

(2025) 02 DEL CK 1081

In the Delhi High Court

Case No : Writ Petition (C) No. 12489 Of 2024

Rocktek Infra Services Pvt. Ltd

APPELLANT

Vs

Principal Commissioner Of Customs (Import)

RESPONDENT

Date of Decision : 06-02-2025

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2025) 02 DEL CK 1081

Hon'ble Judges : Prathiba M. Singh, J; Dharmesh Sharma, J

Bench : Division Bench

Advocate : Prabhat Kumar, Karan Kanwal, Harpreet Singh, Suhani Mathur, Jay Ahuja

Final Decision : Disposed Of

Judgement

Prathiba M. Singh, J

1. This hearing has been done through hybrid mode.
2. This is a petition filed under Articles 226 and 227 of the Constitution of India seeking issuance of an appropriate writ, inter alia, directing the Respondents to permit provisional release of seized goods of the Petitioner under Bond with security amount, however, without any Bank Guarantee.
3. The brief background is that the Petitioner imported self-drilling bars against four bills of Entry bearing Nos. 3339702, 3339581, 3339436 and 3339114. The said goods were seized by the Customs Department on the ground that they were wrongly classified by the Petitioner under Entry No. 82.07 instead of 73.04 of the Harmonized Commodity Description and Coding System (hereinafter "HSN") classification.
4. The Petitioner made repeated representations to the Customs Department for release of the seized goods. Finally, however, vide order dated 29th August, 2024, the Principal Commissioner of Customs (Import), ICD, Tughlakabad, New

Delhi provisional release of seized goods subject to furnishing of UT Bond equal to assessable value and Bank Guarantee of 130% of the deferential duty. The relevant portion of the said provisional release order reads as under:-

2. In this regard it is informed that the competent authority has approved provisional release of the seized goods imported vide Bills of Entry No. 3339114 dated 04.05.2024, 3339436 dated 04.05.2024, 3339581 dated 04.05.2024 & 3339702 dated 04.05.2024 subject to furnishing of UT Bond equal to assessable value and Bank Guarantee of 130% of differential duty. The Bill of Entry wise amount of UT Bond and BG is given below:-

Sr.

No.

Bill of Entry No. & date

UT Bond amount (Rs.)

BG amount (Rs.)

1

3339114 dated 04.05.2024

2045944

2033422.3

2

3339436 dated 04.05.2024

2005866

2065830

3

3339581 dated 04.05.2024

2058601

1864096

4

3339702 dated 04.05.2024

1988996

2009889.71

5. As per the above order, the provisional release has been permitted subject to two conditions –

- Furnishing of UT Bond for the entire assessable value and
- Furnishing of a Bank Guarantee for 130% of the Differential duty.

6. The Petitioner is seeking to challenge these onerous conditions of provisional release imposed by the Customs Department. Hence, the present petition.

7. Notice was issued in this petition on 6th September, 2024, and the matter has thereafter been listed on seven occasions before the Court. The counter affidavit and rejoinder have also been filed.

8. The short point being urged by the Petitioner is that the Petitioner is a regular importer of seized goods and the Id. Counsel for the Petitioner has taken the Court through the HSN classification. It is submitted by Id. Counsel that the conditions imposed for provisional release are extremely onerous and considering the value of goods, the said conditions are making it difficult to get the goods released.

9. It is the submission on behalf of the Petitioner that the issue of classification has to be finally decided by the Customs Department, however, for the last nine months, the goods are lying with the Customs Department resulting in financial losses to the Petitioner.

10. On the other hand, Mr. Harpreet Singh, Id. SCC for the Customs Department submits that the seized goods are being misclassified only to avoid anti-dumping duty as the goods are being imported from China. He also places reliance on the decision of this Court in *Hind Global Enterprises vs. The Commissioner of Customs & Anr.* [W.P.(C) 10015/2017], wherein the Court has held that mere onerous conditions would not permit the Petitioners to bypass the appellate remedy available under the Customs Act, 1962 and approach this Court by way of a writ jurisdiction.

11. The Court has perused the HSN classification entries as also the respective bills of entry and the description therein. The Court has also perused the judgment in *Hind Global Enterprises (supra)*. In the said matter, the Coordinate Bench of this Court had observed that in cases of this nature, the Petitioner ought to invoke the appellate statutory remedy. Further, in the said matter, the writ petition was dismissed on the first day itself as is noted in Paragraphs 9 and 10 of the said order, which is set out below:

"9. If the present writ petition is entertained, we would necessarily have to issue notice and await the counter affidavit which would take time. In fact it would delay the matter. Moreover questions would also arise with regard to facts relating to the imported goods etc.

10. Keeping in view the aforesaid position, we would observe that the petitioner should invoke the appellate statutory remedy by way of appeal under Section 128 of the Act. The same would be efficacious and proper forum for redressal of the grievance. If any such an appeal is filed within a period of two weeks from

today, the same would not be dismissed on the ground of limitation. We would also observe that if an appeal is filed, it would be disposed of expeditiously and preferably within a period of five weeks from the filing of the same.”

12. Usually, in such cases, parties ought to avail of the appellate remedy and not rush to the Court that too invoking the extraordinary writ jurisdiction. However, in this case, the Petitioner claims to be a regular importer of the seized goods. The seized goods have been lying with the Customs Department since May 2024. The present petition is also pending for the last six months. Relegating the Petitioner to the appellate remedy at this stage would cause further delays in the release of the seized goods itself. Ultimately the classification has to be decided by the Department.

13. The Customs Department has already accepted the prayer for provisional release. The issue is only in respect of the conditions that are to be imposed. The Court has considered the total value of the goods and the amount of the Bank Guarantee. The calculated amount for the bank guarantee would be substantial and may almost constitute 70-80% of the value of the goods itself. The imposition of conditions being a discretionary matter, in the facts of this case, this Court is of the opinion that it would be just and fair that apart from the Bond which has been directed, the Bank Guarantee to the tune of 30% of the differential duty be furnished by the Petitioner. Ordered accordingly.

14. Upon the same being furnished by the Petitioner, the seized goods shall be released within ten days.

15. The writ petition is disposed of in these terms. The present order has been passed in the facts of this case.

16. Pending applications, if any, are also disposed of.