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IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction [Customs]

ORIGINAL SIDE

CUSTA/51/2024
IA NO: GA/1/2024
COMMISSIONER OF CUSTOMS(PORT) KOLKATA
VS
M/S. CREDENCE INTERNATIONAL

BEFORE :
THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 22nd May, 2024

Appearance :
Mr. Kaushik Dey, Adv.
Mr.Tapan Bhanja, Adv.
…for the appellant.

Mr. Arijit Chakraborty, Adv.
Mr.Debaditya Banerjee, Adv.
Mr.Prabir Bera, Adv.
Mr. Syed Wasim Faruque, Adv.
…for the respondent.

The Court : This appeal filed by the revenue is directed against the order passed by the Customs, Excise and Service Tax Appellate Tribunal, Eastern Zonal Bench, Kolkata (the Tribunal) dated 25.4.2024. By the said order the learned Tribunal has directed release of the seized goods unconditionally. The respondent had imported cutting blades which were detained on the ground that there is under valuation and since the respondent wanted clearance of the goods, an application was filed under Section 110A of the Customs Act, 1962 for grant of provisional release of the seized goods. The adjudicating authority by order dated 1.12.2023 directed provisional release of the goods subject to two conditions (i) execution of bond for full estimated value of goods, that is, Rs.1,62,15,519 (ii) submission of bank guarantee/cash deposit for Rs.65,00,000/- to cover the estimated differential duty probable fine and penalty.

Aggrieved by the same, the respondent preferred appeal to the Commissioner of Customs (Appeals) and by order dated 19.1.2024 the appeal was dismissed. Challenging the same, the respondent preferred appeal before the Tribunal which has been allowed. The only ground on which the learned Tribunal allowed the appeal is that no show cause notice was issued within the time period stipulated under Section 110(2) of the Act. The operative portion of the order passed by the learned Tribunal does not discuss the effect of the order of provisional release passed under Section 110A of the Act. The learned advocate for the respondent referred to the Board Circular No.1/2017-CUS dated 8.2.2017 more particularly two paragraphs therein which reads as follows :

> *"5. Further, it has been brought to the notice of the Board that in cases where provisional release of seized goods is allowed under Section 110A of the Act ibid, show cause notices are not being issued within the stipulated time period on the ground that the goods have been released to the owner of the goods. The provisions of the Customs Act,*

1962 are clear that irrespective of the fact whether goods remain seized or are provisionally released, once goods are seized, the time period (including extended time period) stipulated under Section 110(2) of the Act shall remain applicable and has to be strictly adhered to.

6. The Chief Commissioners/Director Generals are requested to circulate the present guidelines to all the formations under their charge. Difficulties, if any, in implementation of the aforesaid guidelines may be brought to the notice of the Board. Hindi version follows."

It is submitted that in terms of the above Circular the period of limitation prescribed under Section 110(2) of the Act shall remain applicable and has to be strictly adhered to. To be noted that the Circular was issued on 8.2.2017 whereas the amended Section 110 which came into effect on 29.3.2018 has added two provisos of which the second proviso would be relevant for the case on hand which is as follows :

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

Thus, the Circular No. 1/2017-Cus can have no application to the case on hand.

The learned advocate for the respondent submitted that no show cause notice was issued within the first period of six months nor there is any order of extension passed. In any event these are all matters which have to be decided at the time of adjudication after issuance of the show cause notice and at this stage the same cannot be gone into and suffice to hold that the second proviso clearly applies to the facts of the present case. Therefore, we hold that the order passed by the learned Tribunal calls for interference. Accordingly, the appeal is allowed and the order passed by the learned Tribunal is set aside.

As mentioned above, two conditions were imposed for grant of provisional release. So far as the first condition of execution of bond is concerned, we find there is no ground to interfere with the same and the said condition is affirmed. So far as the second condition is concerned, the bank guarantee of Rs.65,00,000/- is to cover the estimated differential duty probable fine and penalty. We prima facie find that in the order passed by the adjudicating authority or the appellate authority there is no indication as to how the value of goods have been arrived at on a provisional basis. Therefore, we are of the view that the interest of the revenue will be protected if the respondent is directed to furnish a bank guarantee for Rs.25,00,000/- and a bond for the remaining Rs.40,00,000/- in respect of the second condition. Accordingly, while allowing the appeal filed by the department and answering the substantial questions of law in favour of the department, the condition imposed by the adjudicating authority for provisional release is modified to the extent indicated hereunder:

(i) The respondent shall execute a bond for the fully estimated value of the goods, that is, Rs.1,62,15,519/-.

(ii) The respondent shall furnish bank guarantee/cash deposit for Rs.25,00,000/-.

(iii) The respondent shall furnish a bond for a sum of Rs.40,00,000/-.

The respondent in compliance of the above three conditions to the satisfaction of the department, the seized goods shall be provisionally released within a period of 10 days from the date on which the conditions are complied with.

In view of the above, the appeal is disposed and the connected application stands closed.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

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