

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

REGIONAL BENCH – COURT NO. 03

CUSTOM Appeal No. 10609 of 2022

[Arising out of -VII-10-09-MISC-PREV-2020-21-1939 dated 22/03/2022 passed by
Commissioner of CUSTOMS-JAMNAGAR(PREV)]

K L INTERNATIONAL

A-256 Old No 55 Flat No A-4 D/F Chatterpur Enclave Phase I
New Delhi.

.....Appellant

VERSUS

C.C.-JAMNAGAR(PREV)

Sharda House...Bedi Bandar Road,
Opp. Panchavati,
Jamnagar, Gujarat.

.....Respondent

APPEARANCE:

Shri Rahul D. Patel, Advocate for the Appellant

Shri P. K. Rameshwaram, Additional Commissioner (Authorized Representative) for
the Respondent

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

FINAL ORDER NO.A / 11353 /2022

DATE OF HEARING: 26.09.2022

DATE OF DECISION: 11.11.2022

RAMESH NAIR

The present appeal has been filed by the Appellant against the decision of Principal Commissioner, Customs (P), Jamnagar communicated by the Deputy Commissioner of Customs, Pipavav vide his letter dated 22.03.2022. Vide this letter the provisional release of imported goods seized vide seizure memo dated 09.12.2021 was accorded and it directs the Appellants to execute of Bond upon submitting the Bank Guarantee or Cash Deposit of an amount of Rs. 12 Crores covering the differential duty, fine, penalty etc.

2. The facts of the case in brief are that the intelligence was received by the DRI, Jamnagar to the effect that M/s K.L. International has imported

1272.050 MT. dry dates (CTH 08041030) having declared assessable value of Rs. 4,08,17,507/- vide Bill of entry No. 6124557, 6124677, 6124787, 6124890 and 6125519 all dated 04.11.2021 filed at Pipavav by allegedly mis-declaring the country of origin. The imported goods (i.e. Dry Dates) were declared to be an UAE origin whereas as per the intelligence, the said imported goods were of Pakistani Origin. As per Notification No. 05/2019-Cus dated 16.02.2019, Customs duty @ 200% was to be imposed on Pakistani Origin dry dates and was to be classified under CTH 9806000.

2.1 Based on the above, an inquiry was initiated against the Appellant and statements of persons were recorded. While the investigation was ongoing, seizure memo dated. 09.12.2021 was issued by the Superintendent (SIIB) Customs House, Pipavav under Section 110 of the Customs Act in respect of the above Bills of Entry seizing the goods under reasonable belief that the same are liable for confiscation under the provisions of Customs Act, 1962. Subsequently, the Appellant made submissions before the Additional Commissioner, Customs (SIIB), Jamnagar and Deputy Commissioner of Customs (Imports), Pipavav Port that the detained goods are edible items approved by CRCL/FSSAI, are perishable in nature and therefore cannot be detained indefinitely and prayed for the goods to be released provisionally at the earliest.

2.2 Pursuant to the above, the Appellant received a letter dated 22.03.2022 from the Deputy Commissioner of Customs House, Pipavav ("impugned order") wherein it is stated that the Principal Commissioner, Customs (P), Jamnagar has acceded request for provisional release of the goods upon execution of Bond covering the full value of seized goods and Bank Guarantee or cash deposit of an amount of Rs. 12 crores covering the differential duty, fine, penalty. Being aggrieved by the order communicated

vide letter dated 22.03.2022, the present appeal has been filed seeking to set aside of the order to the extent it requires to the Appellant to deposit of Rs. 12 Crores of cash or Bank Guarantee.

3. Shri Rahul D. Patel, Learned Counsel, appearing on behalf of Appellant submit that as regard identity and ownership of the importer there is no dispute that the importer is M/s. K L International, which is a proprietary concern of Ms. Bharti who has not denied about her status of proprietrix of the importing firm, she has stated that she is not looking after the business activity, which is looked after by her husband. Therefore, contention of the department that the ownership of the importing firm is under dispute is incorrect. As regard the country of origin of supplier all the documents submitted clearly show goods were originated from UAE. The department case about the dispute of country of origin i.e. allegedly Pakistan is only on the basis of name of bag manufacturer appearing on the bag that to in very few quantity. He submits that the bags were re-used for packing however, the goods were produced in UAE. Therefore, the goods were not liable for seizure. The goods imported in this case are not prohibited goods and redemption fine cannot be more than margin of profit after deducting the landed cost of the goods i.e CIF value plus duty plus other expenses for clearance viz warehousing charges, demurrage detention etc. If duty amount is enhanced the margin of profit will decrease. This margin will further decrease due to deterioration of the subject goods which are perishable in nature. These goods imported in October, November 2021 and are kept in warehouse over a period of almost one year and have thus decreased in market value. The goods are not prohibited for import and the margin of profit has considerably reduced and fine in lieu thereof even if they finally held to be Pakistan Origin will have to be cleared on excessive duty rate. The high amount of Rs 12 Crores as BG will increase the cost of

the importer. These factors appear to have not been considered by the Ld. Pr. Commissioner who has imposed heavy terms of deposit of cash/ BG of Rs. 12 Crore. He has filed a para wise comments vide submission dated 11.10.2022, which is taken on record.

4. Shri P. K Rameshwaram, Additional Commissioner (Authorized Representative) appearing on behalf of the revenue submits that the order dated 22.03.2022 is correct and proper in law considering the fact that the goods were imported from Pakistan as against the UAE. Shri P. K Rameshwaram submitted a written submission in support of his argument during the course of hearing and reiterates the same. Subsequently, he also filed a written submission on 21 October, 2022, all these submissions have been taken on record and considered.

5. We have carefully considered the submission made by both the sides and perused the records. We find that the issue in dispute is of country of origin that whether the goods imported by importer is of Pakistan origin or UAE origin. The department is of the contention that the packing bags bear the name of some Pakistani Company. Therefore, the goods are of Pakistan origin. In this regard, we find that as per the facts all the bags do not bear the name of Pakistani Company. It is also found that the bags do not bear name of any dates manufacturer Company or dates supplier of Pakistan. All the documents submitted by the appellant show that the goods are of UAE origin. However, the investigations are under process, therefore on the basis of investigation and outcome of the adjudication, it can be finally ascertained that whether the goods imported by the appellant is of Pakistan origin or UAE origin. Therefore, at present considering the stage of investigation only a *prima facie* view can be drawn. As regard the dispute raised by Learned (Authorized Representative) about the identity of the importer. We find that since the goods have been provisionally released. The dispute of ownership

of the goods is no longer subject matter in the present case. Moreover, there is no dispute that Ms. Bharti is the proprietor of M/s. K L International and the department also issued summons to her, a criminal case was also filed in the court of law against her. Therefore, at this stage, the issue of identity cannot be said to be in dispute. We find that the question whether or not the Appellant has by mis-declaring the country of origin violated the provisions of customs act and evading the custom duty, has to be adjudicated upon. That being the position, the issue as to whether the Appellant by mis-declaring the country of origin evaded the custom duty or not , it would be adjudicated upon by the adjudicating authority and we do not wish to enter into that arena of controversy. The limited point that is before us is whether the conditions imposed under the provisional release order dated 22.03.2022 are reasonable or are they too harsh and burdensome on the Appellant. If we go back to the conditions which have been imposed by the provisional release order dated 22.03.2022, we find that the Appellant has been required to execute a bond for full value of the seized goods. According to the learned counsel for the Appellant, they are not challenging this condition and Appellant is willing to execute the bond for the same as required by the provisional release order dated 22-03-2022. The actual grievance is with regard to the condition which requires the Appellant to provide security in the form of a bankguarantee or cash deposit for a sum of 12 crores.

5.1 We find that Section 110A of the Customs Act, 1962 provides for provisional release of goods, documents and things seized pending adjudication. Any goods, documents or things seized under Section 110 of the Act, may, pending the order of the adjudicating officer, be released to the owner on taking a bond from him in the proper form with such security and conditions as the Commissioner of Customs may require. Thus, this provision confers a right on the owner to seek provisional release of seized

goods etc., while at the same time a corresponding discretionary power is vested on the adjudicating authority who may release the seized goods. upon a bond with such security and conditions pending order of the adjudicating authority. Section 110A provides a pragmatic mechanism to facilitate provisional release of seized goods to the owner pending adjudication but at the same time protecting the interest of the revenue. Keeping the above in mind, the provision is required to be understood and applied. We also noticed that there are no prescribed guidelines for the amount of security that ought to be insisted upon while making a provisional release under Section 110A of the said Act. However, a reasonable condition may be imposed. Discretion is, therefore, cast upon the adjudicating authority for determining the value of the bond to be taken and the security deposit as also the conditions to be imposed while passing an order for provisional release of the goods. The exercise of this discretion has to be fair and reasonable and should not be exercised on irrelevant considerations.

5.2 The condition submitting the Bank Guarantee or cash deposit of an amount of Rs. 12 crores itself require to be tested in terms of law delivered on the issue in the case of *Spirotech Heat Exchangers Pvt. Ltd. v. Union of India* reported in [2016 \(341\) E.L.T. 110](#) (Del.) wherein the Hon'ble High Court takes the view that the provisional release of seized goods on the condition of payment of 100% of differential duty along with bank guarantee equivalent to 25% of differential duty and bond for 100% of value of the goods would be termed as very harsh condition and contrary to the judgments of the High Courts and Supreme Court. In the said case, the Delhi High Court directed to release the goods subject to the petitioner executing a bond in a sum equivalent to 100% value of the goods and further furnishing security in the form of bank guarantee for a sum equivalent to 30% of the differential duty.

In the case of *Kundan Rice Mills Ltd.* [2008 \(232\) E.L.T. 14](#) (P & H). (supra), the Hon'ble High Court has held that mere existence of power of confiscation not sufficient to justify harsh conditions unless case for confiscation is shown. Exercise of power to impose harsh conditions without valid justification will be arbitrary exercise of power hit by Articles 14, 19 and 21 of the Constitution.

In the matter of *Kuber Casting (P) Ltd.*, [2013 \(297\) E.L.T. 4](#) (P & H) the Division Bench of Punjab & Haryana High Court has held that when duty levied by authorities at the time of initial clearance of goods had been paid, then furnishing of bank guarantee/cash deposit/fix deposit, even to extent of 25% of full value of seized goods was highly onerous condition which made relief of provisional release nugatory. It is not only harsh but squeezes out importer to extent of pushing them out of system. The Court also deprecated the action of Customs authorities and observed that the condition of furnishing of bond for value of seized goods and payment of differential duty, does not put extraordinary financial burden on importer and does not constitute impediment, in their normal business functioning.

In the matter of *Amit Enterprises v. Union of India* - [2011 \(269\) E.L.T. 314](#) (P&H) the relevant observations of the Hon'ble High court reads as under :

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.

5.3 On due considering of the aforesaid judgments, we turn to the question of Bankguarantee/Security which is required to be given in addition to bond for provisional release in the present case. To decide the amount of Bankguarantee, we are guided by the fact that the impugned imported consignments have been accompanied by the necessary documents. Nothing on record indicates that the investigating Agency is considering such documents as forged or otherwise suspicious. 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 Pakistan.

5.4 The goods namely dry dates being edible is obviously in the perishable nature. It has been considered consistently by various forums that in case of perishable goods provisional release of the goods should be allowed expeditiously. On this ground also the appellant deserve for leniency as regard the condition for provisional release of the goods.

5.5 On due consideration of the said facts, without expressing any conclusive opinion on merits of this case and in the light of decisions cites *supra* and also keeping in mind the interest of justice and safeguard of revenue's interest also, we are of the view that the ends of justice will be met when provisional release of the goods is allowed on execution of bond for 100% value of seized imported goods with Bank guarantee for an amount of Rs. 1 crore and an payment of duty applicable on the import of

dry dates of UAE origin. Accordingly, we order the provisional release of the seized goods on the aforesaid condition. We make it clear that our above *prima facie* observation is only limited to provisional release of the goods which shall not influence the revenue's investigation and adjudication of the case.

6. Accordingly, the impugned order is modified and Appeal is allowed in the above terms.

(Pronounced in the open Court on 11.11.2022)

**RAMESH NAIR
MEMBER (JUDICIAL)**

**(RAJU)
MEMBER (TECHNICAL)**

Palak