CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 1523 of 2010

(Arising out of Order-in-Appeal No.70/2009 dated 31.3.2010 passed by the Commissioner of Customs (Appeals), Bangalore.)

The Commissioner of Customs
New Custom House,
Panambur,
Mangalore - 10

Appellant(s)

Versus

INU Exports Private Limited
Raj Talkies Complex,
Shradhanand Marg,
Indore.
Madya Pradesh.

Respondent(s)

WITH

Customs Appeal No. 1525 of 2010

(Arising out of Order-in-Appeal No.70/2009 dated 31.3.2010 passed by the Commissioner of Customs (Appeals), Bangalore.)

The Commissioner of Customs
New Custom House,
Panambur,
Mangalore - 10

Appellant(s)

Versus

INU Exports Private Limited
Raj Talkies Complex,
Shradhanand Marg,
Indore.
Madya Pradesh.

Respondent(s)

AND

Customs Appeal No. 1528 of 2010

(Arising out of Order-in-Appeal No.70/2009 dated 31.3.2010 passed by the Commissioner of Customs (Appeals), Bangalore.)

The Commissioner of Customs
New Custom House,
Panambur,
Mangalore – 10

Appellant(s)

Versus

INU Exports Private Limited
Raj Talkies Complex,
Shradhanand Marg,
Indore.
Madya Pradesh.

Respondent(s)

Appearance:

Mr. K. A. Jathin, AR — For the Appellant

None — For the Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 21137 to 21139 /2023

Date of Hearing: 17.10.2023
Date of Decision: 17.10.2023

Per : DR. D.M. MISRA

None present for the respondents.

2. These three appeals are filed against common Order-in-Appeal No.70/2010 dated 31.3.2010 passed by the Commissioner of Customs (Appeals), Bangalore.

3. Briefly stated the facts of the case are that the respondent imported 2667.881 MTs, 4583.252 MTs and 1012.154 MTs of edible oil (palmolein) and filed Into Bond Bills of Entry 209403 to 209407 dated 21.10.2004; 209316 to 209318 dated 14.10.2004 and 209133 dated 20.09.2004, respectively under prior entry for clearance. The goods were warehoused in the customs bonded warehouse pending test report from the Customs Revenue Laboratory Cochin. The goods were cleared on execution of Bank

Guarantee and by filing Ex-bond Bills of Entry claiming its classification under Chapter Subheading 15111000 of Customs Tariff Act, 1975, the benefit at Sl. No.34 of Notification No.21/2002 dated 1.3.2002 as Crude Pal Oil, Edible grade on payment of applicable duty. As per the test report received on 3.12.2004 from the Chemical Examiner, Customs Revenue Laboratory, Cochin Customs House, it was found that the samples were containing carotene (as beta carotene) below 500 mg / kg., hence, the condition of Sl. No.34 of Notification No.21/2002-Cus. dated 1.3.2002, as amended, not satisfied. Consequently, the same is classifiable under subheading 15119090 read with Sl. No.434 of the Notification No.21/2002-Cus. dated 1.3.2002. Accordingly, the show-cause notices were issued to the respondent proposing classification under the aforesaid heading and denial of the benefit of the Notification as claimed by them. On adjudication, the respective Bills of Entry have been assessed by classifying the product under CTH 15111000 extending the benefit under Sl. No.34 of Notification No.21/2002-Cus. dated 1.3.2002 by the Assistant Commissioner of Customs. Aggrieved by the said orders, Revenue filed appeals before the learned Commissioner (A), who in turn rejected the Revenue’s appeals. Hence, the present appeals.

4. The learned Authorised Representative for the Revenue has submitted that both the authorities below erred in applying the judgment of this Tribunal in the case of **Ruchi Soya Industries Ltd. vs. CC, Mangalore reported in 2006 (193) ELT 499 (Tri.-Bang.)** later upheld by the Hon’ble Karnataka

High Court in as much as the delay occurred in the said case was more than three months whereas in the present case, the delay was less than three months.

5. On perusal of the records, we find that the learned Commissioner (A) following the principle of law laid in the above case has observed that since there was inordinate delay in drawal of samples and receiving the test reports, the carotene level of vegetable oils reduces with passage of time, hence, the test reports of the Customs Revenue Laboratory cannot be relied and accordingly, he has confirmed acceptance of the test report of the goods at the load port by the adjudicating authority. Accordingly, he has upheld the order of the adjudicating authority. We do not find any discrepancy in the said reasoning of the learned Commissioner (A). Consequently, the Revenue's appeals are being devoid of merit, accordingly dismissed.

(Operative portion of the order was pronounced in Open Court.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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