

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
WEST ZONAL BENCH, AHMEDABAD  
REGIONAL BENCH  
COURT NO. III

Customs Appeal No. 10724 of 2019-DB

Arising out of Notification Order-S-10-52-ADJ-PRO-RELEASE-RAJKAMAL-  
18-19

Passed by Commissioner of CUSTOMS (Appeals)-KANDLA

Date of Hearing: 03.05.2019

Date of Decision: 03.05.2019

**M/s RAJKAMAL INDUSTRIAL PVT LTD**  
**401, DEV ARC CORPORATE, ABOVE CROMA ISCON CROSS ROAD**  
**SG HIGHWAY, AHMEDABAD GUJARAT - 380015**

**Vs**

**COMMISSIONER OF CUSTOMS**  
**KANDLA CUSTOM HOUSE, NEAR BALAJI TEMPLE**  
**KANDALA, GUJARAT**

Appellant Rep by: Shri Hardik Modh, Adv.

Respondent Rep by: Shri S K Shukla, AR

CORAM: Ramesh Nair, Member (J)

Raju, Member (T)

Cus - The assessee-company imported goods which it had declared as base oil, whereas the Revenue claimed that the same was HSD - The contentions of the Revenue were based on test reports given by the Baroda CRCL, CRCL New Delhi and IOCL at Mumbai - Hence the present appeal.

Held: The issue at hand is debatable since it revolves around the technical characteristics of the product - The assessee's counsel claimed that while the IS specifications 1460:2005 in respect of HSD provide for 21 specifications for testing, in the present case, the testing was done in respect of 14 specifications only - Apparently, this is a vital discrepancy in conducting the test - However, no opinion is expressed on merits - For releasing the goods for re-export, the quantum of bank guarantee is reduced to 25% of the duty amount - The assessee must also execute a bond for 100% of the value of the goods: CESTAT

Assessee's appeal partly allowed

Case law cited:

*Zip Zap Exim Pvt. Ltd. vs UOI 2018 (364) ELT 26 (Guj.)... Para 2*

FINAL ORDER NO. A/10848/2019

Per: Ramesh Nair:

**This appeal is directed against the order for provisional release dated 27.03.2019 decided by the Commissioner of Customs Kandla and communicated by the Deputy Commissioner of Custom House. According to this order the provisional release order was passed subject to condition of execution of bond for 100% value of the goods and bank guarantee for Rs. 6,85,41,000/- which is equal to 50% of the value of the goods. Being aggrieved by this condition of provisional release, the appellant filed the present appeal.**

**2. Sh. Hardik Modh, Ld. Counsel appearing on behalf of the appellant submits that the issue involved is of mis-declaration of goods as the appellant has declared as base oil whereas the department's contention is that it is a HSD. This contention of the department is based on test report given by Baroda CRCL, CRCL New Delhi and IOCL at Mumbai. He submits that the appellant has declared the good as appearing in the load point, therefore, there is no mis-declaration on the part of the appellant. As regard merit of the case, he further submits that HSD has been defined under supplementary notes of Chapter 27 of the Customs Tariff Act. It means any hydro carbon oil confirming to the India Standard Specific of Bureau of Indian Standard ISI1460: 2005. Indian standard ISI 1460:2005 provides for classifying the product as HSD. In the IOCL report dated 14.08.2018 only 14 were decided out of 21 specifications for coming to the conclusion whether the impugned goods were HSD of not, therefore, there is no conceivable reason as to why the appellant's request for retesting of all the parameters has not been acceded to. He further submits that now the SCN has already been issued which will be defended by the appellant before the adjudicating authority. At this stage, the appellant has requested for reexport of the goods, therefore, there is no impact of custom duty despite this the appellant is ready to give bank guarantee of 25% of the duty amount. In this regard, he relied upon the decision of the Gujarat High Court in the case of *Zip Zap Exim Pvt. Ltd. vs UOI 2018 (364) ELT 26 (Guj.)* wherein the re-export was allowed on furnishing of bank guarantee of an amount equal to 25% of the duty amount.**

**3. Sh. S.K. Shukla, Ld. Suptd. (AR) appearing on behalf of the Revenue invited our attention to the order of this Tribunal dated 13.02.2019 that this Tribunal has directed the Commissioner to provisionally release the goods on the bond and bank guarantee as he deems fit accordingly the Commissioner imposed condition for re-export which is not exorbitant and same may be maintained.**

**4. Heard both the sides, considered the submission made and perused the records. We find that the issue on merit is debatable as involved technical characteristic of the product. The submission of the Ld. Counsel regarding the fact that as per IS specifications 1460:2005 in respect of HSD, it provides 21 specifications whereas the testing was done only in respect of 14 out of 21 specifications. This appears to be very vital discrepancy in conducting the test. However, at this stage, we do not incline to make any**

**observation as regard the merit of the case. As regard the quantum of condition for release of the goods for re-export, we find that once the goods is re-exported the custom duty, if any, stand neutralized, therefore, to secure the interest of Revenue particularly in this case where the goods have to be re-exported, the quantum of bank guarantee decided by the Commissioner is exorbitant. The identical issue has been considered by the Jurisdictional High Court in Zip Zap Exim Pvt. Ltd. (supra) wherein the re-export of the goods were allowed on furnishing of bank guarantee of 25% of the duty amount accordingly, we following the ratio of Gujarat High Court judgment reduce the amount of Bank Guarantee to 25% of the duty involved in the consignment to be re-exported. As the SCN was issued, the quantum of duty as per revenue was worked out to Rs. 5,15,61,820/- hence the appellant is required to furnish Bank guarantee of Rs. 1,29,00,000/- i.e. 25% of duty. The appellant needs to execute the bond for 100% of the value of the goods. Accordingly, the appeal is allowed in above terms.**

**(Dictated and pronounced in the open court)**