CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH : AHMEDABAD

REGIONAL BENCH - COURT NO. 3

CUSTOMS Appeal No. 10867 of 2016-DB

[Arising out of Order-in-Original/Appeal No MCH-PRCOMMR-PVR-33-2015-16 dated 10.02.2016 passed by Commissioner of CUSTOMS-MUNDRA]

Sundersons Logistics Pvt Limited .... **Appellant**
Orient House, Adi Marzban Path, Ballard Estate,
MUMBAI, MAHARASHTRA -400001

VERSUS

Commissioner of Customs, Mundra .... **Respondent**
Office of the Principal Commissionerate of Customs,
Port User Buld. Custom House Mundra,
Kutch, Gujarat -370421

CUSTOMS Appeal No. 10868 of 2016-DB

[Arising out of Order-in-Original/Appeal No MCH-PRCOMMR-PVR-33-2015-16 dated 10.02.2016 passed by Commissioner of CUSTOMS-MUNDRA]

Bharat Lalwani .... **Appellant**
Joint Managing Director, Sundersons Logistics Pvt Limited, Orient House, Adi Marzban Path, Ballard Estate, MUMBAI, MAHARASHTRA -400001

VERSUS

Commissioner of Customs, Mundra .... **Respondent**
Office of the Principal Commissionerate of Customs,
Port User Buld. Custom House Mundra,
Kutch, Gujarat -370421

APPEARANCE :

Mrs. Dimple Gohil, Advocate for the Appellant
Shri Tara Prakash, Deputy Commissioner (AR) for the Respondent

CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. RAJU, MEMBER (TECHNICAL)

DATE OF HEARING : 07.11.2023
DATE OF DECISION: 06.03.2024

FINAL ORDER NO. 10541-10542/2024

RAMESH NAIR :

Brief facts of the case are that the Appellant M/s. Sunderson Logistics is engaged in the business of providing logistic services in relation to import and export of goods. The Appellant is importing Flexi tanks from suppliers in

China after getting it manufactured there in its name. Flexi Tank is a packaging system used for carriage of non-hazardous bulk liquid, viz. Castor oil, liquid sodium silicate, liquid paraffin, edible oil, LAB, Tri-ethylene glycol (TEG) etc. The Flexi Tank is made of four layers of food grade polyethylene and outer layer is poly propylene. The Appellant have claimed benefit of exemption from payment of Customs Duty in terms of Notification No. 104/94–Cus dated 16.03.1994. The Department has alleged that the flexi tank is not of durable nature and therefore the Appellant has wrongly claimed benefit of exemption under the said notification and confirmed demand of custom duty along with fine and penalty vide the impugned Order –in-Original No. MCH/PR.COMMR/PVR/33/2015-16 dated 10.02.2016. Hence the present appeal.

2. Mrs. Dimple Gohil, Learned Advocate appearing on behalf of the Appellant submits that the Department has erred in holding that only those containers which are used for packaging and transporting other goods and are capable of being used several times only will qualify as 'durable containers'. She submits that the Department has only relied on the Board Circular no. 69/2002 – Customs dated 25.10.2002 to deny the exemption to the Appellant under Notification No. 104/94–Cus dated 16.03.1994. She submits that the Flexi Tanks are capable of lasting for the period of sea voyage and are thus of 'durable' nature as high endurance factor is required for a long sea voyage she takes support of the decision of the Commissioner of Customs (Appeals) in the case of J.R. Roadlines Pvt. Ltd. She further submits that the Flexi Tanks are used by the industry players as a substitute of barrels/drums and therefore are considered to be durable in nature.

3. Shri Tara Prakash, Learned Deputy Commissioner (AR) appearing on behalf of Revenue reiterates the findings of the impugned order.

4. We have carefully heard both the sides and perused the documents. We find the issue in the present case is whether the Appellant has wrongly claimed benefit of exemption under Notification No. 104/94 – Cus dated 16.03.1994 as claimed by Department or otherwise. We note that the said Notification provides that import of containers of durable nature are exempted on execution of a bond and on the condition of the goods being re-exported within a period of six months. In the present case we are of the view that the Department has not appreciated the nature and characteristics of the imported goods and have relied only on the Statements recorded during investigation to conclude that the said goods are not durable and therefore not eligible for exemption under the said scheme. As regards the submissions made by the Appellant the term 'durable' encompasses the endurance capability of a product and is not solely based on its capacity to be re-used therefore based on the nature of goods being able to withstand wear and tear and exist for a period of time without deterioration the Appellant was not wrong in claiming benefit under Notification No. 104/94– Cus dated 16.03.1994. It is the claim of the Appellant that the adjudicating authority has not produced any evidence in support of their claim and have only relied on Board Circular No. 69/2002–Customs dated 25.10.2002 to allege that the goods of the Appellant are not durable. We find that the term 'durable containers' needs to be understood in the context in which they are used with reference to the type of materials of which the container is and the purposes for which it is intended to be used. We observe that durability is a relative term and given the advancement of technology materials are capable of providing strength and resistance towards normal wear and tear

and can be attributed with persistent utility when in terms of the notification such goods are to be re-exported. Therefore, we are of the view that the issue needs to verified from the factual matrix given that the nature and characteristics of the product need to be examined in order to determine whether Flexi Tanks will be considered durable or not.

5. In furtherance of the foregoing discussion, we are of the view that the nature of the goods need to be determined by way of proper test/ technical literature for which the matter is remanded for re-consideration to the adjudicating authority.

6. In view of above we make it clear that no findings have been recorded on merits and are leaving the issue open. Appeal is allowed by way of remand to the adjudicating authority.

(Pronounced in the open court on 06.03.2024)

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)

KL