CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

Date of Hearing/Decision:22.11.2018

Customs Appeal No.52923/2018 (SM)

[Arising out of Order-in-Appeal No.258 to 260(SM) CUS/JPR/2017 dated 12.01.2018 passed by the Commissioner (Appeals), Customs, Jaipur]

Dharmesh B. Bhavsar …Appellant
Rep. by Shri N.K. Tiwari, Consultant for the appellant.

Vs.

CC, Jaipur-I ….Respondent
Rep. by Shri K. Podar, DR for the respondent.

CORAM **: HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)**

Final Order No.53373/2018

PER ANIL CHOUDHARY:

The present appeal is filed against the order-in-appeal dated 12.01.2018 vide which the ld. Commissioner (Appeals), Jaipur dismissed the appeal of the appellant for want of mandatory pre-deposit under Section 129 E of the Customs Act.

2. The ld. Counsel for the appellant points out from the order-in-original, that the goods in question, i.e. mobile phones of Chinese origin belonging to the appellant, had been absolutely confiscated. Further, penalty was imposed on the appellant of Rs.1 lakh under Section 112 (b)(ii) along with penalty under Section 114AA of the Act, totaling Rs.1,20,000/-. The appellant was under confusion whether they are required to make pre-deposit as their goods were absolutely confiscated. There was no other reason for not making the pre-deposit. He further pointed out that they have already made the pre-deposit being 10% of the penalty

i.e Rs.12,000/- by challan no.2501 dated 9.4.2018 deposited at Bank of Baroda. Copy of the challan is annexed in the paper book. In this view of the matter, ld. Counsel prays for allowing their appeal by way of remand to the Commissioner (Appeals) for a decision on merit.

3. Ld. Counsel further points out that their prayer for provisional release was not considered by the Adjudicating Authority. The admitted fact is that at the time of seizure, the driver of the truck from whose possession the goods have been seized, had mentioned the name of the appellant as owner. Further, the appellant had claimed the ownership of the goods before the Department. Accordingly, the ld. Counsel also prays that the ld. Commissioner be directed also to consider their prayer for provisional release in accordance with law.

4. Opposing the prayer as regards the provisional release of the goods, the ld. DR points out that from the record, it appears that there is no such prayer before the court below and accordingly, such prayer may not be considered, at this stage.

5. Having considered the rival contentions and in view of the fact that the appellant has now made the pre-deposit, it is a fit case to remand the matter, in the interest of justice, and accordingly, I remand the matter with the issue as regards the provisional release of the goods, to the ld. Commissioner (Appeals) with direction to hear the appellant and pass a reasoned order on merits, in accordance with law. I further direct the ld. Commissioner (Appeals) to consider the request of the appellant for provisional release of the goods in accordance with law. The appellant shall make a fresh application for the provisional release, giving the relevant facts and circumstances in claim of such prayer. The ld. Commissioner

(Appeals) is further directed to dispose of the prayer of the appellant regarding provisional release of the goods within a period of 3 weeks from the date of receipt of the copy of this order. The appellant is also directed to appear before the ld. Commissioner (Appeals) with copy of this order and seek opportunity of hearing.

[Order dictated & pronounced in open court]

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

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