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

REGIONAL BENCH- COURT NO.3

Customs Appeal No.10953 of 2021-DB
(Arising out of CUS-APR-INV-4-2021-GR-1-1164-RP dated 27/10/2021 passed by Commissioner of CUSTOMS-KANDLA)

HAZEL MERCANTILE LTD **......Appellant**
Through Its Authorized Signatory Mr Ashish Patel
Having Its Office No 4 Plot No 222 Ward 12b
Gandhidham, Gandhidham,Gujarat

VERSUS

C.C.-KANDLA **.........Respondent**
Custom House, Near Balaji Temple,
Kandla, Gujarat

APPEARANCE:
Shri. Vikram Nankani, Sr. Advocate & Shri. Hardik Modh, Advocate Appeared for the Appellant
Sh. G. Kirupanandan , Superintendent (AR) for the Respondent

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

Final Order No. A/ 12570 /2021

DATE OF HEARING:26.11.2021
DATE OF DECISION :03.12.2021

RAMESH NAIR

The Present appeal is directed against the order dated 27.10.2021, passed by the respondent Commissioner whereby, the application for provisional release of the seized warehoused goods has been rejected. The brief facts of the case are that the appellant made request for provisional release of the goods in dispute for re-export/export in terms of the Order dated 15.09.2021 passed by the Hon'ble Gujarat High Court in Special Civil Application 7840/2021 wherein, the appellant was permitted to make the application for provisional release in terms of Section 110A of the Customs Act, 1962 and directed the respondent to decide the application in accordance with law. The respondent Commissioner rejected the request for provisional release of the goods for export therefore, the present appeal filed by the appellant.

02. Shri Vikram Nankani, learned Senior Advocate appearing on behalf of the appellant submits that the imported goods were seized on the pretext that the appellant have misdeclared the goods as 'Naptha' and as per the department the goods is other than 'Naptha' hence, the same is restricted goods. He submits that there are contrary test reports. As per four reports the goods was found to be 'Naptha' and as per the department's test report

from Customs House Lab and CRCL, New Delhi the goods were found "Natural Gasoline Liquid". He submits that as per these reports even department cannot conclude that the appellant have misdeclared the goods. He submits that even though presumably the goods is restricted but the same cannot be seized as the goods were warehoused and even before warehousing, the goods were meant for export. The appellant had an export orders and part payment was also received before seizure of the goods therefore, when it was already pre-determined that the goods are imported and warehoused only for export, there cannot be any mala fide intention on the part of the appellant for mis-declaring the classification and/or valuation as alleged by the department.

2.1 He further submits that even if it is restricted goods as per Para 1.23, 1.24 & 2.36 of Foreign Trade Policy read with Para 2.36 of Handbook of Procedure and Section 110A read with Section 125 of Customs Act, 1962 the goods should be released on provisional basis only on submission of bond or undertaking therefore, the provisional release of goods for export in any case will not prejudice to the department. He further submits that even in case of earlier consignments of 'Naptha' imported by the appellant vide Bills of Entry for warehousing bearing Nos.9585811, 9585898 & 9586461 all dated 16.11.2020 and exports thereof was permitted without payment of duty vide three shipping bills bearing Nos. 6787230, 6788047 & 6802032 dated 26.11.20, 26.11.20 & 27.11.20 respectively. He further submits that it is nobody's case that the imported goods are prohibited. The seizure memo itself alleges that "Natural Gasoline Liquid" is amongst restricted category. In any event, Section 125 of Customs Act, 1962 permits release of even confiscated, prohibited goods on payment of redemption fine by using the word "may" conferring discretion on the adjudicating authority to grant or not grant to the person from whose possession or custody the goods had been seized. The option to release the goods on payment of redemption fine in case of such goods which are not prohibited, by use of word "shall" section 125 mandates grant of an option to redeem even confiscated goods on payment of redemption fine.

2.2 He further submits that the show cause notice in respect of seized goods was not issued within six months. However, the DRI on their own extended the period of six months however, show cause notice was issued and even no opportunity was given to the appellant before extending the period of show cause notice. He submits that the show cause notice time can be extended only by the adjudicating authority whereas, in the present case the time for issuance of show cause notice has been extended by DRI which is clearly without jurisdiction therefore, the continued seizure being without jurisdiction the appellant has strong prime facie case for unconditional release of goods for the purpose of re-export.

2.3 He also submits that due to the illegal seizure of the goods, the appellant is incurring huge amount of demurrage/storage charges which has already been accumulated to about Rs.10 Crores. He submits that it may also be considered for grant of waiver certificate for demurrage charges/ inter alia in the light of Regulation 6(1)(l) of Handling of Cargo Regulations.

03. Shri G. Kirupanandan, learned Superintendent (Authorized Representative) appearing on behalf of the revenue reiterates the impugned order.

04. We have carefully considered the submissions made by both the sides and perused the records. We find that the limited issue to be decided in the present case is that whether the seized imported goods which was warehoused by filing warehouse Bills of entry which is exclusively meant for export can be released provisionally for export or otherwise. Since the proceeding of DRI is continued, no final conclusion can be drawn as regard the allegation of DRI that whether the appellant have correctly classified the goods and/or valued the imported goods therefore, we proceed to decide only the issue of release of the goods. We find that since the goods before import and warehousing was intended to be exported, no prejudice will cause to the revenue with regard to dispute, if any for classification of goods and/or valuation of the goods. There is no dispute on the fact that the appellant had export order in possession, moreover, they had received the part payment against the export order therefore, it is clear that the goods which were warehoused and the goods seized by the DRI was already meant for export. In this position, the mala fide cannot be attributed to the appellant. The appellant have heavily relied upon the provisions of Foreign Trade Policy and Hand Book Procedure, the same is reproduced below:-

> ***FOREIGN TRADE POLICY 2015-20***
>
> ***"1.23 Free passage of Export consignment***: *Consignments of items meant for exports shall not be withheld delayed for any reason by any agency of Central/State Government. In case of any doubt, authorities concerned may ask for an undertaking from exporter and release such consignment*
> ***1.24 No seizure of export related Stock:*** *No seizure shall be made by agency so as to disrupt manufacturing activity and delivery schedule of exports. In exceptional cases, concerned agency may seize the stock on the basis of prima facie evidence of serious irregularity. However, such seizure should be lifted within 7 days unless the irregularities are substantiated.*

"2.36 Private/Public Bonded Warehouses for Imports

(a) Private/Public bonded warehouses may be set up in DTA as per rules, regulations and notifications issued under the Customs Act, 1962. <u>Any person may import goods except prohibited items, arms and ammunition, hazardous waste and chemicals and warehouse them in such bonded warehouses.</u>

(b) Such goods may be cleared for home consumption in accordance with provision of FTP and against authorization, wherever required. Customs duty as applicable shall be paid at the time of clearance of such goods.

(c) The clearance of the warehoused goods shall be as per the provisions of the Customs Act, 1962.

<u>FOREIGN TRADE PROCEDURES</u>

"2.36 Warehousing Facility

(a) Public/Private Customs Bonded Warehouses may be set up in DTA as per Chapter-IX of Customs Act, 1962, to import items in terms of Paragraph 2.36 of FTP. <u>On receipt of goods, such warehouses shall keep these goods for one year without payment of applicable customs duties. Goods can be cleared against Bill of Entry for home consumption, on payment of custom duty and on submission of authorization wherever, required. after an order for clearance of such goods for home consumption is issued by competent customs authorities</u>. In case of clearance against duty free categories /concessional duty categories, exemption/concession from duty shall be allowed.

(b) <u>Goods can be re-exported without payment of customs duty provided shipping bill or a bill of export is presented in respect of such goods; and order for export of such goods has been made by competent customs authorities.</u>

From the above provision, it is clear that continued withholding of export consignment even if seized by any agency is not appreciated as per 'Foreign Trade Policy'. After drawl of samples, the seized goods can be allowed to clear for exports pending investigations by accepting undertaking of the exporter.

4.1 The goods other than prohibited goods can be imported, ware housed in public/private bonded warehouse without payment of duty. Authorization for clearance and duty payment is required only for clearance for home consumption which in the present case had not been sought by the appellant as the goods are meant for export only. The warehoused goods can be re-exported without payment of customs duty under shipping bills. Therefore, in view of the clear provision under 'Foreign Trade Policy' and 'Hand book Procedure' as reproduced above, the goods which are under seizure is required to be released provisionally for export without payment of duty. We also find that the department could not make a prima facie case even for seizure of the goods in view of the contrary test reports.

4.2 As per our above discussion and findings, we are of the clear view that the warehoused goods which are meant for export only must be released provisionally by accepting only a bond of the total value of the goods, accordingly, we direct the concerned respondent to release the goods provisionally on execution of only a bond for full value of the goods and the same shall be allowed to be exported without any payment of duty, fine, penalty. The appellant is given liberty to approach the concerned authority for issuance of waiver certificate for the demurrage charges which the concerned authority shall consider in the facts and circumstances of the present case, in accordance with law.

05. Accordingly, the impugned order is set aside. Appeal is allowed in the above terms.

(Pronounced in the open court on 03.12.2021)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Mehul