CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 1921 of 2012

(Arising out of Order-in-Appeal No. 87/2012 /CUS(B) dated 10.04.2012 passed by the Commissioner of Customs (Appeals), Bangalore.)

M/s. Wrigley India Ltd.
Doddaballapur Road,
A.V. Pura,
Rajkunte Post,
Bangalore.

Appellant(s)

VERSUS

Commissioner of Customs,
Office of the Additional Commissioner of Customs,
Air Cargo Complex,
Bangalore.

Respondent(s)

APPEARANCE:

Shri Sumeet Khurana, Chartered Accountant for the Appellant.

Shri P. Saravana Perumal, Additional Commissioner, Authorised Representative for the Respondent

CORAM: HON'BLE MRS R BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 20423 / 2024

DATE OF HEARING: 16.02.2024
DATE OF DECISION: 21.05.2024

PER : R BHAGYA DEVI

This appeal is filed against Order-in-Appeal No. 87/2012 /CUS(B) dated 10.04.2012 passed by the Commissioner of Customs (Appeals), Bangalore.

2. This is a case of misclassification of the product viz., Big Fib and Mast Free Comen (sweetner) imported by the appellant vide Bill of Entry No.414292 dated 18.05.2010. At the time of

import, the appellant had classified the product under Customs Tariff Heading (CTH) 2938 9090 while the department classified the same under 2106 9099. The appellant accepted the classification and paid the differential duty. On verification of documents by the department, it was found that the supplier M/s. Wrigley Jr Company, USA in their invoice had clearly indicated the HTS Code as 2106907090. It was investigated for the past clearances also. The appellant vide their letter dated 04.06.2010 admitted that the goods were correctly classifiable under CTH 2106 as indicated in their suppliers invoice. In the statement dated 03.09.2010 given by Shri H. A. Melligere, In-charge, warehouse of M/s. Wrigley India Pvt. Ltd. Bangalore submitted that the item imported was a chemical compound and cannot be consumed directly and it is used as an additive in the manufacture of chewing gums. He further stated that they were not bound by the supplier's invoice but accepted the classification under CTH 2106 and there was no intention to suppress any facts from the department or to evade a payment of duty. Since, the appellant had not declared the true organic description of the goods and simply declared them as 'Big Fib and Mast Free Comen etc.' and they had failed to declare the same CTH that were shown in the invoice of the supplier, the department alleging suppression of facts invoking extended period and issued a notice for the past clearances and the impugned order confirmed differential duty for the period 24.10.2008 to 28.05.2010 along with equivalent penalty under Section 114A of the Customs Act, 1962.

3. The learned counsel submits that the classification was based on the belief that the item under import was a chemical compound which is not suitable for direct consumption. In May 2010, the department called for various documents and based on that they contended that the right classification was CTH 2106 which was accepted by the appellant and differential duty paid for the normal period of 6 months. It is submitted that the show-cause notice does not allege any suppression of facts nor

the extended period of limitation has been invoked. Since, the notice does not contain any basis for invoking extended period, the impugned order needs to be set aside. Reliance is placed on the decision of the Supreme Court in the case of **Tamil Nadu Housing Board Vs. CCE: 1994 (74) ELT 9 (SC)**. They have also relied on the decision of Tribunal in the case of **Bengal Saws and Steel products Ltd. Vs. CCE, Kolkota: 2004 (177) ELT 517 (Tri.-Del.)** where it was held that where the notice has accepted to change classification only after detection by the department, hence subsequent disclosure of facts and acceptance not obliterates suppression and penalty imposable. He also relies on the CBIC Circular No.1053/02/2017-CX dated 10.03.2017 where it is stated that *"extended period can be invoked only when there are ingredients necessary to justify the demand for the extended period in a case leading to short payment or non-payment of tax. The onus of establishing that these ingredients are present in a given case is on Revenue and these ingredients need to be clearly brought out in the SCN along with the evidence thereof. The active element of intent to evade duty by action or inaction needs to be present for invoking extended period."* He also relies on the decision of Supreme Court in the case of **Commissioner of Central Excise Vs. Brindavan Beverages (P) Ltd. and Ors.: 2007 (213) ELT 487 (SC)** to substantiate the argument that since the show-cause notice did not allege suppression, the order cannot go beyond the notice.

4. The Authorized Representative (AR) on behalf of the Revenue reiterating the findings of the Commissioner (Appeals) submitted that since the appellant had mis-declared the goods and there is no dispute regarding the classification of the goods, the Commissioner (A) was justified in invoking suppression and imposing equivalent penalty.

5. Heard both sides. The appellant has not disputed the classification and paid the duty for the normal period of dispute.

The only question disputed is invocation of suppression and mis-declaration of facts and imposition of equivalent penalty and that the Show cause notice failed to invoke provisions of extended period.

5.1 The show-cause notice at para 12 states that '*it appears that the importers have willfully mis-declared the goods as Glycosides and vegetable alkaloids, natural or reproduced by synthesis, and their salts, ethers, esters and other derivatives with intent to avail lower rate of duty applicable to CTH 29389090 instead of food preparations under CTH 2106 and evade payment of duty'*. At para 13, the notice states that *'whereas in view of the above it appears that the importers have failed to subscribe to the truth of the contents of the Bills of Entry by mis-declaring goods …………. It also appears that the importers have deliberately/willfully mis-declared the goods…………..'* and the notice invokes Section 114A of the Customs Act , 1962 for willful suppression and mis-declaration of goods with intent to evade payment of customs duty. All these goes to prove that the show-cause notice alleged mis-declaration and suppression even though the word "proviso" to Section 28 is missing. This will not in any way vitiate the show-cause notice proceedings with regard to suppression. Hence, the claim of the appellant that the proceedings are beyond the scope of notice is not justified.

5.2 The goods that were imported were sweeteners/flavoring ingredients under the name of Big Fib, Mast Free, Comen, Sweet Drift, Cold Drift, Magna Sweet etc., for manufacture of chewing gum of various flavors. The above goods were classified under CTH 2938 by the appellant and the same was reclassified by the department under CTH 2106 and this classification has been accepted by the appellant. As rightly observed by the revenue the appellant had deliberately avoided declaring the true organic description of the products and declared them as 'Big Fib, Mast free comen etc.; where it would be difficult to arrive at the correct classification. The fact that the above products were not organic or inorganic chemicals as claimed by the appellant but edible material having food ingredients came to be known only after the samples were tested and a certificate was issued by Central Food Technological Research Institute (CFTRI), Mysore certifying that the sample were found to be food ingredient. The supplier of the impugned goods who is the sister concern of the appellant had also classified the items under CTH 2106. Since, the appellant was aware of the fact that the goods were classified by their supplier under CTH 2106 and they are nothing but food edible ingredients to be used in the manufacture of chewing gums, there was intentional mis-declaration by classifying them under CTH 2938. The Hon'ble Supreme Court in the case of **Commissioner of Central Excise Ahmedabad Versus M/s. Urmin Products P. Ltd. And Others: 2023-TIOL-148-SC-CX** observed as follows: *"Thus, in the event of mis-description, wrong description or erroneous description or intentional improper classification of the product manufactured, would not tie the hands of the Competent Authority from piercing the corporate veil to ascertain the true nature of the product and reclassify the same, necessarily after affording an opportunity of hearing which would be in compliance of the doctrine of natural justice"*.

6. In view of the above, I find that the Commissioner (A) was justified in invoking the extended period of limitation and imposing equivalent penalty. Therefore, the impugned order is upheld and the appeal is dismissed.

(Order pronounced in Open Court on 21.05.2024.)

(R BHAGYA DEVI)
MEMBER (TECHNICAL)

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