

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

WEST ZONAL BENCH

Customs Appeal No. 87673 of 2019

(Arising out of Order-in-Original No. S/26/Misc-1688/2019-Gr.I & IA dated 12.06.2019 passed by the Commissioner of Customs Gr.I/IA, Jawaharlal Nehru Customs House, Nhava Sheva)

M/s. Nathi Mal Rugan Mal
6689, Khari Baoli
Delhi

.....Appellant

Vs.

Commissioner of Customs, Nhava Sheva-IRespondent
Jawaharlal Nehru Port Trust,
CUSTOM HOUSE,
NHAVA SHEVA, RAIGAD

APPEARANCE:

Shri Akarsh Srivastava, Advocate for the appellant
Shri K K Srivastav, (AR) for the respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER No: A/86451 / 2021

DATE OF HEARING : 15-07-2021
DATE OF DECISION : 15-07-2021

PER: SHRI P. ANJANI KUMAR

This appeal is filed against communication dated 12-06-2019 issued by the Deputy Commissioner of Customs Group I/IA, JNCH, conveying the provisional release of goods (Long Pepper) imported vide bill of entry No 9432324 dated

27.12.2018 under Section 110 A of the Customs Act, 1962; Learned Commissioner allowed the provisional; release of goods subject to furnishing a Bond for ₹65,79,899/- and a Bank Guarantee of ₹30,00,000.

2. Learned Counsel for the appellants submits that the appeal, though against an administrative order, is maintainable under Section 129(A) of the Customs Act, 1962 as held in

(i). CC, Chennai-II Vs Novel Impex 2019(365) ELT 312-Mad

(ii). Max Enterprises Vs DCC Chennai-II 2019(367) ELT 753-Mad

(iii). Commissioner Vs Navashakti Industries Pvt Ltd 2011 (269) ELT A 146- SC

(iv). Daya Enterprises Vs CC(Export) 2016 (336) ELT 73-Delhi

3. He further submits that during the course of investigation conducted by DRI against past imports, they have deposited ₹70,00,000/- already. In respect of the impugned goods seized by DRI, they have paid duty of ₹3,52,040/- and deposited ₹10,00,000. He further submits that the goods which are perishable in nature are lying under seizure for about two and half years now and the appellant has suffered huge financial loss on this count. He requested that the as the terms and conditions of the bond are harsh the same may be set aside.

4. Learned authorized representative for the department submits that the Bank Guarantee is fixed looking in to the duty liability

and interest etc. involved and therefore, no intervention by the bench is required.

5. Heard both sides and perused the records of the case. On going through the case law cited, we are of the considered opinion that the appeal is maintainable under Section 129(A) of the Customs Act, 1962. The appellants claim that they have cooperated with the investigation and have deposited ₹70,00,000 (Rupees Seventy Lakhs only) towards the duty liability, if any, that may arise on the past imports after completion of investigation; in respect of the impugned goods also they have deposited more than ₹13,00,000/-. They have suffered huge pecuniary losses and the goods are also damaged considerably for the last 2-3 years. On going through the records of the case, we find that the appellants have been cooperating with the investigation and have deposited substantial sums during the investigation only before the passing of any formal adjudicating order confirming the duty. Under the circumstances, we find that the appellant has established his bona fides. The appellants have requested to set aside the conditions of provisional release. We find that setting aside the same would place revenue interests in jeopardy. At the same time we need to take in to account the hardship of the appellant and the financial losses they have undergone. Therefore, we find that ends of Justice would be met if the amount of Bank

Guarantee to be given is modified suitably, while keeping the condition of Bond as it is.

6. Accordingly, the appeal is allowed partially. The Bank amount for submission of Guarantee is fixed at ₹5,00,000 (Rupees Five Lakhs only) in place of ₹30,00,000 (Rupees Thirty Lakhs) and the amount of ₹65,79,899/ fixed for Bond remains unaltered.

(Operative part pronounced in open Court)

(S.K. Mohanty)
Member (Judicial)

(P. Anjani Kumar)
Member (Technical)

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