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

REGIONAL BENCH-COURT NO. 1

Customs Appeal No. 10185 of 2026 - DB

(Arising out of Provisional Release Order communicated under F No. CUS/APR/MISC/7548/2025-Gr.5-6 dated 19-02-2026 (DIN No.20260271MO000061666F) passed by the Principal Commissioner of Customs- Mundra)

SKY MOON IMPEX .... **Appellant**
517, 5TH FLOOR TOWER,
10B UNITY GROUP PHASE 1,
AMARYLLIS HOUSING NEW ROHTAK ROAD,
KAROL BAGH DELHI - 110 005

VERSUS

COMMISSIONER OF CUSTOMS – MUNDRA .... **Respondent**
OFFICE OF THE PR. COMMISSIONER OF CUSTOMS,
MUNDRA PORT & SPL ECONOMIC ZONE,
MUNDRA, GUJARAT-370421

WITH

Customs Appeal No. 10186 of 2026-DB

(Arising out of Provisional Release Order communicated under F No. CUS/APR/MISC/7548/2025-Gr.5-6 dated 27-02-2026 (DIN No.20260271MO0000222ADA) passed by the Principal Commissioner of Customs- Mundra)

SKY MOON IMPEX .... **Appellant**
517, 5TH FLOOR TOWER,
10B UNITY GROUP PHASE 1,
AMARYLLIS HOUSING NEW ROHTAK ROAD,
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COMMISSIONER OF CUSTOMS – MUNDRA .... **Respondent**
OFFICE OF THE PR. COMMISSIONER OF CUSTOMS,
MUNDRA PORT & SPL ECONOMIC ZONE,
MUNDRA, GUJARAT-370421

APPEARANCE:
Shri Prem Ranjan Kumar, Advocate for the Appellant
Shri Akash Singh, Superintendent (AR) for the Respondent

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

Final Order No. 10308-10309/2026

DATE OF HEARING/ DECISION: 10.04.2026

SOMESH ARORA

Appeal No. C/10185/2026

1. The Appellant is engaged in the business of import and trading of TFT LCD parts for manufacturing of wide display panel, PCB for TFT LCD parts for manufacturing of display panel. The Appellant in usual course of import of above said goods, entered into an Agreement with M/s Tenley Limited, Room 2914 29/F, Ho King Commercial Centre 2-16 FA Yuen Street Mongkok, Kowloon, Hong Kong. The supplier issued Invoice No. TLSMI3004-56 dated

30.04.2025 for supply of above goods of total value of USD 95241.60. The Appellant filed the Bill of Entry No. 2140947 dated 19.05.2025 for clearance of these goods and claimed duty exemption under Serial No. 18 of Notification No. 024/2005-Cus.

1.1 The officers of Directorate of Revenue Intelligence (DRI), Zonal Unit, Indore on certain intelligence that the Appellant has indulged in import of various parts of LED/LCD TVs by mis-declaring the same as "Parts of Computer Monitors", put the consignment imported vide above Bill of Entry on hold. They examined the above said consignment on 23.05.2025 and detained the goods for further investigation vide Panchnama dated 23.05.2025.The goods were examined by a Customs empanelled Chartered Engineer who vide his Report dated 24.05.2025 opined that the goods are parts of LED TV and not for monitor and therefore, duty benefit under Sl. No. 18 of Notification No. 024/2005-Cus was not available. The statements of the concerned persons and the Proprietor of the Appellant firm Shri Mayank Jain were recorded on 03.06.2025.

1.2 The goods imported vide Bill of Entry 2140947 dated 19.05.2025 were put under seizure vide Seizure Memo issued under F No. DRI/IZU/34-209S/CINT-25/189 dated 05.06.2025 as the goods appeared liable for confiscation under Section 111(m) of the Customs Act, 1962. The Proprietor of the Appellant firm Sh. Mayank Jain was enlarged on bail by the Ld. 7h Additional Sessions Judge, Bhuj-Kutch, vide Order dated 25.06.2025, subject to certain conditions including deposit of Customs Duty amount of Rs. 12,34,331/- before the Ld. Court of Additional Chief Judicial Magistrate, Mundra, Kutch which was deposited vide receipt dated 25.06.2025.

1.3 The Appellant made request vide Letters dated 07.07.2025, 21.07.2025, 31.07.2025, 11.08.2025, 21.08.2025, 25.08.2025 to the Department for provisional release of the seized goods as no more investigation are to be carried so far as the seized goods are concerned. However, no reply was received to any of the request and the goods remained un-cleared. They therefore filed a Writ Petition under Article 226 of the Constitution of India before the Hon'ble High Court of Gujarat wherein notice was issued to the department. While, the writ Petition was pending, the department vide impugned order dated 16.10.2025 permitted provisional clearance of goods putting very onerous conditions.

1.4 In the meantime, a Show Cause Notice dated 28.11.2025 was also issued to the Appellant. The abovesaid Writ Petition was listed before the Hon'ble High Court on 29.1.2026, which was disposed of in view of the provisional release order having been passed and prayer in the writ petition having been satisfied with liberty to avail the appropriate Appellate remedy. The appellant made a request vide letter dated 03.02.2026 before the Ld. Adjudicating Authority to re-consider the provisional release order in the light of the fact that show cause notice has been issued.

1.5 The Ld. Adjudicating Authority, vide F. No. CUS/APR/MISC/7548/2025-Gr5-6 dated 19.02.2026 modified the condition of provisional release, directing the appellant to furnish a bond equivalent to the re-determined value of goods as per the Show Cause Notice and, furnish a bank guarantee for Rs. 2 Crores with auto renewal clause till adjudication of the case covering the differential duty, redemption fine, penalty under Section 114A of the Customs Act, 1962 and under other Sections. Still being aggrieved by the conditions which were about 300% of the duty, appellant has filed the present appeal before this Tribunal.

Submission by the Party:-

2. There is neither any mis-declaration of value nor of the nature of goods and the same is solely based on mere opinion of Chartered Engineer without any evidence to support the allegation. The onerous conditions imposed by the Respondent for provisional release of goods are not only arbitrary but also against the provisions of law and various judgments of the Hon'ble Court on the issue. The power to release the seized goods under Section 110A of the Customs Act, 1962 needs to be reasonable and not to be used in such a way that it makes the Applicant virtually impossible to avail. The exercise of the discretion has to be fair and reasonable and should not be exercised on irrelevant considerations and that discretion must be exercised in a manner known to law.

2.1 In the show cause notice, the alleged differential duty demanded is Rs. 68,98,872/- against which Bank guarantee for Rs. 2 Crores has been demanded. Hence, the amount of Bank Guarantee demanded is arbitrary and without any justification. The conditions imposed by the Respondent is in violation of the mandate of the judgments passed by Hon'ble High Court and CESTAT and therefore, illegal. The Appellant relies on the following judgments:-

i. Daya Enterprises Vs. Commissioner of Customs reported in 2016 (336) ELT 73 (Del.)

ii. Navshkati Industries Pvt. Ltd. Vs. Commissioner of Customs, ICD New Delhi reported in 2011 (367) ELT 483 (Del.).

iii. Commissioner Vs. Navshkati Industries Pvt. Ltd. - 2011 (269) ELT A146 (SC)

iv. Printwill Offset Vs. Union of India reported in 2016(336) ELT 606 (Guj.)

2.2 The amount of Bank Guarantee demanded covering the differential duty, redemption., fine and penalties in reference to CBIC Circular No. 35/2017 dated 16.08.2017 is illegal. They rely on the following judgments:-

i. Shanus Impex Vs. Union of India reported in 2024 (388) ELT 78 (Del.)

ii. Shreeji Agri Commodity Pvt. Ltd. Vs. Assistant Commissioner of Customs, Import Assessment, Mundra passed vide Final Order No. 10031/2026 dated 21.01.2026 in Customs Appeal No. 11590/2025.

2.3 In view of the foregoing, the appellants pleaded that, if at all any conditions are to be imposed, the same should be reasonable. It is submitted that under Section 110A, the requirement of execution of bond is mandatory, whereas the furnishing of security is discretionary.

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3. The appellant is aggrieved by imposition of condition of Bank Guarantee of Rs.1,75,00,000/- covering the redemption fine and penalties under Section 112(a)(i) and Section 114AA of the Customs Act,1962 and Bond for Rs.3,38,69,491/-imposed vide order dated 27.02.2026 for permitting re-export of Malaysian origin goods namely refurbished LCD Panels (old and used) of different sizes which arrived vide IGM No.1138355 dated 21.05.2025 for which no Bill of Entry was filed by the Appellant. The Appellant entered into an agreement with their supplier M/s. Tenely Limited, Hongkong for import of refurbished LCD Panels (old and used) of different sizes which was supplied vide Commercial Invoice No. 25TSLM11505 dated 15.05.2025 for USD 93,062.70. Before they could take any steps towards the goods, DRI detained the consignment and examined the goods vide Punchnama dated 06.06.2025. .(Page-186 to 194 of the Appeal). The said consignment was thereafter examined by a Customs empanelled Chartered Engineer who vide his Report dated 10.06.2025 opined that the goods are old and used LCD panels which are parts of Computers, possibly refurbished, with no HDMI port, AV input, or IR Blaster. The goods were put under seizure vide seizure Memorandum dated 10.06.2025 as import of old and used IT goods and their

parts are restricted in terms of Para 2.31 of the Foreign Trade Policy, 2023 and required licence issued by DGFT for import.

3.1 The Appellant requested for permission to file shipping bill for re-export of above seized goods but no reply was received. Hence, the Appellant filed a Writ Petition bearing SCA No. 14353 of 2025 wherein Notice was issued to the department. In the meantime, a Show Cause Notice dated 28.11.2025 was also issued to the Appellant.

3.2 The Hon'ble High Court vide Order dated 19.02.2026 directed the department to decide the application for re-export and the said decision to be placed on record by way of an Affidavit by the next date of hearing and adjourned the matter for 12.03.2026. In compliance of the direction of the Hon'ble High Court, the department vide Impugned Order dated 27.02.2026 permitted re-export of the seized goods referring to the CBIC Circular No. 35/2017 dated 16.08.2017 on following conditions:-

a. Bond equivalent to the re-determined value of the goods as per SCN dated 28.11.2025 i.e. Rs. 3,38,69,491/-;

b. Bank guarantee (auto renewal clause till adjudication of the case) of Rs. 1,75,00,000/- covering Redemption Fine and Penalties under Section 112(a) (i) and 114AA of the Customs Act, 1962.

3.3 The condition imposed for permitting re-export as per appellant is against the settled law and also onerous, hence they filed the present appeal.

Submission by Party w.r.t. re-export permitted

4. The allegation that the Appellant has mis-declared consignment of refurbished LCD Panels imported vide Invoice No. 25TSLM11505 dated 15.05.2025 is factually incorrect as they were yet to file the Bill of Entry which is the only document which contains the declaration with regard to classification, description, value and any claim for benefit of exemption notification. The Appellant submits that prior to filing of Bill of Entry, any allegation or any mis-declaration is pre-judging the declaration which the importer is yet to make before the Customs Authorities.

4.1 The allegation of mis-declaration of goods has been made only on the basis of description found in the IGM where it was mentioned as "parts for manufacturing purpose-HSN 85299099". The IGM mentioned the goods correctly as the Chartered Engineer has confirmed the goods as old and used LCD panels which are parts of Computers, possibly refurbished. Even otherwise, IGM is not a document prepared by the importer as the same is prepared and filed by Shipping Line from the load port on which an importer has no control. Goods have been mentioned in the Invoice as "Refurbished LCD Panel (old and used) and the same are classifiable under HSN 85299090 and found to be correct as per the Chartered Engineer's report which confirmed the goods as old and used LCD panels which are parts of Computers, possibly refurbished. Hence, there is no misdeclaration.

4.2 The amount of Bank Guarantee demanded covering the differential duty, redemption, fine and penalties in reference to CBIC Circular No. 35/2017 dated 16.08.2017 is against the settled law that neither duty nor redemption fine is payable in case the goods are permitted for re-export. The appellant relies on the following judgments:-

i. Sankar Pandi Vs. Union of India - 2002 (141) ELT 635 (Mad.)

ii. Union of India Vs. Sankar Pandi – 2018 (360) ELT A214 (SC)

iii. Siemens Ltd. Vs. Collector of Customs - 1999 (113) ELT 776 (SC).

iv. Lalkalam Enterprises Vs. Comm. of Customs Chennai - 2018 (364) ELT 856 (Tri. Chennai)

v. Regal Impex Vs. Comm. of Customs ICD TKD New Delhi - 2016 (332) ELT 835 (Tri. Del)

vi. Extreme Electronics Pvt. Ltd. Vs. Commissioner of Customs, Mundra Customs Appeal No.10155 of 2024 vide Final Order No. 12711/2024 dated 14.11.2024

vii. Selvam Industries Ltd. Vs. Commissioner of Customs, Tuticorin - 2021 (377) ELT 458 (Tri. Chennai)

viii. Rose Mary International Vs. Comm. of Customs passed in Customs Appeal No. 41693 of 2019-SM

ix. Simplex Engineers & Traders Vs. Commissioner of Customs (Import) passed in Custom Appeal No. 41339 of 2019

x. OMS Sivajothi Mills Vs. The Commissioner of Customs passed in Custom Appeal No. 40784 of 2019

4.3 The Appellant submits that this Hon'ble Tribunal in the case of Extreme Electronics Pvt. Ltd. Vs. Commissioner of Customs, Mundra Customs Appeal No.10155 of 2024 vide Final Order No. 12711/2024 dated 14.11.2024 has permitted re-export only on furnishing of bond. In this case, the amount of Bank guarantee demanded is not only excessive, onerous but also without application of judicial mind. It is submitted that the amount of Bank

Guarantee of Rs.1,75,00,000/- is almost 50% of the Market value of Rs.3,38,69,491/- of the goods as ascertained by the Chartered Engineer.

4.4 The Appellant submits that the FOB value ascertained by the Chartered Engineer is also without any evidence to support such value. It is pertinent to mention here that in order to justify FOB and market value adopted by the Chartered Engineer, the Show cause Notice alleges that the import value was not available as no Bill of Entry was filed by the Appellant. It is submitted that the invoice was very much available with the department which is evident from the Punchanama dated 06.06.2025 drawn for the goods. Hence, Commercial Invoice constitutes main documents for value declaration under Section 46 of the Customs Act, 1962 at the time of filing of the Bill of Entry. Hence, allegation that value was unavailable is contrary to the records and renders the reasoning in the Show Cause Notice inconsistent and untenable.

4.5 The Chartered Engineer has not given any evidence as to from where he has ascertained the FOB or market value of re-furbished goods which according to him are 3 to 4 years old whose warranty period was over and having scratches on the body/dents showing physical wear and tear. Once the goods are found as per declaration, there is no reason to reject the invoice value in absence of any evidence to show that the invoice value is incorrect.

4.6 The appellant has already suffered un-necessary charges to the tune of Rs.15,34,425/- towards detention and demurrages due to delay in permitting warehousing of the goods which was granted after lapse of 30 days of written requests. They sought permission to re-export the same and only question if at all would arise in adjudication is regarding the penalty if any. The exercise of the discretion has to be fair and reasonable and should not be exercised on irrelevant considerations and that discretion must be exercised in a manner known to law.

5. The learned Authorised Representative made combined submissions and reiterated the findings of the impugned order relating to re-export. He referred to CBIC Circular No. 35/2017-Customs dated 16.08.2017 and submitted that the conditions imposed for provisional release (as shown below) are justified considering merits of the case:-

"1. Vide letter dated 19.02.2026, the goods Imported vide B.E. 2140697 dated 19.05.2025 was released provisionally subject to following conditions:

- *Bond equivalent to Rs. 2,23,64,744/-;*
- *BG of Rs. 2,00,00,000/-*

2. Vide letter dated 27.02.2026, the goods imported vide vide container number FWRU0366721 under IGM no. 1138355 dated 21.05.2025 was released provisionally for re-export subject to following conditions:

- *Bond equivalent to Rs 3,38,69,491/-;*
- *BG of Rs 1,75,00,000/-"*

6. We have considered the rival submissions. We find that the learned Advocate has, inter alia, relied upon the decision in Navshakti Industries Pvt. Ltd. Vs. Commissioner of Customs, ICD, TKD, New Delhi, reported in 2011 (267) E.L.T. 483 (Del.), which was upheld by the Hon'ble Supreme Court in 2011 (269) E.L.T. A146 (S.C.), wherein the requirement of furnishing a bank guarantee to the extent of 20% of the differential duty was upheld. The Hon'ble Court, while examining the provisions of Section 110A of the Customs Act, 1962, observed that the said provision does not lay down definitive parameters for exercise of power thereunder and, therefore, the Customs (Provisional Duty Assessment) Regulations, 1963, though relating to provisional assessment, can be applied for determining the quantum of bank guarantee under Section 110A in the absence of specific guidelines. The said view stands affirmed by the Hon'ble Supreme Court while upholding the order in Navshakti Industries Pvt. Ltd. (supra).

6.1 At this stage, we are not inclined to go into the merits of the case. We further note that the Hon'ble Delhi High Court in Daya Enterprises Vs. Commissioner of Customs (Export), reported in 2016 (336) E.L.T. 73 (Del.), upheld the condition of execution of bond for 100% of the value along with furnishing of bank guarantee to the extent of 30% of the differential duty with an auto-renewal clause. We also take note of the decision in Shanus Impex Vs. Union of India, reported in 2024 (15) Centax 129 (Del.), wherein Circular No. 35/2017-Customs dated 16.08.2017 came up for consideration. The Hon'ble High Court, referring to its earlier decision in Additional Director General (Adjudication) Vs. Its My Name Pvt. Ltd., reported in 2021 (375) E.L.T. 545 (Del.), observed that paragraph 2 of the said Circular was set aside as being ultra vires to Section 110 of the Customs Act, 1962. However, the remaining portions of the Circular were allowed to survive as they preserved the discretion of the Adjudicating Authority and did not fetter the exercise of such discretion. We also take note of decision of Hon'ble Bombay High Court in the case of BMS Enterprises Vs. Union of India reported in 2025 (392) ELT 433 (Bom) on this issue.

6.2 In view of the above, undue reliance on the said Circular, thereby effectively ceeding discretion to an executive instruction, by judicial functionary is not justified. The discretion vested in the Adjudicating Authority is required to be exercised judiciously, and imposition of onerous conditions without adequate justification cannot be sustained. Accordingly, we direct that the appellant shall furnish a bank guarantee of Rs. 20,00,000/- (approximately 30% of the differential duty) along with execution of bond for 100% of the value of the goods. The directions contained in the impugned order in Appeal No. C/10185/2026 stand modified to the above extent.

7. In the second matter, relating to permission for re-export of goods and imposition of conditions such as bank guarantee, the learned Advocate submitted that the Adjudicating Authority has gone beyond the mandate of CBIC Circular No. 35/2017-Customs dated 16.08.2017 and has failed to exercise the discretion vested in him. It was contended that the imposition of onerous conditions, including furnishing of bank guarantee of Rs. 1,75,00,000/- towards redemption fine and penalties along with execution of bond for the full value of the goods, is excessive and unjustified.

7.1 We have considered the rival submissions. We find that such conditions appear to have been imposed routinely without due application of mind. The learned Advocate has relied upon the decision in Shankar Pandi Vs. Union of India, reported in 2002 (141) E.L.T. 635 (Mad.), wherein it was held that when re-export of goods is permitted, redemption fine is not imposable, and only penalty, if any, for violation of provisions may be considered. The said decision is based on the judgment of the Hon'ble Supreme Court in Siemens Ltd. Vs. Collector of Customs, reported in 1999 (113) E.L.T. 776 (S.C.). The decision in Shankar Pandi (supra) has further been upheld by the Hon'ble Supreme Court in Union of India Vs. Shankar Pandi, reported in 2018 (360) E.L.T. A214 (S.C.).

7.2 We find substance in the submissions of the appellant. However, without going into the issue of leviability of redemption fine when goods are re-exported, we are of the view that penalty is otherwise imposable for contravention of various provisions of the Customs Act, 1962 and other allied Acts/ laws. Further, since the goods are not being cleared for home consumption, the requirement of securing penalties at this stage also calls for moderation. Accordingly, without going into the merits of the case, we modify the impugned order and direct that the appellant shall furnish a bank guarantee of Rs. 15,00,000/- along with execution of bond for the full value of the goods, as required by the lower authority. The bank guarantee so furnished shall be subject to final outcome of the adjudication proceedings and shall be kept alive.

7.3 With the above directions, the impugned orders stands modified to the extent indicated.

8. The appeals are partly allowed.

(Operative portion dictated in the open Court)

(SOMESH ARORA)
MEMBER (JUDICIAL)

(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)

Bharvi