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

Date of Hearing: 21.6.2018
Date of Pronouncement: 2.8.2018

Appeal No. C/51424/2018 with C/Misc./50531/2018-DB

(Arising out of Order-in-Original No. 17/2017-18/VS/COMMR.(IMPORT) dated 30.3.2018 passed by the Commissioner of Customs, New Delhi)

M/s Agya Import Limited — Appellant

Vs.

CC, New Delhi — Respondent

Appearance

Ms. Anjali Manish, Advocate - for the appellant

Shri R.K. Majhi, D.R. - for the respondent

CORAM: **Hon'ble Mr. Anil Choudhary, Member (Judicial)**
Hon'ble Mr. Bijay Kumar, Member (Technical)

Final Order No. 52705/2018

Per Bijay Kumar :

Being aggrieved with the provisional order No. 17/2017-18/V.S./COMMR(IMPORT) dated 30.3.2018, the appellant has filed the present appeal before us on the ground that the ld. Commissioner has imposed the condition for the provisional release of the seized goods, which is very harsh and drastic, difficult to be complied with.

2. To resolve the controversy before us, it is worthwhile to appreciate the facts and circumstances of the case, which related to

import of consignment of HOP extract vide Bill of Entry No. 5252339 dated 13.5.2016. On the basis of information that the declared price of the consignment is not in conformity with the contemporary price of the item imported, the customs seized the imported consignment vide Panchnama dated 10.8.2016. It is also worthwhile to mention that the importer has filed the Bill of Entry in respect of the imported consignment on 13.5.2016 on first check basis. However, the consignment remained pending clearance by the Customs department consequently the same became subject matter of Writ Petition No. 6739/2016 dated 1.8.2016 before Hon'ble High Court of Delhi. It is informed to the Hon'ble Court by Shri Sanjeev Narula, ld. CGSC on behalf of the department that Bill of Entry will be finalised within a period of 10 days. Thereafter, the goods were placed under seizure on 10.8.2016. Subsequent to seizure, the show cause notice was issued to the importer by the adjudicating authority viz. Joint Commissioner of Customs, ACC (Import), New Delhi vide SCN No. VIII/SIIB/CUS/ACC (Import)/22/2016 dated 11.8.2016 under Section 124 of the Customs Act. During the pendency of adjudication, the provisional release was granted by ld. Commissioner (Import) vide the impugned order of the provisional release of the goods.

3. The ld. Advocate on behalf of the appellant submitted that the conditions for the provisional release has been set forth in the impugned order which is as under:

(i) On submission of bond of Rs. 58,23,932/- i.e. full value of the seized goods;

(ii) On furnishing of a bank guarantee with auto renewal clause, for Rs. 45,00,000/- and;

(iii) An undertaking that the identity of the goods shall not be disputed.

5. The ld. Advocate has relied on the following case laws regarding the provisional release of the seized goods :

(1) ***Navshakti Industries Pvt. Ltd. Vs. CC, ICD, TKD, New Delhi*** – 2011 (267) ELT 483 (Del.);

(2) ***Bhaiya Fibres Ltd. Vs. Addl. Dir. General of Revenue Intelligence*** – 2012 (281) ELT 396 (Del.);

(3) ***Worldline Tradex Pvt. Ltd. Vs. CC (Import)*** – 2016 (340) ELT 174 (Del.);

(4) Final Order No. C/A/70628/2016-Cus.(DB) dated 5.8.2016 in case ***of M/s Ratan Aluminium Recycling Pvt. Ltd. Vs. CC, Noida.***

All these cases are pertaining to the provisional release of the seized goods under Section 110A of the Customs Act, 1962. To resolve the issue at hand, it is worthwhile to mention para 9 of the decision in case of ***Navshakti Industries Pvt. Ltd.*** (supra), which is reproduced as under:

> **"9.** Having heard learned counsel for the parties and having perused the decision relied upon by learned counsel

> for the Appellants, we are of the view that in the absence of any definite parameters having been laid down for the exercise of power by the Respondents under Section 110A of the Act, the only option that would be available to us would be to fall back on the Customs (Provisional Duty Assessment) Regulations, 1963. While it may be true that these Regulations would be applicable, *stricto sensu*, only in cases of provisional assessment under Section 18 of the Act, we are of the opinion that the guidelines laid down in these Regulations, in the absence of any other guidelines available to us, would equally apply in the case of a seizure under Section 110A of the Act, particularly in a case such as the present where the imported goods were unconditionally cleared by the Customs Authorities in the first instance."

6. On the other hand, ld. DR reiterated the grounds contained in the impugned order regarding the provisional release of the seized goods which is as per the guidelines issued by the CBEC under Circular No. 35/2017-Cus. Dated 16th August 2017, para 2.1, 2.2 and 2.3 which is relevant are reproduced as under:

> "2.1. Seized imported goods shall be released provisionally by the competent authority upon request of the owner of the seized goods, subject to executing a Bond for the full value/ estimated value of the seized goods.
>
> 2.2. Further, in addition to the Bond mentioned at Para 2.1. above, the competent authority shall take a Bank Guarantee or Security Deposit to cover the following:
>
> i. the entire amount of duty/differential duty leviable on the seized goods being provisionally released;
>
> ii. amount of fine that may be levied in lieu of confiscation under Section 125 of the Customs Act, 1962 at the time of adjudication of the case. While

> securing the same, the competent authority shall take into account the nature of the seized goods, the duty and charges payable on the said goods, their market price and the estimated margin of profit;
>
> iii. amount of penalties that may be levied under the Customs Act, 1962, as applicable, at the time of adjudication of the case.
>
> 2.3. Depending on the specific nature of a case, the competent authority may, for reasons to be recorded in writing, increase or decrease the amount of security deposit as indicated above."

7. After hearing the ld. Counsel from both the sides and after perusal of the appeal record, this is a case of provisional release of the seized goods which is governed by Section 110A of Customs Act, 1962, which is extracted as under:

> **"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 adjudicating authority may require."

8. From the perusal of the provision of Section 110A and Circular No. 35/2017 discussed (supra), it is quite evident that in case of provisional release of the seized goods is to be decided by the adjudicating authority who is competent to decide the case as per show cause notice. In this case, it is on record that Show Cause Notice has been issued by the Joint Commissioner of Customs who is also the adjudicating authority in the case. In the circumstances,

it is not understood as to how and why the provisional release was granted by the Commissioner who as per Show Cause Notice is not the competent adjudicating authority in this case. The proper course would have been to get the provisional release ordered by the Joint Commissioner of Customs to whom the show cause notice is made answerable from the importer. Therefore, the action of the Commissioner granting the provisional release itself is not sustainable and liable to be set aside.

9. In view of above, we set aside the impugned order and allow the appeal. As the provisional release is pending since long time we direct the adjudicating authority to release the goods in terms of guidelines contained in CBEC Circular No. 81/2011-NT dated 25.11.2011 and Circular No. 35/2017-Cus. dated 6.8.2017 within 10 days from the receipt of this order.

10. Misc. application also stands disposed of.

[Pronounced in Court on 2.8.2018]

(Anil Choudhary)
Member (Judicial)

(Bijay Kumar)
Member (Technical)

RM