**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**
**NEW DELHI.**
**PRINCIPAL BENCH - COURT NO.III**

# E-Hearing

# Customs Appeal No.50592 of 2026

[Arising out of Order-in-Original No.12/2026-27/Gr.VB/COMMR./ICD-Import/TKD/New Delhi dated 14.05.2026 passed by the Commissioner of Customs (Import), ICD,Tughlakabad, New Delhi]

**M/s. Columbia Developers Pvt. Ltd.** **...Appellant**
76 , 5th 'A' Cross, IAS Officers Colony,
16th Main, 2nd Stage BTM Layout, 14th
Main Rd. MCHS Colony, Stage 2, Bengaluru,
Karnataka-560 076.

VERSUS

**Commissioner of Customs** **...Respondent**
Imports, ICD TKD-New Delhi,
ICD, Tughlakabad,
New Delhi-110 044.

**APPEARANCE:**
Shri Sambhav Jain, Advocate for the appellant.
Shri Girijesh Kumar, Authorised Representative for the respondent.

**CORAM:**
**HON'BLE DR. RACHNA GUPTA, OFFICIATING PRESIDENT**
**HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)**

**FINAL ORDER NO. 51675/2026**

**DATE OF HEARING:29.10.2026**
**DATE OF DECISION: 05.11.2026**

## DR. RACHNA GUPTA:

The present appeal is filed to assail the Order No12/2026-27 dated 14.05.2026 vide which the provisional release of the goods in question (High Luxury vehicle viz Cadillac Escalade V)[1] is allowed subject to the execution of a bond of Rs.5.80 Crores and on furnishing

[1]Subject Good

a bank guarantee of Rs.4,63,57,479/-. Present appeal has been filed to challenge the said conditions.

2. Briefly stated relevant facts are that under Bill of Entry No.5004155 dated 12.08.2024, the subject goods have been imported through ICD, Tughlakabad declaring the value at USD 78,000/- (CF value). The goods were cleared. However, thereafter, Directorate of Revenue Intelligence [2], Ahmedabad Zonal Unit took up the investigation into the import of luxury motor car. Accordingly, the statement of Director of appellant company was recorded on 11.04.2025. The investigation was also referred to Dubai Customs Export declaration dated 19.07.2024, which reflected FOB value of subject goods at USD 1,99,414/-. keeping in view the aforesaid statement and the difference between the declared import value and the value appearing in foreign export declaration, the vehicle in question/subject goods were seized vide Memo dated 13.06.2025 under Section 110 read with Section 111 (m) of the Customs Act, 1962[3].

3. Thereafter, show cause notice no.262/2025-26 dated 06.12.2025 was served upon the appellant prosing rejection of the declared value, re-determination of value, recovery of differential duty and other consequential actions.

4. After seizure for close to a year, the appellant applied for provisional release of the subject goods under Section 110A of the Act on 17.04.2026 followed by Reminder dated 23.04.2026. Receiving no response, the appellant moved writ jurisdiction of Hon'ble High Court of Delhi. Vide Order dated 30.04.2026 in Writ Petition Civil No.5940 of

[2]DRI
[3]The Act

2026, the Hon'ble High Court of Delhi directed the competent authority to decide the matter within the period specified in its order (within 2 weeks thereof). Pursuant to the said order, the Principal Commissioner allowed provisional release of the vehicle subject to the conditions, as mentioned above. Being aggrieved of the conditions the appellant is before this Tribunal.

5. We have heard Shri Sambhav Jain, learned Counsel for the appellant and Shri Girijesh Kumar, learned Authorised Departmental Representative for the Department.

6. Learned counsel for the appellant has submitted that bank guarantee of Rs.4,63,57,479/-, as has been a condition for provisionally releasing the subject goods, is at 210% of the differential duty, which is absolutely contrary to the settled position of law. The decision of the Hon'ble Supreme Court in the case of **Commissioner of Customs, ICD, TKD, New Delhi Vs. Navshakti Industries Pvt. Ltd.**[4] has been relied upon. Learned counsel submitted that the Hon'ble Apex Court had ordered release of the seized goods on furnishing of a bank gurantee of 30% of the differential duty. Learned counsel has also relied upon the decision of Chandigarh Bench of this Tribunal in the case of **Ventura Global Inc Vs. Commissioner of Customs, Ludhiana** in Customs Appeals No.60137 and 60143 of 2026 decided on 15.07.2026, wherein it was held that the interest of justice and also the interest of revenue will be safeguarded by seeking a bond for the full value of the goods and the bank guarantee to the extent of 30% of the duty estimated. With these submissions, learned counsel has prayed for reduction in the amount of bank guarantee as one of the conditions for

[4]2011 (269) ELT A -146 (SC)

provisionally releasing the subject goods at least to the extent of 30%. The appeal is, accordingly prayed to be allowed.

7. While rebutting these submissions, learned Departmental Representative for the Department has submitted that the present is the case of massive under-valuation of the subject goods. The appellant had imported a high & luxury vehicle from Dubai. The export declaration made to Dubai vis-à-vis the FOB value thereof is USD 1,99,414/- whereas the value declared before Indian Customs is CF value of USD 78,000/- only. It is further submitted that there is no infirmity in the impugned order under challenge. The Commissioner has considered the valuation discrepancy, the proposed differential duty and the possible consequences under the Customs Act and the need to safeguard revenue pending adjudication. It is acknowledged that the bank guarantee imposed is approximately 2.10 times/210 % of the proposed differential duty. Learned Departmental Representative for the Revenue relied upon the decision of the Hon'ble High Court of Delhi in **Mala Petrochemicals & Polymers Vs. Additional Director General, DRI and Another in WP(C) No.3965 and 4123 of 2017 decided on 19.05.2017,** wherein it has been held that the provisional released conditions must be assessed in the light of the facts of a particular case and there can be no universal formula applicable to every case. The decision in the case of **M/s. Classic Interiors Vs. Commissioner of Customs, New Delhi in Final Order No.50023 of 2023 dated 12.01.2023,** wherein the Tribunal has held that there can be no hard and fast rule for conditions of the provisional release and the facts of each case must be considered. It is also submitted that the decision of **Navshakti Industries (supra)**, as relied upon by the appellant, is not

applicable to the facts of the present case as the said matter involved newsprint, a short levied articled, which is not true for the present case. Thus there is no fixed rule that bank guarantee must always be restricted to the 30% of differential duty. Finally submitting that the order has correctly proceeded in terms of Section 110 A of the Act, the discretionary powers given thereunder, hence there is no infirmity. The appeal is accordingly prayed to be dismissed.

8. Having heard both the parties and on perusing the entire records, it is observed that the impugned order has directed provisional release of the subject goods, in terms of Section 110A of the Act. However, subject to the fulfillment of the following two conditions, No.(1) execution of a bond of Rs.5.80 crores and (2) furnishing the bank guarantee of Rs.4,63,57,479/-. At this stage, we have perused the said Section 110A, which is as follows:-

> **"Section 110: Seizure of goods, documents and things**
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> **(1)** If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods: 1[Provided that where it is not practicable to remove, transport, store or take physical possession of the seized goods for any reason, the proper officer may give custody of the seized goods to the owner of the goods or the beneficial owner or any person holding himself out to be the importer, or any other person from whose custody such goods have been seized, on execution of an undertaking by such person that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer: Provided further that where it is not practicable to seize any such goods, the proper officer may serve an order on the owner of the goods or the beneficial owner or any person holding himself out to be importer, or any other person from whose custody such goods have been found, directing that such person shall not remove, part with, or otherwise deal with such goods except with the previous permission of such officer.] 2[(1A) The Central Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, by notification in the Official Gazette, specify the goods or class of goods which shall, as soon as may be after its seizure under sub-section (1), be

> disposed of by the proper officer in such manner as the Central Government may, from time to time, determine after following the procedure hereinafter specified. (1B) Where any goods, being goods specified under sub-section (1A), have been seized by a proper officer under sub-section (1), he shall prepare an inventory of such goods containing such details relating to their description, quality, quantity, mark, numbers, country of origin and other particulars as the proper officer may consider relevant to the identity of the goods in any proceedings under this Act and shall make an application to a Magistrate for the purpose of–
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> **(a)** certifying the correctness of the inventory so prepared; or
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> **(b)** taking, in the presence of the Magistrate, photographs of such goods, and certifying such photographs as true; or
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> **(c)** allowing to draw representative samples of such goods, in the presence of the Magistrate, and certifying the correctness of any list of samples so drawn. (1C) Where an application is made under sub-section (1B), the Magistrate shall, as soon as may be, allow the application.] 3[(1D) Where the goods seized under sub-section (1) is gold in any form as notified under sub-section (1A), then, the proper officer shall, instead of making an application under sub-section (1B) to the Magistrate, make such application to the Commissioner (Appeals) having jurisdiction, who shall, as soon as may be, allow the application and thereafter, the proper officer shall dispose of such goods in such manner as the Central Government may determine.]"

9. The bare perusal reveals that the seized goods, pending adjudication can be released to the owner, the importer in the present case. However, Condition No.1, taking a bond from him in proper form and Condition No. (2) such security and conditions as the Adjudicating Authority may require. Thus, the provision extends discretion with the Adjudicating Authority to decide the nature or quantum of the security to be furnished and the conditions to be imposed. This perusal makes it clear that the provision does not provide for a blanket rule in all cases of mis-declaration that 100% of the duty demanded must be asked to be deposited. The power under Section 110A of the Act involves exercise of discretion. The scope of judicial review is to examine if the discretion has been rightly exercised; that it is not based on irrelevant materials and is fair and reasonable in the circumstances. It is not an

Appellate power. The drawing of a distinction between seizure of imported goods as a result of undervaluation and seizure of imported goods upon mis-declaration cannot *per se* be said to be irrational. On the contrary, the failure to draw such a distinction and treat all types of wrongful imports on an equal footing might result in miscarriage of justice. That is perhaps why Section 110A has been worded in the way it has, leaving some margin to the Customs in the exercise of their discretion subject, of course, to the recognized legal limits. We draw our support from **Mala Petrochemicals & Polymers Vs. ADG, Directorate of Revenue Intelligence[5].**

10. The Commissioner has already ordered the provisional release. Hence, at this stage, we do not look into the bonafide thereof. However, with respect to the conditions vis-à-vis bank guarantee, we observe that the Commissioner has calculated the amount not merely equivalent to the proposed differential duty but as apparent from para 7.11 of the impugned order, the value of proposed fine and penalties have also been quantified and have been added to the amount of bank guarantee demanded from the appellant. The said amount is the maximum amount to be called from the appellant in case the appellant fails at the time of final adjudication. Demanding the same at the stage of provisional release is the unreasonable use of discretionary power for the simple reason that the condition of bank guarantee has to be proportionate balancing out the revenue interest with the importer's hardships. The high & luxury vehicle, the year of its make and of its import is quite relevant as far as the depreciation of the value of the vehicle is concerned.

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[5] 2017 (353) ELT 446 (Del.)

11. In view of these observations, we hold that the condition of bank guarantee, which is 210% of the proposed differential duty in the impugned order is disproportionate. This is sufficient for us to order the reduction in the amount of bank guarantee as a condition of the impugned provisional order. Simultaneously, keeping in view the alleged mis-declaration of the high and luxury vehicle, we direct that the bank guarantee to the extent of 50% of the proposed differential duty should be substituted as the condition vis-à-vis bank guarantee in the impugned order is concerned. With these observations, the order under challenge is ordered to be modified to that extent. As a result, the appeal is partly allowed.

[Order pronounced on 05.11.2026]

**(DR. RACHNA GUPTA)**
**OFFICIATING PRESIDENT**

**(P.V. SUBBA RAO)**
**MEMBER (TECHNICAL)**

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