

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
BANGALORE**

REGIONAL BENCH - COURT NO. 2

Customs Appeal No. 20145 of 2023

[Arising out of Order-in-Original No. MLR-CUSTM-000-RS-COM-004-2022-23 dated 17/01/2023 passed by the Commissioner Of Customs , MANGALORE]

**M/s Vidya Herbs Private
Limited**

No.39/11, Amble Hoble, Aradavalli,
Chikkamagaluru, Karnataka, 577101

Appellant(s)

VERSUS

**The Commissioner of
Customs, Mangalore-CUS**

NEW CUSTOMS HOUSE, PANAMBUR
MANGALORE, KARNATAKA, 575010

Respondent(s)

Appearance:

Mr. N. Anand, Advocate For the Appellant

Mrs. D.S. Sangeetha, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. P.A. AUGUSTIAN, MEMBER (JUDICIAL)

**HON'BLE MR. PULLELA NAGESWARA RAO, MEMBER
(TECHNICAL)**

Final Order No.20664/2023

Date of Hearing: 24/04/2023

Date of Decision: 30/06/2023

Per : P.A. AUGUSTIAN

The appellant is a private limited company engaged in the business of manufacturing and export of Herbal Ayurvedic Extracts and is a 100% Export Oriented Undertaking under Cochin, Special Economic Zone Office, Bangalore. They have

been accorded status of Three Star Export house and are also holding "Authorized Economic Operator MSME Certificate".

2. Learned Counsel for the appellant submitted that in compliance with the Rule 5 of the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 appellant has imported "Indonesia Robusta Coffee Beans" as raw material for their production and as per the certificate issued by overseas agencies goods are falling under the category of "Indonesia Robusta Coffee Beans". On arrival of the shipment, the appellant filed a Bill of Entry No.3235561 dated 09.11.2022 with relevant documents and when the samples were drawn from the consignment for Phytosanitary inspection the Customs officers have observed that the goods imported are "Coffee Husk/Bits" and not "Indonesia Robusta Coffee Beans." The learned counsel submitted that the goods were subjected to 100% examination and that there is nothing on record as to whether the department drew sample for further test by testing agencies. As per the request of the appellant, issue of SCN was waived and appellant appeared before the Adjudication Authority.

3. However, by confirming the mis-declaration of imported goods, the Adjudication Authority vide impugned order denied the benefit of exemption notification and confiscated the goods. Goods were allowed to be redeemed on payment of customs duty, fine and penalty. Aggrieved by the said order, the present appeal is filed.

4. Learned Counsel for the appellant draws our attention to relevant provision of Chapter 9, General Exemption No.69,

Notification No.52/2003-Cus dated 31.03.2003, and submitted that all goods as specified in Annexure-I to the Notification are exempted from payment of customs duty subject to fulfillment of Condition No.2A and that as per the Annexure-I, raw material required for production of goods are allowed to import.

5. Learned Authorized Representative (AR) appearing on behalf of the Respondent submitted that the mis-declaration was brought to the notice of the Respondent only at the time of inspection of the goods and when the said mis-declaration was brought to the notice of the appellant, the appellant vide letter dated 10.12.2022 admitted that the cargo was not matching with the cargo declared in the documents, which are classified under CTH 09019010 and that the importer also expressed willingness to pay Customs statutory charges for the cargo. Learned Authorized Representative submitted that as per the invoice, description of the goods are shown as "Indonesian Robusta Coffee Beans". Thus it is a clear case of mis-declaration and goods are liable for confiscation.

6. We have considered the submissions made by the learned Counsel regarding their eligibility to import all types of goods including Coffee husk, which is classifiable under the CTH 09019010. Though the arguments are correct to some extent, while issuing such general exemption for import of goods by an EOU, it is specified that such EOU must follow procedure prescribed under Rule 5(1)(a) of Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017. In the present case as evident from the application for Procurement of Goods under the

said Rule, the importer obtained sanction for import of "Indonesia Robusta Coffee Beans" having CIF Value of Rs.65,38,813/-. As per the invoice, description of the goods is shown as "Indonesia Robusta Coffee Beans" and as per the description of the consignment mentioned in certificate of quality issued by credited agency it shows "bags of Indonesian Robusta Coffee Beans. As per Chapter 9 of Customs Tariff, heading; 0901 reads; "Coffee, whether or not roasted or decaffeinated; coffee husks and skins; coffee substitutes containing coffee in any proportion". Bulk import of Rob Cherry is classified under 09011145 and when imported goods consisting only of coffee husks and skins they are classified under 09019010. However, in the present import, there are discrepancies in the description of goods and when the said discrepancy was brought to the notice of the importers, the appellant vide, letter dated 10.12.2022 admitted that the cargo was not matching with the cargo declared in the documents and also admitted that the cargo was found to be coffee Husk/bits, which is classified under CTH 09019010. Rule 5(1)(a) of Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 cast duty on importer to ensure import of goods as approved and if any change in description/classification, importer should have sought necessary amendment by submitting details of such goods from the appropriate authority.

7. As per the import policy liberal approach/ interpretation is taken to promote the activities of EOUs. They can be authorized to import any goods to meet the export requirement. However,

certain restrictions are imposed on such EOUs to ensure import of goods meant for export promotion activities and to ensure earning of net foreign exchange (NFE) while extending such exemptions. The power vested on the Customs authority is to verify that the goods imported are as per the import documents and the relevant approvals and it is for the concerned authority under Special Economic Zone to consider the request of EOU to import raw material suitable for manufacture of export products and to ensure fulfillment of export obligations as per the norms issued from time to time. In the present situation, goods even if they are considered as Coffee husk/Bits as alleged, they are legally permitted subject to fulfillment of condition 2A under General Exemption No. 69, Notification 52/2003-Cus. Dated 31.03.2003.

8. In the facts and circumstances of the case, we set aside the impugned order, the importer can approach the concerned authority and submit a fresh application under Rule 5(1)(a) of Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017, providing the information as was found by the customs authorities on examination of the goods and on submission of the amended/revised permission the Customs authorities to release the goods by extending the benefit of Notification No. 52/2003-Cus. Dated 31.03.2003.

9. In case, the appellant fails to produce the revised/amended permission, Customs Authorities to draw samples in accordance with law and based on the test report of the Authorized Test Agency, the Adjudication Authority shall

pass appropriate orders after giving reasonable opportunity to the appellant.

(Order pronounced in the Open Court on **30/06/2023**)

(P.A. AUGUSTIAN)
MEMBER (JUDICIAL)

(PULLELA NAGESWARA RAO)
MEMBER (TECHNICAL)

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