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

REGIONAL BENCH-COURT NO. 3

Customs Appeal No. 10311 of 2025- DB

(Arising out of Provisional release Order GEN-ADJ-ADC-2-2025 dated 30.01.2025 passed by Ld. Commissioner of CUSTOMS-KANDLA)

GURUKRUPAN AGRO LIMITED ....**Appellant**
401, 4th Floor, Shivalik-7,
Gondal Road, Rajkot,
Gujarat-36002

VERSUS

Commissioner of CUSTOMS, Kandla ......**Respondent**
CUSTOM HOUSE,
KANDLA, GUJARAT

APPEARANCE:
Shri Vikas Mehta, Consultant for the Appellant
Shri Sanjay Kumar, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. SOMESH ARORA
HON'BLE MEMBER (TECHNICAL), MR. SATENDRA VIKRAM SINGH

Final Order No. 10183/2025

DATE OF HEARING: 12.03.2025
DATE OF DECISION: 12.03.2025

SOMESH ARORA

In the instant case, provisional release has been sought of the goods which were seized by the DRI for violation of certain provisions of advance authorisation scheme. The DRI is still investigating the matter. Allegation is that certain quantity of goods is chick peas which were got cleared from the Customs port by the party on 27.09.2024 by filing of bill of entry and which were to be processed for exports, were later on seized by DRI on 28.11.2024 when officers visited to check the status of the party including his manufacturing capability etc. The Goods have a short life being perishable in nature. Therefore, there are correctly covered under Section 110A of the Customs Act, 1962 and hence, are eligible for provisional release. It was alleged that certain quantity of material was also sold in the domestic market, on which after DRI search, duty has been paid by the appellant as stated by the learned Counsel.

2. The Learned Counsel for the party pleads that the Commissioner of Customs, Kandla while ordering provisional release of the goods, has ordered the party to furnish a bank guarantee for Rs. 1,06,56,771/- and a bond equal to the value of the goods i.e. of Rs. 2,42,19,936/- for undertaking to pay, the duty, fine or penalty as may be imposed by the adjudicating authority. In the instant case, the party is aggrieved by the requirement of onerous bank guarantee which imposes financial burden on him. The learned Adjudicating authority while passing the order has relied upon the Board Circular No. 35/2017-Cus dated 16.08.2017 which in para 2.2 and 2.3 reads as follows:-

> *2.2 Further, in addition to the Bond mentioned at Para 2.1 above, the competent authority shall take a Bank Guarantee Security Deposit to cover the following:*
>
> > *I. The entire amount of duty/differential duty leviable on the seized goods being provisionally released;*
> >
> > *ii. amount of fine that may be levied in lieu of confiscation under Section 125 of the Customs Act, 1962 at the time of adjudication of the case. While securing the same, the competent authority shall take into account the nature of the seized goods, the duty and charges payable on the said goods, their market price and the estimated margin of profit;*
> >
> > *iii. amount of penalties that may be levied under the Customs Act, 1962, as applicable, at the time of adjudication of the case.*
>
> *2.3 Depending on the specific nature of a case, the competent authority may, fer reasons to be recorded in writing. increase or decrease the amount of security deposit as indicated above.*

3. Learned Counsel points out that the Commissioner has adopted the reasoning of the Board's Circular only and has worked out the bank guarantee which is beyond 100% duty and has kept in mind some component of penalty, redemption fine etc. also. As per the learned counsel there is no reason given as is the requirement of para 2.3 of the Board Circular. Therefore, the learned Adjudicating authority has simply yielded to the board circular and has not exercised his own mind as is the judicial requirement. In support of this

contention, he relies upon para 19 of the impugned Provisional release order which reads as follows:-

> ***"19. Further, I find that Circular No. 35/2017-Cus dated 16.08.2017 lays down the guidelines for provisional release of seized imported goods under Section 110A of the Customs Act, 1962. Para 2.1 and 2.2 of the said Circular lays down the value of Bond and BG to be sought from the owner of goods. As per Para 2.1 of the Circular dated 16.08.2017, the owner of goods shall execute Bond equal to the full value of goods. As per Para 2.3 of the Circular dated 16.08.2017, the owner of goods shall provide Bank Guarantee or Security deposit to cover differential duty, redemption fine and the penalties that may levied under the Customs Act, 1962. In the instant case, the differential duty is Rs. 1,06,56,771/- and the value of seized goods is Rs. 2,42,19,936/-."***

4. He pleads that his order apart from giving sequence of events or facts and the relevant provisions has not worked out the basis and reason for calculating the bank guarantee or security in the matter and has also ignored various pleas made by them. He, therefore pleads for considerable reduction of the bank guarantee and only to bond conditions for release of the seized goods which being highly perishable will otherwise be damaged. He also pleads that consequent upon seizure of the goods by the DRI, the party had got amended their advance authorisation(s) on 16.12.2024 in which name of M/s. Vasundhara Industries has been mentioned as the supporting manufacturer. He pleads that this aspect was also brought to the knowledge of the adjudicating authority but has been conveniently ignored in his reasoning. He pleads that once the goods are released and exported, not only the country will earn foreign exchange but also there will be no duty element. This will clearly absolve the party from the onerous burden of duty on imported goods. The absence of name of the supporting manufacturer in previous authorisation will also become procedural violation only, if these developments are taken in to account.

6. The learned AR on the other hand pleads that the case was made by the DRI which found the violation of conditions of the Advance Authorisation Scheme by the importer, since the party was mentioned as having manufacturing capability which on verification, turned out to be the merchant exporter. He also questioned the conduct of the party who have sold some quantity of the chickpeas in the domestic market. These developments do not aspire confidence on the conduct and intention of the party. And therefore, the revenue is required to safeguarded. He therefore justified retaining same of conditions as were placed by the adjudicating authority.

7. We have gone through the facts stated before us as well as the rival submissions. We find that at this stage it is not possible to comment upon the legality or otherwise of the investigations as also the adequacy of steps taken by the party including sustainability of the seizure of goods. We find that the interest of revenue as well as of the party needs to be protected and balance between the two needs to maintained so that the business can continues and the envisaged transaction of export through the supporting manufacturer is completed in the interest of the Nation. Having considered the rival arguments and the intervening developments to some extent, we find that exports to be undertaken by the party must not be hinded through the supporting manufacturer i.e. Vasundhra as of now in the view of new authorisation dated 16.04.2024. The bond condition as laid down by the Commissioner will prevail till the time the duty, penalty, interest & redemption fine, etc. are paid by the party as may be adjudicated. As far as protection of revenue is concerned, we direct that an undertaking may be taken from the supporting manufacturer to the effect that (a) he has machinery and other infrastructure to process these imported goods (b) he will carry out processing of the remaining seized goods and will hand over the same to the appellant for its exportation. While we find

that the bank guarantee condition is quite onerous and deserves to be reduced. We are equally aware that the interest of Revenue ad-interim, may need protection. To this effect, we direct that the party shall offer a hypothecation as offered to us, security of any immovable property in the name of the appellant party which shall remain with the department, till the time export sale proceeds are realised. The valuation of the above property shall be more than the amount of bank guarantee determined by the adjudicating authority vide impugned order dated 30.01.2025. Further, the said immovable property should be free from any loan or hypothecation. With these directions, we direct the provisional release of the seized goods within a week of the party submitting the requisite documents.

8. Order impugned is modified as above. Appeal is partly allowed.

(Pronounced in the open court on 12.03.2025)

(SOMESH ARORA)
MEMBER (JUDICIAL)

(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)

Raksha