

Security/ bank guarantee is necessary for the provisional release of the confiscated goods before adjudication

The CESTAT, New Delhi in the matter of *M/s Classic Interiors v. Commissioner of Customs, New Delhi [Customs Appeal No. 51454 of 2022 dated January 12, 2023]* modified the order of the Commissioner of Customs (Appeals), to the extent that the amount of bank guarantee for provisional release of the confiscated goods to be reduced from 10% to 5% of the total value of the goods, on the grounds that differential duty as demanded has already been deposited by the assessee. Held that, some security is necessary to cover it if the goods are to be released provisionally before adjudication.

Facts:

M/s Classic Interiors (“**the Appellant**”) had imported Polyvinyl Chloride (“**PVC**”) panels (“**the Goods**”), which the Directorate of Revenue Intelligence suspected to be mis-declared in terms of value and percentage of PVC.

During investigation, the Goods were seized under Section 110 of the Customs Act, 1962 (“**the Customs Act**”) vide seizure memo dated July 26, 2019, after which the Appellant sought provisional release of the goods. Subsequently, the Additional Commissioner, after considering the submissions passed the Order-in-Original (“**the OIO**”) directing the Appellant to submit a Bond and Bank Guarantee for provisional release of the goods, against which an appeal was also filed by the Appellant.

This appeal has been filed to assail the Order-in-Appeal (“**the Impugned Order**”) dated December 09, 2020 passed by the Commissioner of Customs (Appeals) (“**the Respondent**”), who partially allowed the Appellant’s appeal and modified the OIO, to the extent of reducing the bank guarantee for provisional release of the seized goods to 10% of the value of goods and upheld the order of the Additional Commissioner.

Being aggrieved, the Appellant has prayed to waive the requirement of bank guarantee as the differential duty had already been paid.

Further, after the seizure, a Show Cause Notice dated July 20, 2022 (“SCN”) was issued proposing recovery of differential duty, confiscation of the goods and imposition of penalties and it was proposed in the SCN to adjust INR 55,00,000/- deposited by the Appellant during the investigation against the differential duty demanded.

The Appellant contended that, since the entire duty demanded in the SCN has already been paid, the condition of 10% bank guarantee for provisional release of the goods may be waived and the seized goods may be released provisionally without any bank guarantee on a bond for the full value of the goods

Issue:

Whether the submission of bank guarantee for provisional release can be completely waived off if differential duty has been paid?

Held:

The CESTAT, New Delhi in ***Customs Appeal No. 51454 of 2022***, held as under:

- Observed that, there was allegation of mis-declaration of the value of the Goods, which has been admitted to by the Appellant. Further, the SCN demanded differential duty which the Appellant has already deposited.
- Noted that, there cannot be any hard and fast rule regarding the conditions for provisional release of the goods and the facts of each case have to be looked into.
- Further noted that, confiscated goods can be redeemed by the Appellant upon adjudication by paying a fine and some security must be provided to cover it in order for the Goods to be released provisionally before adjudication.

- Stated that, if the Goods are confiscated and allowed redemption on payment of fine, such fine has to be recovered from the Appellant and some security is necessary to cover it if the Goods are to be released provisionally before adjudication itself.
- Modified the Impugned Order to the extent that the amount of bank guarantee for provisional release of the goods shall be reduced from 10% to 5% of the total value of the goods.

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