

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI
DIVISION BENCH B1
COURT NO. III**

**Application No. C/Misc/40010/2019, C/Misc[EH]/40009/2019
In Appeal No. C/42026/2018**

**M/s ZARIWALA ENTERPRISES
192, KAMBEKAR STREET, 6TH FLOOR
ROOM NO. 601602, MASJID WEST, MUMBAI - 400003**

Vs

**COMMISSIONER OF CUSTOMS
CUSTOMS HOUSE, TUTICORIN**

Date of Hearing: 20.03.2019

Date of Decision: 20.03.2019

**Appellant Rep by: Shri A K Jayaraj, Adv.
Respondent Rep by: Ms T Usha Devi, DC AR**

**CORAM: Sulekha Beevi C S, Member (J)
Madhu Mohan Damodhar, Member (T)**

Cus - The Miscellaneous Application has been filed by assessee seeking provisional release of goods that have been seized and confiscated vide impugned Order - The assessee has not opted for provisional release at the earliest opportunity i.e., during pendency of proceedings before the adjudicating authority - After passing the impugned Order and confirming the mis-declaration, mis-classification of goods and also confirmation of duty demand and imposing redemption fine, the assessee cannot at this stage request for provisional release - Further, to consider the issue of provisional release at this stage, it would be necessary to hear the arguments in detail and the decision would touch the merits of the case itself - The issue of mis- declaration and mis-classification are the main allegations in SCN - The goods are not in the nature of easily perishable goods - The assessee has waited for around two years and four months to file this application for provisional release - No genuine grounds of urgency found for release of the goods - The Miscellaneous Application for provisional release of the goods is therefore dismissed - The Miscellaneous Application for early hearing is allowed: CESTAT

Misc application dismissed

MISC ORDER NOS. 40202-40203/2019

Per: Bench:

The above Miscellaneous Application has been filed by the appellant seeking provisional release of the goods that have been seized and

confiscated vide impugned Order dated 25.04.2018. The above early hearing application has also been filed by the appellant seeking early hearing of the appeal.

2.1 Ld. Counsel Shri. A.K. Jayaraj appearing on behalf of the appellant/applicant submitted that the appellant had filed Bill-of-Entry dated 09.11.2016 for import of the goods which are in the nature of Polyester Knitted Fabrics, Viscose Synthetic Fabrics, etc. Vide the impugned Order, the goods have been confiscated and the appellant has been given an option to redeem the goods on payment of fine of Rs. 12,00,000/- besides duty demand of Rs. 74,90,832/- and penalty of Rs. 6,00,000/- which has been imposed on the appellant.

2.2 He submitted that the declaration made by the appellant in the Bill-of-Entry and other documents are correct. The allegation of the Department that the price value declared as well as the classification declared by the appellant is incorrect, is without any factual basis. He urged that the Tribunal has enough powers under Rule 41 of the CESTAT Procedure Rules to grant provisional release of the goods during the pendency of the appeal.

3. Ld. AR Ms. T. Usha Devi appearing on behalf of the respondent opposed the application. She submitted that the appellant had not filed any application for provisional release before the adjudicating authority. Further, the provision contained in Rule 41 ibid does not empower the Tribunal to release the goods during the pendency of the appeal, especially when the Order-in-Original has given an option to redeem the goods on payment of duty and fine.

4. Heard both sides.

5.1 On perusal of records and after hearing the submissions made by both sides, it is seen that the Bill-of-Entry was filed on 09.11.2016. The appellant has not filed any application for provisional release of the goods during the pendency of the proceedings before the authorities below. In case the appellant had filed such an application and the same was rejected, the appellant could have filed an appeal before the Tribunal against such rejection of provisional release application .

5.2 The appellant has not opted for provisional release at the earliest opportunity i.e., during the pendency of proceedings before the adjudicating authority. After passing the impugned Order and confirming the mis-declaration, mis-classification of the goods and also confirmation of the duty demand and imposing redemption fine, the appellant cannot at this stage request for provisional release. Further, to consider the issue of provisional release at this stage, it would be necessary to hear the arguments in detail and the decision would touch the merits of the case itself. The issue of mis- declaration and mis-classification are the main allegations in the Show Cause Notice.

5.3 The goods are not in the nature of easily perishable goods. The appellant has waited for around two years and four months to file this application for provisional release. We therefore find no genuine grounds of urgency for release of the goods. The Miscellaneous Application for provisional release of the goods is therefore dismissed.

6. However, taking note of the contentions put forward by the appellant, we grant early hearing of the appeal. The Miscellaneous Application for early hearing is allowed. Registry is directed to list the case for hearing on 25.05.2019.