
(2024) 01 CESTAT CK 0016

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No.60765, 60766 Of 2023

M/s Shanus Impex And Others

APPELLANT

Vs

Commissioner Of Customs, Amritsar

RESPONDENT

Date of Decision : 04-01-2024

Acts Referred:

Citation : (2024) 01 CESTAT CK 0016

Hon'ble Judges : S. S. Garg, Member (J);P. Anjani Kumar, Member (T)

Bench : Division Bench

Advocate : Vikrant Kackria, Narinder Singh, Shivam Syal

Final Decision : Disposed Of

Judgement

P. Anjani Kumar, Member (T)

1. Brief issue involved in both these appeals, filed by M/s Shanus Impex [Appeal No. C/60765/2023-CU (DB)] and by M/s S.K. Overseas [Appeal No. C/60766/2023-CU (DB)], concerns conditions of the provisional release of seized garlic imported, availing the benefit of Notification No.99/2011-CUS dated 09.11.2011, applicable to the imports under South Asia Free Trade Area Agreement (SAFTA). On the basis of an investigation conducted by the Directorate of Revenue Intelligence, the goods imported appeared to be of non-Afghanistan origin contrary to the claim of the appellants and therefore, the same were seized. On a request made by the appellant-importers, provisional release was ordered by the Department, subject to the conditions specified therein; appellants challenged the orders vide CWPs before the Hon'ble High Court of Delhi, who set aside the impugned order and remanded the case back to the Commissioner.

2. The Commissioner vide order dated 14.12.2023 allowed provisional release subject to fulfilment of certain conditions laid down therein. The appellants challenged the conditions, specified for provisional release, by filing CWPs Nos.16429/2023 and 16430/2023 before the Hon'ble High Court of Delhi. Hon'ble

High Court of Delhi, vide Orders dated 20.12.2023, dismissed the writ petitions as withdrawn and allowed the appellants to file appeal against the impugned order dated 14.12.2023, within two working days and directed the Appellate Authority to dispose of the same as expeditiously as possible.

2. Learned Commissioner, vide impugned order dated 14.12.2023, has directed M/s Shanus Impex to execute a Bond amounting to Rs.4,44,29,865/- and to furnish a Bank Guarantee for Rs.3,70,24,887/-; directed M/s S.K. Overseas to execute a Bond amounting to Rs.3,14,46,822/- and to furnish a Bank Guarantee of Rs.2,62,05,685/- while binding both the importers to pay the alleged differential duty, fines and penalties. Accordingly, these appeals have been filed.

3. Shri Vikrant Kackaria, learned Counsel for the appellants, reiterates the grounds of appeal and submits that the goods were imported from Afghanistan by road to India and all the goods are covered by a Certificate of Origin issued by the authorities in Afghanistan; the investigation is still going on and it is yet to be proved that the goods were not produced in Afghanistan; moreover, the goods have deteriorated and are not likely to fetch even 50% of the imported value, on being sold; therefore, the amount of Bond and Bank Guarantee fixed/imposed is very harsh; he further submits that in respect of M/s S.K Overseas, they may be permitted to pledge a property in lieu of Bank Guarantee. He relies upon the following cases:

- Deenanath Maurya- 2021 (378) ELT 626 (Tri. All.)
- Swiss Carbonate –2022 (381) ELT 248m (Guj.)
- Spirotech Heat Exchangers Pvt. Ltd. – 2016 (341) ELT 110 (Del.)
- Navshakti Industries Pvt. Ltd. – 2011 (267) ELT 483 (Del.)
- G.B. International- 2017 (347) ELT 406
- Printwell Offset – 2016 (336) ELT 606 (Guj.)

4. Shri Narinder Singh, assisted by Shri Shivam Syal, learned Authorized Representatives for the Department, reiterates the findings of the impugned orders and submits that it is prima facie proved that the goods were not of Afghanistan origin; the only investigation left is to decide the exact origin of the goods which in no way would help the appellant as it is evident that they have misused the benefit of the Notification with an intent to evade payment of duty; he submits that unlike a manufacturer-importer, a trader-importer leaves nothing in the control of the Department to enable the recovery of differential duty, fines and penalties and therefore, the conditions of provisional release were correctly placed by the competent authority. He relies on the following cases:

- T.L. Verma & Company Pvt. Ltd. – 2009 (234) ELT 203 (P&H)
- Apollo Cranes Pvt. Ltd. – 2012 (275) ELT 148 (Bom.)
- Sri Venkateshwara Paper Boards – 2022 (379) ELT 310 (Mad.)

- Unik Traders – 2019 (367) ELT 353 (Mad.)

5. Heard both sides and perused the records of the case. In the instant issue, we find that the goods are of perishable nature and it will not be anybody's gain to keep the goods rotting under seizure. We find that, prima facie, the evidence available with the Department is in the form of transcripts of messages and the investigation is in progress and the Department is yet to negate the certificate issued by the authorities in Afghanistan. Understandably, the enquiry as per the procedure laid down under the Notification regarding the rules of origin is likely to take some time. Therefore, there is nothing wrong in releasing the goods provisionally as has been ordered by the competent authority. However, the only difference of opinion lies in the quantum of Bond and Bank Guarantee to be furnished for such release.

6. We find that the Hon'ble High Court of Gujarat in the case of Swiss Carbonate (supra) quoting from other judgments held that:

"There are many judgments of different High Courts which have been placed by Mr. Nayak for our consideration. One of the judgment of Delhi High Court in the case of Spirotech Heat Exchangers Pvt. Ltd. v. Union of India reported in 2016 (341) E.L.T. 110 (Del.) takes the view that the provisional release of seized goods on the condition of payment of 100% of differential duty along with bank guarantee equivalent to 25% of differential duty and bond for 100% of value of the goods would be termed as very harsh condition and contrary to the judgments of the High Courts and Supreme Court. In the said case, the Delhi High Court directed to release the goods subject to the petitioner executing a bond in a sum equivalent to 100% value of the goods and further furnishing security in the form of bank guarantee for a sum equivalent to 30% of the differential duty."

7. The Hon'ble High Court of Delhi in the case of Spirotech Heat Exchangers Pvt. Ltd. (supra) held that:

6. The Court notices that despite the aforementioned orders of this Court and the Supreme Court, the respondents are continuing to impose harsh conditions for provisional release of goods. In the present case, apart from the exporter having to pay 100% of the differential duty it has to furnish a bank guarantee equivalent to 25% of the differential duty and execute a bond for 100% of the value of the goods. Since the respondents do not appear to be inclined to follow the aforementioned orders binding order of the Supreme Court, and are compelling exporters and importers to approach this Court every time for relaxation of the conditions imposed for the provisional release of goods, the Court is of the view that relegating the petitioner to a statutory remedy would not be efficacious.

8. The Hon'ble High Court of Gujarat in the case of Printwell Offset (supra) held that:

5. In the light of the fact that the principal relief prayed for in this petition has

not been pressed, it is not necessary to enter into the merits of the impugned order dated 2-12-2015 withdrawing the redemption issued to the petitioner. However, consequent to the said order, as on date, the petitioner's redemption stands withdrawn. Resultantly, the petitioner firm would be required to fulfil the export obligation in terms of the EPCG scheme authorization granted to it. Since the first part of the export obligation was to be completed within a period of four years, it appears that the petitioner still has time to fulfil the export obligation. As rightly submitted by the learned counsel for the petitioner, if the machines imported under EPCG scheme remain under seizure, the condition thereof is likely to deteriorate, which would not benefit either the petitioner nor the Revenue. On the other hand, if the petitioner firm is permitted to use the machines, it may be in a position to fulfil the export obligation, which would be in the benefit of the scheme. On a perusal of the order of provisional release, it is apparent that three conditions have been imposed for the purpose of provisional release of the goods. Firstly, the petitioner is required to furnish of a bond for the full value of the goods, to which the petitioner has no objection. Secondly, the petitioner is required to furnish a bank guarantee for the full duty amount, which is the main bone of contention. Thirdly, the petitioner is required to furnish a bank guarantee equal to 25% of duty amount. This condition is in the nature of penalty, and hence, at this stage, the question of furnishing a bank guarantee towards penalty would not arise.

6. Under the circumstances, without entering into the merits of the contentions of the rival parties, the Court is of the view that the interests of justice would be served if the order of provisional release of the seized goods as contained in the communication dated 9-2-2016, is modified to the following extent :

(i) The first condition which requires the petitioner to furnish a bond for the full value of the goods is required to be sustained

(ii) The second condition which requires the petitioner to furnish bank guarantee for full duty amount is required to be modified by directing the petitioner to furnish a bank guarantee to the extent of 30% of the duty amount in line with the decision of the Supreme Court in *Commissioner of Customs, ICD, TKD, New Delhi v. Navshakti Industries Pvt. Ltd.* (supra).

9. We find that various High Courts have been consistent in taking the view that Bank Guarantee of about 25% of the differential duty along with Bond for full duty would suffice for provisional release of seized goods. In the instant case, learned Authorized Representative seeks to rely on the judgment of Hon'ble Punjab & Haryana High Court in the case of *T.L. Verma & Company Pvt. Ltd.* (supra). We find that in this case and also other cases relied upon by the Authorized Representative, the facts are not comparable as the cases, referred to, were regarding seizure of non-perishable goods and goods alleged to have been smuggled. To that extent, we find that the cases cited by the Authorized Representative cannot be relied upon. In the instant case, the goods have been cleared by the jurisdictional Customs Authorities after satisfying themselves

about the conditions of import and the same were seized by DRI at a later date; the goods are of perishable nature and the exact origin of the goods is yet to be ascertained. Therefore, considering the facts and circumstances of the case, we find that the following conditions would suffice in the interest of justice:

(i) The importers shall furnish a Bond covering the full value of goods and bind themselves to pay the differential duty along with fine, penalty and interest that may be levied on adjudication of the case.

(ii) The importers shall furnish Bank Guarantee equal to 30% of the alleged differential duty.

10. Accordingly, the present appeals are disposed of in the above terms. It is to make very clear, at this juncture, that this Bench has not given any opinion on the merits of the case and any passing remarks should be understood only in the context of provisional release of the goods. It is directed that the respondents shall allow provisional release of seized goods within two working days of the appellants' fulfilling the conditions specified above.