CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT No.-2

Customs Appeal No.20156 of 2023

(Arising out of Order-in-Appeal No.COC-CSTM-000-APP-30/2022-23 dated 14/03/2023 passed by Commissioner (Appeals) Customs, Cochin)

M/s Ashwith Trade Links and Service, ...**Appellant**
31/2304, Thammanam,
Kochi, Kerala-682032

VERSUS

Commissioner of Customs, Cochin ....**Respondent**
Custom House, Willingdon Island,
Cochin-682009

APPEARANCE:

Shri M. Balagopal, Advocate for the Appellant
Shri K.A. Jathin, Authorised Representative for the Respondent

CORAM:
HON'BLE MR. P.A. AUGUSTIAN, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

FINAL ORDER NO.20917/2023

DATE OF HEARING : 11.08.2023
DATE OF DECISION : 07.09.2023

PER: P.A. AUGUSTIAN

The appellants had imported 'coated paperboard gloss' from China and on a arrival of the goods, filed Bill of Entry dated 10.10.2022. On assessment, customs duty was also paid. But thereafter alleging that appellant failed to comply with the statutory requirement under Legal Metrology (Packaged Commodities) Rules, 2011, goods were detained. Appellants vide letter dated 01.11.2022 submitted that the goods are not meant for retail sale and not falling under the category of goods as alleged. The goods are sold to industrial users after doing processing like cutting, shaping according to the requirement of the buyers. Moreover present package is only for the purpose of transportation. Further the appellant also produced GST invoice related to past import along with MSME and GST registration. However, the Adjudication Authority ordered absolute confiscation of the goods and also imposed penalty of Rs.2 lakhs under Section 112 of Customs Act, 1962. In appeal, first Appellate Authority also upheld the order of absolute confiscation and penalty. Aggrieved by said order present appeal is filed.

2. When the matter came up for hearing, learned Counsel for the appellant submitted that the appellant had imported goods for sale to industrial users and printing press and not for retail sale. The learned counsel also submitted that sufficient evidence had been submitted before the Adjudication Authority including local sale invoices to different customers to prove that the customers of the appellant are carrying out printing of magazines, periodicals, books, maps etc. The learned counsel for the appellant also submitted that when the matter came up before the adjudication/Appellate Authorities, appellant had expressed their willingness to affix 'not for retail sale' label to fulfil the requirement of the *ibid* provision of law. But said request was also not considered by the Adjudication/Appellate Authorities. Learned counsel further submitted that the case law of Sheik Mohammed Omar V/s Collector of Customs, Calcutta relied by the Department is not applicable in appellant's case since it is related to import of

live animals. Further, in the *ibid* judgment it was categorically held that "prohibition of importation or exportation could be subject to certain prescribed conditions to be fulfilled before or after clearance of goods". If such conditions are not fulfilled it may amount to prohibited goods. In appellant's case even if it is assumed that goods imported by the appellant are subject to provisions of Legal Metrology (Packaged Commodities) Rules 2011 as alleged, if the appellant fulfil the condition regarding affixing of label showing 'not for retail sale' it is sufficient to meet the conditions under *ibid* Rules. The learned Counsel also drew our attention to Bill of Entry dated 20.09.2022 and Bill of Entry dated 10.11.2022 where same goods were imported through very same port and no such objection was made at any point of time. Regarding absolute confiscation, learned Counsel drew our attention to the judgment of the Hon'ble Supreme Court in the case of O. Konavalov V/s Commander, Coast Guard Region reported in 2006 (197) E.L.T. 3 (S.C.). Relevant paragraph of the order is reproduced below for ready reference:-

> *"31. The power to confiscate and the consequent forfeiture of rights or interests are drastic, being penal in nature. Statutes conferring such powers must be read very strictly. There can be no exercise of power under such statutes by way of extension or implication. No expansive meaning can be given therefore to Section 115 of the Customs Act merely from the dictionary meaning the word absolute as has been done by the Division Bench of the High Court.*
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> *Since the order passed by the Commissioner of Customs proposed confiscation not on the ground of detection or seizure of any contraband which is sought to be brought into the territorial waters but for reasons of non-compliance with Section 30 of the Customs Act, 1962. The scope of Section 115(2) cannot be extended and be invoked as if this is a case of transport of contraband goods."*

3. Learned counsel also submitted that the goods are detained since its import and prayed for waiver of demurrage charge/issue of detention certificate.

4. Learned D.R. reiterated the findings in the impugned order and submitted that goods are liable for absolute confiscation as held by the Adjudication/Appellate Authorities.

5. We have gone through the grounds of appeal, findings in the impugned order and the submissions made by both the sides. As per Section 3 of the Legal Metrology (Packaged Commodities) Rules, 2011, the provisions of this rules shall not apply to packaged commodities meant for industrial consumers or institutional consumers and the provisions are applicable only when imported goods are meant for resale. As per Section 2 (bb) of the Legal Metrology (Packaged Commodities) Rules, 2011 *"institutional consumer" means the consumer who buys packaged commodities directly from the manufacturer or from an importer or wholesale dealer for use by that industry and the package shall have declaration 'not for retail sale'* , The Adjudication Authority admits that since goods are meant for industrial consumers, it is exempted from the provisions of the *ibid* Rules. The Adjudication Authority also admits that the clients to whom the goods imported under previous Bill of Entry sold by the appellant are doing manufacturing activity. However in present import, the benefit is denied to appellant on the ground that appellant failed to submit documentary evidence to prove that goods imported under present Bill of Entry is meant for sale to industrial consumers and for that reason they are not eligible for exemption under Rule 3B

of the *ibid* Rules. The above finding is factually unsustainable. The importer had produced sufficient evidence regarding details of the clients to whom the goods are sold after its import earlier and once the Adjudication Authority is satisfied with the activity carried out by the importer, no further evidence can be produced at the time of import regarding the details of customers to whom the goods are being sold after clearance. If adjudication authority has reasons to belief that the goods can be diverted after clearance to local sale, goods could have been cleared on execution of bond. From the impugned order it is evident that the proper officer at the time of physical examination of the goods has observed that the goods were in pre-packed condition and also does not bear the required labelling to mean that the imported "Coated Paperboard Gloss" are not for retail sale. Once the appellant had expressed their willingness to comply with the rules before clearance of the goods by affixing declaration on the packets that 'not for retail sale', the Lower Authority ought to have extended an opportunity for affixing the same before its release for home consumption. Moreover different Authorities under the provisions of Legal Metrology Act, 2009 and Legal Metrology (Packaged Commodities) Rules, 2011 are empowered to act upon the sale of goods without proper packaging if it is sold without complying with the statutory requirement.

6. Considering the above facts, impugned orders are set aside. The respondent shall allow the appellant to affix 'not for retail sale' labels on each packet and after confirming the same, shall allow clearance of the goods. Regarding the prayer of the appellant for

detention certificate, the issue is not considered by the Adjudication/Appellate Authority. However considering the submissions made by the learned counsel for the appellant, respondent is directed to consider the request made by the appellant vide letter dated 23.11.2022 for waiver of demurrage/storage charges under regulation 6(1)(1) of Handling of Cargo in Customs Area Regulation 2009 and issue appropriate order.

(Order pronounced in the Open Court on **07.09.2023**)

(P.A. AUGUSTIAN)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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