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

REGIONAL BENCH- COURT NO. 3

Customs Appeal No. 10185 of 2022
Customs Miscellaneous (EH) Application No. 10134 of 2022

(Arising out of -20220471MN0000919821 Dated- 06/04/2022 passed by Commissioner of CUSTOMS-Valsad)

AMGLO RESOURCES PRIVATE LIMITED ....**Appellant**
301, Elphinstone House
Mumbai, Maharashtra

VERSUS

C.C.E & S.T.-VALSAD ....**Respondent**
Third Floor, Adarashdham Building,
Vapi-Daman Road, Vapi, Gujarat
Gujarat-396191

APPEARANCE:
Shri Jitendra Motwani, Advocate for the Appellant
Shri J. A Patel, Authorised Representative for the Respondent

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

Final Order No. A/ 10421 /2022

DATE OF HEARING:02.05.2022
DATE OF DECISION:10.05.2022

RAMESH NAIR

The present appeal has been filed by the Appellant against provisional release order dated 06.04.2022 passed under the approval of the Respondent herein to the extent it directs the Appellants to furnish a bank guarantee to the extent of 15% of value of seized imported goods.

2. The facts of the case in brief are that the Appellant is a company incorporated under the Companies Act, 1956 and in ordinary course of its business, had imported Copper Cathodes conforming to LME Grade “A” from a UAE based supplied viz., NBJ International FZ-LLC, Dubai, UAE vide 4 Bills of Entry Nos.

- 7078197 dated 14.01.2022,
- 7078275 dated 14.01.2022,
- 7078308 dated 14.01.2022 &
- 7078318 dated 14.01.2022

3. Import documents as received from the foreign supplier such as invoices, Bill of Lading and Country of Origin Certificate, etc. were filed by the Appellant along with the aforesaid Bills of Entry under Section 46 of Customs Act, 1962 (‘the Act”). The Appellant admittedly has not availed any duty benefit on the basis of the said COO or otherwise and was willing to pay duty at appropriate rate.

4. During the course of physical examination of the goods imported under the Bills of Entry, it was observed by the assessing officer that the said goods appear to be of Iran origin and not Zambia and on the basis of the said observation, Inspector Customs, ICD, Tumb under the instruction of the Respondents issued Detention Memo dated 20.01.2022 informing the Appellant not to remove, sale or part with or deal with, in any other manner without permission of competent authority of Customs, ICD Tumb.

5. Based on the above, an inquiry was initiated against the Appellant, and statements of officials were recorded under Section 108 of the Customs Act, 1962. While the investigation was ongoing, seizure memo dated 02.02.2022 was issued by the Deputy Commissioner of Customs, ICD Tumb under Section 110(1) of the Act in respect of the four Bills of Entry seizing the goods under reasonable belief that the same are liable for confiscation under Section 111(m) of the Act.

6. Subsequently, the Appellant made detailed submissions before the Deputy Commissioner of Customs, ICD Tumb that the goods imported by the Appellant are not prohibited goods or subjected to any import restrictions in terms of Act and prayed for the goods to be released at the earliest.

7. Thereafter, Vide letter dated 04.02.2022, the Deputy Commissioner of Customs, ICD Tumb allowed provisional release of the seized goods under Section 110A of the Act subject to submission of Bond amounting to five times of the value of the goods and bank guarantee amounting to 15% of the duty payable.

8. Vide letter dated 09.02.2022, issued under the office of the Commissioner of Customs, the Respondent herein, the provisional release letter dated 04.02.2022 was cancelled and withdrawn on the grounds that:-

a. The origin of the goods is still under examination along with verification of authenticity of Certificate of Origin and investigation in this regard may require inspection and testing of the goods by the experts on the subject, if required.
b. Provisional release of such goods at this stage is premature in as much as the goods appear to be in nature of prohibited goods.

9. The Appellant being aggrieved by the said letter, requested the Respondent to reconsider the aforesaid decision and requested for provisional release of the goods.

10. Pursuant to the above, the Appellant received a letter dated 06.04.2022 from the Deputy Commissioner of Customs, ICD Tumb ("impugned order")

wherein it is stated that the competent authority has allowed the provisional release of goods on they executing a bond covering the full value of the seized goods and Bank Guarantee of 15% of the value of the seized goods. Being aggrieved by the order communicated vide letter dated 06.04.2022, the present appeal has been filed seeking modification of the order to the extent it requires the Appellant to furnish a bank guarantee of 15% of value of the seized goods.

11. Shri. Jitendra Motwani, Learned counsel appearing for the Appellant assails the impugned order on the following grounds:

- The direction to provide bank guarantee for 15% of the value of the goods is without any basis and bad in law inasmuch as the appellant at the time of hearing is willing to pay the entire duty without claiming benefit under any FTA Regulation.
- Once the entire duty is paid then the question of giving any further bank guarantee towards provisional release of goods is uncalled for and contrary to the law laid down on the issue. The following decisions are relied upon
    - *Amit Enterprises Vs. Union of India [2011 (269) ELT 314 (P&H)*
    - *Om Udyog vs. Joint Commissioner of Customs [2013 (287) E.L.T 48 (P & H)*
    - *Kuber Casting (P) Ltd. Vs Union of India [2013 (297) E.L.T. 4 (P & H)*
    - *Sada Sukhi Electronics (p) Ltd. Vs. Commissioner of Customs (Seaport – Import) [2014 (304) ELT 42 (Madras)]*
    - *SRK Manufacturing versus Commissioner of Customs, Ludhiana [2022 (1) TMI 220 – CESTAT CHANDIGARH]*
    - *Aban Exim Pvt. Ltd. Vs. Commissioner of Customs [2014 (309) E.L.T. 485 (Del.)]*
    - *Umiya Enterprise vs. Asst. State Tax Officer, SGST Dept., Palakkad [2020 (35) G.S.T.L 78 (Ker.)]*

- *Deenanath Maurya vs. Commissioner of Customs, Lucknow [2021 (378) E.L.T 626 (Tri. – All.)]*

- Without prejudice to the aforesaid and in any event, admittedly, vide letter dated 04.02.2022, the department had permitted clearance of the goods imported vide impugned Bills of Entry by furnishing a bank guarantee equivalent to 15% of the duty payable. The said order was wrongly withdrawn by the office of Commissioner of Customs, Ahmedabad, the Respondent herein, inasmuch as once the provisional release order was passed on 04.02.2022, the office of the Commissioner of Customs became *functus officio* and had no jurisdiction to review its order.

- there is no provision under the Customs Act which gives power to the department to review the order passed under Section 110A of the Customs Act. Reliance in this regard is placed on the decision:

    - *Dharampal Satyapal Ltd. Vs. Union of India [2010 (257) E.L.T 194 (Gau.)]*

    - *Tarun Castings Pvt. Ltd vs. Commissioner of C. Ex., Jaipur [2002 (142) E.L.T. 400 (Tri. – Del)]*

- Without prejudice to the above and in any event, it is submitted that the department is completely secured in the present case as the appellant is willing to deposit the entire amount which was over 25 crores (BCD + IGST) and therefore, the direction to impose an onerous condition of furnishing bank guarantee to the extent of 15% of the value of goods over and above the duty being paid at the time of clearance is clearly bad in law.

- The issue on the basis of which the investigation has been initiated is admittedly the Country of Origin Certificate. The case of the department is that the COO appears to be false and the goods have been imported from Iran instead of Zambia. It is submitted that even if the said allegation is taken to be true, it is an undisputed fact that the appellant had no role in issuance of the Country of Origin certificate as the document was submitted by the appellant before the Customs Authority alongwith the other documents received from the UAE supplier.

- Further, the said Country of Origin certificate has not been used by the appellant to avail any duty benefit and no benefit would be accrued to the appellant by mis-declaring the Country of Origin. Even if it is assumed that the goods are imported from Iran, the same would have no bearing to the present case as there is no restriction under the Import Export Policy for importing Copper Cathodes from Iran. Para 2.18 of the relevant Foreign Trade Policy is relevant to the said submission.

- On the issue of Country of Origin certificate, it is submitted that while the investigation is ongoing, there is no evidence so far to show that the said Country of Origin certificate is forged and/or false and therefore keeping in mind the facts of the case, the order directing furnishing of bank guarantee to extent of 15% of the value of the seized goods is incorrect moreso when the entire duty is being paid.

12. Shri. J. A. Patel, Learned Superintendent (Authorised Representative) during the hearing had submitted that the order dated 06.04.2022 which was issued after the approval of the Competent Authority is correct and proper in law considering the fact that the goods were imported from Iran as against Zambia.

13. We have carefully considered the submissions made by both the sides and perused the records. In the present case, the appellant herein had imported Cooper Cathodes under Bills of Entry annexed from Page 23 to Page 30 of the Appeal Memorandum. The details of the import is reproduced below for the ease and reference.

Sr. No	Bill of Entry No. & Date	Description of Goods imported as per import document	Weight of the goods (in MT)	Value of the goods (in Rs.)
1.	7078275 dated 14.01.2022	Copper Cathode Conforming to LME Grade A	496.452	352074983/-
2	7078197 dated 14.01.2022		500.67	355065655/-
3	7078308 dated 14.01.2022		350.603	248641497/-
4	7078318 dated 14.01.2022		150.105	106451811/-
Total			1497.83	106,22,33,946/-

14. The issue in the present case relates to whether the order dated 6th April 2022 issued by the Competent Authority is correct and proper in law to the extent it directs the appellant to provide a bank guarantee to the extent of 15% of the value of seized goods. The appellant submitted that before the said impugned Order was passed, an order was issued on 4th February 2022 by which the goods impugned in the 4 Bills of Entry were allowed to be provisionally cleared under section 110A of the Customs Act on Appellant furnishing the bank guarantee amounting to 15% of the duty payable. The said order was withdrawn by the office of the Respondent herein on the ground that:

(a) *the origin of the goods is still under examination along with verification of authenticity of COO and investigation in this regard may require inspection and testing of the goods by the experts on the subject, if required;*

(b) Provisional release of such goods at this stage is premature inasmuch as the goods appear to be in the nature of prohibited goods

15. The overall value of goods in the present case is over 100 crores. The fact that the earlier order dated 04.02.2022 issued by the deputy commissioner of Customs, Tumb was withdrawn by the office of Respondent shows that the issue of provisional release was being done under the approval of the Respondent.

16. We find that under the Customs Act, there is no provision granting power to the department to review an order passed under Section 110A and accordingly the impugned order is bad in law. This view gets support from the decision of Gauhati High court in the case of Dharampal Satyapal Ltd. (supra) which reads as under:

> ***"26.*** *It is well settled that a Court or Tribunal or adjudicating authority becomes functus officio (ceases to have control over the matter) once a judgment is pronounced or the order is made. Such judgment and order, when becomes final, cannot be altered, changed, varied or modified unless the statute, whereunder the Court, Tribunal or the adjudicating authority functions, so permit. There can also be no doubt that the power of review is not an inherent power. The right to seek review of an order is neither natural nor fundamental right of an aggrieved party. Such power must be conferred by law. If there is no power of review, the order cannot be reviewed. However, a Court, having plenary power, is not affected by any statutory restrictions in reviewing its own order. In Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji, reported in (1971) 3 SCC 844, the Supreme Court, while dealing with the provisions of Saurashtra Land Reforms Act, 1951, and referring to Order 47 Rule 1 of the CPC, held that there is no inherent power of review with the adjudicating authority if it is not conferred by*

law. The observations read, "It is well settled that the power to review is not an inherent power. It must be conferred by law either specifically or by necessary implication. No provision in the Act was brought to (our) notice from which it could be gathered that the Government had power to review its own order, it is obvious that its delegate could not have reviewed its order." The position of law, so laid down in Patel Narshi Thakershi (supra), has been reiterated by the Supreme Court in other later cases."

17. In the present case, once the provisional release order was passed, the Office of the Commissioner of Customs, Ahmedabad, Respondent herein had no jurisdiction under the Customs Act to review the earlier order dated 4th February 2022 granting provisional release to the goods imported vide the Bills of Entry impugned in the present case. The correct approach would have been for the Respondent to challenge the correctness of the said provisional release order before this tribunal.

18. Further to the above, there have been no reasons provided in the order dated 6th April 2022 as to why the department has changed its stand by directing the appellant to furnish a bank guarantee to the extent of 15% of the value of the seized goods as against the original condition mentioned in the provisional order dated 4th February 2022 which was to provide a bank guarantee to the extent of 15% of the duty payable.

19. Be that as it may, the condition of furnishing the bank guarantee to the extent of 15% of the value of goods or 15% of the duty value itself requires to be tested in terms of the law delivered on the issue in the case of Amit Enterprises v Union of India (supra), wherein the Hon'ble Punjab and Haryana was pleased to modify the condition of furnishing of bank guarantee of 25% of the market value of the seized goods on the ground that the petitioner

therein had paid duty as per the valuation of the department. The relevant extract of the said decisions is reproduced below:

> ***"11.*** *We find merit in the contention that requirement of giving a declaration that the petitioner will not challenge the value of the goods, is unreasonable and arbitrary. The petitioner cannot be debarred from asserting its version as to the value and classification of goods. If such a condition is allowed to be imposed, the department can unilaterally allege any valuation and continue to keep the goods under detention unless the affected party agrees to withdraw the challenge to the valuation. This will amount to denial of justice. Similarly, requirement of furnishing bank guarantee equal to 25% of the full market value of the seized goods is also, in the facts and circumstances of the case, arbitrary. Mere fact that condition of 10% of bank guarantee was upheld by this Court in T.L. Verma and M/s. Kundan Rice Mills cannot be justification to impose such conditions in each and every case. In those cases, this Court was satisfied that the importers had adopted fraudulent tactics which, prima facie, justified opinion for confiscation of goods. The said judgments cannot apply to every case of detention. Mere allegation of liability to confiscation is not enough. Circumstances and grounds justifying opinion about liability to confiscation is open to judicial scrutiny.*
>
> ***12.*** *Power of detention of goods is a drastic power and exercise of such power has to be hedged by safeguards to check its abuse and limit its exercise only to situation where it is intended by law to be exercised. Existence of power and exercise of power are independent. Mere fact that there is a power to confiscate does not mean that such power could be exercised mechanically or arbitrarily. The authority exercising such power must strictly justify the same. Balance has to be maintained between the need for exercise of such power for the purpose for which the same has been conferred and adverse effects on rights of a citizen.*

13. *As held in Mapsa Tapes Pvt. Limited, power of search and seizure to check evasion of tax has been upheld as temporary interference with the right of a citizen. At the same time, seizure is not only invasion of right of property but also right of privacy. Such right can be affected only by fair and reasonable procedure as held in Maneka Gandhi v. Union of India, AIR 1978 SC 597. Referring to this aspect, in a recent decision in District Registrar and Collector, Hyderabad and Another v. Canara Bank etc., AIR 2005, SC 186, it was observed :-*

"33. Intrusion into privacy may be by - (1) legislative provisions, (2) administrative/executive orders, and (3) judicial orders, the legislative intrusions must be tested on the touchstone of reasonableness as guaranteed by the Constitution and for that purpose the court can go into the proportionality of the intrusion vis-a-vis the purpose sought to be achieved. (2) <u>So far as administrative or executive action is concerned, it has again to be reasonable having regard to the facts and circumstances of the case.</u> (3) As to judicial warrants, the court must have sufficient reason to believe that the search or seizure is warranted and it must keep in mind the extent of search or seizure necessary for the protection of the particular State interest. In addition, as stated earlier, common law recognized rare exceptions such as where warrantless searches could be conducted but these must be in good faith, intended to preserve evidence or intended to prevent sudden danger to person or property."

(underlining supplied).

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55. In Smt. Maneka Gandhi v. Union of India and Another (1978) 1 SCC 248 - a 7-Judges bench decision, P.N. Bhagwati, J. (as His Lordship then was) held that the expression ' personal liberty' in Article 21 is of the widest amplitude and it covers a variety of rights which go to constitute the personal liberty of man and some of them have been raised to the status distinguishing as fundamental rights and give *additional protection under Article 19 (Emphasis supplied). Any law interfering with personal liberty of a person must satisfy a triple test; (i) it must prescribe a procedure (ii) the procedure must withstand the test of one or more of the fundamental rights conferred under Article 19 which may be applicable in a given situation; and (iii) it must also be liable to be tested with reference to Article 14. As the test propounded by Article 14 pervades Article 21 as well, the law and procedure authorizing interference with personal liberty and right of privacy must also be right and just and fair and not arbitrary, fanciful or oppressive. If the procedure prescribed does not satisfy the requirement of Article 14 it would be no procedure at all within the meaning of Article 21."*

14. *Reasonableness being part of fundamental right under Article 14, doctrine of proportionality can be invoked so that unequals are not treated as equals. The exercise of discretion has to be proportionate to the wrong which has led to the action. The doctrine of proportionality has been explained in Om Kumar v. Union of India, AIR 2000 SC 3689, wherein it was observed :-*

"28. By "proportionality", we mean the question whether, while regulating exercise of fundamental rights, the appropriate or least-restrictive choice of measures has been made by the legislature or the administrator so as to achieve the object of the legislation or the purpose of the administrative order, as the case may be. Under the principle, the court will see that the legislature and the administrative authority "maintain a proper balance between the adverse effects which the legislation or the administrative order may have on the rights, liberties or interests of persons keeping in mind the purpose which they were intended to serve". The legislature and the administrative authority are, however, given an area of discretion or a range of choices but as to whether the choice made infringes the rights excessively or not is for the court. That is what is meant by proportionality."

> ***15.*** *In the present case, dispute is about the classification and valuation. The petitioner already paid duty even as per valuation of the department. The department has not kept in mind guidelines of expeditious investigation and of not detaining the goods on simple dispute of valuation/classification. The department has not shown prima facie case for exercise of power of confiscation and has only relied upon existence of power. In these circumstances, the requirement of bank guarantee equal to 25% of the value of goods is clearly arbitrary and mala fide and the said condition cannot be sustained.*
>
> ***16.*** *Accordingly, this petition is allowed and detained goods are directed to be released forthwith subject to the conditions contained in the order of provisional release except equirement of a declaration by the petitioner that it will not dispute the value and requirement of furnishing bank guarantee. It is, however, made clear that this order will not affect the merits of the controversy which will be finally adjudicated upon in accordance with law independently."*

20. We also find that the Tribunal in the case of *SRK* Manufacturing versus Commissioner of Customs, Ludhiana (supra) had deleted the condition of furnishing the bank guarantee equivalent to the 30% of the value of goods on the ground that the appellant therein had paid duty on the declared value and had accepted to pay the entire differential duty as well. Relevant para of the said decision is reproduced below:

> *"28. The next question would then be as to the legality and propriety of the conditions imposed in the impugned order for provisional release of the goods. The operative portion of the impugned order has already been reproduced above. As per the order the conditions imposed for provisional release are as under:*
>
> *The goods are to be provisionally released:-*

(i) the goods are to be subjected to mutilation so as to render them as scrap

(ii) furnish bond equal to the value of the impugned good.

(iii) furnish Bank Guarantee equivalent to 30% of the value of the goods.

(iv) pay the differential duty assessed by the department.

29. The Ld. Counsel for importer has submitted that they have no objection to comply with all the above conditions except the condition to furnish Bank Guarantee equivalent to 30% of the value of the goods. It is submitted by him that they have paid the entire duty on the declared value and also willing to pay the differential duty if any assessed by the department. We find that when the importer has made such payments and the goods having been mutilated to render them as scrap so as not to be reused as such for any purpose, the condition to furnish BG in addition to bond isnot warranted or justified.

30. The commissioner (Appeals) has relied on the judgments in the case of Bhaiya Fibre Ltd (supra) and Max Enterprises Vs. Dy. Commissioner of Custom, Chennai 2019 (367) ELT 753 (Mad.) in these decisions, the Hon"ble High Courts have not imposed condition to furnish BankGuarantee. In para 12 of the decision in the case of Bhaiya Fibre Ltd, the Hon"ble High Court observed as under:

12. Under the circumstances, we have to go by the principles laid down by the Customs (Provisional Duty Assessment) Regulations, 1963.We, therefore, direct the Respondent to provisionally clear the goods forming the subject matter of 12 bills of entry that have been mentioned in the petition upon the Petitioner depositing an amount equivalent to 20% of the difference in the provisional duty as sought to be assessed by the Respondent and on the basis of the value Prima facie determined by the Respondent, that is US $ 1640/PMT and thevalue declared by the Petitioner, that is between US$ 870/PMT and

US$ 1000/PMT. The Petitioner will, of course, be also obliged to execute a bond to pay the balance of the differential duty as and when it I finally assessed. The Respondent will issue a show cause notice to the Petitioner before taking a final view in the matter.

31. The case of Max Enterprises (supra) the Hon"ble High Court in para 14 observed as under:

14. The cases cited at the Bar indicate the consistent view that release of the consignments be permitted in terms of Section 110A of the Act upon condition that the petitioner directed to remit 30 to 50% of 30% of the differential duty and execute a personal bond for the remaining70%., upon remittance and furnishing of which, the goods shall be released forthwith. On the aspect of under invoicing, the Department is at liberty to initiate proceeding for adjudication that will be concluded after hearing the petitioner and in accordance with law.
From the above, it can be seen that the reliance placed by the Commissioner (Appeals) to impose the condition to furnish BG is highly misplaced and misconstrued. In both these decisions, the Hon'ble Courts have directed to pay 20/30 percent of the differential duty. In the present case, the importer having paid duty on the declared value and having accepted to pay the entire differential duty, we are of the considered opinion that in the interest of justice, the condition to furnish Bank Guarantee equivalent to 30% of value of the goods requires to be waived which we hereby do.

32. In the result, the impugned order is modified to the limited extent of setting aside the direction to furnish Bank Guarantee of 30% equivalent to the value of the goods. The appeal filed by importer C/60419/2021 is partly allowed in above terms. The appeal filed by Revenue C/60469/2021 is dismissed."

21. Similar, view has been taken by various other courts in the following decisions.

- *Om Udyog vs. Joint Commissioner of Customs [2013 (287) E.L.T 48 (P & H)*
- *Kuber Casting (P) Ltd. Vs Union of India [2013 (297) E.L.T. 4 (P & H)*
- *Sada Sukhi Electronics (p) Ltd. Vs. Commissioner of Customs (Seaport – Import) [2014 (304) ELT 42 (Madras)]*
- *Aban Exim Pvt. Ltd. Vs. Commissioner of Customs [2014 (309) E.L.T. 485 (Del.)]*
- *Umiya Enterprise vs. Asst. State Tax Officer, SGST Dept., Palakkad [2020 (35) G.S.T.L 78 (Ker.)]*
- *Deenanath Maurya vs. Commissioner of Customs, Lucknow [2021 (378) E.L.T 626 (Tri. – All.)]*

22. In all the above cases the condition to furnish bank guarantee on the value of goods was deleted. Infact in some case the party was directed to provide BG towards differential duty.

23. The present case stands at a better footing as the Appellant is agreeable to pay entire duty to secure provisional release of goods. As evident from the Bills of entry, the appellant was always willing to deposit the entire duty of BCD + IGST which is over 25 crores and therefore, the condition to direct the appellant to furnish a bank guarantee of 15% of the value of the goods which is over 100 crores is excessive and arbitrary more importantly when the appellant is willing to deposit the duty payable on the seized goods. There is no dispute on the valuation or classification of the goods as is clear from the impugned provisional release order.

24. Looking at the facts of the present case, we find that the law laid down in the aforesaid decisions is squarely applicable to the facts of the present case as well and the condition to direct the Appellant to furnish bank guarantee of 15% of the value of goods is arbitrary, excessive and bad in law.

25. A perusal of the seizure memo clarifies that it is the case of the department that the goods in the present case were imported from Iran as against the declared country viz., Zambia. Keeping the above allegation in mind, the department had seized the goods imported vide 4 impugned Bills of Entry. The argument of the appellant that no benefit is accrued to the appellant by allegedly mis-declaring the Country of Origin as they were always willing to pay the entire duty payable on these goods without even the considering the said COO cannot be ruled out and have to bear in mind when conditions for provisional release was decided under the approval of the Respondent. Also, that the department before this Tribunal has not controverted the submissions of the Appellant that in terms of para 2.18 of the Foreign Trade Policy, the goods are freely importable even when imported from Iran. In other words it is not even the case of the department before us that there was any restriction on import of goods from Iran. Further it is a settled law that an importer unless proven otherwise beyond doubt cannot be said to have any role in the issuance of a COO as the same is issued by the competent authority of the originating country.

26. However, at this point in time, it is also important to note that the investigation is ongoing and country of origin of the goods will be determined only after the investigation is concluded. At this point of time, it cannot be said with certainty that the goods were imported from Iran. Be that as it may, the issue before this Tribunal is limited to the provisional release of goods and the same need to be decided keeping in mind the fact that the Appellant never

intended to avail any benefit basis the COO and were and are willing to pay the duty on the goods imported vide the 4 bills of entry.

27. As per our above discussion and case laws, we are of the view that the conditions imposed in the impugned provision release order is not justified and correct. However keeping in mind the interest of justice and safeguard of revenue's interest also, we hold that the seized goods shall be released provisionally on payment of custom duty on the conditions that the appellant shall execute a bond of full value of the seized imported goods and shall furnish bank guarantee of Rs. 1 Crore (Rs. One Crore Only). The Appeal is allowed in the above terms. MA also stand disposed of.

(Pronounced in the open court on 10.05.2022)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Prachi