CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST ZONAL BENCH : AHMEDABAD

REGIONAL BENCH - COURT NO. 3

CUSTOMS Appeal No. 10288 of 2020
(Miscellaneous Application No. C/EH/10197/2020)

[Arising out of Order-in-Original/Appeal No -VIII-48-1321-MISC-MCH-2019-20- dated 17/02/2020 passed by Commissioner (Appeal) of Central Excise, Customs & ST, Mundra, Kutcch]

Witteneia Multitrading Pvt Limited .... **Appellant**
E- 303-304, Neo Corporate Plaza, Ramchandra Lane
Extn, Kanchpada, Opp. Kapolwadi, Malad
Mumbai, Maharashtra

VERSUS

Commissioner of Central Excise & ST, Kutch .... **Respondent**
Central Excise & Service Tax Commissionerate,
Centeral Excise Bhavan Plot No. 82, Sector 8,
Gandhidham(Kutch), Gujarat

APPEARANCE :

Shri Hardik Modh, Advocate for the Appellant
Shri S.K. Shukla, Superintendent (AR) for the Respondent

CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. RAJU, MEMBER (TECHNICAL)

FINAL ORDER NO. A/11130 / 2020

DATE OF HEARING : 16.07.2020
DATE OF DECISION : 16.07.2020

RAMESH NAIR :

The present appeal and early hearing application is filed against the impugned order of Principal Commissioner of Customs, Custom House, Mundra, Kutch, communicated by the Deputy Commissioner (Import Group-II) Custom House, Mundra dated 17.02.2020 whereby the provisional release order was passed in respect of goods valued Rs. 1,95,62,941/- with the condition of execution of bond for full value with bank guarantee of Rs. 60,60,600/-.

2. Shri Hardik Modh, learned Counsel appearing on behalf of the appellant submits that this case is of live consignment therefore, early

hearing application and appeal may be disposed of together. He submits that the respondent has imposed exorbitant conditions for provisional release of goods for home consumption under Section 110A of the Customs Act, demanding bank guarantee equivalent to the duty involved in the consignment is arbitrary, unreasonable and excessive. He submits that M/s. Alzpenta Tradelinks Pvt. Limited filed bill of entry claiming exemption. It is live consignments. The goods have not yet cleared for home consumption. The benefit of exemption notification has not been extended. There is even no attempt for diversion of the goods of the disputed consignments. In these facts, action of the Respondent for demanding bank guarantee equivalent to duty is unreasonable. He submits that if investigating authority found that M/s. Alzpenta Tradelinks Pvt. Limited and the appellant misused the advance authorisation in past transactions, then the investigating authority would have denied benefit of exemption notification in respect of live consignments and allowed to clear the goods with payment of duty. He submits that there is no mis-declaration in description and value of the goods, therefore, imposing harsh condition of demanding bank guarantee equal to duty amount is excessive and unreasonable. He submits that the case is at investigation stage and nothing has been proved against the appellant therefore, Respondent ought not to have put harsh conditions on the appellant for provisional release of the seized goods. He placed reliance on the following judgments:-

(a) Spirotech Heat Exchangers Private Limited vs. Union of India 2016 (341) ELT 110 (Del) Para 6.

(b) G.S. Sales Corporation vs. CC, Mundra - 2016 (343) ELT 641 (Tri)

(c) ABS International vs. CC - Order NO. A/11823 of 2018 dated 30.08.2018

(d) Pallahan Industries vs. Union of India - 2015 (325) ELT 18 (P&H)

He also submits that the appellant have been incurring detention and demurrage charges on account of live consignment. No prejudice would be caused to the Respondent if the seized goods are allowed for re-export.

3. Shri S.K. Shukla, learned Superintendent (Authorised Representative) appearing on behalf of the Revenue submits that there is clear attempt of evasion of duty by claiming scheme of advance authorisation fraudulently. Therefore, the goods are rightly seized and the condition imposed for provisional release is not harsh. He placed reliance on the following Board Circular and judgments:-

(a) Board Circular No. 35/2017- Cus dated. 16.08.2017

(b) 2019 (365) ELT 312 (Mad) - CC, Chennai vs. Novel Impex

(c) 2018 (364) ELT 932 (Tri-Mum) — S S Offshore Pvt. Limited vs. CC (Import-I), Mumbai

(d) 2017 (357) ELT 1038 (Tri-Mum) — Vishal Collection vs. CC (NS-V), Nhava Sheva

(e) 2019 (367) ELT 353 (Mad) - Unik Traders vs DRI, Chennai

(f) 2017 (353) ELT 446 (Del) — Mala Petrochemcials & Polyrneis vs. ADG, DRI

(g) 2018 (360) E!T A256 (SC) - ADG vs. Mala Petrochemcials & Polymers

(h) 2020 (372) ELT 297 (Tri-Mum) — Sharaya International vs. CC, Nhava Sheva-V

(i) 2019 (370) ELT 462 (Tri-Mum) - S.H.A.M.K. International Pvt. Limited vs. CC (Import), Nhava Sheva

(j) 2019 (369) ELT 1409 (Tn-Del) — Jai Shiv Trading Company vs. CC, New Delhi

(k) 2016 (331) ELT 227 (Mad) — ZakirAli Khan vs. CC (Airport), NCH, ACC, Meenambakkam

(l) 2020 (371) ELT 774 (Tri-Kol) — CC (Port), Kolkata vs Rudra Vyaparchem Pvt. Limited

4. We have heard both sides and perused the record. In the overall facts of the case, we find that there is prima-facie case of malafide on the part of the appellant to claim exemption fraudulently. However, this is not our conclusion on the merits of the case as the detailed investigation is pending. We also find that the appellant requested for provisional release for re-export of the goods. In that case, a lenient view can be taken. Needless to say that the appellant shall clear the goods on payment of duty as assessed by the Customs. In these circumstances, we are of the view that the appellant deserve for some leniency as regards terms of provisional release of the seized goods. Accordingly, we hold that goods may be provisionally released on furnishing bond of total value with bank guarantee of the amount of 50% of the total duty.

Thus, the appeal is partly allowed in the above terms. Early hearing application also disposed of.

(Order pronounced on 16.07.2020*)*

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)

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