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

REGIONAL BENCH - COURT NO. 3

CUSTOMS Appeal No. 10308 of 2020
(Miscellaneous Application No. C/EH/10206/2020)

[Arising out of Order-in-Original/Appeal No -VIII-48-1703-PA-KAUSHIK-GR-III-19-10 dated 29/01/2020 passed by Commissioner of Customs, Mundra, Kutcch]

Kaushik Granite Pvt Limited **.... Appellant**
4, 5, 7, Meldi Estate, Near Railway Crossing, Gota,
Ahmedabad, Gujarat

VERSUS

Commissioner of Customs, Mundra **.... Respondent**
Office Of The Principle Commissionerate Of Customs,
Port User Buld. Custom House Mundra, Kutch, Gujarat

APPEARANCE :

Shri Hardik Modh, Advocate for the Appellant
Shri Shri S.N. Gohil, Superintendent (AR) for the Respondent

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

FINAL ORDER NO. A/11129 / 2020

DATE OF HEARING : 16.07.2020
DATE OF DECISION : 16.07.2020

RAMESH NAIR :

This appeal as well as the early hearing application is filed against the impugned order whereby the Learned Commissioner communicated the order through Assistant Commissioner for provisional release of imported goods covered under Bills of Entry Nos. 7740144 dated 22.08.2018 and 8549092 dated 22.10.2018 on the condition of furnishing bond of Rs. 99,66,273/- and deposit of differential duty amount of Rs. 9,68,399/- with bank guarantee of Rs. 9,68,399/-.

2. The appellant's grievance is that the terms of provisional release are very harsh and the goods may be allowed to be provisionally released only

on furnishing of bond on payment of differential duty and without any bank guarantee.

3. Shri Hardik Modh, learned Counsel appearing on behalf of the appellant submits that the amount of differential duty shown in the provisional release order dated 29.01.2020 is Rs. 9,68,399/- whereas, the show cause notice itself has worked out the total duty against the two bills of entries as Rs. 6,56,589/-. He further submits that the appellant is required to pay differential duty, therefore, they may be allowed to provisional release of goods without any bank guarantee. He also submits that show cause notice is still pending for adjudication therefore, at this stage the Respondents ought not to have put harsh conditions upon the appellant for provisional release of the seized goods. He relied 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 as against the total duty against various bills of entries, which comes to Rs. 19,77,248/-, a part of the goods were released on payment of differential duty as well as on furnishing bank guarantee of Rs. 13,69,682/-. Therefore, the same is sufficient for release of overall consignment and hence, no further bank guarantee may be insisted upon.

4. Shri S.N. Gohil, learned Superintendent (Authorised Representative) appearing on behalf of the Revenue reiterates that the terms fixed by the respondent for provisional release of seized goods are correct as there is strong case in favour of the Revenue regarding under valuation of the seized goods.

5. We have carefully considered the submissions made by both sides and perused the record. We find that since a limited issue of terms of provisional release of seized goods is involved, we take up the appeal itself for disposal, after allowing the early hearing application.

6. We agree with the learned Counsel that differential duty against the bills of entries Nos. 7740144 dated 22.08.2018 and 8549092 dated 22.10.2018 has been worked out and indicated in the show cause notice to Rs. 6,56,589/-. We also find that appellant have already given bank guarantee of Rs. 13,69,682, however the same is against other bills of entries. But, since the adjudication to take place combinedly in respect of all the bills of entries including the present two bills of entries, the said bank guarantee amount can be adjusted against overall demand of penalty and fine, if any, imposed at the time of adjudication. The merit of the case is undervaluation of import goods which needs to be established beyond doubt. However, at the present stage, it is premature to opine on the conclusion of the merits of the case. Considering the above facts and circumstances, we are of the view that justice will be done if the appellant deposit principal duty at the time of clearance of the goods and furnish a bond of Rs. 99,66,273/- with bank guarantee of Rs. 4,00,000/- with auto renewal clause. Accordingly, we hold so.

7. The appeal is partly allowed in the above terms. Early hearing application also stands disposed of.

(Order pronounced on 16.07.2020*)*

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)

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