CUSTOMS EXCISE & SERVICE TAX APPLELLATE TRIBUNAL, NEW DELHI

PRINCIPAL BENCH

Customs Appeal No. 50873 of 2020

(Arising out of Order-in-Original F No. VIII(CUS) 14/Adj-I/Rudra/2019-20 dated 27.4.2020 passed by the Commissioner Customs, Indore)

RUDRAS OVERSEAS **APPELLANT**
228, Vinay Nagar
Indore-452002.

VS.

COMMISSIONER OF CUSTOMS, **RESPONDENT**
B-Zone, 3rd Floor, 12/27 & 12/28,
Village Pipliakumar, Nipania
Indore-452010.

Present for the Appellant: Shri V S Negi, Advocate
Present for the Respondent : Shri Sunil Kumar, Authorized Representative.

CORAM :
HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. C L MAHAR, MEMBER (TECHNICAL)

DATE OF HEARING : 24/09/2020
DATE OF DECISION : 24/09/2020

FINAL ORDER NO. 50849/2020

PER JUSTICE DILIP GUPTA:

This appeal has been filed to assail the order of the Commissioner Customs, Indore[1] for provisional release of the seized goods on execution of Bond and on furnishing of bank guarantee.

2. It transpires from the record that the appellant imported one shipment of nutrition supplements for which Bill of Entry dated

[1] The Commissioner

November 23, 2019 was filed at ICD, Indore and the appellant paid Customs duty of Rs.7,53,643/-. However, before the goods could be cleared, the goods were examined by the Directorate of Revenue Intelligence, Indore and the goods were detained.

3. The appellant claimed that as the goods were for human consumption and prone to deterioration/ damage, the appellant moved an application dated December 26, 2019 for provisional release of the goods under section 110A of the Customs Act, 1962[2]. The appellant has stated that during the course of investigation, the appellant was asked to deposit Rs.10 lakh which the appellant deposited.

4. A communication dated April 27, 2020 has been addressed to the appellant by Assistant Commissioner and same is reproduced below:

Dated 27.04.2020

To

M/s. Rudra Overseas
Vijay Nagar, Indore

Dear Sir,

Subject: Provisional release of goods imported under Bill of Entry No. 5795615 dated 23.11.2019-Reg.

Please refer to your application dated 24.02.2020 regarding provisional release of seized goods imported under Bill of Entry No. 5795615 dated 23.11.2019.

2. The Commissioner of Customs, Indore is pleased to provisionally release the seized goods imported under Bill of Entry No. 5795615 dated 23.11.2019 on execution of Bond for the value of Rs.86,22,915/- and furnishing of Bank Guarantee/Security of Rs.1,38,19,048/-.

Yours sincerely

Sd/-
Assistant Commissioner

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[2] the Customs Act

5. Relying upon the provisions of Section 110 A of the Customs Act, learned Counsel appearing for the appellant has submitted that the Adjudicating Authority can release the goods on taking a bond from the owner in a proper form with such security and conditions as the Adjudicating Authority may require, but in the instant case, the Assistant Commissioner has merely stated that the Commissioner, who is the Adjudicating Authority, has provisionally released the goods on execution of a Bond of Rs. 86,22,915/- and furnishing of bank guarantee/security of Rs.1,38,19,048/-, without giving any reasons for arriving at such a conclusion. He, therefore, submits that the order is non-speaking order, more particularly when the order passed by the Commissioner has also not been made known or enclosed with the communication of the Assistant Commissioner.

6. It is for this reason that the learned Authorised Representative of the Department was required to place on record the order passed by the Commissioner. Today, a notesheet has been filed by the Authorized Representative. It shows that a note had been prepared which was placed for perusal and approval before the Assistant Commissioner and the Commissioner and these two officers have merely signed at the bottom of the notesheet. It is contended by the Authorized Representative of the Department that since the note has been approved/ signed by the Commissioner, it should be taken as an order of the Commissioner.

7. Section 110 A of the Customs Act, which deals with the provisional release of goods pending adjudication, is reproduced as under:

> **"SECTION 110A. Provisional release of goods, documents and things seized or bank account provisionally attached pending adjudication.** - Any goods, documents or things seized or bank account provisionally attached under section 110, may, pending the order of the adjudicating authority, be released to the owner or the bank account holder on taking a bond from him in the proper form with such security and conditions as the adjudicating authority may require."

8. A perusal of the aforesaid section indicates that the Adjudicating Authority may, pending the final order, release the goods to the owner on taking a bond from him in the proper form with such security and conditions as the Adjudicating Authority may require. Thus, the Adjudicating Authority has to take a decision and the owner of the goods is required to be apprised of the reasons culminating in the provisional release order. In the present case, it transpires that the office put up a note indicating the value of bond and the value of bank guarantee/security and this note has merely been signed by the Commissioner. It also needs to be noted that even the note was not supplied with the order. Such a procedure does not satisfy the requirement of Section 110A of the Customs Act. The order passed by the Commissioner must indicate application of mind and contain reasons for passing an order for provisional release. Each case has to be considered on the basis of the facts brought to the notice of the Commissioner.

9. We, therefore, have no hesitation in observing that the communication dated April 27, 2020 for provisional release of goods should be set aside.

10. Such goods are stated to be for human consumption and liable to deterioration. The Commissioner shall, therefore, pass an order for provisional release of the goods in the light of the observations made above within a period of one week from the date a copy of this order is served upon by the Commissioner by either of the parties.

11. It has been stated by the learned Counsel for the appellant that a notice has been issued for disposal of the seized goods. In the circumstances mentioned above, when an order of provisional release has to be passed, the goods seized shall not be disposed for a period of eight weeks from today.

12. The appeal is, accordingly, allowed. The communication dated April 27, 2020 is set aside and the appeal is allowed to the extent indicated above and with the aforesaid directions.

Justice Dilip Gupta
(President)

C. L. Mahar
(Technical Member)

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