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

REGIONAL BENCH - COURT NO. 3

CUSTOMS Appeal No. 10371 OF 2023-DB

[Arising out of Order-in-Original F. No. CUS/560/2022-Adjn. dated 16.05.2023 passed by Commissioner of Customs (Prev.) Rajkot/Jamnagar]

M/s. K.L. International .... **Appellant**
A-256, Old No. 55, Flat No. A-4, D/F, Chatterpur
Enclave, Phase-1, New Delhi 110 034

VERSUS

Commissioner of Customs (Prev.), Jamnagar .... **Respondent**
Besides Jamnagar Chamber of Commerce and
Industries, Rajkot Jamnagar Highway, Jamnagar
(Gujarat) 360 001

APPEARANCE :

Shri Uday M. joshi, Advocate for the Appellant
Shri Vijay G Iyengar, Assistant Commissioner (AR) for the Respondent

CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)

DATE OF HEARING : 28.06.2023
DATE OF DECISION: 26.07.2023

FINAL ORDER NO. 11614/2023

RAMESH NAIR :

This appeal is directed against the order F.No. CUS/560/2022-Adjn. dated 16.05.2023 whereby the appellant's request to reconsider the amount of bank guarantee/ cash deposit ordered to be furnished, vide letter dated 19.04.2023 was rejected. In the said order it was directed to furnish a bank guarantee of Rs One Crore for provisional release of imported Dry Dates. Being aggrieved by the order dated 16.05.2023 issued by Chief Commissioner, the present appeal is filed before this Tribunal.

2. Shri Uday M Joshi, learned Counsel appearing on behalf of the appellant submits that the Chief Commissioner in the impugned order while rejecting the request of the appellant for reducing the amount of bank guarantee relied upon various judgments however, these judgments are not applicable in the facts of the present case as the goods involved is perishable edible goods. He further submits that the goods are neither restricted nor prohibited. It is his submission that learned Chief Commissioner has not

followed the Tribunal order dated 11.11.2022 despite the same was accepted by the Revenue. He submits that in the said Tribunal decision dated 11.11.2022, against the goods valued at Rs. 4.08 Crores, a bank guarantee was fixed at Rs. One Crore. In the present case the goods are of same consignment by the same importer therefore, following the Tribunal order dated 11.11.2022, the bank guarantee directed by learned Chief Commissioner for Rs. One Crore is absolutely incorrect and illegal on the face of the said Tribunal order. Therefore, he prays that amount of Rs. One Crore of cash deposit or bank guarantee should be reduced to bring in consonance with the order dated 11.11.2022.

3. Shri Vijay G Iyengar, learned Assistant Commissioner (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. On careful consideration of the submissions made by both the sides and perusal of record, we find that the appellant imported the same goods valued at Rs. 4.08 Crores at Pipavav Port and in the same nature of dispute the goods were seized however in this Tribunal by final order No. A/11353/2022 dated 11.11.2022, the appellant was allowed to furnish bank guarantee of Rs. One Crore for provisional release of the goods. Since in the present case, the same dispute is involved and the only difference is Port of import otherwise in the same facts and circumstances it has been decided in order dated 11.11.2022 that bank guarantee amount was reduced from Rs. 12 Crores to Rs. One Crore. Therefore, there is no reason to defy the order of this Tribunal dated 11.11.2022 for fixing the amount of bank guarantee/ cash deposit to be furnished for provisional release of the goods. In the case of this Tribunal order dated 11.11.2022, the value of the goods was 4.08 Crores against which the bank guarantee of Rs. One Crore was fixed by this Tribunal therefore following the same ratio, in the present case, against the value of goods which is Rs. 72,22,361/-, a proportionate amount of bank guarantee should be fixed at Rs. 18 Lakhs.

5. As regards the learned Chief Commissioner’s contention that in the present case, show cause notice was issued whereas in the earlier case there was no show cause notice. In this regard, we are of the view that merely by issuing a show cause notice which is nothing but only proposals, the

circumstances of the earlier case decided in the order dated 11.11.2022 and in the present case are not different, therefore on this count, the amount of bank guarantee cannot be enhanced.

6. We do not find any reason that despite this Tribunal passed an order in the appellant's own case which was accepted by the Revenue why different yard sticks can be applied in the present case, particularly when all the facts and circumstances of the case involved in the Tribunal's order dated 11.11.2022 and in the present case are absolutely identical. Therefore, we are of the view that the amount of bank guarantee must be reduced in consonance with the Tribunal's order dated 11.11.2022. Accordingly, we hold that goods shall be provisionally released on execution of bond for total value of goods and on furnishing a bank guarantee/ cash security of Rs. 18 Lakh (Rupees Eighteen Lakhs only). The impugned order is modified to the above extent and the appeal is allowed in the above terms.

(Pronounced in the open court on 26.07.2023*)*

(Ramesh Nair)
Member (Judicial)

(C L Mahar)
Member (Technical)

KL