CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
OLD RED BUILDING, 38,M.G.Marg,CIVIL LINES, ALLAHABAD

Dated: 23/04/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **A/ 70129/2016 SM** dated 09/03/2016

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the **Central Excise and Salt Act, 1944.**

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
	C/52803/2015	SSA INTERNATIONAL LTD UNIT O 306-208, SQUARE ONE MALL, C-2, DISTRICT CENTRE SAKET, NEW DELHI
	Name and Address of Respondent	COMMISSIONER OF CUSTOM, NOIDA CONCOR COMPLEX(ICD DADRI) PO-CONTAINER DEPOT, GREATER NOIDA, GAUTAM BUDH NAGAR UP 201311

Other Appellants and Respondents as per Annexure

Copy To

3 Advocate(s) / Consultant(s DR.PRABHAT KUMAR,ADV
B-51(BASEMENT),SARVODAYA
ENCLAVE(NEAR MOTHER INTERNATIONAL
SCHOOL), NEW DELHI-17

4 Bar Association, CESTAT, ALLAHABAD
5 Director Publications, Customs, Excise. I.P. Estate, Delhi

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhisham Pitamah Marg, New Delhi-3

7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

9 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-16, Faridabad 121003 (Haryana)

11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi – 110070

12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad -- 38
13 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad,-500082
14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar
Regional Bench, Allahabad

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

Cus. Appeal No.52803/15

Arising out of OIO No.03-Commr./Cus/ICD-DD/2015 dated 31.03.2015 passed by Commr. of Customs, Noida.

For approval and signature:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	: No
2.	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	: Yes
3.	Whether His Lordship wishes to see the fair copy of the Order?	: Seen
4.	Whether Order is to be circulated to the Departmental Authorities?	: Yes

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M/s SSA International Ltd. ...APPELLANT(S)

VERSUS

Commissioner of Customs, Noida RESPONDENT (S)

APPEARANCE

Dr. Prabhat Kumar, Adv. for the Appellant (s)
Shri Rajeev Ranjan, Joint Commr. (A.R.) for the Department

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

DATE OF HEARING & PRONOUNCEMENT : 09. 03. 2016

Final ORDER NO. 70129/2016

Per Mr. Anil Choudhary :

The Appellant, M/s SSA International Ltd., is in Appeal against Order-in-Original No.03-Commr./Cus/ICD-DD/2015 dated 31.03.2015 passed by Commr. of Customs, Noida, imposing redemption fine of Rs.10.00 lakhs and penalty of Rs.5.00 lakhs under Section 112 of the Customs Act, 1962.

2. Brief facts are that the appellant, M/s SSA International Ltd, Saket, New Delhi having IEC Code Number & PAN Number, imported 19,595 kgs (43200 lbs) California Inshell Almonds vide Invoice dated 11/9/14 and Bill of Lading dated 10/8/14 having assessable value of Rs.81,67,686.85 from M/s Lina Global Incorporate, New York, USA. The bill of entry on the goods reaching ICD, was filed on 24/9/14. The Customs requested the appellant to obtain No Objection Certificate from M/s Food Safety & Standards Authority of India (FSSAI) in respect of the imported Almonds. The sample was drawn by the authorized officer for lab analysis on 10.10.2014 and the report dated 27.10.2014 was issued addressed to the Assistant Commissioner. It was stated that "the tested sample does not conform to 2.3.47(5) for FSSR, 2011 for dry fruits & nuts (Inshell Almonds) with respect to presence of insect fragments which should not be present". Thus, the NOC was refused on analysis by FSSAI On the request of the appellant, a fresh sample was drawn on 13/11/14 and was again tested. Vide report dated 12/1/15, it was stated that the sample does not conform to the standards laid down under Regulation No.

2.3.47(5) of Food Safety and Standards (Food Products Standard and Food Additives) Regulations, 2011 and as per Sl.No.7 of FSSAI methods and standards for imported Food, 2012,, since the sample shows presence of "Mould and Fungal Growth" in it and "Yeast & Mould Count" higher than the prescribed limit. It also shows "Acidity of extracted fat expressed as oleic acid" higher than the prescribed limit. Hence, the sample is sub-standard and unsafe under Section 3(1)(zx) and 3(1)(zz)(x) of FSS Act, 2006 and NOC was refused.

2.1 Accordingly, on the request of the appellant informing that they were not satisfied with the result or analysis report given by FSSAI and requested to allow them to resample the same from FSSAI or any other recognized certified inspection agency in order to get the clarity on the quality of the goods. The said request was rejected. It was further urged by the appellant that the supplier of the goods in USA, had stated that the sample was tested and was found fit by an authorized testing agency in USA, namely, USDA and the second test was got done from another lab, i.e. FSA Lab in USA.

2.2 Under the above facts, it was stated by the appellant before the ld.Commissioner that there was no malafide intention on their part. It was also contended that the mould and fungal growth as reported by FSSAI, is on the shell of almonds and inside may not be infested. It was also submitted that fungal growth could be due to moisture content during the long transport period which was almost 45 days.

3. The ld. Commissioner vide OIO dated 31/3/15 observing that the imported goods, has failed to clear the food safety standards,

accordingly, held that the impugned goods are offending in nature as per Food Safety & Standard Regulations, 2011 and accordingly, rejected the same for clearance for home consumption. Further, the ld.Commissioner held that the impugned goods are liable for confiscation under Section 111 (d) of the Customs Act, 1962 and as requested by the appellant, re-export was allowed to the supplier on payment of redemption fine of Rs.10.00 lakhs. It was further observed that since the goods imported by the appellant, have failed to pass the test of Food Safety & Standard Regulations, 2011, therefore, the appellant was held liable for penal action under Section 112 of the Customs Act 1962. Accordingly, the appellant was directed to pay redemption fine and re-export the imported almonds being 19595 kgs of California Inshell Almonds and further, penalty of Rs.5.00 lakhs was imposed under Section 112 of the Customs Act, 1962.

4. The ld. Counsel for appellant states that in view of the two test reports obtained by the shipper/exporter in USA, the goods were definitely in good condition at the time of shipping. He further points out that the bill of lading is dated 10/8/14, whereas, the bill of entry was filed on 24/9/14. Further, the sample for test was drawn on 10/10/14. Thus, there has been a lapse of 2 months from the date of shipping and the date of drawing sample and in the course of transportation by ship, the imported elements suffered major damage and as such, no malafide is attributable on them. Accordingly when the permission to re-export, is granted, for failing the test, no redemption fine and penalty should have been imposed.

4.1 The ld. Counsel also relies on the ruling of of this Tribunal in the case of Bio-Chemical Pharmaceuticals Ltd. Vs. Commr. of Customs, Mumbai : 2005 (186) ELT 564 (Tri.-Mumbai) where the Division Bench of this Tribunal, held that in the case of import of drugs not meeting pharmacopoeia test grades, hence not permitted to be imported under Rule 41 of Drugs & Cosmetics Rules, 1945 and shipping was allowed on payment of fine and there have been no malafide on the part of the importer although the confiscation was upheld and imposition of penalty was set aside and further, redemption fine was reduced to token 1% of sale value. The ld. Counsel also relies on another decision of this Tribunal in the case of Centre Marketing Agency Vs. Commissioner of Customs (Airport), Calcutta : 2004 (178) ELT 601 (Tri.-Kolkata) wherein transistors were imported from Phillppines and the case of mis-declaration was made out, as being undervalued, re-export was allowed, redemption fine was set aside along with penalty.

7. Ld.A.R. for revenue relies on the impugned order.

8. Having considered the facts and circumstances and the rival contentions, I hold that there is no malafide intention on the part of the appellant. It is a matter of fact that two laboratories in the country of export found that the goods under export were in good condition. It is also a matter of fact that a period of more than two months had expired from the date of shipping to the date of sending the sample for testing and as such, during this period, the goods suffered damage and no malafide is attributable to the appellants. Accordingly, the appeal is allowed and the redemption fine and penalty are set aside.

The appellant will be entitled to consequential benefit, if any, in accordance with law.

(Dictated and pronounced in the open Court)

(Anil Choudhary)
MEMBER (Judicial)

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