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

REGIONAL BENCH-COURT NO. 1

Customs Appeal No. 11121 of 2025-DB

(Arising out of Order in Appeal MUN-CUSTM-000-APP-286-24-25 dated 21.03.2025 passed by the Commissioner (Appeals), Customs- Ahmedabad)

SAANCHI AGRO PVT LTD ……..**Appellant**
Plot No. 3103/4th Phase,
Poonam Industries,
G.I.D.C., Vapi,
Valsad, Gujarat-396195

VERSUS

Commissioner of CUSTOMS - Mundra Customs ……**Respondent**
The Additional Commissioner of Customs,
Customs House,
Mundra Port, Kutch, Gujarat

APPEARANCE:
Shri Hardik Modh, Advocate appeared for the Appellant
Shri Prashant Tripathi, Superintendent (AR) appeared for the Respondent

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

Final Order No. 10661/2025

DATE OF HEARING: 08.08.2025
DATE OF DECISION: 22.08.2025

SOMESH ARORA

The Appellant has challenged the Order-in-Appeal No. MUN-CUSTM-000-APP-286-24-25 dated 21.03.2025 passed by the Ld. Commissioner of Customs (Appeal), Ahmedabad whereby he directed provisional release of seized imported goods on furnishing Bond equivalent to value of the goods providing Bank Guarantee (BG) of Rs. 1,35,40,160 (which is 20% of the Assessable Value of the goods i.e. Rs. 6,77,00,800) to secure redemption fine & penalty and payment of duty amount pertaining to the alleged mis-declared goods before the provisional release.

2. **FACTUAL BACKGROUND**

Date	**Event**
September, 2024	The Appellant imported "Wooden Powder" vide BL No. 039EX78873 dated September 16, 2024,

	BL No. 039EX81206 dated September 22, 2024, and BL No. CULVSGN2404191 dated September 19, 2024 from M/s Thai Binh BD Export Import Company Limited, Vietnam.
	On investigation, DRI found that the imported consignment, declared to contain 99.56 MT of Wood Powder, also included 98.8 MT of Cashew Nut (Broken) which as per Notification No. 59/2015 - 2020 dated February 21, 2023, issued by DGFT is a restricted item but permissible subject to a Minimum Import Price ('MIP') of Rs. 680 per KG.
17.10.2024	The DRI authorities issued a Seizure Memo dated October 17, 2024 under F.No. DRI/AZU/GRU/Int-S4/Saanchi Agro/2024 seizing the said goods. The alleged customs duty on the imported consignment was approximately determined to be Rs. 2.66 Crores.
11/12.11.2024	The Appellant filed BOE No. 6638143 dated November 11, 2024, BOE No. 6638163 dated November 12, 2024, and BOE No. 6638198 dated November 12, 2024.
20/22.11.2024	The Appellant deposited entire customs duty of Rs. 2.66 Crores vide Challan.
11.01.2025	The Deputy Commissioner (Group-II) of Mundra Customs, ('Adjudicating authority') allowed Provisional Release of the goods vide order F. No. CUS/APR/MISC/70/2025-Gr I – O/o Pr Commr-Cus-Mundra subject to the following conditions: • Furnishing a bond equal to value of the goods; • Providing a Bank Guarantee ('BG') of Rs. 2 Crores to secure redemption fine & penalty. • Payment of customs duty pertaining to alleged mis-declared goods before provisional release.
23.03.2025	The Appellant preferred an appeal before the Commissioner of Customs (Appeal), Ahmedabad who vide impugned order, modified furnishing of BG equivalent to 20% of the value as determined by the adjudicating authority
02.04.2025	Show Cause Notice was issued in the matter which is pending for decision.
29.05.2025	The Appellant requested the Learned Commissioner to issue corrigendum to the OIA, clarifying that the direction to provide BG is to the extent of 20% of the BG amount of Rs. 2.00 Crores, as originally determined by the adjudicating authority in the OIO.

11.06.2025	The Appellant requested the adjudicating authority to allow provisional release of imported goods on furnishing BG to the extent of Rs. 40.00 Lakhs i.e. 20% of BG amount of Rs. 2.00 Crores.
12.06.2025	The Ld. Commissioner of Customs (Appeals), Ahmedabad issued a letter directing the Appellant to furnish BG of Rs. 1,35,40,160 (20% of the Assessable Value of the goods) to secure redemption fine & penalty.

3. The appellant in their various submissions highlighted the following:-

<u>3.1 No bank guarantee is required since full duty of Rs. 2.66 crores have been deposited by the appellant.</u>

They have already deposited duty amounting to Rs. 2.66 Crores and as duty liability has already been fully discharged and bond has been executed for 100% of value of goods, the requirement of furnishing a further BG, whether full or partial, amounts to a duplication of security and is unwarranted, excessive and imposes an undue financial burden on the Appellant, especially in the absence of any adjudicated liability towards penalty or fine, as the proceedings are still ongoing. Reliance is placed upon the following case laws:

- Hon'ble Delhi High Court in the case of Mala Petrochemical & Polymers v/s The Addl. Director General, DRI & Anr. in W.P.(C) No. 3965/2017 and in the case of Mala Petrochemical & Polymers v/s The Commissioner of Customs (Import) ICD; Tughlakabad, New Delhi & Anr. in WP(C) No. 4123/2017;
- Shivam Marketing v/s UoI [2015 (325) E.L.T. 589 (M.P.)];
- Kuber Casting (P) Ltd. v/s UoI [2013 (297) E.L.T. 4 (P & H)];
- Aban Exim Pvt. Ltd. v/s Commissioner of Customs [2014 (309) E.L.T. 485 (Del.)].

<u>3.2 Without prejudice, the impugned order ought to be interpreted to mean that BG equivalent to 20% of the value of BG determined in the OIO is to be furnished.</u>

Without prejudice to the Appellant's contention that no BG was warranted in the instant case, the Appellant submits that the Impugned Order ought to be interpreted to mean that the BG amount equivalent to 20% of the BG value of Rs. 2 crore determined by the adjudicating authority in the OIO is to be furnished. Reliance is placed upon the decision in the case of **MKS Glocomm LLP vs UOI** [2022 (10) TMI 646]. This interpretation was supported by the following:

- The Learned Commissioner of Customs (Appeals), Ahmedabad expressly acknowledged that the Appellant had already executed a bond equivalent to 100% of the value of goods and has already deposited duty of Rs. 2.66 Crores, as determined in the Seizure Memo dated October 17, 2024;
- The direction refers to a BG pegged to "the value as determined by the adjudicating authority" and in the OIO, the only specific monetary value determined by the adjudicating authority is the BG value of Rs. 2.00 Crores;
- The judicial precedent cited by the Learned Commissioner of Customs (Appeals), Ahmedabad emphasized that the BG value should be linked to estimated duty or a proportionate value that balances the interests of both the parties (i.e., revenue and the importer), rather than a rigid percentage of total cargo value.

3.3 In view of the above, it was prayed that the impugned order passed by the Ld. Commissioner of Customs (Appeal) be set aside and appropriate relief by way of setting aside the BG condition and allowing the provisional release of goods based solely on the already executed bond and duty payment be allowed.

4. Learned AR on the other hand in rebuttal argued as follows:-

4.1 There are judgments on this issue, and it has been held that 100% BG condition cannot be applied uniformly, and it should be studied on a case-by-case basis. CBEC Circular No. 35/2017-Cus dated 30.06.2017 also mentions the judgments of High Courts in this regard. As far as case laws relied upon is concerned, it was countered as follows:-

(a) Shivam Marketing Vs UoI - [2015(325)E.L.T. 589 (M.P.) - department put a condition of release of 75% of the goods while retaining 25% of the goods as security in lieu of BG. Hon'ble High Court rejected such a condition.

(b) Kuber Casting (P) Ltd Vs UoI – 2013(297)ELT4(P&H) – Hon'ble High Court held that when duty is paid, the condition of BG of 25% of full value of goods is highly onerous making relief of provisional release nugatory.

(c) Aban Exim Pvt Ltd Vs Commissioner of Customs – [2014(309)ELT485(del.)- BG condition was waived and Hon'ble High Court directed a release of goods on payment of duty and submission of Bond.

Therefore, Condition of BG, especially in absence of any adjudicated liability towards penalty/fine will not be an undue financial burden.

4.2 The Commissioner (A) has relied upon the judgment in the case of MKS Glocomm LLP Vs UOI [2022 (10)TMI646. From this judgment and the language of the impugned order, it appears that the intent is to direct the appellant to deposit 20% of the value so determined, which is the duty since no other value is to be determined by the adjudicating authority. Judicial precedents cited by the Commissioner (A) also point to the direction that the OIA supports a balance between interests of both the parties (importer and revenue).

4.3 The consignment was declared as "wood powder" in 3 Bills of Lading (7 containers) pertaining to 16th September, 19th September and 22nd September, 2024. The consignment was put on hold on 12.10.2024 and were examined on 12.10.2024 & 14.10.2024. Concealment was found in all the consignments wherein "**Broken cashew nuts**" were found concealed behind the declared goods i.e., wood powder. The CHA stated that they did not file the B/Es for the consignments since they had taken a decision of not filing the BEs for the consignments of trading firms as consignment of one of their clients, M/s Yana Enterprises was found mis-declared by the DRI. Interestingly, Yana Enterprises was the firm of a relative of Shri Janak Bhanushali, the Director of the appellant.

4.4 The day DRI examined the goods and found mis-declaration, the importer received an email regarding wrong loading of the cargo while the BLs are issued almost one month back. Since these goods were found concealed, the goods are liable for confiscation under Section 111, including Section 111(m) of the Act. Appellant has relied upon few case law to press that BG condition should be done away with but in none of the case law relied upon by the assessee, concealment of the goods was found. Therefore, the facts are different. On the other hand, Hon'ble P & H High Court in T.L. VERMA & COMPANY PRIVATE LTD. Vs Union of India- [2009 (234) E.L.T. 203 (P & H)], held that when prima facie goods are liable for confiscation under Section 111(m) of the Act, the condition to submit a Bank Guarantee is not arbitrary and onerous to recover possible fine/penalty even if the duty is paid. Relevant para is as under:

> "***Para 2***. *It is the case of the petitioner that Glass is imported by it, which is released after payment of customs duty under the Customs Act, 1962 (for short 'the Act'). The valuation of goods is guided by the data of Directorate of Valuation (for short "DOV") and the customs duty was paid on the valuation of float glass imported, which is not less than then value fixed by the DOV. It is pointed out that on 10-6-2008, the officers of the Directorate of Revenue*

Intelligence (for short 'the DRI') visited the office-cum-godown premises of the petitioner, and they detained the stock of imported glass valued at Rs. 23,77,513/-, even though all the documents and record pertaining to the import of glass and the payment of the customs duty was produced.

Three hard disks installed on the computers in the office of the petitioner were also taken away. Vide communications dated 13-6-2008 and 30-6-2008, the petitioner requested for release of the goods provisionally, but the said requests were not acceded to. It is further pointed out that the petitioner imported another 10 containers of colour and clear floal class from Malaysia. They were received at Port of Import at Ludhiana. The bills of entry dated 18-6-2008 and 19-6-2008 were filed. <u>The declared value of the goods was found to be higher than or equal to the DOV data and accordingly the assessed customs duty was paid.</u>

9. The goods are liable to be confiscated in terms of Section 111(m) of the Act, therefore, the condition of executing indemnity bond equal to the market value of the goods, cannot be said to be arbitrary. Once the goods are released to the petitioner, it shall be open to the petitioner to sell the same and, therefore, asking for indemnity bond equal to the market value, is a justified condition as in the event of order of confiscation being passed against the petitioner, the respondent-authorities could proceed to recover the amount from the person, who has furnished the indemnity bond. Similarly, the other conditions in respect of payment of duty in cash and by Bank Guarantee are also fair and reasonable as on the basis of prima facie investigation made, the DRI could reasonably form an opinion that there is evasion of duty. Similarly, requirement of furnishing the Bank Guarantee to recover the possible fine and penalty, which can be imposed in terms of the provisions of the Statute also cannot be said to be unjustified. The conditions imposed for the provisional release of the goods vide communication dated 8-7-2008, cannot be said to be onerous, unjustified or arbitrary, which may warrant interference in the writ jurisdiction of this Court.

4.5 This case was upheld in Hon'ble Supreme Court also as reported in 2010 (251) E.L.T. A116 (S.C.), Hon'ble Supreme Court held as under:-

> *"The Hon'ble Punjab and Haryana High Court in its impugned order while holding that the conditions for provisional release of goods cannot be held as onerous, unjustified or arbitrary had held that once goods are held liable to confiscation in terms of Section 111(m) of Customs Act, 1962, the condition of executing indemnity bond equal to market value of goods cannot be said to be arbitrary. Similarly, the other conditions, in respect of payment of duty in cash and by Bank Guarantee are also fair and reasonable as on the basis of prima facie investigation made, the DRI could reasonably form an opinion that there is evasion of duty. The Court further held that requirement of furnishing Bank Guarantee to recover the possible fine and penalty, which can be imposed in terms of provisions of the statute, also cannot be said to be unjustified."*

Therefore, the ratio that if prima facie the goods are liable for confiscation, the condition of Bank Guarantee is not arbitrary.

4.6 The case law relied upon by the appellant are not applicable for the reasons that the facts are different as in none of the cases, concealment of goods was found. Also, no case relied upon by the appellant has travelled to Hon'ble Supreme Court. Recently, following the judgment in T L Verma (Supra), Hon'ble CESTAT, Delhi in M/s. Classic Interiors Versus Commissioner of Customs, New Delhi – [2023 (1) TMI 556 - CESTAT, NEW DELHI] upheld the condition of BG. In this case also, Hon'ble tribunal considered other case laws in favour of the party which have been relied upon by the appellant in present appeal also and distinguished on the fact that when the goods are prima facie liable for confiscation, BG has to be submitted.

4.7 The amount of BG decided by the Commissioner (Appeals) is the percentage of the value of goods. This becomes clear when the order itself says that it has followed the judgment in the case of MKS Glocomm LLP Vs UOI [2022(10) TMI 646]. In this judgment, the BG is almost 12 % of the value of the goods. Nowhere does the judgment even talk about BG as a percentage of Duty.

4.8 The appellant has contested that the BG, without any adjudicated liability in terms of RF/Penalty, will be an undue financial burden. In this case, SCN was issued on 02.04.2025 and Hon'ble Tribunal may like to direct for early disposal of the SCN.

5. We have gone through the respective submissions. We find that as per the party, the order for provisional release puts onerous conditions as they have been asked to furnish B G of 20% of the value of the goods in spite of the fact that they have paid full duty and submitted Bonds of full value. The mis-declared goods were imported in the month of September, 2024 and seizure was done on 17.10.2024. The impugned goods were "broken cashew nuts" stated to be concealed and not declared in consignment of wood powder. The imported goods which are edible items of inferior cashews in broken pieces are already lying at the port for almost a year. The condition of such cashew nuts and whether they are edible and meet the requirements of FSSAI for food items or not, is not coming on record to us. Therefore, at this stage, the blanket order for release cannot be given without an inspection and certification by the authorities dealing with Foods, standards and Safety. It is also brought on record and agreed upon by both the sides that the show cause notice has been issued on 02.04.2025 and is under process of adjudication. The adjudicating authority is therefore seized of the matter for more than four months now. Under the circumstances, we are of the view that ends of justice can be met if expeditious disposal of show cause notice through adjudication is directed at this stage. We are therefore, inclined to direct the adjudicating authority to complete the adjudication process within four weeks of the receipt of this order. Needless to say, the appellants before us shall duly cooperate in the adjudication process. Lack of cooperation or non-adjudication will be cause enough for either party to approach us in the matter for extension of time or seeking provisional release of the goods respectively. In case, the items are found edible and therefore, allowable to be released the period of validity of

certificate of FSSAI should also be brought on record by party, if seeking provisional release in any future request. Department shall cooperate in such process by allowing access to the party. The appeal is disposed of in the above terms.

6. Appeal disposed of.

(*Order Pronounced in the open court on 22.08.2025)*

(SOMESH ARORA)
MEMBER (JUDICIAL)

(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)

Raksha