

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 86536 of 2022

(Arising out of Order-in-Appeal No. 01/SKM/(01)/CC(ADJ.)/Mumbai/2022-23 dated 01.07.2022 passed by the Commissioner (Appeals) of Customs (Adjudication), Mumbai)

Shree Chamunda Enterprises

333 Tower B Kalaptaru Crest,
Bhandup (W), Mumbai-400078.

.... Appellant

Versus

Commissioner of Customs, Mumbai (ADJ)

New Custom House, Ballard Estate,
Mumbai-400001.

.... Respondent

Appearance:

Shri Anil Balani, Advocate for the Appellant

Shri Ramesh Kumar, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85728/2022

Date of Hearing: 22.08.2022

Date of Decision: 24.08.2022

Per: S.K. MOHANTY

This application has been filed by the appellant against the order dated 01.07.2022 passed by the Commissioner of Customs (Adjudication) Mumbai, rejecting the provisional release of goods imported by the appellant and seized by the Department. This is second round of litigation before this Tribunal.

2. Briefly stated the fact of the case are that the appellant has imported CRGO sheets / coils. On the basis of an intelligence received, it appeared to the Department, that the appellant was importing "Secondary grade goods" and were declaring the same to the "Prime

goods". Goods (CRGO Sheets) imported by the appellant, as detailed below, were seized.

Sl. No.	B/E No/ Date	Quantity (in MTs)	Name of Importer	Seized at
1	2009758/ 11.02.2019	27.005	M/s Shree Chamunda Enterprises	CFS- M/s Apollo Logistics, Nhava Sheva
2	2086237/ 18.02.2019	51.180		
3	2053006/ 14.02.2019	23.950		CFS- M/s All Cargo Logistics, Nhava Sheva
4	2057278/ 14.02.2019	23.145		CFS- M/s Ameya Logistics, Nhava Sheva
5	2137930/ 21.02.2019 2137932/ 21.02.2019 2226609/ 27.02.2019	79.975	M/s Shree Chamunda Enterprises	CFS- M/s STP Services Pvt. Ltd., Chennai
6	2226355/ 27.02.2019	25.940	M/s JBC International	
7	-----	10.82	-----	Premises of M/s Shree Chamunda Enterprises, Rabale

2.1. On conclusion of the investigation a Show Cause Notice dated 20.08.2019 was issued and same is pending adjudication, Mean while the appellant has applied for provisional release of the seized goods. The Department has rejected the request vide a communication dated 12.11.2021 passed by Additional Director General (Adjudication DRI, Mumbai). Such rejection was appealed against by the appellant before this Tribunal. Tribunal vide Final Order A/85189/2022 dated 03.03.2022 has allowed the appeal by way of remand back to the Original Authority for consideration of the request for provisional release considering the test report, policy provisions and other submissions made by the appellant. The impugned order has been

passed in pursuant of the final order by this Tribunal. Therefore, the appellants are before us.

3. Shri Anil Balani, Learned Counsel for the appellants submits that imported goods worth around 2 Cr are pending release for more than 3 years. They have deposited an amount of Rs 1.53 Cr already; the appellants are incurring huge losses in addition to demurrage charges. He submits that the allegation of the Department is not correct; the appellants and the others have been importing such goods from a long time; Department has not raised any objection in the past; now the Department seeks to recover the differential duty for the previous imports and seeks to confiscate the impugned goods under seizure. He submits that the test reports obtained by DRI indicate that the goods are confirming to the requirement of BIS standards IS: 3024 and as such the Department has no reason to hold on to the goods. He fairly submits that the importer is ready to abide by any conditions that may be put for provisional release. He relies on CBIC Circular No. 35/2017 dated 16.08.2017 and the decision of Hon'ble Bombay High Court in case of Ganesh Benzoplast Ltd 2020 (374) E.L.T. 552 (Bomb). He submits that the department has kept the case in call book and the adjudication is not likely to be completed in near future. Therefore, looking in to the pecuniary loss already suffered by the appellant and the prejudice that may be caused to them, he prays that as an interim measure, he prays that provisional release be ordered and department may be directed to issue detention certificate.

4. Shri Ramesh Kumar, Learned Authorized Representative, appearing for the department, on the other hand counters the submissions of the appellants and raises a preliminary objection that the designation of Additional Director General (Adjudication) DRI has been since changed to Commissioner (Adjudication) and therefore, the name of the respondent needs to be changed by changing the cause title. He further submits that as per the investigation conducted, it is revealed that the appellants have submitted forged/fabricated Mill Test Certificates (MTC) and have not satisfied the conditions laid down in the policy. He submits that as per Steel and Steel Products (Quality Control Order) 2012 dated 02.03.2012

- (i) the products have to conform to the specified standards,
- (ii) they have to bear the standard mark of the BIS, and
- (iii) the manufacturer has to obtain the requisite certification of BIS.

5. Learned Authorized Representative further submits that as per above not only the good be as per specifications of BIS, the product should bear BIS marks and the manufacturer needs to have BIS license/ registration for manufacturing such goods. He submits that in view of the various judgments, mandatory conditions have to be strictly observed; goods imported in violation of the condition of import should be treated as prohibited goods; importer is not entitled for provisional release in the absence of BIS certificate; the imported goods also need to adhere to BIS standard. He relies on

- (i) *Ambay Cement 2004 (178) E.L.T. 55 (SC)*
- (ii) *Raj Grow Impex LLP 2021 (377) E.L.T. 145 (SC)*
- (iii) *City Office Equipment 2019 (367) E.L.T. 920 (Mad.)*
- (iv) *Global Tradex Ltd. 2016 (332) E.L.T. 657 (Bom.)*
- (v) *HBL Power Systems Ltd 2018 (362) E.L.T. 856 (Tri.- Hyderabad)*
- (vi) *Om Prakash Bhatia 2003 (155) E.L.T. 423 (SC)*

6. Heard both sides and perused the records of the case. Coming to the preliminary objection raised by the Department that the cause title needs to be changed, we find that neither respondent nor the jurisdiction of the respondent is changed. Its only designation of the respondent changed and as such objection is very technical in nature and should not come in the way of deciding the issue. The case of the Department is that the appellants forged Mill Test Certificate and that goods imported by the appellant, under seizure are not BIS compliant. We find that in view of the direction of the Hon'ble Bombay High Court and the final order of this Tribunal cited above the goods were got tested by the Department and as per the reports has recorded in the impugned order. The goods are as per the BIS specification IS:-3034. Now the Department raises an objection that it is not enough the goods are BIS compliant; the manufacturer is also required to be registered with/ licensed by the BIS; the appellant has submitted forged/fabricated Mill Test Certificate to show secondary goods as

primary goods and thus the conditions specified by the imports are not satisfied. On the other hand Learned Counsel for the appellants submits that internationally such goods are manufactured by reputed companies like Thysson Krupp or Tata's etc; the name of the manufacturer can be ascertained from the CRGO sheets; the Sheets indicate the name of the manufacturer; goods are manufactured by the original manufacturer and not suppliers in the instant case. As this reputed companies have been importing for long it cannot be said that they are not BIS compliance. He submits that he would produce the BIS registration/licence of the manufacturer.

7. We find that impugned goods are manufactured by the some other manufacturer and supplied by someone else. We find that as per BIS standard and the control order cited above it is the goods that should be as per BIS specifications and the manufacturer should be licensed or registered by BIS (Bureau of Indian Standard). The rules do not specified that the supplier should be registered. We find that as per the argument of the Department, as far as the genuineness of Mill Test Certificate is concerned, may be relevant to ascertain the *bona fides* of the appellant importer in the adjudication proceedings This is not relevant for provisional release as it is established that goods, independently tested after the import in India, are BIS compliant. Regarding the second condition of the control order learned Counsel for the appellants submits that manufacturers of the impugned goods have been supplying goods to India and as such they have the registration with BIS and that he would submit the same. He also submits that the Panchnama clearly indicates that the goods are ISI marked. We find that once the goods are BIS compliance; the manufacturer is registered/licensed by BIS and the goods have ISI markings, goods are free from taint as far as provisional release of the goods is concerned. We find that the department should not have any objection in releasing the goods provisionally. However, we are of the opinion that at the same time the interest of the Revenue is to be safeguarded. We find that Learned Counsel for the appellants submits that they have already deposited about Rs 1.53 Cr which is very huge compare to the value of the seized goods i.e. less than 2 Cr. Learned Authorized Representative

therefore, submits that the deposit made by the appellants was towards duty liability in respect of the past imports and not for the impugned goods.

8. We find that the importer has been suffering for the last 3 years. He had to approach the Honourable High Court and this Tribunal to get the goods tested and released provisionally. As per the submissions of both the parties, adjudication is not likely to be completed in near future. We are of the considered opinion that there is no reason as to why the appellant should suffer as, in view of our discussion above, the goods are tested to be BIS compliant and the manufacturer of the goods is claimed to be registered with the BIS. We find that the importer appellant has complied with the conditions of Import of impugned CRGO sheets. Therefore, we find that the department is not correct in rejecting the request for provisional release of the goods. Further, we find that it's the department that has seized the goods and at their behest goods have been placed in the warehouse for such a long period. They were not kept in the warehouse at the sweet will of the importer. Therefore, we find that the interest of justice would be met if the department issues a detention certificate, as applicable, for waiver of demurrage charges. We would like to make it very clear at this juncture that this order or for that matter any of the observations made hereunder are not to construed as any decision or comment touching upon the merits of the case. The adjudicating authority shall not be influenced by this order and shall form his own independent opinion based on the facts of the case and provisions of law.

9. In view of the above we order that the impugned seized goods shall be provisionally release subject to the following condition:-

- (i) The appellants shall submit the Bond for full value of the goods.
- (ii) The appellants shall furnish a bank guarantee of Rs. 25 Lakhs.

- (iii) The appellants shall submit a proof that the manufacturers of impugned goods are registered/ licensed by BIS.
- (iv) Department shall issue detention certificate as may be applicable.

(Order pronounced in the open court on 24/08/2022)

(S. K. Mohanty)
Member(Judicial)

(P. Anjani Kumar)
Member (Technical)

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