IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing/Decision: 04.10.2017

Appeal No. C/51529/2017-CU [SM]

(Arising out of Order-in-Appeal No. C.No. VIII/SIIB/CUS/ACCIMPORT/SGIPL/66/2017/15223 dated 21.08.2013 passed by the Commissioner of Customs, New Delhi)

Ethos Ltd. Appellant

Vs.

CC New Delhi (Import & General) Respondent

Appearance

Shri B.K. Singh, Advocate - for the appellant

Shri K. Poddar, DR - for the respondent

CORAM: **Hon'ble Mr. Ashok Jindal, Member (Judicial)**

Final Order No. 57016/2017

Per Ashok Jindal:

1. The appellant is in appeal against the impugned order of provisional release of goods under Section 110A of the Customs Act, 1962 on the following conditions:-

   i. *M/s Swatch Group (India) Pvt. Ltd*., shall furnish a bond equivalent to Rs. 25,17,10,823/- in respect of the seized goods as listed in the Annexure-'A' (Annexure-I') to the DRI, MZU, Mumbai's letter dated 06,06,2017;and

   ii. Payment of differential duty involved (Rs. 21,78,906-) on the seized goods; and

iii. *M/s Swatch Group (India) Pvt. Ltd.*, shall also furnish a Bank Guarantee with auto renewal clause, for Rs. 2,51,71,082/-.

2. The facts of the case are that on 30th March, 2017, the premises of the appellant were searched by of DRI and found that appellant were selling watches imported by M/s Swatch Group (India) Pvt. Ltd. The case of the revenue is that as Swatch Group (India) Pvt. Ltd, the importer has cleared the watches by declaring RSP which is less than the RSP at which the appellants are selling the watches, therefore, M/s Swatch Group (India) Pvt. Ltd has miss-declared the value of the impugned goods. On this premises, the watches imported by M/s Swatch Group (India) Pvt. Ltd, which were sold to the appellant were seized and during the pendency of the proceedings, the appellant sought provisional release of the said watches under Section 110A of the Customs Act, 1962. The impugned order was passed.

3. As per the impugned order, the goods were ordered for provisional release on the condition that the importer, M/s Swatch Group (India) Pvt. Ltd shall furnish a bond and shall pay differential duty on account of undervaluation of seized goods and to furnish bank guarantee for the release of the said goods. Aggrieved from the said order, appellant is before me.

4. The Ld. Counsel for the appellant submits that as appellant is the owner of the goods and the goods have been seized from his premises, in that circumstances, as per Section 110A of the Customs Act, 1962 the goods are required to be released to the appellant only. Therefore, the condition wherein the goods were directed to be

released to the importer is harsh against the appellant. The appellant is aggrieved with the condition (iii) of the impugned order wherein the importer has been directed to furnish bank guarantee for Rs. 2,51,71,082/- for release of the goods whereas the total value of the seized goods is Rs. 25,17,10,823/- and the differential duty is demanded of Rs. 21,78,906/- only. Therefore, the demand of bank guarantee is very harsh, the same may be relaxed. He further submitted that as in various judicial pronouncements, it has been held for provisional release of goods, payment of duty is sufficient. He is also aggrieved from the condition (ii) of the impugned order.

5. On the other hand, Ld. AR opposed the contention of the Ld. Counsel and submits that the appellant has not produced document before the authorities as per law to claim ownership of the said seized goods as M/s Swatch Group (India) Pvt. Ltd is the importer and the duty is to be demanded from the importer, in that circumstances, the goods are to be released to the importer only. He also submits that nowhere, it is coming out from the impugned order from the document seized clarified that the appellant is the owner of the seized goods. In that circumstances, the appellant has no locus standi to file the appeal before this Tribunal. The case law relied upon by the Ld. Counsel for the appellant are not relevant to the facts of the case.

6. Heard the parties and considered submissions.

7. On the basis of the argument advanced by both the sides the following issue emerges before me.

1. Whether in the facts and circumstances in the case, the goods can be released to the appellant being owner of the goods or not?
2. Whether conditions imposed for provisional release are harsh to the appellant, if so, what should be the conditions for provisional release?

Issue No. 1

8. I have gone through the impugned order, in paragraph L of the impugned order the Adjudicating Authority has recorded as under:-

> "Watches imported by Swatch Group (India) Pvt. Ltd are sold to its retailers from where it is finally sold to the consumer. One such retailer of Swatch Group (India) Pvt. Ltd is Ethos Ltd. (the appellant before me)".

9. From the impugned order, it is clear that the appellant being the retailer has purchased watches from Swatch Group (India) Pvt. Ltd. (importer). When the matter came up for hearing yesterday i.e. on 03/10/2017, the Ld. Counsel for the appellant was asked to produce the document how they got the ownership of the impugned goods. Today when the matter was called for hearing, the Ld. Counsel for the appellant produced a certificate issued by Swatch Group (India) Pvt. Ltd, (the seller of the impugned goods) and the said certificate is incorporated as under:-

Adv

SWATCH GROUP

SWATCH GROUP (INDIA) PRIVATE LIMITED

To,
M/s. Ethos Limited,
Kamla Centre
SCO 88-89, Sector 8-C
Madhyamarg, Chandigarh,
India - 160009

Date: 04.10.2017

Sub: - **Reference to the Provisional Release Order C. No. VIII/SIIB/CUS/ACCC Import/SGIPL/66/2017 15223 dated 21/08/2017.**

This is with reference to the email request dated 03.10.2017 from Ethos Ltd to provide an NOC to get provisional release of the seized goods in its favour from custom authorities as such goods have been sold to Ethos Ltd and they are the owner of such goods.

We certify that the watches seized by the DRI authorities as per the Annexure A (Annexure – I) to DRI, MZU, vide letter dated 06/06/2017 have been purchased by M/s Ethos Ltd on outright sale basis.

We understand that M/s Ethos Ltd, being the legal owner of the seized goods, have made application seeking provisional release of the goods to Ethos Ltd in terms of Section 110A of the Customs Act.

The Company declares that it is not the 'owner' of the watches seized from the premises of M/s Ethos Ltd and has no right to raise any objection if the said seized watches are released by custom authorities to its owner in terms of the law and subject to such conditions as it may deem fit.

For Swatch Group (India) Pvt. Ltd.

Partha Dattagupta Pawan Agarwal

SWATCH GROUP (INDIA) PVT. LTD. NEW DELHI

Authorized Signatories

Name: Partha Dattagupta, Pavan Agarwal
Designation: Country Manager, CFO.

Swatch Group (India) Private Limited
Registered Office : 4th Floor Rectangle 1 Plot No. D4 Saket District Centre New Delhi-110 017 India
CIN : U74999DL2000PTC105409
Phone +91 11 4609 2900 Fax +91 11 4609 2999, Email : info@in.swatchgroup.com
Customer Service: 2nd Floor Rectangle 1 Plot No. D4 Saket District Centre New Delhi - 110017 India
Phone : +91 11 49092800 Fax : +91 11 49092802

A COMPANY OF THE SWATCH GROUP OF SWITZERLAND

10. Further, the appellant has produced the copy of invoices against which the impugned watches were sold to the appellant by M/s Swatch Group (India) Pvt. Ltd. In that circumstances, the

appellant is the owner of the impugned goods and the said goods has been seized from the possession of the appellant.

11. Further, as per Section 110A of the Customs Act, 1962 which is reproduced below :-

> *[110A. Provisional release of goods, documents and things seized pending adjudication.—Any goods, documents or things seized under section 110, may, pending the order of the adjudicating officer, be released to the owner on taking a bond from him in the proper form with such security and conditions as the Commissioner of Customs may require.]*

the goods are required to be released to the owner of the goods. From the documents produced before me, it is clear that the appellant is the owner of the impugned goods. Therefore, condition (i) of the impugned order is contrary to law. Therefore, I modify the condition (i) of the impugned order as under:-

12. M/s Ethos Ltd shall furnish a bond equivalent to Rs. 25,17,10,823/- in respect of seized goods as listed in Annexure A to DRI MZU Mumbai letter dated 06/06/2017.

Issue No 1 is answered, accordingly.

<u>Issue No.2</u>

13. I have gone through the impugned order and found that the conditions imposed for provisional release is harsh as per various judicial pronouncements of the Hon'ble High Courts as well as of this Tribunal.

14. I find that in case of *Kuber Casting (P) Ltd. V/s Union of India* 2013 (297) E.L.T. 4 (P&H) the Hon'ble High Court after examining the issue held that the bank guarantee of 30 per cent of the value of the goods seized is harsh condition to the appellant and thereafter the Hon'ble High Court direct to pay the differential duty and on payment of the differential duty, the Adjudicating Authority was directed to release the goods to the appellant. Therefore, following the decision of the Hon'ble High Court of Punjab and Haryana in case of Kuber Casting (P) Ltd. (supra) I direct the appellant to pay the differential duty of Rs. 21,78,906/- on the seized goods for release of the goods provisionally.

15. In the result, following the order is passed. The goods shall be released provisionally under Section 110A of the Customs Act to the appellant i.e. M/s Ethos Ltd*.* subjecting following conditions:-

   1. The appellant shall furnish a bond equivalent to 25,17,10,823/- in respect of seized goods as listed in Annexure A to the DRI MZU Mumbai letter dated 06/06/2017 and on payment of differential duty of Rs. 21,78,906/- seized goods.

16. The appeal is disposed off in the above manner.

(Dictated & pronounced in open Court)

(Ashok Jindal)
Member (Judicial)

Rekha