CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH COURT NO.II

Customs Appeal No. 51612 of 2017(DB)

(Arising out of Order-in-Original No. 02-2017-RNS-COMMR-IMP-ICD-TKD dated 20/01/2017 passed Commissioner of CUSTOMS (IMPORT)-NEW DELHI(ICD ITC))

United Exports **Appellant**
109/3, KM Stone, G T Road
Gharaunda, Karnal, Haryana

Versus

Commissioner of Customs, Delhi
(ICD TKD) **Respondent**
Inland Container Deport, Tuglakabad
ICD, Delhi

Appearance
Ms. Prabjyoti Chadda, Advocate for the appellant
Shri Sunil Kumar, Authorized Representative for the respondent

CORAM:
Hon'ble Smt. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Bijay Kumar, Member (Technical)

Date of Hearing/Decision: 07.05.2019

Final Order No: 50637/2019

Per Archana Wadhwa

1. The present impugned order stands passed in *de Novo* proceedings when the matter was earlier remanded by the Tribunal vide its Final Order No. 53891/2016 dated 29/09/2016. The concluding part of the order is as follows;

> *8. Considering the facts and circumstances on record and following the principles laid down in the*

> *cases of Commissioner of Customs and Central Excise, Indore vs. Neo Sack Ltd. 2009 (238) ELT 88, Commissioner of Customs (kandla) vs. APL India Ltd. 2008 (230) ELT 468 (Tri.-Ahmd.) the Commissioner of Customs is directed to reconsider the matter leniently to grant ex-post facto permission for re-export within the further period of 6 months in terms of Notification No. 158/95-Cus (Supra) and the demand of duty of Rs. 8,64,587/- along with interest on the re-imported goods, namely, Basmati Rice, which have been factually re-exported by the appellant vide shipping Bill No. 1865804 dated 01.07.2008 is hereby set aside. The issue of granting permission ex-post facto is remanded back for decision within 3 months of receipt of this order after giving opportunity of personal hearing to the appellant.*

As is seen from above the duty demand confirmed against the appellant stands set aside by the Tribunal.

2. Further, we are informed that there was neither any penalty nor any redemption fine. While setting aside the demand of duty, Tribunal directed the Commissioner to sanction *ex post facto* permission for re-export of the goods, as the goods had already been export.

3. The Commissioner vide present impugned order, instead of granting such permission again rejected the same. We really fail to understand the meaning of such rejection for re-export of the goods, when the same has already been re-exported and there is no consequence of such rejection of re-export. Ld. Advocate explains that they have given bank guarantee during the course of first adjudication, which the Revenue is refusing to release.

4. We note that no penalty or redemption fine is involved and there was only duty demand which has already been set aside by the Tribunal. The matter was remanded only for technical reason of allowing the re-export by the Commissioner. The refusal of the same by the

Commissioner does not lead to any confirmation of any amount against the assessee and, who is entitle to the refund of or release of the bank guarantee, in as much as the demand has already been set aside by the Tribunal.

5. In view of above observations, we set aside the impugned order and allow the appeal with any consequential relief to the appellant.
6. The Revenue is directed to release the bank guarantee of the assessee. Appeal is disposed of in above terms.

(Dictated and pronounced in open court)

(Bijay Kumar)
Member (Technical)

(Archana Wadhwa)
Member (Judicial)

Tejo