(2021) 11 CESTAT CK 0055

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 75709 Of 2021

M/s Apex International — APPELLANT

Vs

Commissioner Of Customs (Port), Kolkata — RESPONDENT

Date of Decision : 16-11-2021

Acts Referred:
Customs Act, 1962 — Section 110A, 110(2), 123, 124, 125

Citation : (2021) 11 CESTAT CK 0055

Hon'ble Judges : P. K. Choudhary, J

Bench : Single Bench

Final Decision : Disposed Of

Judgement

1. The present appeal is against the Order-in-Original No.DRI/KZU/CF/ENQ-06(INT-03)/2021 dated 29.07.2021 passed by Principal Commissioner of Customs (Port), Kolkata.

2. Briefly stated the facts of the case are that in the course of business, the appellants had imported certain goods vide Container No.TRHU5329180 and declared the same under Bill of Entry No.2724802 dated 11.02.2021. The Bill of Entry was filed by M/s R.M.Carriers Pvt. Ltd. (CHA). The goods so imported were covered under Commercial Invoice No.KVO/20-21/012 dated 06.01.2021. Subsequently, the appellants received an e-mail dated 14.02.2021 from the foreign exporter that there is an error in the Commercial Invoice and Packing List, which were sent to the appellants for the purposes of filing afresh. This e-mail was forwarded to the CHA by the appellants. In the meantime, the CHA informed the appellants that the DRI Authorities had examined the imported consignments and have kept the goods under detention.

3. The Ld.Advocate appearing on behalf of the appellants, submitted that the DRI Authorities were regularly approached requesting them to release the goods under detention. In the meantime, several summons were issued to the appellants, to which, they complied. The DRI vide e-mail dated 31.03.2021,

intimated the appellants that the goods were kept under detention. It is also submitted that the goods so seized have been valued at Rs.52,75,957/- vide order dated 31st March 2021, which is much more than the declared value. The Ld.Principal Commissioner of Customs vide the impugned order, extended the period of time for issuance of show-cause notice under Section 124 of the Customs Act, 1962. This order is under challenge in the present appeal proceedings.

4. The Ld.Advocate submitted that on approaching the Customs Authorities for provisional release of the seized goods, no response has been received from them. It is only mentioned at Para 8.3 of the impugned order that the Principal Commissioner of Customs has discussed the request for provisional release of the seized goods. He also submitted that in the cause of detention of the imported goods, the appellant is incurring demurrages and losses. Finally, the Ld.Advocate prayed that the order of extension passed by the Ld.Principal Commissioner is arbitrary and may be set aside.

5. The Ld.D.R. for the Revenue, submitted that the Ld.Principal Commissioner was within his right to order extension of the period for issuance of show-cause notice under Section 110 (2) (as amended) of the Customs Act, 1962. The Ld.D.R. further mentioned that this sub-section was amended w.e.f. 29.03.2018 and empowering the Commissioner to order such extension suo motu without any reference to the person from whom the goods were seized. As such, he submitted that the impugned order does not suffer from any illegality and the same may be upheld. He also submitted that none of the goods are perishable in nature and the seized goods i.e. sun glasses, ladies bags etc. may be branded goods and the same may attract violation of Intellectual Property Right (IPR) and there is gross mis-declaration. Under these circumstances, the seized goods should not be released provisionally.

6. Heard both sides through video conferencing and perused the appeal records.

7. Section 110A of the Customs Act, 1962, reads as follows :

"110A. Provisional release of goods, documents and things seized pending adjudication :

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."

I observe from the submission of the Ld.Advocate for the appellants that the goods under detention/seizure are neither prohibited items nor restricted items and hence the same are not subjected to any statutory permission. The Central Board of Excise & Customs has issued Guidelines for provisional release of seized imported goods pending adjudication under Section 110A of the Customs Act, 1962, which reads as under :

"2. While provisional release of seized imported goods under Section 110A of the Customs Act, 1962 may normally be considered by the competent adjudicating authority upon a request made by the owner of the seized goods, provisional release shall not be allowed in the following cases -

(i) Goods prohibited under the Customs Act, 1962 or any other Act for the time being in force;

(ii) Goods that do not fulfill the statutory compliance requirements/obligations in terms of any Act, Rule, Regulation or any other law for the time being in force;

(iii) Goods specified in or notified under Section 123 of the Customs Act, 1962;

(iv) Where the competent authority, for reasons to be recorded in writing believes that the provisional release may not be in the public interest.

2.1 Seized imported goods shall be released provisionally by the competent authority upon request of the owner of the seized goods, subject to executing a Bond for the full value/estimated value of the seized goods.

2.2 Further, in addition to the Bond mentioned at Para 2.1 above, the competent authority shall take a Bank Guarantee or Security Deposit to cover the following :

i. the entire amount of duty/differential duty leviable on the seized goods being provisionally released;

ii. amount of fine that may be levied in lieu of confiscation under Section 125 of the Customs Act, 1962 at the time of adjudication of the case. While securing the same, the competent authority shall take into account the nature of the seized goods, the duty and charges payable on the said goods, their market price and the estimated margin of profit;

iii. amount of penalties that may be levied under the Customs Act, 1962, as applicable, at the time of adjudication of the case."

8. It is also submitted by the Ld.Advocate on behalf of the appellant importer, that they are willing to execute the bond for the full value as per the adjudication order. Accordingly, the appellants are directed to execute the bond backed by the Bank Guarantee. On execution of bond and bank guarantee, the Adjudicating Authority shall grant the provisional release of the consignment. I also direct that the quantum of bond should be sufficient enough to cover the duty, redemption fine and penalty likely to be imposed during the adjudication taking into consideration the various circulars issued by the CBEC.

9. In view of the above, I direct the Ld.Principal Commissioner (Prev.) to consider the request made on behalf of the appellants for provisional release of the goods.

10. With the above observations, the appeal is disposed off.

(Pronounced in the open court on 16.11.2021)

