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

REGIONAL BENCH : COURT NO. 3

CUSTOMS Appeal No. 12100 of 2019- DB

[Arising out of Order-in-Original/Appeal No VIII-10-23-COMMR-O&A-2018 dated 29.01.2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-JAMNAGAR(PREV)]

Copy Care Enterprise ...Appellant
C-18, Agman Avenue, Nr. Shreyas Park Society,
Jodhpur Tekra, Satellite
Ahmedabad, Gujarat-380015

VERSUS

C.C.-Jamnagar(prev) ...Respondent
Sharda House...Bedi Bandar Road,
Opp. Panchavati,
Jamnagar, Gujarat

APPEARANCE:
Present for the Appellant : Shri Devashish K Trivedi, Advocate
Present for the Respondent: Shri A R Kanani, Superintendent (AR)

CORAM:

HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)

HON'BLE MR. RAJU, MEMBER (TECHNICAL)

Final Order No. 11632/2024

DATE OF HEARING: **16/04/2024**
DATE OF DECISION: **24.07.2024**

RAMESH NAIR

Appellant has filed the present appeal against Order No. F. No. VIII/10-23/Commr/O&A/2018/7490 dtd. 29.01.2019 of Commissioner of Customs, Jamnagar by which the request of the Appellant for provisional release of seized goods viz. 'Used Multifunctional Digital Devices (MFD) (14 containers) was rejected.

2. The brief facts of the case are that appellant had imported fourteen containers containing Multi-functional Digital Devise (MFD) and part thereof at Pipavav Port. Clearance of the said containers was in process. Bills of entry in regard to two containers were filed. The DRI had seized the containers under Panchanama dtd. 01/02.03.2018 and Panchanama dtd. 15.03.2018. It is alleged that the goods were restricted for import as per the Notification No. 35(RE-2012)/2009-2014 dtd. 28.02.2013 by

relying on examination report of valuer. Vide seizure memo dtd. 10.08.2018, said goods were seized. Appellant had submitted application dtd. 11.12.2018 before the Commissioner of Customs, Jamnagar praying for provisional release of the goods. Said application came to be rejected vide impugned order/ letter dtd. 29.01.2019. Being aggrieved appellant filed the present appeal before this tribunal.

3. Shri. D.K. Trivedi, Learned Counsel appearing on behalf of the appellant submits that the appellant is seeking provisional release of the goods. He submits that the preposition is no more res-integra that the MFD requires to be provisionally released. Further, the valuation done by the Chartered Engineer in not in accordance with the customs valuation rules as well as the relevant circular. Therefore, in such circumstances, it is settled that the declared value has to be accepted and the goods are required to be provisionally released. He placed reliance on following documents, circulars and judgments.

(i) Valuation report dtd. 06.08.2018 of Chartered Engineer

(ii)Opinion dtd. 31.01.2019 of same Chartered Engineer

(iii)Instruction/Circular dtd. 19.11.1987 on valuation of second hand machinery.

(iv)Instruction/Circular dtd. 15.10.2015 on valuation of second hand machinery.

(v) Instruction/Circular dtd. 05.02.2020 on valuation of second hand machinery.

(vi) Commr. Of Cus., Ludhiana Vs. B.E. Office Automation Products Pvt. Ltd. – 2020(371)ELT 592 (Tri. Chan.)

4. Shri A R Kanani, Ld. Superintendent (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

5. On careful consideration of the submissions made by both the sides and perusal of the record, we find that limited prayer of the appellant is for provisional release of the goods. It is seen from the records that there have been number of orders issued by this Tribunal and various High Courts accepting the fact that the impugned MFDs are not liable for absolute confiscation. In this regard, we also find support from judgments of the Hon'ble Supreme Court in the case of *Commissioner of Customs* v*. Atul Automations Pvt. Ltd.* [(Civil Appeal No. 1057 of 2019 & Connected cases arising out of SLP No. 12471 of 2018, disposed of on

24-1-2019] [2019 (365) E.L.T. 465 (S.C.)] [*Atul Automations*] stating, the review petition filed by the revenue against the order has been dismissed.

6. We also find that the adjudicating authority heavily relied upon the para 2 of the Board Circular No. 35/2017, dated 16-8-2017. We noticed that the Hon'ble High Court of Delhi, upon being presented with the inexorable mandate of the very same circular in Additional Director General (Adjudication) v. Its My Name Pvt. Ltd. [2021 (375) E.L.T. 545 (Del.)], observed that-

> *'51……Mr. Ganesh relied on Agya Import Ltd. : 2018 (362) E.L.T. 1037 (Del.), which holds that para 2 of the said Circular was merely in the nature of a "general guideline", and did not incorporate any mandate. We, having perused para 2 of Circular 35/2017-Cus. supra, vis-a-vis Section 110A of the Act, are not inclined to be so magnanimous. According to us, para 2 of Circular 35/2017-Cus. is clearly contrary to Section 110A and is, consequently, void and unenforceable at law. It is not permissible for the CBEC, by executive fiat, to incorporate limitations, on provisional release of seized goods, which find no place the parent provision, i.e. Section 110A of the Act. Executive instructions may, the district, supplement the statute, where such supplementation is needed, but can never supplant the statutory provision. By excluding, altogether, certain categories of goods from the facility of provisional release, para 2 of Circular 35/2017-Cus. supra clearly violates Section 110A, were under all goods, documents and things, are eligible for provisional release. Goods, which are eligible for provisional release under Section 110A of the Act, cannot be rendered ineligible for provisional release by virtue of the Circular. (Be it noted, here, that we refer to the "eligibility" of the goods for provisional release, as distinct from "entitlement" thereof, which has to be determined by the adjudicating authority in exercise of the discretion conferred on her, or him by Section 110A.) Para 2 of Circular 35/2017-Cus., therefore, effectively seeks to supplant Section 110A, to that extent, and has, therefore, to be regarded as void and unenforceable at law.*

7. Further we find that Appellant's request for provisional release of goods was fully covered by the provisions of Section 110A of the Act. Accordingly, the impugned order is set aside and appeal is allowed. Since, the this matter of provisional release of the goods is pending for last more than five years, in the interest of justice, the adjudicating authority is directed to order for provisional release of goods in accordance with law within a period of one month from the date of this order.

(Pronounced in the open court on **24.07.2024** *)*

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

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