

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH COURT NO.II

CUSTOMS APPEAL NO. 50122 / 2022

[Arising out of Order-in-Original No. GEN/ADJ/COMM/134/2020-ADJJ-O/O
COMMR-CUS-INDORE dated 15.12.2020 passed by the Commissioner of
Customs, Indore]

HITESH NAGWANI

65, Vasudev Nagar
Indore 452002 in
M/s. Rudras Overseas

APPELLANT

Vs.

COMMISSIONER OF CUSTOMS, INDORE

B-Zone, 3rd floor, 12/27 & 12/28
Village Pipliakumar, Nipania,
Indore 452010.

RESPONDENT

APPEARANCE:

Ms Vibha Narang, Advocate for the Appellant
Shri Ishwar Charan, Authorised Representative for the Department

CORAM:

HON'BLE DR. MRS RACHNA GUPTA, MEMBER (JUDICIAL)

DATE OF HEARING: July 11, 2022
DATE OF DECISION: 18.08.2022

FINAL ORDER No. 50707/2022

PER DR. RACHNA GUPTA

Present appeal has been filed to assail the Order-in -Original bearing No. 134/2020 dated 15.12.2020 vide which the request of importer for provisional release of seized currency amounting to Rs.82,67,900/- and USD 5000 has been rejected. The facts relevant for the present purpose are as follows:

That the importer M/s. Rudra Overseas has imported one shipment of nutrition supplements for which bill of entry No. 5795615 dated 23.11.2019 was filed at ICD, Indore. The customs duty of Rs.7,53,643/- was paid by the said importer. However, before the goods could be cleared, the goods were examined by the Directorate of Revenue Intelligence, Indore and were detained under Panchnama dated 29.11.2019 which were subsequently seized vide seizure memo dated 26.12.2019 under section 110 of Customs Act, 1962 on the allegation of under valuation.

The importer M/s. Rudra Overseas applied for a provisional release of the said seized goods vide Seizure Memo dated 26.12.19. The residential premises of appellant were also searched in course of investigation and follow up action of the aforesaid seizure on 28.11.2019 during the course of said search Indian currency of Rs.82,67,900/- and USD 5000 was found which were retained by the officer of DRI, IZU, Indore under Panchnama dated 28.11.19 alleging the same as sale proceed of the import of aforesaid goods by M/s. Rudra Overseas.

Pursuant to directions of Hon'ble High Court of Madhya Pradesh in a civil Writ petition No. 2315 of 2020 filed by appellant that the goods were ordered to be released by Commissioner of Customs, Indore vide letter dated 27.4.2020, however, on execution of bond valued at Rs.86,22,915/- and on furnishing of a Bank guarantee of 1,38,19,048/-. These directions were challenged before CESTAT order being non-speaking and arbitrary. Vide Final Order of this Tribunal bearing No. 50849 /2020 dated 24.9.2020 this Tribunal directed the Commissioner to pass speaking order while considering the request of provisional release and to not to dispose of the goods prior that. Based thereupon the order of provisional release of goods was passed by the Commissioner of Customs, Indore on 8.10.2020. However, the currency seized from appellant's residence alleging

it to be the sale proceed of aforementioned goods was still not released. The appellant filed an application dated 7.11.2020 for the provisional release of said seized currency followed by two reminders dated 15.11.2020 and 24.11.2020 requesting for its release. But there was no response. Being aggrieved appellant approached Hon'ble High Court of Madhya Pradesh in a writ petition No. 19808 of 2020. Pending the case, the Departmental rejected the appellants' request for provisional release of currency by the impugned order dated 15.12.2020. Since this order was appealable Hon'ble High Court of Madhya Pradesh directed to approach the appropriate forum. Consequently the said writ petition was withdrawn and present appeal challenging the said order of 15.12.2020 has been filed. Being aggrieved the appellant is before this Tribunal.

2. I have heard Ms Vibha Narang, learned Counsel appearing for the Appellant and Shri Ishwar Charan, learned Authorised Representative appearing for the Department.

3. It is submitted on behalf of the learned Counsel for the appellant that the request has been rejected on two grounds:

- i) that since the investigation by DRI was under process, release cannot be ordered; and
- ii) that there is no provision under the Customs Act for provisional release of the currency.

Learned Counsel submitted that investigation stands now completed as show cause notice dated 30.12.2020 has already been issued to the appellant which is pending adjudication before the Department. Hence the first ground is now redundant. As far as the statutory provisions are concerned, it is submitted that in terms of section 2(22) of Customs Act, 1962 currency is as good as goods. The goods imported by the importer M/s. Rudra Overseas have already been released. There is no reason for

not releasing provisionally, the currency seized from the appellants premises. It is submitted that allegation against the appellant is nothing but a mere presumption that the currency seized is the sale proceed of the goods imported by M/s. Rudra Overseas. Otherwise also no proper order of seizure has been passed by the competent authority while making seizure of the impugned currency. Even the proprietor of appellant was not present at the time of search. The question of ordering confiscation thereafter does not at all arise. With these submissions the order under challenge is prayed to be set aside and appeal is prayed to be allowed.

4. Per contra the learned Departmental Representative relies upon the order under challenge. With respect to the issue of show cause notice to the appellant, learned Departmental Representative opted not to make any further submissions. However, appeal is prayed to be dismissed.

5. After hearing the parties and perusing the entire record, it is observed and held as follows:

From the show cause notice issued to the appellant on 30.12.2020 i.e. after the order under challenge was passed, it is apparent that appellant has been mentioned to be a bonafide owner of the goods imported by the importer M/s. Rudra Overseas. The said allegations have been leveled based upon the submissions of proprietor of M/s. Rudra Overseas namely M/s. Shri Sanjay Punjabi as well as the data as was retrieved from the laptop of said Sanjay Punjabi. Whether or not the allegations leveled in the Show Cause Notice stands the fate of truth is not the subject matter of present adjudication which is confined merely to the question as to whether the currency notes seized from the premises of the appellant despite being alleged to be sale proceeds of the imported goods owned by appellant, can be provisionally released. Show Cause Notice is sufficient to show

that investigation has been concluded in this matter. Hence first ground for rejecting appellant's request for provisional release of currency is now redundant.

Coming to the second ground of rejection that there is no provision of law to provisionally release the currency notes, it is observed that section 110 of Customs Act 1962 rather requires that any goods seized under section 110 of Customs Act 1962 may pending adjudication can be released provisionally on taking bond with security or such conditions as may be required the second section reads as follows:

[110A. Provisional release of goods, documents and things seized [or bank account provisionally attached] pending adjudication

Any goods, documents or things seized [or bank account provisionally attached] under section 110, may, pending the order of the [adjudicating authority], be released to the owner [or the bank account holder] on taking a bond from him in the proper form with such security and conditions as the [adjudicating authority] may require.]

No doubt the word currency is not been mentioned in the said section but perusal of section 2(22) of Customs Act 1962 reveals that currency is included in definition of 'goods'. The section reads as follows:

"(22) "goods" includes-

- (a) Vessels, aircrafts and vehicles;
- (b) Stores;
- (c) Baggage;
- (d) **Currency and negotiable instruments;** and
- (e) Any other kind of movable property:

No doubt in terms of section 121 of Customs Act, the sale proceeds of smuggled goods shall be liable to confiscation, but apparently the said provision shall not be applicable to the present case wherein there is no allegation of goods imported in question to be smuggled one. The allegations against the importing firm are that the goods as have been imported are undervalued. The Hon'ble Apex Court in the case of **Gurmukh**

Singh vs UOI [1984 (18) ELT 274] has held that where there is nothing to prove that the amount which is sought to be confiscated is sale proceed of smuggled goods, that must be returned to the person from whom it is seized and authorities are not empowered to take said money into custody. The said money has been taken into custody as on the sole consideration that the appellant is beneficial owner of the goods imported by M/s. Rudra Overseas. The correctness of the said allegation has yet to undergo the test of truth. As evidence are without any comments on those. However keeping into consideration the aforesaid section, i.e. section 110A and 2 (22) of Customs Act, it is held that statute has a provision permitting provisional release of the goods against certain security / bond and as condition as may be deemed fit by the competent authority. In addition, there also has been **CBIC Circular No. 35 /2017 dated 16.8.2017** laying guidelines for provisional release of seized goods under section 110 of Customs Act, 1962, according to which there is no bar on provisional release of the Currency even if it is observed that no formal seizure order has been passed. Rather no seizure memo has been generated, there appears no reasonable ground for confiscation thereof. Above all, the goods for which the impugned currency is alleged to be the sale proceeds, already have been provisionally release in favour of the importer against furnishing of bank guarantee and execution of bond as directed. The issue has earlier being dealt by this Tribunal in the case of **Promod Auto Parts Pvt Ltd. vs Commissioner of Customs and Central Excise Settlement Commission** reported as **[2016 (336) ELT 358 (Tri Delhi)]** wherein it has been held

"7. The point for consideration is the correctness of the Original Authority's decision for refusing the provisional release of the seized currency to the appellant. The reason quoted by the Id. Commissioner is that there is no provision under Central Excise Act, 1944 to provisionally release the currency and it will also jeopardize the interest of the

Revenue because of the involvement of huge duty and interest in this case.

8. Regarding the non-availability of requisite provision of law for provisional release of the seized currency under Central Excise Act, 1944, we find that the Commissioner is in error. We find that the seizure of currency in the present case is made under Section 110 of the Customs Act, 1962 on the reasonable belief that they are sale proceeds of clandestinely manufactured and cleared excisable goods which are liable for confiscation. Section 110 of the Customs Act states that if the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods. Section 2(22) of the Customs Act defines "goods" which includes currency. Since seizure of currency is made adopting the definition of "goods" as contained in Section 2(22) of the Customs Act, 1962 and considering it as "goods", the Id. Commissioner's observation that the definition of "goods" as per Section 2(22) of the Customs Act, 1962, which includes currency, has not been made applicable to the Central Excise vide Notification No. 68/63-C.E. is factually incorrect. If this view is to be accepted, the seizure of currency in the present case itself will become untenable as there is no other provision under Central Excise Act, 1944 for seizing currency. The definition in the Act confines to 'excisable goods'. Hence, it is clear that the seizure of currency is made by the officer adopting the definition in the Customs Act and the said provision treats the currency as "goods" which can be seized. Here, we notice that on 16-8-2011, the Dy. Commissioner (AE) ordered the provisional release of seized goods other than currency on submitting B-11 Bond for Rs. 98,91,350/- and bank guarantee of Rs. 24,72,838/-. No legal authority has been quoted in the communication. The Department does not have a case that the provisional release of the seized goods as ordered on 16-8-2011 is not authorized by the law. Hence, applying a different treatment for the currency which is seized as goods (sale proceeds of non-duty paid goods) is not legally sustainable."

Hon'ble Apex Court also in the case of **Commissioner of Customs New Delhi vs. Euroasia global** reported as **[2009 (236) ELT 627 (SC)]** has considered the question as to whether mis-declaration of description and value constitute "smuggling" as defined under section 2(39) of Customs Act, 1962, the question was decided in negative. Further the release of currency notes was stayed but for the reason that the Hon'ble High Court had granted unconditional release of cash. **The Hon'ble Delhi High Court in the case of Tripta Sharma vs Commissioner of Customs, New Delhi** reported as **[2002 (145) ELT 519]** that the seized currency has to be released

when owner thereof has claimed. Hon'ble Supreme Court in the case of **Dr. Pratap Singh vs Director of Enforcement**, reported as **[AIR 1985 SC 989]** has held that to contend about the reason to believe is not synonymous with subjective satisfaction and the Court can examine whether the reason to believe is held in good faith.

6. In view of the entire above discussion, it is clear that belief of the department about the impugned currency notes to be the sale proceeds of imported goods allegedly under-valued goods, but otherwise not alleged to be smuggled goods cannot, be a reason to deny the provisional release of the said currency. The said belief is still to be proved by the department. The release of currency notes otherwise also cannot be denied merely on the basis of statements as was held by Hon'ble Supreme Court of Madras in the case of **J K.S. Air travels vs Chief Commissioner of Customs, Chennai-I**, reported as **[2016 (331) ELT 173 (Mad)]**.

7. In view of the above discussion, the order under challenge is held to be wrong, accordingly, is hereby set aside. Consequent thereto, the appeal stands allowed.

(Pronounced in the open Court on 18.08.2022)

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

ss