

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD**

REGIONAL BENCH - COURT NO.I

Customs Early Hearing Application No.70161 of 2025

(On behalf of the Appellant)

In

Customs Appeal No.70512 of 2025

(Arising out of Order-In-Original No.56-2024-25, dated-25/02/2025 passed by Commissioner (Appeals) CGST & Central Excise,)

M/s B P Wire Industry

.....Appellant

(D-14, Industrial Estate-III, Road Aligarh
Aligarh, Uttar Pradesh 202001)

VERSUS

Commissioner, Customs (Preventive), Lucknow

....Respondent

(Hall No.3, 5th & 11th Floor,
Lucknow, Uttar Pradesh-226024)

APPEARANCE:

Shri Manish Pushkarna, Advocate &
Shri Jitin Singhal, Advocate for the Appellant
Shri A. K. Chaudhary, Authorised Representative for the Respondent

CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)

MISCELLANEOUS ORDER NO.70188/2025

FINAL ORDER NO.-70433/2025

DATE OF HEARING : 27.06.2025
DATE OF DECISION : 30.06.2025

P.K. CHOUDHARY:

M/s B.P. Wire Industry has filed the present appeal whereby the Appellant seeks to challenge the Provisional Release Order No.56/2024-25 dated 25.02.2025 passed by the Commissioner, Customs (Preventive), Commissionerate

Lucknow. On the grounds, *inter alia*, the Commissioner has vide his order for provisional release of the seized goods i.e imported Betel Nuts and Betel Nuts Power to be exported has imposed a condition of furnishing Bank Guarantee. Further, the Appellant has also filed miscellaneous Application seeking early hearing of the above mentioned appeal on the ground *inter alia* the subject goods are perishable in nature and are highly susceptible to fungal infestation due to atmospheric humidity. That the market value is deprecating with each passing day and the prolonged seizure is severely impacting their export-worthiness due to deterioration over time and the Appellant is having financial hardship due to demurrage charges.

2. While taking up the application for Early Hearing the learned Departmental Representative has raised preliminary objection for hearing the appeal by the Single Member Bench. In support of his submission the learned Departmental Representative has relied upon the decision of the Hon'ble Allahabad High Court in the case of Commissioner of C.Ex. & S.T., Lucknow V/s Aimr Jewels Pvt. Ltd. reported in 2017 (6) G.S.T.L. 155 (All.) whereby the Hon'ble High Court while dealing with the issue in a case where the goods had already been ordered to be confiscated. The Hon'ble High Court examined Section 129C(4) of the Customs Act and held that a bare reading of the said provision that any case, which is assigned to a Bench can be decided by one of the members sitting singly if the value of the goods confiscated without option to redeem under Section 125 does not exceed Rs 50 lakhs.

3. Countering to the said submissions of the learned Departmental Representative, learned Advocate Shri Manish Pushkaran & Shri Jitin Singhal learned counsel for the Appellant contended that there are three stages, namely, detention, seizure and confiscation. In the present case, the present appeal relates to only first two conditions, i.e. detention and seizure, which comes under Section 110A of the Customs Act, for which

the goods are required to be provisionally released pending adjudication. Furthermore, it is the submission of the Appellant that 3rd stage i.e. confiscation, would arise only after the final adjudication of the case, which would be covered under Section 129C(4)(a) of the Customs Act, which is not the subject matter of the present appeal.

4. Also, it has been contended that the decision of the Hon'ble High Court, (Supra), is distinguishable on the facts and is, thus, not applicable to the facts of the present case inasmuch as in the cited case the goods were confiscated without giving an option to redeem the same, while the same is not in the present case. Hence, it is the contention of the learned Counsel for the Appellant that the above cited case of the Hon'ble Allahabad High Court is not applicable, instead, the present case is covered by the decisions of this Tribunal rendered in *Rajguru Enterprises Pvt. Ltd. Vs Commr. Of Cus. (Prev.)*, Mumbai, 2010 (260) ELT 108 (Tri-Mumbai) and *Ridhi Siddhi Collection Vs. Commr. of Cus. (Import) Nhava Sheva*, 2014 (310) ELT 618 (Tri-Mumbai) which squarely apply to the facts of the present case.

5. Since, the preliminary objection regarding the hearing of the appeal by the Single Member Bench has been raised, I find it appropriate to deal with this issue at the first instance.

6. Considering the arguments of both the parties and carefully analyzing the provisions of Section 110A and Section 111 of the Customs Act, I find that these two provisions operate into two different fields inasmuch as Section 110 mandates seizure of the goods for the reason that the goods are liable for confiscation. Section 110A mandates provisional release of the seized goods pending adjudication. A separate provision i.e. Section 111 deals with confiscation of inappropriately imported goods for the conditions mentioned in the said section. In the present case, I find that neither the Panchanams under which the subject goods were detained nor the seizure memo under which the goods have been seized mention Section 111 of the

Customs Act. This is sufficient to arrive at a conclusion that the present case before hand is not a case under Section 111 instead, is a case pertaining to Section 110A of the Customs Act. As rightly argued by the learned Counsel for the Appellant that the Hon'ble Allahabad High Court dealt with the case where the order for confiscation has been passed without giving any option to redeem the goods. I find that the present case is not such a case. Therefore, I hold that the above cited judgement of the Hon'ble Allahabad High Court is clearly distinguishable on the facts of the present case and does not support the arguments of the learned Departmental Representative and is not applicable to the case.

7. I may respectfully refer to the judgement of the Hon'ble Delhi High Court in Shantilal Mehta Vs Union of India & Ors, 1983 (14) ELT 1715 (Del.), wherein the Hon'ble Delhi High Court in para 38 of the judgement explained the meaning of 'confiscation' as under:-

"38. The word 'confiscate' means to appropriate property to the use of the state. To adjudge property to be forfeited to the public treasury; to seize and condemn private forfeited property to public use. (Black's Law Dictionary 4th ed. page 371). Confiscation is based on seizure. Seizure is forcible taking of possession. Forcible possession is either by lawful authority or by over-powering force. Seizure is by lawful authority under Section 110(1). But refusal to return the seized goods contrary to Section 110(2) is unlawful and without any authority. Because it is based on sheer force. This illegality spreads and infects the whole process and renders the entire proceedings void ab initio and a complete nullity.

39.*****

40.The essence of the concept of confiscation is that the offending goods are taken by the state as its own

property. The owner of goods is deprived of the property and it is appropriated to public use. Taking of private property to public use as being forfeited to the state is confiscation. Confiscation is punishment for smuggling. So possession of goods by the customs is essential for making an order of confiscation....."

8. In the above cited judgement, reference has been made to judgement rendered in Sardar Kulwant Singh Vs Collector of Central Excise and Customs, 1981 Excise Law Times 3, the goods were allowed to be returned because adjudication proceedings had not been concluded and the order of the confiscation had not been passed. In view of the above, from the records and the submissions made by both the parties it is clear to me that, in the present case, adjudication proceedings had not been concluded and the order of confiscation has not been passed yet. Therefore, I hold that the judgement of the Hon'ble Allahabad High Court as relied upon by the learned Departmental Representative is not applicable to the present case being distinguishable on the facts of the present case. I further find that it is a case of provisional release of goods by imposing certain conditions, hence the matter can be heard by Single Member Bench.

9. In view of the above, I allow the application seeking early hearing of the appeal and proceed to take up the appeal for hearing.

10. Having held so as above, now I take up the main appeal challenging the impugned order passed by the Commissioner imposing a condition of furnishing Bank Guarantees for seeking provisional release of seized goods as contended by the learned counsel for the Appellant.

11. Briefly stated, the facts of the case are that the Appellant has Private Bonded Warehouse at Shed No. 1 and 2 situated at Aligarh. The Appellant is a Star 1 Export House. The Appellant had imported Betel Nuts under Warehouse Bill of Entry

(without payment of customs duty) declaring that it will export Flavoured Supari manufactured after processing the imported goods under Manufacturing and Other Operation Warehouse Regulation Scheme (MOOWR). The DRI, Delhi Zonal Unit, New Delhi conducted searches at various places and the search proceedings were recorded under respective Panchnamas dated 01.06.2024 & 02.06.2024 and, consequently, certain bags of imported betel nut and the goods meant to be exported (Betel Nut Powder) were examined. Consequently, the DRI, DZU vide letter dated 01.06.2024 had informed the Deputy Commissioner, ICD to hold the imported and to be exported consignments of the subject goods. This letter was withdrawn by the DRI vide letter dated 26.09.2024. For detaining the goods, it is the case of the Department that the goods were imported in contravention of Section 111(m) and (o) of the Customs Act. Likewise, as regards goods meant to be exported, it is alleged that to be mis-declared in the shipping bills, contravening the provisions of Section 118(i) of the Customs Act. Thus, for the Department, the goods were liable for confiscation. The Appellant vide a letter dated 05.08.2024, requested for release of the detained goods. However, the subject goods were seized by passing seizure orders dated 09.08.2024 and 13.09.2024. Furthermore, the Appellant also requested the DRI to de-seal its business premises registered under MOOWER Scheme so as to enable it to commence its business. The DRI by its letter dated 25.09.2024 had intimated that it had no objection for provisional release of goods under above seizure memos. Consequently, the Appellant had addressed various letters requesting for release of its goods and de-sealing of its business premises. Contrary to the request, the learned Commissioner of Customs (P), Lucknow, vide a letter dated 07.10.2023 had suspended the warehousing license. Against such action, the Appellant had approached the Hon'ble High Court of Delhi by way of filing writ petition which is pending for disposal. Since the seized goods have not been released despite various requests being made, the Appellant filed Writ Petition (Civil) No. 1157 of 2025 before the Hon'ble Delhi

High Court whereupon the Hon'ble High Court vide order dated 12.02.2025 held as follows:

"14. In view thereof, it is reasonably inferred that the Department of Customs has no objection to the provisional release of the goods of the Petitioner. Accordingly, it is directed that the Department of Customs shall provisionally release the Petitioner's goods, subject to conditions imposed in accordance with law, within a period of two weeks from today."

12. Pursuant to the above, the learned Commissioner of Customs (Preventive) has passed the present impugned order directing provisional release of subject goods on furnishing PD Bonds and Bank Guarantees, and, as such, the Appellant being aggrieved by the direction for furnishing Bank Guarantee and the value of PD Bonds, is challenging the impugned order.

13. It is relevant to state here that, at the time of filing of the appeal, no Show Cause Notice ¹was issued. However, as on date, subsequent to the filing of the appeal, a SCN dated 28.05.2025 has been issued, which is pending adjudication and, therefore, the issue of provisional release of the subject goods comes within the ambit of section 110A of the Customs Act, 1962.

14. Heard both the sides and perused the appeal records.

15. The learned Counsel for the Appellant submits:-

(i) that, detention and seizure on one hand is separate and distinct from confiscation. Since, the present case is pending adjudication, the stage of confiscation has not yet arrived. Therefore, the case is governed by the category seizure for which applicable provision is Section 110A and, under which, the subject seized goods are liable to be provisionally released;

¹ SCN

(ii) that, the subject seized goods to be imported have been seized on presumption that the same would be diverted;

(iii) that while passing the impugned order, learned Commissioner has placed reliance on the Circular No. 01/2011-Cus dated 04.01.2011, which is general in nature and cannot be made applicable in view of fact that for the subject goods there is a specific circular No. 32/2009-Cus dated 25.11.2009. It is a settled law that special provision would prevail over general provision;

(iv) the learned Commissioner has arbitrarily and contrary to the settled law has imposed condition of imposing Bank Guarantees for provisionally releasing the goods. The learned Counsel for the Appellant referred to Circular No. 35/2017-Cus dated 16.08.2017 imposing conditions for Bank Guarantees and would submitted that this condition has been struck down by the Hon'ble Delhi High Court in the case of Addl. DG (Adjn) Vs. Its My Name Pvt. Ltd., 2021 (375) ELT 545 (Del.) which has been followed by the Hon'ble Delhi High Court in its subsequent decision in the case of Shanu Impex Vs UOI, 2024 (388) ELT 78 (Del.).

(v) The learned Counsel for the Appellant further submitted that, at the first instance the seizure itself is bad inasmuch as the phrase used are 'reason to believe' and 'on specific intelligence'. In support of his submissions the learned Counsel relied upon the judgment of the Hon'ble Delhi High Court in the case of Shantilal Mehta Vs UOI (Supra) where these two expressions have been considered holding that without cogent and tangible material these expressions cannot be used in an omnibus manner. Thus, concluding the submissions it is contended that the subject seized goods i.e. imported as well goods meant to be exported are required to be provisionally released on furnishing a PD bond for the value of such goods and without asking for any Bank Guarantee.

16. On the other hand, the learned Departmental Representative has vehemently argued and relied upon the findings in the impugned order and, thus, contended that impugned order has been validly passed which requires to be sustained and appeal filed by the Appellant being, devoid of any merits, be dismissed.

17. Upon considering the submissions of both the parties and carefully perusing the relevant provisions, cited judgements and documents on record, I find that present case is a case of seizure which comes under Section 110A of the Customs Act. Also, it is an admitted and undisputed fact that the SCN dated 28.05.2025 having been issued after filing of the present appeal is still pending for adjudication. In such an event, it cannot be said that the stage of confiscation has arrived in the present case. I find force in the argument of the learned Counsel for the Appellant that Section 110A mandates provisional release of seized goods pending adjudication. Therefore, it is my considered view that the subject seized goods are liable for provisional release to the Appellant.

18. As regards the arbitrary condition for furnishing Bank Guarantees, as ordered in the impugned order, I observe that this condition has been struck down by the Hon'ble Delhi High Court in the case of Its My Name Pvt. Ltd (supra) and Shanu Impex case (supra). I also find that the Appellant, admittedly and undisputed, is 1 Star Export House and for the goods meant to be exported by such Star Export House, irrespective of the category (i), (ii), (iii), (iv) or (v) for Star Houses, the condition for furnishing Bank Guarantees has been relaxed by the specific Circular No. 32/2009-Cus dated 25.11.2009. Further the Hon'ble Delhi High Court in the cases cited supra have been pleased to struck down the condition of furnishing Bank Guarantees as required by Circular No. 35/2017-Cus dated 16.08.2017.

19. On perusal of the records, I also find that the DRI itself has in its letter dated 25.09.2024 given its no objection for

provisionally releasing the subject seized goods of both the categories. The DRI in its said letter has stated that, "the request may be considered for provisional release and dealt with in terms of Para 2.2 of the Board Circular No. 35/2017-Cus dated 16.08.2017"

20. Further, the Hon'ble High Court of Delhi in its order dated 12.02.2025 passed in Writ Petition (Civil) No. 1157 of 2025 filed by the Appellant herein have noted this aspect and directed that the Department shall provisionally release the goods subject to condition imposed in accordance with law.

21. In view of the findings above, it is clear that the only condition in accordance with law which is sustainable is furnishing of PD Bond of the value of the imported goods and goods meant to be exported. I find that reliance placed by the learned Counsel on Circular 32/2009-Cus dated 25.11.2009 is justified inasmuch as this does not require furnishing of bank Guarantee for any category for Star Export Houses. On the other hand, the Circular No. 01/2011-Cus dated 04.01.2011 as relied upon in the impugned order is general in nature. It is settled law that conditions stipulated under specific provision has to be complied with in totality and the said provision shall prevail over the general provision. This has been so held by this Tribunal in the case of Flemingo Duty Free Shop Pvt. Ltd. vs. CCE& ST, 2018 (361) ELT 742 (T). The decision in Flemingo Duty Free Shop case has been passed following the decision of the Larger Bench of this Tribunal in M/s Avis Electronics Pvt. Ltd., 2000 (117) E.L.T. 571 (Tri.-LB) holding that when a particular thing is directed to be performed in a manner, statutorily, it should be performed in that manner itself and not otherwise.

22. Similar views have been expressed by the Hon'ble High Court of Gauhati in the case of CCE v. Jellalpole Tea Estate, 2011 (268) E.L.T. 14 (Gau.) wherein the Hon'ble Court held that "what is required to be done in a manner prescribed by law, ought to be done in that manner only or not at all." As is in the

present case, specific circular No. 32/2009 does not require furnishing of Bank Guarantees for star export houses; and, the condition of furnishing Bank Guarantees in another circular have been set aside by Hon'ble Delhi High Court as mentioned above. Therefore, respectfully following the ratio of the above cited decision, I hold that Circular No. 01/2011-Cus dated 04.01.2011 being general in nature has been wrongly applied in the present case inasmuch as the present case is governed by Circular No. 32/2009-Cus dated 25.11.2009 where there is no requirement of furnishing of Bank Guarantee.

23. I find that despite various requests having been made by the Appellant for provisionally releasing the seized goods, the Department has not released even though the DRI had given its no objection for the provisional release. The Appellant being left rudderless had no option but to approach the Hon'ble Delhi High Court which also directed the learned Commissioner to provisionally release the goods in accordance with law. These material facts which were before the Commissioner have not been discussed nor analyzed by him while passing the impugned order which makes the impugned order bereft of independent analysis of material facts.

24. In view of the above, I find that the Commissioner has not given its independent findings and analysis on the relevant provisions and relevant circulars pertaining to the issues in the present case, except to rely upon the averments made by the Department in Panchanama and seizure memo thereby, evidencing total non-application of mind while passing the impugned order. I hold that the impugned order is liable to be quashed and set aside to the extent it orders for furnishing of Bank Guarantees for provisionally releasing the seized imported goods as well as seized goods meant to be exported. Consequently, I allow the appeal directing the Appellant to furnish the PD bond for value of the goods in respect of imported goods as well as goods meant to be exported. Upon furnishing PD bond to the above effect, the learned Commissioner is

directed to provisionally release both the category of seized goods forthwith. The appeal filed by the Appellant is allowed in the above terms. A copy of this order to be issued Dasti.

(Pronounced in open court on 30.06.2025)

Sd/-
(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

Nihal