CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.3

Customs Appeal No.10355 of 2021
(Arising out of OIA-MUN-CUSTM-000-APP-001-21-22 dated 05.04.2021 passed by Commissioner of CUSTOMS-MUNDRA)

MUKESH STEEL **........Appellant**
C-45, GROUND FLOOR WAZIRPUR,
INDUSTRIAL AREA, DELHI

VERSUS

C.C. MUNDRA **.......Respondent**
OFFICE OF THE PRINCIPAL COMMISSIONERATE OF CUSTOMS
PORT USER BULD., CUSTOM HOUSE MUNDRA, MUNDRA,
KUTCH GUJARAT-370421

APPEARANCE
Ms. Sunaina Phul, Advocate for the Appellant
Mr. Vinod Lukose, Superintendent (Authorized Representative) for the Respondent

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

Final Order No.____10295 /2022

DATE OF HEARING: 03.12.2021
DATE OF DECISION: 31.03.2022

RAJU

This appeal has been filed by M/s Mukesh Steel against order of Commissioner (Appeals) upholding the order of Deputy Commissioner prescribing the terms of Provisional release under Section 110A of the Customs Act, 1962.

1.1 The facts of the case are that during the course of appellants premises cold rolled stainless steel coils / circles were placed under seizure by the Intelligence Officer, Directorate of Revenue Intelligence on 13.10.2020. During the investigation statement of Proprietor Shri Mukesh Mittal of the appellant, M/s Mukesh Steel was recorded on 19.08.2020, 11.09.2020, 14.09.2020, 21.09.2020 and 29.09.2020. The seizure memo records that the appellant had the undervaluation. Later on statement of Shri Amil Mittal, uncle of Shri Mukesh Mittal was recorded on 15.09.2020, 18.09.2020 and 30.09.2020. The seizure memo also records that Shri Amit Mittal also admitted under valuation of the consignment. The seizure memo records as under:-

DIN-202010DDZ400004D93FE

GOVERNMENT OF INDIA
DIRECTORATE OF REVENUE INTELLIGENCE
DELHI ZONAL UNIT
B-3&4, 6TH FLOOR, PARYAVARAN BHAWAN, CGO COMPLEX, LODHI ROAD
NEW DELHI - 110003

F. No. DRI/DZU/23/ENQ-02/2020 | 2770 – 2771

Dated: 13 .10.2020

Seziure Memo

An intelligence was developed that some importers are importing Stainless Steel Cold Rolled Circles/Coils from China by the way of routing through Malaysia, Indonesia in order to evade Customs Duty and CVD by availing the benefit of Preferential Treaty Agreement and they are also suppressing actual invoice value. It was found that one of the importer M/s Mukesh Steel (IEC No. 0513087818), C-45, Ground Floor, Industrial Area, Wazirpur, Delhi had routed Stainless Steel Cold Rolled Circles/Coils through Malaysia, Indonesia and mis-stated/suppressed the actual value before Customs.

2. Accordingly, office premises of M/s Mukesh Steel were searched on 11.02.2020. During searches documents and electronic devices were resumed and goods lying at factory cum office premises were detained vide panchnama dated 11.02.2020, for further investigation. The details of goods are as below:

Table-A

Sr. No.	Goods	Qty.	Unit	Imported (in kgs)	Domestically Procured(in Kgs)
1	S.S.CIRCLE (121-140)	136.87	Kgs.	0	136.87
2	S.S. CIRCLE (7219)	300.00	Kgs.	0	300.00
3	S.S BABY COIL	1820.00	Kgs.	0	1820.00
4	S.S. SHEET	2851.70	Kgs.	0	2851.70
5	S.S.COIL/SHEET (120-135)	3452.50	Kgs.	0	3452.50
6	S.S.SHEET (7219)	4662.20	Kgs.	0	4662.20
7	S.S.CIRCLE (106-120)	5669.09	Kgs.	0	5669.09
8	S.S.COIL (IMPORT)(90-100)	6750.30	Kgs.	0	6750.30
9	S.S.COIL/SHEET (100-110)	29390.20	Kgs.	0	29390.20
10	S.S.COIL / SHEET (7219)	37272.00	Kgs.	0	37272.00
11	S.S.CIRCLE (95-110)	53742.95	Kgs.	27588.95	26154
12	SS COIL/SS SHEET(110-120)	90703.95	Kgs.	0	90703.95
13	S.S.COIL (80-90)	93975.63	Kgs.	42266.63	51709
14	S.S.COIL (JOB)	119004.00	Kgs.	0	119004.
		449731.39	Kgs	69855.58	379875.81

3. In this regard, Statement of Shri Mukesh Mittal, Proprietor of M/s Mukesh Steel was recorded on 19.08.2020, 11.09.2020, 14.09.2020, 21.09.2020 and 29.09.2020 wherein he admitted that since July 2019 he had imported consignments by the way of undervaluation. He stated that his uncle Shri Amit Mittal, proprietor of a firm namely M/s Mukesh Steel Trading and looked after their import. Further, statement of Shri Amit Mittal, was recorded on 15.09.2020, 18.09.2020 and 30.09.2020 wherein he also confirmed the undervaluation of the consignments of Coils imported from M/s MCH Steel Industry Co. Ltd, China in the name M/s Mukesh Steel, M/s Mukesh Steel Trading

DIN-202010DDZ400004D93FE

5. From the ledger of M/s Mukesh Steel for the year 2019-20 it is found that 27588.95 kgs of Stainless-Steel Circle mentioned in column imported at Sr. No. 11 of Table-A pertains to import made vide Bill of Entry No. 6224001 dated 24.12.2019 and 26154 Kgs of SS Circle was purchased from M/s Choice Cargo Agencies Pvt. Ltd. who is basically an importer of coils and circles from Indonesia/Malaysia against whom investigation is under progress and therefore on reasonable belief said quantity is liable for confiscation under Customs Act, 1962.

6. As per S.no. 14 of table-A above circle weighing 19004 Kgs were made from SS Coils brought from M/s Mukesh Steel Trading for job work. Shri Amit Mittal, proprietor M/s Mukesh Steel Trading admitted in his statements that these SS Coils were imported and purchased from M/s MCH Steel Industry Co. Ltd. China by evading payment of customs duty and therefore liable for confiscation under Customs Act, 1962.

7. SS Coil weighing 6750 Kgs mentioned at S.no. 8 of table A above was procured from M/s Dharm Impex, who is an importer of coil from M/s MCH Steel Industry Co. Limited by evading payment of customs duty and therefore liable for confiscation under Customs Act, 1962.

8. Therefore, from the foregoing paras, based upon reasonable belief it appears that the value and Country of Origin(COO) of the goods was mis-declared by M/s Mukesh Steel and forged AI Form which is a Preferential Certificate of Origin that is accepted as evidence of origin by preference-giving countries (member countries of AIFTA), were submitted in order to evade Customs duty and CVD. The above goods mentioned in the imported column at Sr. No. 11 and 13 and in the domestically procured column at Sr. No. 8,11and 14 of Table-A are liable for confiscation under Section 111(m) of the Customs Act, 1962 as for violation of provision of Section 46 of the Customs Act, 1962.

Table-B

Sr. No.	Sr. No. of Table A	Goods	Qty.	Unit	Imported (in kgs)	Domestically Procured(in Kgs)
1	8	S.S.COIL (IMPORT)(90-100)	6750.30	Kgs.	--	6750.30
2	11	S.S.CIRCLE (95-110)	53742.95	Kgs.	27588.95	26154
4	13	S.S.COIL (80-90)	93975.63	Kgs.	42266.63	------
5	14	S.S.COIL (JOB)	119004.00	Kgs.	--	119004.

9. Accordingly, goods mentioned and summarized in Table-B detained vide detention memo dated 11.02.2020 are hereby seized under provision of Section 110 of the Customs Act, 1962.

10. The aforesaid goods mentioned in Table-B above detained under panchnama dated 11.02.2020 shall remain in the custody of the person to whom detained goods were handed over for safe custody.

12/10/2020

O/C 13/10/2020

(Nakul Dev)
Intelligence Officer
DRI, Delhi Zonal Unit

Thereafter a corrigendum to the seizure memo was issued:

DIN-202010DDZ400006JE742

GOVERNMENT OF INDIA
DIRECTORATE OF REVENUE INTELLIGENCE
DELHI ZONAL UNIT
B-3&4, 6TH FLOOR, PARYAVARAN BHAWAN, CGO COMPLEX, LODHI ROAD
NEW DELHI - 110003

F. No. DRI/DZU/23/ENQ-02/2020 /2919 Dated: 26.10.2020

Corrigendum to Seizure Memo dated 13.10.2020

In the Seizure Memo dated 13.10.2020 issued vide File No. DRI/DZU/23/ENQ-02/2020 by an Intelligence Officer, Directorate of Revenue Intelligence, Delhi Zonal Unit, New Delhi following amendment may be noted:

a. Last line in para 3 may now be read as " Further, statement of Shri Amit Mittal, Proprietor, M/s Mukesh Steel Trading was recorded on 15.09.2020, 18.09.2020 and 30.09.2020 wherein he confirmed the undervaluation of the consignment of coils imported from M/s MCH Steel Industry Co. Ltd. China in the name of M/s Mukesh Steel and M/s Mukesh Steel Trading.

b. In para 6 of the figure "19004" may now be read as "119004"

c. Table-B occurred in para 8 shall be replaced as below:

Sr. No. (1)	Sr. No. of Table-A (2)	Goods (3)	Quantity (Kgs) (4)	Imported (Kgs) (5)	Domestically procured (Kgs) (6)
1	8	S.S. Coil(Import)(90-100)	6750.30	-----	6750.30
2	11	S.S. Circle(95-110)	53742.95	27588.95	26154.00
3	13	S.S. Coil(80-90)	42266.63	42266.63	------
4	14	S.S. Coil(Job)	119004.00	--	119004.00

d. Para 9 shall be read as " Accordingly, goods of description and quantity mentioned in column(3) &(4) respectively, of Table-B, which were detained vide Detention Memo dated 11.02.2020 are hereby seized under Provision of Section 110 of Customs Act, 1962."

26.10.2020

(Nakul Dev)
Intelligence Officer
DRI, Delhi Zonal Unit

To,
1. M/s. Mukesh Steel (IEC No. 0513087818), C-45, Ground Floor, Industrial Area, Wazirpur, Delhi
2. M/s Mukesh Steel Trading (IEC No. 508066573), C-18/4, Industrial Area, Wazirpur, Delhi

1.2 The appellant applied for provisional release of goods and vide order dated 31.12.2020 the Deputy Commissioner informed the appellant the terms of the provisional release provided by the Competent Authority as follows:

> " *Further, it is to inform that said provisional release under Section 110A of the Customs Act, 1962 is subject to execution of Bond for full value with Bank Guarantee for 2.5*

times of the duty amount of duty i.e. Rs. 2065915 x 2.5 = Rs. 5164787.50 (to cover fine and penalty on adjudication)."

These terms were challenged before Commissioner (Appeals) who descripts the appeal. The appellants are before us.

2. Learned counsel for the appellants argued that the terms of the release are very stringent. She pointed out that the said order relies on the Circular No. **35/2017-Cus dated 16.08.2017**. she pointed out that the said circular never provided guidelines for bond and security deposit/ bank guarantee for provisional release of the goods. She pointed out that para 2.3 of the Circular gives Competent Authority discretion to decide the amount after recording the reasons in writing. She pointed out that out of large quantity of goods which were detained on 11.02.2020 only about 25% of the said quantity was placed under seizure on 13.10.2020. 75% of the goods remained detained for no reason for a period of almost 8 months.

2.1 She pointed out that majority of the goods were domestically procured. She relied on the decision of Tribunal in case of Witteneia Multitrading Pvt. Ltd. Vide **Final Order No. 11130 of 2020 dated 16.07.2020** wherein the goods were released on furnishing a bond of total value with bank guarantee of only 50% of the total duty involved. She also relied on the decision of Delhi High Court in the case of Spirotech Heat Exchangers Pvt. Ltd. reported at **2016 (341) ELT 110 (Del.)** wherein provisional release was allowed on condition of a bond equal to 100% of the value of goods and bank guarantee for 30% differential duty.

2.2 She further argued that the balance of convenience lies in favour of the appellant s 75% of the stock was illegally detained for a period of 8 months as majority of goods were domestically procured. She relied on the decision of Tribunal in case of Nathi Mal Rugan Mal vide **Final Order No. 86451 of 2021 dated 15.07.2021**, wherein considering the hardship faced by the appellant, the bank guarantee required was reduced from 30 lakhs to Rs. 5 Lakhs on value of goods of approximately 65 lakhs.

2.3 She also relied on the decision of Hon'ble High Court of Bombay in the case of Indosheel Mould Limited in **W.P. No. 5593 of 2021**.

3. Learned Authorized Representative pointed out that **Circular No. 35 of 2017- Cus. Dated 16.08.2017** gives flexibility to the Competent Authority to fix the conditions of provisional release. He also relied on

the decision of Tribunal in case of S S Offshore Pvt. Ltd. reported at **2018 (364) ELT 932 (Tri. Mum.)** in which case while the differential duty was Rs. 3.62 Crores, the bank guarantee was set at Rs. 10 Crores in respect of goods valued at Rs. 41.45 Crores.

3.1 He further submitted that in the instant case, the case were seized vide seizure memo dated 13.10.2020 read with corrigendum dated 26.10.2020. The provisional release was ordered on 31.12.2020 under Section 110A of the Customs Act. He pointed out that in cases where provisional release is offered to the appellant, in terms of Section 110A (2) second Proviso, the time limit for issue of Show Cause Notice within six months does not apply. He further pointed out that the case is still under investigation and Show Cause Notice can only be issued after completion of investigation.

4. We have considered rival contentions.

5. This appeal is against an order fixing the terms of provisional release of goods sought by the appellant. The value of goods is Rs.1,91,91,322.23 and the approximate differential duty comes to Rs.20,65,915/-. The competent authority has fixed the terms of provisional release as a bond equal to goods and bank guarantee equal to 2.5% times the duty amount. The competent authority has relied on circular no. **35 of 2017-Cus dated 16.08.2017**. Para 2 of the said circular reads as follows:

> *2. While provisional release of seized imported goods under Section 110A of the Customs Act, 1962 may normally be considered by the competent adjudicating authority upon a request made by the owner of the seized goods, provisional release shall not be allowed in the following cases -*
>
> *(i) Goods prohibited under the Customs Act, 1962 or any other Act for the time being in force;*
>
> *(ii) Goods that do not fulfill the statutory compliance requirements/obligations in terms of any Act, Rule, Regulation or any other law for the time being in force;*
>
> *(iii) Goods specified in or notified under Section 123 of the Customs Act, 1962;*
>
> *(iv) Where the competent authority, for reasons to be recorded in writing believes that the provisional release may not be in the public interest.*
>
> *2.1 Seized imported goods shall be released provisionally by the competent authority upon request of the owner of the seized goods, subject to executing a Bond for the full value/estimated value of the seized goods.*

> *2.2 Further, in addition to the Bond mentioned at Para 2.1 above, the competent authority shall take a Bank Guarantee or Security Deposit to cover the following:*
>
> *i. the entire amount of duty/differential duty leviable on the seized goods being provisionally released;*
>
> *ii. amount of fine that may be levied in lieu of confiscation under Section 125 of the Customs Act, 1962 at the time of adjudication of the case. While securing the same, the competent authority shall take into account the nature of the seized goods, the duty and charges payable on the said goods, their market price and the estimated margin of profit;*
>
> *iii. amount of penalties that may be levied under the Customs Act, 1962, as applicable, at the time of adjudication of the case.*
>
> *2.3 Depending on the specific nature of a case, the competent authority may, for reasons to be recorded in writing, increase or decrease the amount of security deposit as indicated above.*

6. It is apparent that in terms of clause i, ii and iii of para 2.2. of the said Circular, the Bank Guarantee should include the differential duty, the amount of fine that may be levied in lieu of confiscation under Section 125 of the Customs Act, 1962 and the amount of penalties that may be levied under Customs Act, 1962. The said Circular gives discretion to the Competent Authority to increase or decrease the amount of security deposit depending on facts of the case. In the instant case the Competent Authority has fixed the security amount as 2.5 times the duty amount. From the defense presented by the appellant, it has not been denied that the goods seized were imported goods. The grounds of appeal do not contest the quantification of duty on merits as there is no specific arguments in the appeal memorandum or in the written submissions filed by the appellant except some general statements.

7. The next issue raised by the appellant relates to the fact that though the seizure was made on 13.10.2022, no notice has been issued till date. The appellant has relied on the decision of Hon'ble High Court of Bombay in **Writ Petition No. 5593 of 2021** in case of Indosheel Mould Ltd. to assert that in such cases the seizure itself should be vacated. We find that the seizure was made on 13.10.2020 and the said seizure order is not subject matter of challenged in the present proceedings. The entire appeal of the appellant before the lower authorities as well as Tribunal is only for the relaxation in the terms of Provisional release, there has not been any challenge to seizure before lower authorities.

8. Now coming to the quantum of security fixed by the lower authorities, we find that in the instant case, the goods were cleared from

the Customs area and were lying in the premises of the appellant. Part of the goods were further processed. Moreover, from the entire quantity detained by the Revenue, 75% of the same was found to be of Indian Origin and for the rest the Revenue is yet to issue the Show Cause Notice. In this background, we find that the amount of security of 2.5 times the differential duty is excessive, the same is reduced to the amount equal to differential duty quantified in the order. The bond amount will continue to remain equal to the value of the goods. Appeal is partly allowed in above terms.

(Pronounced in the open court on 31.03.2022)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Neha