Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.3

Customs Appeal No.10045 of 2021

(Arising out of -VIII-48-1321-MISC-MCH-2019-20 dated 18/12/2020 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-KUTCH (GANDHIDHAM))

MM9 INTERNATIONAL **......Appellant**

403, 4th Floor Arcadia Building, Opp. Ncpa, Nariman Point
Mumbai, Mumbai
Maharashtra

VERSUS

C.C.-MUNDRA **.........Respondent**

Office Of The Principle Commissionerate Of Customs, Port User Buld. Custom House Mundra, Mundra
Kutch, Gujarat-370421

APPEARANCE:

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

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

Final Order No. A/ 10475 /2021

DATE OF HEARING: 03.02.2021
DATE OF DECISION:04.02.2021

RAMESH NAIR

This appeal was filed against Order dated 18.12.2020 passed by the Commissioner of Customs, Customs House, Mundra communicated by the Deputy Commissioner (Import Gr.II), Customs House, Mundra whereby, the appellant's imported seized goods has been provisionally released subject to the execution of bond for full value with Bank Guarantee of Rs.1,38,12,513. The appellant challenged the said order on the ground that the condition of bank guarantee is exorbitant therefore, they seek reduction in the amount of the bank guarantee.

2. Shri Hardik Modh, Learned Counsel appearing on behalf of the appellant submits that the subject goods were seized alongwith other consignment under common seizure memo dated 27.11.2019. He invited our attention to the Annexure 'A' to the seizure memo dated 27.11.2019 wherein, five consignments were seized imported by various parties. He submits that out of five, two consignments mentioned at Sr. No.4 & 5 of Annexure 'A' were subject matter of the appeal before this tribunal. This tribunal vide Order No. A/11130/2020 dated 16.07.2020 reduced the bank guarantee amount to 50% of the total duty and appeal was partly allowed. He submits that since the common issue and same goods are involved and also a common Show Cause Notice was issued, being an identical case the same relief may be given in the present case.

3. Shri S.N.Gohil, Learned Superintendent (Authorized Representative) appearing on behalf of the revenue submits that the competent authority has correctly imposed a condition for provisional release. Considering the grave nature of the case he submits that there is a serious fraud in this case committed by the importers therefore, no relaxation can be given and the appeal be dismissed.

4. We have carefully considered the submission made by both the sides and perused the records. We find that considering the fact of the present case which is not different from the facts involved in case which was decided by this tribunal vide Order dated 16.07.2020 in the case of WITTENIA MULTITRADING PVT. LIMITED, we need not to discuss much on the issue. The order dated 16.07.2020 is reproduced below:-

> *"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 GroupII) 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/-.*
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> *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. AlzpentaTradelinksPvt. 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. AlzpentaTradelinksPvt. 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:-*
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> > *(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 (NSV), 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 VyaparchemPvt. 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."

4.1 From the above order it can be seen that this tribunal considering all the common facts came to the conclusion that for provisional release of the goods bond of the total value of the goods and bank guarantee of the amount of 50% of the total duty is sufficient.

4.2 Considering the above decision of this tribunal, in this case also we hold that the seized goods shall be released on furnishing bond of total value of the goods with bank guarantee of the amount of 50% of the total duty.

5. The appeal is allowed in the above terms.

(Pronounced in the open court on 04.02.2021)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Mehul