioner of Cus., Sahnewal; 2015 (324) ELT 149 (P&H); Kuber Casting (P) Ltd. v. Union of India; 2013 (297) ELT 4 (P&H) and Century Knitters (India) Ltd. v. Union of India; 2013 (293) ELT 504 (P&H).
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> That apart, it is urged that the petitioner(s) have already deposited cash amounts of Rs. 15,00,000/- each qua two different seizures, which have not been taken into account

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3 ICD
4 TKD
5 DRI
6 PVC
7 Act

> while ordering the amounts under proposed Bank Guarantee.
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> Accordingly, the authorities are directed, through counsel, to re-examine the issue and pass supplementary modified order of release. The authorities may also consider giving an opportunity to explain to the petitioner as well before passing any such order.
>
> List for consideration on 15.01.2020."

3. On 15.01.2020, the High Court dismissed the writ petitions as infructuous.

4. The Additional Commissioner gave an opportunity of personal hearing to the appellant on 14.01.2020 but nobody appeared. Subsequently, the learned counsel of the appellant gave a written submission by letter dated 20.01.2020 stating that the differential duty has been deposited during the investigation. After considering the submissions made by the appellant the Additional Commissioner passed the following order of provisional release:

> "(i) Bond equal to the value of the goods i.e. submission of Bond for provisional release of re-determined value of the goods of Rs. 1,38,97,788/- in proper format.
>
> (ii) Submission of Bank Guarantee for Rs. 30,90,659/- to cover the applicable Govt. dues like any possible Redemption Fine/Personal penalty and any other dues which adjudicating authority may impose at the time of adjudication of subject case.
>
> (iii) This is provisional release order, therefore, the value and duty etc. may increase or decrease at the time of finalization of case."

5. Aggrieved, the appellant appealed the Commissioner (Appeals) who passed the impugned order partially allowing the appellant's appeal by reducing the bank guarantee for provisional release to 10% of the value of the goods but otherwise upholding the order of the Additional Commissioner.

6. The prayer made in the appeal before us is as follows:

> "(i) Set aside the Order in Appeal No. CC(A)CUS/D-II/Import/ICD/TKD/1093/2020-21 dated 08.12.2020 and the Order-in-Original dated 06.08.2020;
>
> (ii) Grant consequential relief;
>
> (iii) Pass such other order(s) or direction(s) in favour of the appellant as the Hon'ble Commissioner may deem fit in the facts and circumstances of the case and in the interest of justice."

7. At the outset, we find that this prayer is defective as the prayer is **for such orders or directions as the Hon'ble Commissioner may deem fit in the facts and circumstances of the case and in the interest of justice**, and it is impossible for the Tribunal to decide what the Commissioner may deem fit. Secondly, the **prayer is to set aside the order in appeal as well as the order in original with consequential relief**. It needs to be pointed out that the order in original allows provisional release of goods, subject to some conditions and the order in appeal impugned before us in this appeal partially modified those conditions. **If both these orders are set aside, there will not be any order for provisional release at all**. This is not a case of confirmation of a demand or confiscation of goods or imposition of penalty and if the order of provisional release is set aside, there will be no provisional release at all.

8. However, the submission before us by the learned counsel is to waive the requirement of bank guarantee for provisional release. He submits that after the seizure, a show cause notice[8] dated 20.07.2022 has since been issued proposing recovery of differential duty, confiscation of the goods under Section 111(l) and 111(m)

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8 SCN

and imposition of penalties under Section 114A and 114AA. It has been proposed in the SCN to adjust Rs.55,00,000/- deposited by the appellant during the investigation against the differential duty demanded. Learned counsel for the appellant submits a challan dated 23.08.2022 whereby the remaining part of the demanded differential duty of Rs. 18,68,500/- has also been deposited. Since the entire duty demanded in the SCN has already been paid, he prays that the condition of 10% bank guarantee for provisional release of the goods may be waived and the seized goods may be released provisionally without any bank guarantee on a bond for the full value of the goods. He relies on following case laws:

(i) Amit Enterprises Vs. Union of India[9]

(ii) Shilpi Crafts Vs. Union of India[10]

(iii) Gaurav Electronics Vs. Addl. Commissioner of Customs, Sehnewal[11]

(iv) Kuber Casting (P) Ltd. Vs. Union of India[12]

9. He submits that in similar cases the goods were released provisionally even where part of the differential duty demanded has been deposited.

10. Learned authorised representative opposes the above prayer. He submits that this is a case where the importer had imported PVC panels and filed bills of entry which, on investigation were found to be heavily undervalued. The fact of undervaluation was accepted by the appellant by its letter dated 23.07.2020 and 24.07.2020 and also in statements under Section 108 of the Customs Act dated

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9 **2011 (269) ELT 314 (P&H)**
10 **2014 (314) ELT 48 (P&H)**
11 **2015 (324) ELT 149 (P&H)**
12 **2013 (297) ELT 4 (P&H)**

13.07.2019 and 16.07.2019. The appellant has not retracted these statements till date but had, on the other hand, requested for closure of the cases under Section 28(6).

11. Learned authorised representative He further submits that although the adjudication is still pending, it is to be noted that the goods were mis-declared in terms of value and the appellant accepted the mistake of undervaluation and agreed to its re-determination in writing. Any goods which are mis-declared in terms of value or any other particular are liable for confiscation under Section 111(l) and (m). Since the undervaluation is not disputed by the appellant, they are liable for confiscation.

12. Learned authorised representative also submitted that the goods seized under Section 110 of the Act can under certain circumstances be released provisionally to the appellant under section 110A. Central Board of Excise and Customs [13] issued Circular No. 35/2017-Cus. dated 30.06.2017 as per which provisional release of goods can be permitted subject to execution of a bond and furnishing a bank guarantee to safeguard recovery of any redemption fine if it is imposed consequent upon the confiscation. The redemption fine under section 125 cannot exceed the market value of the goods. The Commissioner (Appeals) has, in the impugned order ordered execution of a bond for the full value of the goods and only 10% of the value in the form of bank guarantee. These conditions for provisional release are extremely liberal and there is no scope or need to interfere with the impugned order.

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13 CBEC

13. We have considered the submissions on both sides and perused the records.

14. There cannot be any hard and fast rule regarding the conditions for provisional release of the goods and the facts of each case have to be looked into. In **Amit Enterprises** relied upon by the learned counsel for the appellant, the High Court distinguished the case from other judgements of the same Court. The High Court observed that in the cases of **T.L. Verma & Company** and **M/s Kundan Rice Mills** the Court was satisfied that the importers had admitted fraudulent tactics which, *prima facie*, justified opinion for confiscation of the goods. The High Court further remarked that such judgement cannot be applied to every case of detention.

15. In this case, we find that there was allegation of mis-declaration of the value of the goods which has been admitted to by the appellant in letters and statements. The SCN demanded differential duty which the appellant has already deposited. The SCN has also proposed confiscation of the goods under Sections 111(l) and 111(m). After adjudication, if the goods are held liable for confiscation, they may be released on payment of redemption fine. The present case of provisional release of goods needs to be seen in this context. If the goods are confiscated and allowed redemption on payment of fine such fine has to be recovered from the appellant and some security is necessary to cover it if the goods are to be released provisionally before adjudication itself. Considering the overall factual matrix of this case we modify the impugned order reducing the amount of bank guarantee to 5% of the value of the goods.

16. The appeal is partially allowed and the impugned order is modified to the extent that the bank guarantee for provisional release of the goods will be 5% of the value of the goods.

(Pronounced in open Court on 12/01/2023)

(Justice Dilip Gupta)
President

(P.V. Subba Rao)
Member (Technical)

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