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

REGIONAL BENCH-COURT NO. 3

CUSTOMS Appeal No. 10088 of 2024 - DB

(Arising out of Order in Original F-NO-5-15-01-SIIB-PARTHGLOBAL-2023-24 dated 14/08/2023 passed by Commissioner of Customs- Kandla)

PARTH GLOBAL IMPEX **........Appellant**
Ground Floor Kh No. 96/2, Gali No. 8/1
Old No.8 Village Wazirabad North,
Delhi North, Delhi-110084

VERSUS

Commissioner of CUSTOMS – Kandla **......Respondent**
office of the Commissioner of Customs,
Near Balaji Temple, Kandla,
Kuchchh, Gujarat-370210

APPEARANCE:
Ms. Priyanka Goel, Advocate for the Appellant
Shri Rajesh K Agarwal, Superintendent (AR) for the Respondent

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

Final Order No.11829/2024

DATE OF HEARING: 30.04.2024
DATE OF DECISION: 27.08.2024

RAMESH NAIR

This appeal is directed against order-in-original dated 14.08.2023 issued by Deputy Commissioner Customs, Kandla, wherein the decision of the Commissioner, Customs, Kandla has been communicated. This order is a granting of provisional release of the seized goods wherein the appellant was directed to furnish their bond equal to the value of goods i.e. Rs. 3,65,78,838/- and to furnish a bank guarantee equal to the duty amounting to Rs. 6,20,26,403/-. The impugned provisional release order was issued in compliance to the Hon'ble Delhi High Court order dated 10.07.2023 in case of Writ petition No. 7372/2023. The Adjudicating Authority while granting the provisional release by imposing condition of bond and bank guarantee as described above, observed that based on the investigation of DRI, Gandhidham, it was informed this office that the document submitted by the appellant company have failed to establish that the seized goods namely dried Areca Nuts were supplied from claimed domestic suppliers (M/s. Kumar Brothers, Assam, M/s. S.N. Trading Company, Assam, M/s MaaKamakhya Traders, Assam, & M/s. KGN Traders, Karnataka). In fact investigation has proved that there was no movement of concerned vehicles with the subject goods on the given dates from place of dispatch to the place of dispute, no documentary evidence in supply of areca nuts to M/s Parth Global Impex were available with three of the above suppliers, while one of them was not found existing at their address. Clearly investigation thus on verifications contented it is evident to the reasonable conclusion that seized goods in question are imported areca nuts, which have been cleared without payment of duty. Therefore, on account of non-submission of legitimate documents regarding the source of said seized goods vis-à-vis the connection of key persons namely Shri Himanshu & Shri Sovit Jain to the appellant and diversion of sale of offending goods from KASEZ Gandhidham, the DRI has reason to believe that detained goods were offending in nature and were part of consignment cleared from KASEZ Gandhidham to DTA without payment of duty under the guise of export to Bangladesh.

1.1 On the basis of above observation, based on the investigation of DRI, the Learned Commissioner Customs, Kandla has though decided to grant provisional release of the goods Under Section 110 A of the Customs Act, 1962, but with condition of bond for Rs. 3,65,78,838/- with bank guarantee of Rs. 6,20,26,403/-. The appellant being aggrieved by the condition for provisional release of the seized good filed the present appeal.

2. Ms. Priyanka Goel, Learned Counsel appearing on behalf of the appellant submits that appellant are engaged in trading of dried areca nuts which are purchased from domestic market, under proper invoice and after paying proper IGST on the said goods. The department on the basis of some intelligence received by the DRI that some smuggling cartel is evading custom duty by diverting the duty free imported goods such as Areca nuts and black/white pepper from Kandla SEZ to Domestic Tariff Area (DTA) disguising the movement as export to Bangladesh.

2.1 She submits that the impugned goods in question are of Indian origin, lawfully acquired from domestic market. The goods were wrongly seized under the provisions of the Customs Act, 1962. It is an admitted position that the seizure of impugned goods is town seizure and not from some Custom area. Therefore, the provisions of Customs Act are wrongly invoked.

2.2 She submits that in the seizure memo all the observations such as non-movement of goods is based on assumption presumption whereas there is no justification of the statement. There is no corroborative evidence produced by the department, in respect of the said statement and on the contrary appellant had submitted all the evidences such as E-way Bills, E-invoices, and payment details. She submits that the Learned Commissioner had failed to give any observation in respect of the documents submitted by the appellant which clearly cast shadow of doubt, that impugned goods are locally procured only and some goods were allegedly diverted from KASEZ to DTA.

2.3 Without Prejudice, she also submits that if at all, the goods are diverted than also appellant cannot be tied up with the provisions of

Customs Act as appellant under bona fide belief procured the goods from its supplier duly discharge the liability of GST and therefore, there was no reason to doubt the origin of goods. Hence, the seizure itself is illegal.

2.4 She further submits that in the seizure memo, the department has not mentioned the valuation method applied by the respondent before finalizing the value of impugned goods based upon which the bond value has been levied and also bank guarantee, cash security of the seizure value was directed to furnish for the provisional release of the impugned goods. Therefore, the value for bond as well as for bank guarantee fixed by the revenue is absolutely incorrect.

2.5 She submits that the Section of Customs Act invoked are solely pertains to the importation of goods, these sections are inapplicable in the present case because the impugned goods are procured exclusively from local market and are intended solely for sale within the territorial confines of India. In view of her submission, she requests that condition for provisional release pertaining to submission of bank guarantee may be set aside.

3. Shri R. K. Agrawal, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the observation made by the Learned Commissioner for provisional release. He submits that on the basis of the investigation DRI has a reasonable belief that the goods were diverted from KASEZ. Accordingly, the same were seized. Therefore, for the provisional release, order for execution of bond and bank guarantee is just and proper, it does not required any interference.

4. We have carefully considered the submission made by both the side and perused the records. We find that the goods were seized after primary investigation. We find that there is no evidence that even though it is assumed that the goods were diverted from SEZ but as per the documents submitted by the appellant the goods were procured by the appellant from domestic supplier. It is also fact that transaction also suffered the GST and E-way bill and invoices were raised.

4.1 Having observed above, we also find that the detail investigation is yet to be carried out and only thereafter it can be established whether the goods under seizure is clandestinely form KASEZ or otherwise. In this position, the condition of bank guarantee of Rs. 6,20,26,403/- appears to be very harsh. Therefore, we are of the view that the amount of bank guarantee needs to be reduced, in the facts and circumstances of the case. Accordingly, the goods may be provisionally released on execution of bond for Rs. 3,65,78,838/- with a bank guarantee of Rs. 3 crores .

5. Accordingly, the impugned order is modified to the above extent. The appeal is disposed of in the above terms.

(Pronounced in the open court on 27.08.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Raksha