IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA
REGIONAL BENCH - COURT NO.1
Customs Appeal No.76183 of 2018
(Arising out of Order-in-Appeal No.KOL/CUS(Port)/AA/6/2018 dated 02.01.2018 passed by Commissioner (Appeals) of Customs, Kolkata.)

Commissioner of Customs (Port), Kolkata
(15/1, Strand Road, Custom House, Kolkata-700001.)
...Appellant

VERSUS

M/s. Opel Exports
.....Respondent
(10, Saha Lane, Kolkata-700007.)
WITH

Customs Appeal No.76184 of 2018
(Arising out of Order-in-Appeal No.KOL/CUS(Port)/AA/5/2018 dated 02.01.2018 passed by Commissioner (Appeals) of Customs, Kolkata.)

Commissioner of Customs (Port), Kolkata
(15/1, Strand Road, Custom House, Kolkata-700001.)
...Appellant

VERSUS

M/s. R.K.Exports
.....Respondent
(17A, Ratan Sarkar Garden Street, Kolkata-700007.)

APPEARANCE

Shri Manish Mohan & Shri S.Debnath, both Authorized Representatives for the Appellant (s)
NONE for the Respondent (s)

CORAM: HON'BLE SHRI ASHOK JINDAL, MEMBER(JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER(TECHNICAL)
FINAL ORDER NO. 76275-76276/2023

DATE OF HEARING : 2 August 2023
DATE OF DECISION : 2 August 2023

Per : ASHOK JINDAL :

Revenue is in appeal against the impugned orders passed by the Ld.Commissioner(Appeals) for provisional release.

2. The facts of the case are that initially after importation on filing of the Bill of Entry, the goods were seized and the respondents sought the release of the goods provisionally under section 110A of the Customs

Act, 1962. The said request of the respondents were rejected by the adjudicating authority on 07.12.2017. The said letter has been issued to the respondents by Deputy Commissioner of Customs, Gr.VI, Customs House, Kolkata with the approval of the Commissioner of Customs (Port). The respondent challenged the said orders before the Ld.Commissioner(Appeals) on the ground that these orders have been passed by the Deputy Commissioner of Customs Gr.VI, Customs House, Kolkata. The Ld.Commissioner(Appeals) dealt the issue and allowed provisional release. Against the said orders, the revenue is in appeal saying that the Ld.Commissioner(Appeals) has no power to hear the appeal against the order passed by the Commissioner of Customs (Port). Therefore the impugned orders are to be set aside.

3. None appeared on behalf of the respondent.

4. We heard the Ld.AR for the department and perused the records.

5. We find that whole dispute arose in respect of the letter issued by Deputy Commissioner of Customs dated 07.12.2017 which is extracted here :-

GOVERNMENT OF INDIA
OFFICE OF THE COMMISSIONER OF CUSTOMS (PORT)
CUSTOMS HOUSE, 15/1, STRAND ROAD, KOLKATA-700001.

F.NO.S37C(Misc)-158/2017A(6) DATE:__/12/2017

To

M/s. R.K.Exports
17A, Ratan Sarkar Garden Street
Kolkata-70007

Subject: Provisional release of goods as imported Bills of Entry No.3081943 dated 29.09.2017 – reg.

Please refer to the letter dated 03.10.2017 on the above subject.

The request has been examined

In this connection reference is made to Section 110A of the Customs Ac5, 1962, relating to provisional release of goods, documents and things seized pending adjudication, which stipulates that *"any goods, documents or things seized under section 110, may, pending the order of the [adjudicating authority], 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.*

However, on the basis of DRI, Kolkata Zonal Unit investigation, so far, it revealed that goods are imported by Shell Company and ownership of the goods is yet to be investigated. IEC holder is also not co-operating with the investigation authority.

In view of above request for provisional release of the goods under section 110A of the Customs Act, 1962, for the Bills of Entry No.3081943 dated 29.09.2017, is rejected.

This issues with approval of Commissioner of Customs (Port).

Sd/
07/12/17
(Md.Faizul Haque)
Deputy Commissioner of Customs (Gr.VI)
Customs House, Kolkata

Copy to :

The Assistant Director,
Directorate of Revenue Intelligence,
Kolkata Zonal Unit,
8, Ho Chi-Minh Sarani,
Kolkata-700071.

6. As the said letter has been issued to the respondents with approval of the Ld.Commissioner of Customs (Port), in that circumstances, it is held that the said order has been passed by the Commissioner of Customs (Port) and against the order passed by the Commissioner of Customs (Port), the appeal lies before this Tribunal. Therefore, the Ld.Commissioner(Appeals) has no power to entertain the appeals against the order passed by Ld.Commissioner of Customs (Port). Accordingly, we set aside the impugned orders by allowing the appeals filed by the revenue.

(Dictated and pronounced in the open Court.)

Sd/
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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