DASTI

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

COURT NO. IV

DATE OF HEARING : 24/10/2018.
DATE OF DECISION: 24/10/2018.

Customs Appeals No. 52906-52907 of 2018

[Arising out of the Order No. VIII/ICD/10/TKD/SIIB-Imp/Inv/mishika ent./104/2018 dated 07/08/2018 and No. VIII/ICD/10/TKD/SIIB-Imp/Inv/Durga ent./98/2018 dated 07/08/2018 both passed by The Joint Commissioner (SIIB Import), Inland Container Depot, Tughlakabad, New Delhi.]

Shri Navjot Singh Lamba]
Proprietor of M/s Mishika Enterprises] Appellants
Shri Amit Ahuja]
Proprietor of M/s Durga Enterprises]

Versus

CC, New Delhi Respondent

Appearance

S/Shri Sonia Sharma and Amit Batra, Advocates – for the appellants.

Shri Rakesh Kumar, Authorized Representative (DR) – for the Respondent.

CORAM: **Hon'ble Shri C.L. Mahar, Member (Technical)**
Hon'ble Ms. Rachna Gupta, Member (Judicial)

Final Order No. 53140-53141/2018 Dated : 24/10/2018

Per. C.L. Mahar :-

The brief facts of the case are that M/s Mishika Enterprises a proprietorship firm has imported a consignment of water filter fitting Reverse Osmosis (RO) Membrane describing the same as water filter fitting – A&S – 7 (water filter parts) imported vide bill of entry No. 7160295 dated 10/07/2018 from Advance Union International Ltd. classifying the same under Customs Tariff Heading No. 84212120. The import price declared by the appellant was @ U.S. $ 2.25 per piece.

2. The Directorate of Revenue Intelligence has entertained a doubt that the value declared by the appellant for the above-mentioned import consignment was not a correct value as similar goods are being imported by other importers in the country at much higher prices and therefore after necessary examination the goods were put under seizure vide the seizure memo dated 07/08/2018. On the request of the appellant for provisional release of the seized goods as per the provision of the Customs Act. The Joint Commissioner (SIIB) Import, ICD, Tughlakabad, New Delhi vide its letters No. VIII/ICD/10/ TKD/SIIB-Imp/Inv/mishika ent./104/2018 dated 07/08/2018 and No. VIII/ ICD/10/TKD/SIIB-Imp/Inv/Durga ent./98/2018 dated 07/08/2018 ordered the provisional release of seized goods on conditional basis. The conditions on which the seized consignment were allowed to be provisionally released are as follows :-

> "(a) submission of bond for the full value of the seized goods amounting to Rs. 1,19,88,400/- in proper format for provisional release ;

(b) submission of bank guarantee of amount equal to differential duty of Rs. 8,85,374/- alongwith duty payment of Rs. 24,39,609/-. The bank guarantee shall contain auto renewal clause ;

(iii) submission of bank guarantee amounting to Rs. 3,00,000/- to cover redemption fine and penalty, if any that adjudicating authority may impose. The bank guarantee shall contain auto renewal clause".

For provisional release of the consignment imported by M/s Durga Enterprises, the following conditions for provisional release were conveyed by the Joint Commissioner, SIIB :-

"(a) submission of bond for the full value of the seized goods amounting to Rs. 1,19,68,120/- in proper format for provisional release ;

(b) submission of bank guarantee of amount equal to differential duty of Rs. 12,23,459/-. The bank guarantee shall contain auto renewal clause ;

(iii) submission of bank guarantee amounting to Rs. 4,00,000/- to cover redemption fine and penalty, if any that adjudicating authority may impose. The bank guarantee shall contain auto renewal clause".

3. Feeling aggrieved of tough conditions of the release of goods, the appellant had approached Hon'ble High Court of Delhi, wherein the Hon'ble High Court in its order dated August 10, 2018 has directed the appellant to approach this Tribunal saying : "*In case, the petitioner is aggrieved by the imposition of the conditions, which include payment of differential duty and any*

other amount, it is open to it to challenge it before CESTAT. In such event, CESTAT shall consider the submissions of the petitioner and dispose of the appeal expeditiously, having regard to the nature of goods – preferably, within four weeks".

4. Considering the above instructions of the Hon'ble High Court, we have heard both the sides and feel that on the preliminary evidences regarding under valuation of import consignment which have been advanced before us by the learned DR, we feel that the condition of provisional release appears to be financially tough on the part of the appellant and since the appellant is providing a bond of full value of seized goods and as the importer is a regular importer, we feel it proper to revise the above-mentioned conditions of the provisional release and allow the seized goods to be taken on provisional basis by complying with the following conditions :-

(i) that the importer will furnish bond for the full value of the seized goods in a proper format of the bond prevalent in the Customs Department ;

(ii) at the time of the release of the goods the importer will make full payment of the duty assessed on the declared value of the import consignment ;

(iii) that as a security to the above-mentioned bond a bank guarantee of Rs. 5,00,000/- will also be submitted to the Customs Department. The bank guarantee shall contain the auto renewal clause.

5. The above conditions will aply for both the import consignments.

6. In view of above, the appeals as above are allowed with the direction to the Customs Department that on compliance of the above conditions the goods may immediately be released to the appellant.

7. Order may be delivered **Dasti**.

(Order dictated and pronounced in the open court.)

(Rachna Gupta)
Member (Judicial)

(C.L. Mahar)
Member (Technical)

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