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

REGIONAL BENCH- COURT NO. 3

Customs Appeal No. 10707 of 2024- DB
(Arising out of F. NO. GEN/ADJ/COMM/181/2024-Adjn-O/o Commr-Cus-Kandla dated 07.11.2024 passed by Commissioner of Customs - Kandla)

Cuthbert Winner LLP ....**Appellant**
IInd, 44, Regal Building, Outer Circle,
Connaught Place, New Delhi-110001

VERSUS

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

WITH

Customs Appeal No. 10708 of 2024- DB
(Arising out of F. NO. GEN/ADJ/COMM/181/2024-Adjn-O/o Commr-Cus-Kandla dated 07.11.2024 passed by Commissioner of Customs - Kandla)

Cuthbert Oceans LLP ....**Appellant**
Unit No. 111, ACY Aggarwal City Square
Plot No. 10, District Centre Mangalam Place
Sector 3, Rohini, New Delhi-110085

VERSUS

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

APPEARANCE:
Shri Manish Pushkarna with Shri Tarun Chawla and Shri Jitin Singhal, Advocates for the Appellant
Shri Prashant Tripathi, Superintendent (AR) for the Respondent

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

FINAL ORDER NO. 12901-12902 /2024

DATE OF HEARING: 22.11.2024
DATE OF DECISION: 29.11.2024

RAMESH NAIR

The above two appeals are against the common Order dated 07.11.2024 passed by the Commissioner of Customs, Kandla whereby the request of the appellant made vide their letters dated 17.10.2024 and 22.10.2024 for provisional release of the seized goods were rejected before passing the adjudication order dated 08.11.2024.Being aggrieved by the impugned order dated 07.11.2024, the appellant filed the present appeals.

1.1 The brief facts of the case are that the appellants named above had imported the subject goods from Afghanistan and USA, i.e. Black

Pepper and Inshell Walnuts as detailed below. The subject goods were un-loaded and cleared at Port of Discharge, Mundra, thereafter, trans-shipped to Kandla SEZ, Gandhidham – at the premises of M/s Aditya Exports and M/s Zest Marine, both being the Warehouse Owners.

1.2 The case of the department is that the appellants had imported Black Pepper below CIF value of Rs.500/-per Kg in violation of LoA condition as well as Country of Origin shown in the documents submitted during the import were not genuine inasmuch as the ships/ vessels on which the goods had shown to be transported from Afghanistan to Bandar Abbas, Iran, to Jebel Ali, Dubai, were never docked/ visited Bandar Abbas Port during the transit period shown on the documents. The imported goods were examined and verified by the proper officer and, thereafter, being satisfied with the genuineness and correctness of the description, quantity, value and compliance of the provisions of the Act, had ordered release of the goods for home consumption on payment of appropriate customs duty. The appellants had paid the appropriate customs duty and the goods were released for home consumption. Thereafter, the goods were trans-shipped to be warehoused in different Cold Storages in the State of Haryana.

1.4 The DRI had seized the subject goods under section 110 of the Customs Act, 1962 vide Seizure Memos dated 24.04.2023 and 04.05.2023 on a reasonable belief that they were liable for confiscation under Section 111(d), 111(m) and 111(o) read with Notification of Ministry of Commerce and Industry S.O. 2665(E) dated 05.08.2016. The details of the goods lying under seizure after clearance from the respective Port of Import where on alleged differential duties sought to be demanded and recovered are as under:

Sl. No.	Description of imported goods	Country of Origin	Alleged Differential Customs Duty (in Rs.)	Quantity	DTA Bill of Entry No. and Date	Premises where seized goods are lying
1	Black Pepper	Afghanistan	2,33,20,770.68	56 MT [Table -B, SCN, pp.26-27]	1002182 / 11.2.23; 1002472 / 16.2.23; and 1002948 /25.2.23	Trucks parked at Nathpur, Haryana
2	Black Pepper	Afghanistan	1,36,27,190.12	33.2 MT [Table -C, SCN pg. 27]	2000953 / 20.02.23	Prabhu Kripa Cold Storage, Kundli, Sonepat, Haryana
3	Inshell Walnut	Afghanistan	1,95,80,141.70	96.85 MT [Table -D,SCN pg. 27]	2002782 /23.02.23 ;and 2003594 /09.03.23	Kurfi Cold Storage, Kundli, Sonepat, Haryana
4	Inshell Walnut	Afghanistan	90,38,093.40	42.85 MT [Table -E,SCN pp.27-28]	2002499 /07.02.23	Anant Cold Storage, Kundli, Sonepat, Haryana
5	Inshell Walnut	U.S.A.	2,16,14,785.71	161.2 MT [Table -F,SCN pg. 28]	2003622 /09.03.23 ; and2003785 /13.03.23	Prabhu Kripa Cold Storage, Kundli, Sonepat, Haryana
6	Inshell Walnut	U.S.A.	75,09,152.00	56 MT [Table -G,SCN pg. 28]	2003995 /15.03.23	Leh Cold Storage, Kundli, Sonepat, Haryana

1.5 The appellant had filed Civil Writ Petition No. 11758 of 2023 in the Hon'ble Punjab and Haryana High Court seeking release of the seized goods mentioned at Sl. No. 5 and 6 on which the Hon'ble High Court by its Order dated 12.10.2023 had ordered the release of the seized goods only on furnishing PD Bond/Surety.

1.6 The appellants had requested for provisional release of the seized goods by its letter dated 15.11.2023 on condition as mentioned in the Order of the Hon'ble High Court, i.e., on furnishing PD Bonds. In reply thereto, the learned Commissioner by its Letter dated 09.12.2023 stated that the goods sought to be released are not covered by the Order of the Hon'ble High Court. Further, for the goods at Sl. No. 5 and 6, the learned Commissioner desired personal presence of Sh. Sameer Arora (Partner) along with original documents. Since, by an inadvertent mistake, the other goods mentioned at Sl. No. 1to4 were missed to be incorporated in the above mentioned writ petition, the appellant had filed Misc. Application in the Hon'ble High Court seeking to amend the writ petition by inserting other consignments as well and praying for release of the same. The Hon'ble High Court by its Order dated 22.07.2024 allowed the said Misc. Application and amended writ petition was taken on record.

1.7 The goods mentioned at Sl. No. 1 to 4 are the subject matter of present appeals. The goods mentioned at Sl. No. 5 and 6 have been released on furnishing PD Bonds as per the directions of the Hon'ble Punjab and Haryana High Court. The seized goods had not been provisionally released, instead, impugned Order dated 07.11.2024 has been passed rejecting the request for provisional release of the goods at Sl. No. 1to 4 tabulated above. Being aggrieved by the said impugned order appellants filed the present appeals.

2. Shri Manish Pushkarna, Learned Counsel along with Shri Tarun Chawla and Shri Jitin Singhal, Advocates appearing on behalf of the appellants submits that the impugned Order has been passed even when the show cause notice was pending adjudication. The impugned order has been passed on erroneous ground, i.e., adjudication proceedings are at the fanged, therefore, provisional release is not in consequence with section 110A of the Act**.**

2.1 He submits that the impugned order has been passed in haste with a pre-determined bias against the appellant and malafide on the part of the learned Adjudicating Authority, for the reasons as stated below:

1. There was sufficient time period for adjudication of the show cause notice and the subject goods ought to have been released pending adjudication.
2. For releasing the goods, the learned Commissioner by its Letter dated 23.09.2024, required furnishing PD Bond and Bank Guarantee. That is to say, when the condition of the said Circular requiring furnishing of Bank Guarantee had already been struck down by the Hon'ble Delhi High Court.
3. Hon'ble High Court Order dated 25.09.2024 – The Hon'ble High Court has observed that by its earlier Order dated 20.09.2024, the learned Commissioner was asked to release the goods without making any further objection but goods not released. Instead, the learned Commissioner required furnishing of PD Bond and Bank Guarantee, thereby, not bothering to notice the directions of the Hon'ble High Court. Further, the Hon'ble High Court has noted that the Hon'ble Delhi High Court has struck down the referred Circular.
4. Impugned order has been passed wholly ignoring the fact that the Country of Origin Certificates have been verified by the FTA Cell to be genuine.

2.3 He submits that the Hon'ble High Court by its Order dated 03.10.1014 recorded the personal presence of the learned Commissioner and Dy. Commissioner and directed the Counsel for the petitioner (i.e., appellant herein) to keep PD Bond ready for perusal and further action. The case was listed for hearing on 04.10.2024.The Hon'ble High Court passed Order dated 04.10.2024 noting, inter alia, that Sh. Samir Arora has received a letter signed by the Dy. Commissioner for releasing the goods on PD Bond. Thus, the Hon'ble High Court directed release of the goods forthwith.

2.4 In view thereof, it is prayed that the impugned order rejecting release of the goods at Sl. No. 1 to 4 be quashed and set aside and, consequently, direction be issued to release the subject goods mentioned at Sl. No. 1 to4 of the Table (*supra*) on furnishing PD Bond/

Surety since the case is covered by the decision of the Hon'ble High Court in appellants' own case wherein the Hon'ble High Court has directed release of the goods mentioned at Sl. No. 5 & 6 of the Table (*supra*) on furnishing PD Bond/Surety.

3. Shri Prashant Tripathi, Learned Superintendent (AR) appearing on behalf of the Respondent reiterates the finding of the impugned order.

4. We have carefully considered the submission made by both sides and perused the records. We find that the appellant's request for provisional release of the goods was rejected by interpreting Section 110 A on the pretext that though the provisional release of the goods can be made during the pendency of the adjudication of the case but in the present case the adjudication proceedings are on fag end, therefore, it was held that release of the goods provisionally at this stage are not in consequence with the intent provision of Section 110 A of the Custom Act, 1962. For ease of reference Section 110 A is reproduced below:-

> *"110 A. Provisional release of goods, documents and things seized pending adjudication.*
> *Any goods, documents or things seized under Section 110, may, pending the order of the adjudicating authority, be released to the owner on taking a bond from him in the proper form with such security and conditions as the adjudicating authority may require."*

4.1 From the reading of the above Section 110 A , the provisional release of the goods is required during the pending of the adjudication process. In the present case the adjudicating authority has passed the order rejecting the provisional release before the adjudication order was passed, therefore, for this reason itself the impugned order is not legal and correct. Moreover, in the present case the main case under adjudication order dated 08.11.2024 whereby the adjudication order was passed, the said order was set aside and appeals bearing No. C/10704-10706/2024 were remanded to the adjudicating authority. In such a situation the case related to the said appeals stand restored back to the Show cause notice stage, therefore, at this stage the provisional release of the goods can be made in terms of Section 110A of the Customs Act, 1962.

4.2 Without prejudice to the above, we find that in the present case out of 6 bills of entry, in case of Sr. No. 5 and 6 of the above table, the

Hon'ble Punjab and Haryana High Court in writ petition no. 11758 of 2023 by its order dated 12.10.2023 had ordered the release of the seized goods on furnishing of the PD Bond/surety. We find that the entire facts of the case are identical in respect of the consignment mentioned at Serial No 1 to 4 which are subject matter of the present case. Therefore, the ratio of the Hon'ble High Court Judgment in the appellant's own case vide order dated 12.10.2023 is directly applicable. The Hon'ble High Court Judgment is reproduced below:-

> "The present application has been filed inter alia praying for release of the goods which were seized vide impugned seizure order dated 04.05.2023.
>
> Learned counsels for the petitioner have opened their arguments by submitting that vide order dated 09.08.2023, it was duly recorded that the seized goods are perishable in nature. It is submitted that the respondents have themselves vacated the seizure order vide subsequent order dated 24.08.2023 and on the same very day, the same officer issued a fresh seizure memo wherein it was stated that the goods which have been imported were undervalued.
>
> Learned counsel for the petitioners has submitted that at this stage they pray only to the extent that the goods be released as the same are perishable in nature but at the same time wants to keep all the grounds available to him to be open as he has challenged the seizure memo in accordance with law.
>
> It is submitted by the counsel of the petitioners that the goods were duly cleared by the respondent authorities in accordance with law and no objection were ever raised and the custom duty against the said goods already stands paid. In fact, more than 40% of the goods were sold further but the remaining stock has been seized illegally. It is further submitted that the goods be released against furnishing of personal bond and the petitioners have already paid the duty imposed.
>
> Per contra, Mr. Saurabh Goyal, Advocate appearing for the department has taken this Court to the provisions of Section 110A of the Customs Act, 1962 and had submitted that the petitioners can apply for provisional release for goods to the authorities and the Commissioner of Customs shall pass an appropriate order in accordance with law. He fairly submitted that the petitioners had deposited Rs. 1.25 Crore approx. towards the duty which was levied at the time of clearance of consignment. However, since the allegations are of undervaluation by the petitioners, they could be imposed with additional liability of Rs. 2.25 Crores approx. as the rates at which the goods have been imported are extremely low. Though candidly admits that these amounts are subject to final calculations in adjudication.
>
> He has further submitted that the order dated 24.08.2023 whereby the seizure order dated 04.05.2023 was vacated finds a mention that a fresh memo is being issued and accordingly the same was issued mentioning the reason of seizure.
>
> Heard, learned counsels for the parties and end of the justice would be met by keeping all the grounds and arguments available to both the sides open and at this stage, since the goods involved are perishable in nature, the respondents are directed to release the goods subject to furnishing of personal bond/surety to the satisfaction of Commissioner of Customs.
>
> Application disposed off accordingly."

4.3 In view of the above high court order, facts being identical in respect of the consignment mentioned at 1 to 4 and 5 to 6, same view needs to be taken. The adjudicating authority as regard this Hon'ble

High Court's order dated 12.10.2023 contended that the appellant even by amending the writ petition and seeking relief in respect of the subject consignments mentioned at Sr. no. 1 to 4, the high court has not granted the relief in order dated 20.09.2024. The said order of the Hon'ble High Court dated 20.09.2024 is reproduced below:-

> "Matter comes up on an application seeking clarification of the order passed by this Court dated 12.10.2023.
>
> Learned counsel for the applicant submits that the respondents are insisting of all the bills of entries whereas in the seizure memo, there is no such mentioning.
>
> This Court vide order dated 12.10.2023 has simply passed the following order:
>
> > "Heard, learned counsels for the parties and end of the justice would be met by keeping all the grounds and arguments available to both the sides open and at this stage, since the goods involved are perishable in nature, the respondents are directed to release the goods subject to furnishing of personal bond/surety to the satisfaction of Commissioner of Customs."
>
> Therefore, no further clarification is required to be made in the order dated 12.10.2023.
>
> It is noticed that order passed by this Court has not been complied with even till date. The goods have not been released.
>
> Learned counsel for the Customs Department states that the concerned authorized signatory, Mr. Samir Arora has not furnished his personal bonds, and the bonds which were furnished failed to identify Samir Arora as the person who had submitted the personal bonds.
>
> Faced with the said objection, learned counsel for the petitioner/applicant states that Samir Arora will personally be present before the authorities on Monday i.e. 23.09.2024, in the office of Commissioner of Customs, Kandla.
>
> If the concerned person Mr. Samir Arora presents himself with appropriate identity, the Commissioner of Customs shall forthwith release the goods without making any further objections, failing which the concerned Commissioner shall remain present in the Court on the next date of hearing.
>
> List the main case on the date already fixed i.e. 25.09.2024.
> CM stands disposed of."

4.4 From the above order it can be seen that the Hon'ble High court has not rejected the provisional release in respect of Sr. No. 1 to 4. However, it is implied that the order dated 12.10.2023 is applicable to the goods mentioned at Sr. No. 1 to 4 also as no negative order was given by the Hon'ble High Court. In this regard, we find that since the facts are identical and the goods are perishable, the order of the Hon'ble Punjab & Haryana High Court dated 12.10.2023 is applicable to the present case even if not directly, the ratio of the said judgment is clearly applicable, being same nature of goods involved.

4.5 Considering the above, we are of the view that the goods mentioned at Serial No. 1 to 4 are also liable to be provisionally released only on production of PD Bond/Surety applying the ratio of the

Hon'ble High Court order dated 12.10.2023. Therefore, we hold that the adjudicating authority shall release the goods mentioned at Sr. No. 1 to 4 on execution of PD Bond/ Surety within a period of 15 days from the date of this order.

5. Accordingly, the impugned is set aside. Appeals are allowed in the above terms.

(Order pronounced in the open court on 29.11.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Neha