CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Customs Appeal No. 51125/2018 with
Customs Misc. Application Nos. 50435, 50461 & 50462/2018

(Arising out of Order-in-Appeal No. VII(Cus)15-03/2017-Adj-I dated 19.04.2018 passed by the Commissioner of Customs, Indore)

DATE OF HEARING : 05.07.2018
DATE OF DECISION : 05.07.2018

M/s Prestige Polymers Pvt. Ltd. ….. **Appellants**
(Rep. by Sh. Priyadarshi Manish, Adv.)

VERSUS

CC, Indore ..… **Respondent**
(Rep by Sh. Rakesh Kumar, DR)

CORAM : **HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)**
HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)

FINAL ORDER No. 52473/2018

PER ANIL CHOUDHARY :

Heard both the parties on the modification application (C/ROM/50461/2018) for modifying the Interim Order dated 18.05.2018 wherein this Tribunal directed the Appellants to make the pre-deposit, subject to which the appeal to be listed for final hearing.

2. The learned counsel for the Appellants states that, since in the present case the impugned order did not confirm any duty demand nor imposed any penalty, the Interim Order dated 18.05.2018 needs to be modified by waiving the condition of pre-deposit, in the interest of justice.

3. Having considered the contention, we find that the prayer of the Appellants is just and proper. We, accordingly, modify the Interim Order dated 18.05.2018 by clarifying that no pre-deposit is required to be made in this case.

4. The other application filed by the Appellants for early hearing being C/Misc/50462/2018 is also heard.

5. The learned counsel for the Appellants states that, they have challenged the impugned order being of provisional release dated 19.04.2018 and that since last two years the goods are lying with the Customs Department. So, he prayed for early hearing of the matter.

6. Having considered the rival contentions and the period of goods under seizure, we allow the application for early hearing of appeal.

7. With the consent of both sides, we proceed to decide the appeal on merit.

8. In the present appeal, the Appellants have challenged the conditions of provisional release of goods given in the impugned order dated 19.04.2018 passed by the Commissioner of Customs, Indore.

9. The Appellants, M/s Prestige Polymers Pvt. Ltd., is a SEZ Unit located at SEZ Phase-I, Pithampur, Madhya Pradesh, having IEC No. They imported some consignments of LED TV Panels for further processing and re-export as per the authorized operation under the LOA granted by the SEZ authorities. The details of the goods imported by six containers is as under :

S.N.	IGM No. & Date	Declaration of Goods as in IGM	Container No.	B/L No.& Date	B/E No. & Date	Date of Examination by DRI	Goods found on Examination	Value of Goods declared in B/E (AV) in INR	Seizure Date	Seizure Value
1.	2145356 dt 25.08.16	LED Panel	OOLU9183698	OOLU2576379090 dt.8.8.16	B/E Not filed	17.09.16	LED TV Panel	N.A.	12.01.17.	40,47,840
2.	2145356 dt.25.08.2016	LED Monitor	OOLU9616062	OOLU2576466271 dt.11.8.16	B/E Not filed	19.09.16	LED TV in SKD condition	N.A.	19.09.16	93,61,031
3.	2144363 dt.11.8.16	LED Monitor	OOLU8306904	OOLU2575852230 dt.28.7.16	0003837 dt.22.8.16	20.09.16	LED TV in SKD condition	32,59,798	20.09.16	1,75,56,211
4.	2145356 dt.25.8.2016	LED Monitor	OOLU9806890	OOLU2576075781 dt.31.7.16	0004073 dt6.9.16	23.09.16	LED TV in SKD condition	22,00,300	23.09.16	1,67,43,570
5.	2144251 dt.10.8.16	D-LED Panel of size 55" without main operating board conceal cover, speakers and remote control , wire set.	BMOU4966695	PATPIR 1607018 dt.25.7.16	0003918 dt26.8.16	17.11.16	LED TV Panel of Samsung Brand	11,82,017	05.01.17	1,98,16,333
6.	2144363 dt.11.08.16	Electronic Parts	SEGU4464863	OOLU2575897850dt.28.7.16	B/E not filed	07.12.16	Panels for LED TV	N.A.	28.01.17	51,01,000

10. In the month of August, 2016, six containers reached ICD in the course of transit to SEZ at Pithampur. The DRI, on the basis of specific intelligence, intercepted the containers loaded with various electronic goods like LED TV etc.

The said goods were examined at ICD, Pithampur, during the period September to December, 2016. As per the Revenue, the ascertained value was higher than the declared value in the Bill of Entry with respect to three containers. The same is as under :

S.No.	Container No.	B/E NO. & Date	Value of seized goods	Ascertained Value	Total Duty
1.	OOLU8306904	3837/22.02.2016	17556211	3743408	1095922
2.	OOLU9806890	4073/06.09.2016	16743570	4533322	1327177
3.	BMOU4966695	3918/26.08.2016	19816333	20014497	5859451
		Total	**5,41,16,114**	**2,82,91,228**	**82,82,550**

Based on such ascertained value, the Customs Authorities directed the provisional release on the following conditions :

1. Execution of Bond of Rs. 2,82,93,228/- for ascertained value of seized goods before the Deputy Commissioner, ICD, Pithampur.

2. Payment of Customs Duty of Rs. 82,82,550/- under intimation to the Deputy Commissioner, ICD, Pithampur.

3. Furnish Bank Guarantee of 25% of ascertained value of seized goods Rs. 2,82,91,228/- as security against the above referred Bond before the Deputy Commissioner, ICD, Pithampur.

11. Having considered the rival contentions and considering the fact that the goods are lying in the ICD,

Pithampur, for about two years, we modify the terms of provisional release as under :

1. So far as execution of Bond is concerned, the same is upheld and not modified.
2. So far as duty demanded on the enhanced value of Rs. 82,82,550/- is concerned, the same is directed to be paid on provisional basis, subject to final assessment.

3. So far as condition of Bank Guarantee is concerned, the same is to be furnished for an amount of Rs. 15 lacs.

Subject to fulfillment of the aforementioned modified conditions and filing of compliance report before the concerned Customs authorities, the goods shall be released provisionally within three days.

12. So far as the goods in other three containers is concerned, the learned counsel states that earlier they moved the Hon'ble Madhya Pradesh High Court in Writ Petition wherein they have prayed that they intend to re-export the goods lying in these three containers in which bill of entry was not filed.

13. In this view of the matter, we grant liberty to the Appellants to file the bill of entry and take the provisional release, as per the aforementioned modified conditions, and/or alternatively file shipping bill for re-export of the said goods on

the condtions of provisional release as mentioned in para 11 since the goods under these B/L are also under seizure. The concerned authorities shall take the necessary action in accordance with law, preferably within a period fifteen days from the date of filing of such shipping bill.

14. In the result, the appeal stands disposed of in the above terms. Misc. Applications also stand disposed of accordingly.

(Dictated & pronounced in the open court)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(C.L. MAHAR)
MEMBER (TECHNICAL)

Golay