

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
1st Floor, WTC Building, FKCCI Complex, K. G. Road,
BANGLORE-560009

COURT-I

Customs Appeal No.2188 of 2010

*[Arising out of the Order-in-Original No.11/2010 dated 24.06.2010
passed by the Commissioner of Customs, Cochin.]*

M/s. DLF Southern Towns Pvt. Ltd. **....Applicants**
1-E, Jhandewalan Extension,
Naaz Cinema Complex,
New Delhi – 110 055.

Vs.

The Commissioner of Custom **....Respondents**
Custom House
Cochin – 682 009.

Appearance:

None

**....For
Applicant**

Vs.

Mr. P. Saravana Perumal,
Addl. Commissioner (AR)

**.... For
Respondent**

CORAM:

Hon'ble MR. P. A. AUGUSTIAN, MEMBER (JUDICIAL)
Hon'ble Mrs. R. BHAGYA DEVI, MEMBER (TECHNICAL)

Date of Hearing: 06.07.2023

Date of Decision: 10.07.2023

FINAL ORDER No. 20680 of 2023

Per R. BHAGYA DEVI:

The appellant-importer M/s. DLF Southern Towns Private Limited filed Bills of Entry for clearance for clearance of total quantity of 31360 bags of ordinary Portland Cement from Pakistan supplied by M/s. Maple Leaf Cement Limited, Pakistan. The

appellant had claimed the benefit of Notification No.29/2010, 4% SAD exemption which is applicable to prepackaged bags intended for retail sale.

2. As per the General Notes regarding Import Policy all prepackaged commodities, imported into India, shall in particular carry the following declaration.

- (a) Name and address of the importer;
- (b) Generic or common name of the commodity packed;
- (c) Net quantity in terms of standard unit of weights and measures. If the net quantity in the imported package is given in any other unit, its equivalent in terms of standard units shall be declared by the importer;
- (d) Month and year of packing in which the commodity is manufactured or packed or imported;
- (e) Maximum retail sale price at which the commodity is packaged form may be sold to the ultimate consumer. This price shall include all taxes local or otherwise, freight, transport charges, commission payable to dealers, and all charges towards advertising, delivery, packing forwarding and the like, as the case may be.

3. The appellant waived show-cause notice and for personal hearing, the Custom House Agent (CHA) had appeared on behalf of the importer. The CHA had also declared that the imports were for their own consumption and the goods were not meant for retail sale. The Commissioner on verification of the records noted as follows:

“11. As per the examination report by the proper officer, the details of importer were not available on the packages and the importer vide letter dated 21.06.2010 has stated that the goods were purchased on high sea sale agreement

and on examination only they came to know that the cement bags did not contain the name of importer.

12. Thus, I find that the subject import is in violation of policy provisions thereby rendering the goods liable to confiscation under Section 111(d) of the Customs Act, 1962 read with Section 3(3) of the Foreign Trade Policy (Development & Regulation) Act, 1992. For the above act, the importer also appeared liable for penalty under Section 112(a) of the Customs Act, 1962. The importer has not produced any additional documents to substantiate that the goods were imported for retail sale.”

3.1 Accordingly, the goods were confiscated and the importer was given an option to redeem the goods on payment of fine of Rs.2,50,000/- under Section 125 of the Customs Act, 1962 and penalty of Rs.1,00,000/- was also imposed on the importer under Section 112(a) of the Customs Act, 1962.

4. Aggrieved by the above order, the appellant preferred an appeal before this Tribunal. When the appeal came up for hearing, none present for the appellant, however, Mr. M. Balagopal, learned advocate on record had forwarded a letter dated 31.05.2023 stating that inspite of their repeated efforts, they could not contact the appellant, hence, he requested for an adjournment or to dispose of the matter on merits. Since already four adjournments had been granted and as the appeal pertains to 2010, we take up the matter for decision on merits after hearing learned Authorised Representative for the Revenue.

5. Learned Authorised Representative for the Revenue reiterating the findings of the Commissioner stated that he has violated the Policy provisions and hence, the goods were liable for confiscation and penalty. He also stated that the CHA in his reply had declared that the import is only for his own consumption and not for retail sale. He also submitted that in the grounds of appeal submitted by the appellant at paragraph 8, they have admitted the fact that the packages did not carry the name and address of the importer as required under Para 5 of the Import Policy. He has also placed reliance on the decision of the Tribunal rendered in the case of *Creative Enterprise vs. Commissioner of Customs (Import)*, Nhava Sheva: 2019 (370) ELT 446 (Tri.-Mum.), wherein the Tribunal had held that:

“4. The Tribunal in the case of *Pooja Hardware Pvt. Ltd. v. Commissioner of Customs (Import), Nhava Sheva*, reported in 2014 (306) E.L.T. 626 (Tri.-Mumbai) has denied the benefit of exemption Notification No. 29/2010-Cus. (supra). In that case, the aluminum profiles, hardware for furniture fittings though imported in pre-packed form, but since the same were not meant for retail sale under the provisions of Legal Metrology Act, 2009 and rules framed thereunder, the exemption benefit was denied. In the present case, we have already observed that the appellant had not produced any evidence to show that the imported goods are intended for retail sale and thus, the benefit of exemption is not available”.

6. In view of the above findings of the Commissioner (A) which are admitted by the appellant and based on the decision of the Tribunal, we find that the importer has violated the conditions of Import Policy and did not comply with the conditions of the

Notification No.29/2010. Accordingly, the impugned order is upheld and the appeal is dismissed.

*(Order pronounced in open court **10.07.2023.**)*

(P. A. AUGUSTIAN)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

RV