Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO. 01

Customs Appeal No. 11755 of 2017
(Arising out of OIA-AHD-CUSTM-000-APP-031-17-18 Dated- 20/06/2017 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)

Guru Prakash Enterprise ....**Appellant**
A-604, Mahalaya Tower, Opp.
Hotel President,C.G. Road,
Ahmedabad, Gujarat

VERSUS

C.C.-Ahmedabad ....**Respondent**
Custom House, Near All India Radio Navrangpura,
Ahmedabad, Gujarat

APPEARANCE:
Shri. Vikas Mehta, Consultant for the Appellant
Shri. Himanshu P Shrimali, Superintendent (AR) for the Respondent

CORAM: HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)

Final Order No. 10121 /2025

DATE OF HEARING:10.02.2025
DATE OF DECISION:14.02.2025

Acting as Custom Broker on behalf of importer, namely, M/s. Magnum Chocolatier, Chennai, the appellant filed seven bills of entry with ICD, Khodiyar, Gandhinagar in respect of goods, namely, pudding and jelly. The details of bills of entry are given in the show cause notice. DRI examined the goods and issued Show Cause Notice dated 04.03.2016 to the importer, *inter alia,* alleging wrong classification and failure to affix stickers declaring RSP on the individual packets of imported goods. Penalty was also proposed on the appellant under Section 112 (a) of Customs Act, 1962 for allegations of contraventions and misdemeanors. According to this, CHA filed bills of entry containing details of RSP although goods did not bear stickers/labels bearing such details.

2. Ld. Adjudicating Authority dropped the demand by holding that goods were correctly classified under CTH 1704 (as against 2106 proposed in the SCN). He also dropped penal proceedings against the appellant on the ground that the appellant had no means to verify whether the individual packages inside the containers had the required stickers/labels. Department filed appeal before Ld. Commissioner (Appeals), who, vide impugned order reversed the order of Ld. Adjudicating Authority and allowed the appeal filed by department on classification. He also held that the appellant was liable to penalty under Section 112 (a) and remanded the matter to lower authority to determine differential duty, interest, confiscation, redemption fine, penalty, etc. The importer filed appeal before this Hon'ble Tribunal. Their appeal was allowed vide order reported at 2020 (371) ELT 309 (Tri. – Ahmd.) in the matter of M/s. Magnum Chocolatier Vs. Commissioner of Customs, Ahmedabad.

Grounds Of Appeal:

3. The advocate for the appellant states that the appellant has filed the present appeal challenging the order of Ld. Commissioner (Appeals) on the ground that containers were sealed before they were opened by DRI and hence, they had no means to verify that the goods were not affixed with stickers/labels containing details of RSP on the packages. The Panchanama dated 21.08.2014 drawn at ICD, Khodiyar clearly notes that containers were sealed. Hence, the appellant had no means to ascertain that stickers/labels were duly affixed at the time of import. There is no evidence in the form of statement of importer or any other person to the effect that appellant had prior knowledge about the aforesaid lapse. In the case of Prime Forwarders v/s Commissioner of Customs, Kandla, 2008 (222) ELT 137 (Tri. – Ahmd.), this Hon'ble Tribunal has set aside penalty imposed on Custom House Agent on the ground that the said CHA has acted on the basis of the documents

given to them and there is nothing to show that he was aware of the containers being stuffed with alleged mis-declaration. He therefore prayed for acceptance of the appeal.

4. The learned A.R on the other hand reiterates the findings specially Para 10.4 to 10.6 reproduced below of the impugned order and states further that in case law cited by the appellant reported in 2020 (371) ELT 309 (Tri-Ahm.) (supra) issue of non-fixing of M.R.P was not decided specifically.

> *Para "10.4 I do not agree with the contention of the adjudicating authority that there was no mala fide intention of the importer for not fixing such labels and therefore did not that impose any penalty as not fixing the labels on the individual retail sale unit amounts to wrong and false declaration of RSP at the time of filing bill of entry, thus indulging in deliberate misstatement making the importer (Respondent 1) liable to penalty under Section 114A and 112(a) of the Customs Act, 1962.*
>
> *10.5 In view of the facts mentioned above, the arguments of the Respondent I that there was no mis-statement / misrepresentation on their part and that the demand of duty and interest does not sustain and that they are not liable to penal action cannot be accepted.*
>
> *10.6 The contention of the Respondent 2 that there was no evidence to prove their complicity in the instant case is not acceptable. The records show that the Customs Broker, M/s. Guru Prakash Enterprise aided the Respondent 1 in suppression and misstatement of facts and despite the required sticker / labels were not fixed on the goods, filed bills of entry containing wrong information regarding RSP, hence they are justifiably liable to penalty under Section 112(a) of the Customs Act, 1962 and order of the adjudicating authority not imposing the penalty on them is incorrect."*

5. In rejoinder, the learned Advocate states that apart from his above arguments which require setting aside the order, the remand order of the Commissioner (Appeals) in any case is not maintainable, as the CHA acted only by relying upon the documents as were provided to him by the importer without knowing what kind of goods were contained in the container and whether they had affixed any MRP or not. In support, he seeks to rely upon the decision in the matter of PRIME FORWARDERS vs. CCE-Kandla as reported in 2008 (222) ELT 137 (Tri-Ahm.) as is the part of the synopsis submitted.

6. This Court has considered the rival submissions. It finds that the case against the main party on the issue of Notification was decided in 2020 (371) ELT 309 (Tri.-Ahm.). However, the contents of the decision in the matter of M/s. Magnum Chocolatier Vs. Commissioner of Customs, Ahmedabad as reported in 2020 (371) ELT 309 (Tri. – Ahmd.) do not indicate whether the issue of labelling of consignment was before the Division Bench of this Tribunal or was given relief of to the party at any stage earlier, before the contest in the Tribunal. Since, the decision delivered on 27.09.2019 does not show any context on the point of RSP, it will be reasonable for this Court to conclude that the same was not agitated to the prejudice of the party by the department. As far as, the issue of classification is concerned even from the judgment, it is clear that it has gone in favour of the importer, therefore, the main party stands exonerated of the charges. The question of any allegation sustaining against the CHA, therefore, does not arise. The decision cited by the learned advocate are clearly in support of the proposition that there was no prior knowledge of the contents of the container or how they were going to be presented before the Customs authority for examination. The actions taken by the CHA on the basis of documents presented to him by his client, who as on date also stands absolved do not leave any scope for imposition of penalty. Same is therefore liable to be set aside and it is, therefore, ordered accordingly.

7. Appeal is allowed.

(Pronounced in the open court on 14.02.2025)

(SOMESH ARORA)
MEMBER (JUDICIAL)

Prachi