**(2023) 12 CESTAT CK 0056**

**In the Customs, Excise And Service Tax Appellate Tribunal**

**Case No :** Customs Appeal No. 86387 Of 2022

M/S Parekh Industries Ltd — APPELLANT

Vs

Commissioner Of Customs (Export), ACC, Mumbai — RESPONDENT

**Date of Decision :** 19-12-2023

**Acts Referred:**

Constitution Of India, 1950 — Article 226
Customs Act, 1962 — Section 110, 110A, 110(1), 110(2)
Customs Act, 1962 — Section 28, 28(9), 122, 122A, 124

**Citation :** (2023) 12 CESTAT CK 0056

**Hon'ble Judges :** S.K. Mohanty, Member (J);M.M. Parthiban, Member (T)

**Bench :** Division Bench

**Advocate :** Prakash Shah, S.K. Hatangadi

**Final Decision :** Dismissed

# Judgement

M.M. Parthiban, Member (T)

1. Brief facts of the case are that M/s Parekh Industries Limited, Prince House, 51/3, Marol Co-op. Indus. Estate, M.V. Road, Andheri (East), Mumbai – 400059 (herein after referred to as “the appellants”), is engaged inter-alia in the manufacture and the export of Potassium Gold Cyanide (PGC), a chemical compound of gold metal, availing the facility of Advance Authorisation, besides supplying the same in the domestic market on payment of applicable duties/ taxes. The manufacturing process adopted by the appellants involves import of lower grade PGC from abroad and improving the purity content of gold in their factory for exporting the resultant product as higher grade PGC. Further, the appellants also imports gold bars by availing exemption from payment of import duty under Notification No. 18/2015-Customs dated 01.04.2015, under Advance Authorisation with actual user condition. The imported gold is melted in their factory premises and remade in the form of gold bars of various sizes with the brand name of the appellants as “PAREKH Industries Ltd.” and sold in the domestic market on payment of applicable tax/GST. The appellants were availing

exemption from payment of customs duty on import of Gold bars under Advance Authorisation Scheme. Further, the Appellants were also availing other export incentives such as IGST refunds of tax paid on the export goods and Duty Credit Scrips under the Merchandise Exports from India Scheme (MEIS). The Directorate of Revenue Intelligence (DRI), Bengaluru on the basis of reasons to believe that the appellants have contravened the provisions of the Customs Act, 1962, by disposing the imported gold in the domestic market as such and are circulating the imported PGC, by exporting it to Dubai and re-importing the same through Indonesia, back to India, have conducted search proceedings and the appellant’s factory-cum-office premises and the residential premises of Shri Rajesh J. Parekh, President & CEO on 09.07.2021 and 10.07.2021. On completion of search proceedings, 100 kg. of PGC presented for export in the Shipping Bills (S/B) No.2962080 and No. 2961738, both dated 07.07.2021 totally valued at US $ 4,334,400/ Rs.31,90,11,840/- at Air Cargo Complex (Export), Mumbai and gold bars, strips and dust valued at Rs.6,84,60,605/- and PGC / chemicals of precious metals valued at Rs.4,35,70,249/- available at the factory premises of the appellants in Mumbai along with documents and other records were seized under Section 110 of the Customs Act, 1962. Consequent to this, the appellants had filed a Writ Petition No. 3788 of 2021 before the Hon’ble High Court of Bombay challenging the seizure of the goods, seeking directions for release of the same, removal of alert for 100% examination of export goods, removal of suspension of IGST refund and registration of MEIS duty scrips. Upon hearing the case the Hon’ble High Court had passed an interim order dated 29.03.2022 directing the petitioner to make an application for provisional release of the seized goods and the same to be decided within 10 days by the competent authority from the date of such application. At the request of the appellants vide their letter dated 31.03.2022 requesting for provisional release of seized goods, the competent authority i.e., Commissioner of Customs (Export), Air Cargo Complex, Sahar, Andheri, Mumbai had accorded permission for release of seized goods provisionally on execution of the Bond of an amount equivalent to the value of the goods along with furnishing of security of 50% of the value of goods vide office letter F. No. S/6-Misc-292/19-20/ACC(X) PT-I dated 11.04.2022. Being aggrieved by the decision of the said Commissioner of Customs (Export), Mumbai, the appellants have filed this appeal before the Tribunal.

2. While the matter was pending before the Tribunal, the appellants had approached the Hon’ble High Court of Bombay and obtained the final order dated 27.06.2023. In the said judgement, the Hon’ble High Court of Bombay had requested the Tribunal to take up their appeal and decide the same as expeditiously as possible and within a period of 3 months. The relevant paragraphs of the said order of the Hon’ble High Court is extracted and given below, for ease of reference:

“2. The Petitioner has approached this Court praying for the following reliefs:-

“(a) This Hon’ble court be pleased to issue a Writ of Certiorari or any other appropriate Writ, order or direction calling for the records of the present case and after going through the legality and validity thereof be pleased to quash and set aside the impugned the order for seizure of:

i. Export consignment of Potassium Gold Cyanide("PGC") of 50 KG each of Shipping Bills No.2962080 and No.2961738, both dated07.07.2021, totally valued at US $ 4,334,400.00(Equivalent to INR 31,90,11,840/-) at Air Cargo(Export) Complex, Mumbai; and

ii. Export related precious metals (i.e. Gold Bars, Strips, and Dust) valued at Rs.6,84,60,695/- and chemicals thereof worth Rs.4,35,70,249/- [Totally worth Rs.11,20,30,944/-] at the Petitioner's factory premises in Mumbai on 10.07.2021.

b. This Hon'ble Court be pleased to issue writ of Mandamus or a writ of the nature of Mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India, ordering and directing the Respondents, their subordinate servants and agents:

(i) To release the aforesaid seized export goods and export related stock of goods;

(ii) To remove an alert for 100% examination of export consignment for the Petitioner from the Indian Customs EDI System (ACES);

(iii) To remove suspension of IGST Refund totally amounting to Rs.11,21,81,858/- for the months of April 2021 and June 2021; and

(iv) To register MEIS (merchandise Exports from India Scheme) Duty Credit Scrip issued by the DGFT totally amounting to Rs.4,38,54,848/- with the Mumbai Air Cargo Customs.

(c) That pending the hearing and final disposal of the above Petition, this Hon'ble Court be pleased to, by an interim order and injunction of this Hon'ble Court:

(i) Direct the Respondents to release the impugned goods seized and grant waiver of execution of Bond/security in the interim, which would be subject to outcome of this writ petition, or to pass any other Order(s) as this Hon'ble Court may deem fit in the given facts and circumstances of the present case."

3. This petition was filed on 14th December 2021, after which the Petitioner came to be issued two show cause notices, one show cause notice dated 1st July 2022 (Exhibit-H, page 185A-1 to 185A-150) and the second show cause notice dated 5th July 2022 (Exhibit-I, page 185A-151 to 185A-266). The show cause notices are pending adjudication.

4. Mr. Shah has also drawn our attention to an order dated 29th March 2022 passed by the Coordinate Bench of this Court is concerned. One of the Petitioner's relief which was for release of the seized export goods and export related stock of goods, in such regard, the Division Bench directed that the Petitioner shall make an application for provisional release of the goods and if

 

such application is made, the same shall be decided within 10 days by the concern Authority from the date of the said application.

5. Mr. Shah has submitted that accordingly, such an application was made and an order was passed on such application, which is now challenged by the Petitioner and the subject matter is pending appeal before the Tribunal.

6. It is on such backdrop, the proceedings are before us. Admittedly, the two show cause notices as referred by us are pending adjudication. Mr. Shah would submit that the immediate concern of the Petitioner is in regard to prayer clauses b(iii) and b(iv) of the petition, which is in relation to the Petitioner's claim, which according to the Petitioner falls outside the said show cause notices. It is Mr. Shah's submission that such claim of the Petitioner is required to be decided by the Respondents independent of the adjudication of show cause notices.

7. Insofar as the above factual position is concerned, Mr. Mishra would not dispute the same that the show cause notices are yet to be adjudicated. Insofar as the Petitioner's contention in regard to prayer clauses b(iii) and b(iv) are concerned, Mr. Mishra would submit that it would be appropriate that the Petitioner makes a representation/ application to the concern Authority, so that the claim of the Petitioner in that regard can be decided.

8. Mr. Mishra would submit that in these circumstances, as the issues are pending consideration of the department, the reliefs as prayed for in the petition are not to be considered at this stage, as the petition according to him itself is premature.

9. We have heard learned counsel for the parties. We have also perused the record. In the facts and circumstances of the present case, we are of the clear opinion that the concerned Authorities need to adjudicate the show cause notices dated 1st July 2022 and dated 5th July 2022, as expeditiously as possible and in accordance with law.

10. Insofar as the reliefs as prayed for in terms of prayer clauses b(iii) and b(iv) are concerned, we are of the opinion that it is appropriate that the claim of the Petitioner is decided by the concerned Authorities for refund of duty (IGST) and for registration of the duty credit scrips, as expeditiously as possible and in any event within a period of three months from today.

11. The proceedings arising from the provisional release are already pending before the Tribunal as noted above, and as the present proceedings are pending, the said appeal was not being heard as informed by Mr. Shah. We accordingly request the Tribunal to take up the appeal and decide the same as expeditiously as possible and within a period of three months from today.

12. All contentions of the parties in regard to the pending proceedings before the department are expressly kept open.

13. Petition is disposed of in the above terms. No costs.

14. Parties to act on an authenticated copy of this order.”

3. On careful reading of the above judgement of the Hon’ble High Court of Bombay, it is clear that the directions for this Tribunal is to decide the issue arising out of the appeal filed by the appellants in respect of provisional release of the seized goods. Further, it is clearly spelt out in the said judgement, that other issues such as adjudication of the show cause proceedings vide Show Cause Notice (SCN) dated 01.07.2022 and 05.07.2022, IGST refunds, registration of MEIS scrips are to be decided by the concerned authorities, and thus these issues are not for consideration before this Tribunal.

4. In the appeal papers filed by the appellants, they had sought for unconditional release of seized goods without insisting on any security and prayed for setting aside the permission dated 11.04.2022 accorded for provisional release of seized goods by the Commissioner of Customs (Export), Air Cargo Complex, Mumbai. In this regard, we would like to peruse the legal provisions contained in the Customs Act, 1962 on the issue of Provisional release of goods and the actions that are to be taken consequent to the seizure of the goods under the said Act of 1962. The relevant legal provisions of the Customs Act, 1962, are extracted below:

Section 110. Seizure of goods, documents and things. -

(1) If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods:

xxx xxx xxx xxx

(2) Where any goods are seized under sub-section (1) and no notice in respect thereof is given under clause (a) of section 124 within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized:

Provided that the Principal Commissioner of Customs or Commissioner of Customs may, for reasons to be recorded in writing, extend such period to a further period not exceeding six months and inform the person from whom such goods were seized before the expiry of the period so specified:

Provided further that where any order for provisional release of the seized goods has been passed under section 110A, the specified period of six months shall not apply.

(3) The proper officer may seize any documents or things which, in his opinion, will be useful for, or relevant to, any proceeding under this Act.

(4) The person from whose custody any documents are seized under sub-section (3) shall be entitled to make copies thereof or take extracts therefrom in the presence of an officer of customs.

xxx xxx xxx xxx

 

Section 110A. Provisional release of goods, documents and things seized or bank account provisionally attached pending adjudication. -

Any goods, documents or things seized or bank account provisionally attached under section 110, may, pending the order of the adjudicating authority, be released to the owner or the bank account holder on taking a bond from him in the proper form with such security and conditions as the adjudicating authority may require.

5. From the perusal of the above legal provisions of the Customs Act, 1962, it transpires that 'the proper officer' under Section 110(1) ibid, if he has reason to believe that any goods are liable to confiscation, then he may seize the goods. In terms of sub-section (2) to Section 110 ibid, a Show Cause Notice (SCN) in respect of the seized goods is required to be given within a period of 6 months to the person from whose position the goods were seized. For any reasons to be recorded in writing, such period of 6 months may be extended to another 6 months' time by competent authority specified therein. It is also provided that this time limit does not apply in cases where the goods have already been released to the goods. However, CBIC in its instructions No.1/2017-Customs dated 08.02.3017 had required that the field formations shall adhere to the time limits prescribed under Section 110(2) ibid, irrespective of the fact that whether goods remain seized or are provisionally released. It is a fact on record that in respect of all seized goods, the SCNs have been issued on 01.07.2022 and 05.07.2022, and the same are required to be adjudicated as per limitation of power/value limits in the procedure of adherence to principles of natural justice as specified under section 122, 122A and 124 ibid. Central Board of Indirect Taxes & Customs (CBIC) in accepting the recommendations of Comptroller & Auditor General of India (C&AG) have prescribed certain time frames within which the cases involving seizure of goods alone, without involving any demand of duty under Section 28 shall be adjudicated by the concerned officers by issue of Circular No.3/2007-Customs dated 10.01.2007. For cases to be adjudicated within the competence of Principal Commissioner/ Commissioner of Customs or an Addl./ Joint Commissioner of Customs, one year from the date of service of the SCN has been fixed as the outer time limit; for the authorities below, namely Asst./Dy. Commissioners and other gazetted officers, the time limits have been fixed as 6 months and 3 months, respectively. Further, in cases where such time limits could not be adhered to by an adjudicating authority, due to circumstances that prevented from observing that time limits, then the supervisory officer has been asked to fix appropriate timeframe for disposal and monitoring of such cases. In respect of cases involving confiscation of goods along with demand of duty under section 28 ibid, statutory provisions under sub-section (9) to Section 28 ibid provide for a maximum time of 6 months and one year from the date of SCN as the outer time limit within which the cases has to be adjudged for determining the duty and/or interest liability payable, in normal cases and in cases involving collusion or wilful mis-statement or suppression of facts, respectively. Further, where such adjudicating authority was prevented from

 

determining the duty liability in exceptional circumstances, the superior officer to such authority may extend for further period of 6 months and one year, respectively, in such cases.

6.1 Further, from the plain reading of the provisions of Section 110(A) ibid, we find it evident that any goods, documents or things seized or bank account provisionally attached under Section 110 ibid, may pending the order of adjudicating authority, be released to the owner or the bank account holder on taking a bond from him in the proper form with such security and conditions as the adjudicating authority may require. However, once the adjudication order has been passed in respect of the seized goods, there is no further action left in respect of such seized goods for consideration on its provisional release by an appellate forum.

6.2 The factual matrix of the case before us indicate that the competent authority had issued two SCNs dated 01.07.2022 and 05.07.2022 inter-alia, in relation to the goods seized, which are the subject matter of provisional release in the case before us. Of course, the said SCNs have also been issued on the appellants for various violations of the Customs Act read with other related legal requirements for import/export of the impugned goods under other Acts. It has been brought to our notice by the learned AR through a 'Declaration for Mention' submitted on 06.12.2023, stating the that the Commissioner of Customs-IV (Export), Air Cargo Complex, Sahar, Mumbai had adjudicated the said show cause notices and had issued an Order-in-Original CAO NO.CC/RK/11/2023-24 Adj.(X) ACC dated 06.10.2023, during the pendency of the appeal regarding provisional release of goods before the Tribunal. The above latest development in the show-cause notice proceedings have been informed by the Commissioner of Customs- IV (Export), through his office letter dated 30.11.2023 to the Principal Commissioner, CESTAT, Mumbai. Accordingly, the AR has submitted that the above facts relating to the latest development of the case may kindly be taken up for consideration by the Tribunal.

6.3 On the basis of our above analysis of the legal provisions contained in Section 110 (A) ibid, and in view of the aforesaid development in the pending show-cause proceedings before the Commissioner of Customs- IV (Export), we are of the considered view, that the appeal for provisional release of goods has become infructuous on account of final orders having been passed on the show cause notices issued in respect of such seizure of goods.

7. In view of the above factual position, we are of the considered view that appeal filed by the appellants has become infructuous inasmuch as the SCNs issued by the department had already been adjudicated. Hence, the present appeal filed before the Tribunal for unconditional release of the seized goods cannot be considered. Accordingly, the appeal filed by the appellants is dismissed as infructuous.

 