

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL,
WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-DB

COURT – II

Customs Appeal No. C/50064/2019 [DB]

[Arising out of Order-in-Original No. VIII/ICD/10/TKD/SIIB-IMP/Inv/State Ent/12/2018/397 to 400 dated 04.04.2018 passed by the Joint Commissioner of Customs, ICD, Tughlakabad, New Delhi]

State Enterprises

...Appellant

Vs.

C.C., New Delhi

...Respondent

Present for the Appellant : Mr. A.K. Maggu, Advocate

Present for the Respondent : Mr. Sunil Kumar, D.R.

Coram: HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. S. SRIVASTAVA, MEMBER (TECHNICAL)

Date of Hearing / Decision 26.03.2019

FINAL ORDER NO. 50423/2019

PER: S. SRIVASTAVA

This Appeal has been filed by the appellant against the Order of Commissioner(Appeals) dated 26.11.2018. By the said Order Commissioner(Appeals) has modified the terms of provisional release of the consignment seized by reducing the bank guarantee from Rs. 18,94,220/- + Rs. 5,68,266/- to Rs. 12,00,000/- + Rs. 4,00,000/-.

2. Facts of the case are that appellant had imported a the consignment of LED monitors declaring them to be "LED monitors for computer screen". However, Revenue was of the opinion that these were television monitors. After consulting chartered engineers and taking his opinion Revenue proceeded

to seize the said goods vide memo dated 30.01.2018. Thereafter, appellants were offered provisional release vide the Order dated 04.04.2018. Against this Order, Appellant filed the Appeal to Commissioner(Appeals) and Commissioner(Appeals) as per Order in para 1, supra has modified the terms of provisional release of seized goods.

3. We have heard Shri AK Maggu, Ld. Advocate for the appellant and Shri Sunil Kumar, Ld. DR for the Department.

4. Arguing for the appellant, Ld. Counsel submitted that terms of provisional release even after modification by Commissioner(Appeals) are very harsh and they should be modified as per Supreme Court decision in the case of **Commissioner Vs. Navshakti Inds. Pvt. Ltd. 2011 (269) ELT A 146 (S.C.)**. He further submitted that even till date no notice initiating proceedings under Section 124 of Customs Act, 1962 has been issued to them. Hence goods should be released to them unconditionally in terms of Section 110(1) & Section 110(2).

5. Arguing for the Revenue Ld. AR submitted that the issue in the Appeal is provisional resale of the goods. The fact that no notice has been issued or extension has not been granted under Section 110(2) or not is not known however, since the matter of provisional release is before the Bench the matter can be decided to that effect on the basis of Circular dated

16.08.2017 decision of Delhi High Court in the case of **Mala Petrochemical & Polymers Vs. Commissioner of Customs (Import) ICD, New Delhi & ANR** reported in **2017 (353) ELT 446 (Del)**

6. We have considered the submissions made by both the parties during the course of arguments.

7. The issue can be disposed of with regard to release of goods on provisional basis. Even after lapse of more than one year and three months we are not in a position to be told that whether proceedings under Section 124 have been commenced or not. Revenue is not in a position to say whether 110(2) extension has been granted or not. However, since appellant have been pursuing with regard to modification of order of provisional release of the seized goods we agree to the prayer made with respect to the terms and conditions. Bank guarantee equivalent to 100% of differential duty and probable redemption fine and penalty cannot be justified, even to the extent as modified by the Commissioner(Appeals). Accordingly, we modify the terms as have been held by the Supreme Court to the extent of 30% of bank guarantee imposed by the Original authority i.e. 30% of the amount of Rs. Rs. 18,94,220/- + Rs. 5,68,266/- imposed and accordingly. Total bank guarantee that may be given by appellant is reduced to Rs. 7 lakhs.

8. Revenue is directed to allow provisional release on execution of bond of value as directed by Order dated 04.04.2018 and bank guarantee of Rs. 7 lakhs within a period of one month from date of receipt of this Order.

9. Appeal is thus partially allowed.

[Dictated and pronounced in the open Court]

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)
D.J.

(S. SRIVASTAVA)
MEMBER (TECHNICAL)