OD – 14

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction [Customs]

ORIGINAL SIDE

CUSTA/79/2025
IA NO: GA/1/2025, GA/2/2025
COMMISSIONER OF CUSTOMS PORT KOLKATA
VS
M/S. ENTERPRISE INTERNATIONAL LIMITED

BEFORE :
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ
And
THE HON'BLE JUSTICE UDAY KUMAR
Date : 18th February, 2026

<u>*Appearance :*</u>
Mr. Kaushik Dey, Adv.
Mr. Tapan Bhanja, Adv.
…for appellant.

Mr. Sudhir Mehta, Sr. Adv.
…for respondent.

The Court : There is a delay of 73 days in filing the appeal. We are satisfied with the explanation offered for not preferring the appeal within time. Therefore, the delay is condoned. The application is allowed.

IA No.GA/1/2025 is disposed of.

Heard learned counsel for the appellant and Mr. Mehta, learned senior counsel for the respondent/department. Perused the memorandum of appeal and the order passed by the Tribunal. The Tribunal's order dated March 6, 2025 is read as follows :

"The Revenue is in appeal against the impugned order.

2. The facts of the case are that the officers of Directorate of Revenue Intelligence searched the office and godown of the respondent regarding importation of 'Mulberry Raw Silk' imported through Kolkata, Port and detained the goods on the ground that the documents pertaining to said goods were not available with the caretaker of the premises.

2.1 Subsequently, the said documents were submitted to DRI, Varanasi Unit and the same was informed to DRI vide letter 14.06.2016. The request was also made to DRI that the respondent's firm may be allowed to sell the goods.

2.2 Further, the respondent vide letter dated 24.06.2016 made request to Commissioner of Customs (Port), Kolkata and Additional Director General of DRI (New-Delhi) to release the said goods provisionally under Section 110A of Customs Act, 1962.

2.3 Accordingly, the Deputy Commissioner of Customs allowed the goods to be released provisionally under Section 110A of the Act on the payment of Bond and Bank Guarantee by the respondent.

2.4 Accordingly, the respondent on 08.08.2016 submitted the Bank Guarantee and PO Bond in terms of the Order of the Provisional release of goods passed by the Commissioner of Customs (Port) and the said goods were released provisionally on 12.08.2016.

2.5 Subsequently, the respondent receives Show Cause Notice dated 23.11.2016 from DRI (HQRs) regarding extension of time for issuance of SCN under Section 110(2) of the Act and personal hearing for the said matter was fixed on 28.11.2016. However, the respondent failed to attend the personal hearing as the SCN was not received in due course and inform the customs authority regarding delayed delivery of said Show-cause notice.

2.6 As such, Commissioner of Customs (Port) granted the extension of six months to the Directorate of Revenue Intelligence, (Hqrs) for issuing the Show Cause Notice.

2.7 The Director of the respondent Firm through RTI applied for copy of the note sheet of the concerned file in which the order of provisional release was dealt with. On 28.02.2017, the office of the respondent gave the copy of note sheet.

2.8 As such, the respondent submits to the Customs Authorities that since the SCN was not issued by the Directorate of Revenue Intelligence within the stipulated extended period as given by the Commissioner of Customs (Port). Accordingly the respondent's firm was eligible for unconditional release of the said good in terms of Section 110(2) of the Customs Act.

2.9 The respondent vide various letters dated 15.02.2018, 08.03.2018, 10.04.2018, 03.05.2018 & 18.05.2018 requested the Commissioner of Customs (Port) to release the said Bank Guarantee in terms of Section 110(2) of the Customs Act, as no Show Cause Notice was issued within six months and within the extended period of six months, But *vide letter dated 03.08.2018, The Deputy Commissioner of Customs (Port), denied release of Bank Guarantee on the ground that Show Cause Notice is still awaited from the DRI. It was also mentioned in the said letter that "As per Section 110(2) of the Customs Act, 1962 as amended by the Finance Act, 2018 (Section 92) the Six Month constant for issuing the Show Cause Notice, in cases where Order for Provisional Release of the seized goods has been passed, has been dispensed off."*

2.10 Against the said order, the respondent filed the appeal before the Id. Commissioner (Appeals) of Customs and the Id. Commissioner (Appeals) of Customs set aside the order of the Deputy Commissioner as the same is not maintainable.

2.11 Against the said order, the Revenue is in appeal before us.

3. Heard the parties and considered the submissions made from both sides.

4. We find that to file this appeal, the Revenue is banking on an amendment in the Section 110 of the Customs Act, 1962 vide Section 92 of the Finance Act, 2018, wherein Section 110(2) of the Customs Act, 1962, which reads as under:

"Provides that the Principal Commissioner of Customs or Commissioner of Customs 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".

5. The said provisions came into effect on 29.03.2018 and at the seizure of the goods in question and release thereof, the said provisions were not in force. In that circumstances, the Revenue cannot rely on the amended provisions in 2018 for the release of the goods in 2016 provisionally. Therefore, the Revenue is duty bound to issue the show-cause notice within extended period of six months by the Id. Commissioner (Port), which they failed to do so.

6. In that circumstances, we do agree with the observations made by the Id. Commissioner (Appeals) in the impugned order and no show-cause notice was issued to the respondent within extended period of six months in terms of Section 110(2) of the Customs Act, 1962 as existed at the time of seizure of the goods.

7. In view of the above, no proceeding is sustainable against the respondent and they are entitled to release of the goods, the personal Bond and Bank guarantee.

8. In view of the above, we do not find any infirmity in the impugned order. Accordingly, the same is upheld.

9. In the result, the appeal filed by the Revenue is dismissed."

As no substantial question of law arises from the facts as narrated in the order of the learned Tribunal, we dismiss this appeal along with the connected application.

(RAJARSHI BHARADWAJ, J.)

(UDAY KUMAR, J.)

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