

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

Regional Bench COURT-2

Customs Appeal No. 21845 of 2015

[Arising out of the Order-in-Appeal No. COC-CUSTM-OOO-APP-61/2015-16
dated 03.07.2015 passed by the Commissioner of Customs (Appeals),
Cochin-9.]

M/s. Kriztle Bath and Wellness Pvt. Ltd.,
Anna Maria Complex, P T Usha Road
Ernakulam, Kerala - 682011

.....Appellant

VERSUS

Commissioner of Customs, Cochin
Custom House, Willingdon Island,
Kerala - 682009

.....Respondent

Appearance:

Mr. M. Balagopal, Advocate for Appellant

Mr. Neeraj Kumar, Authorized Representative for Respondent

Coram:

Hon'ble Mr. P.A. Augustian, Member (Judicial)

Hon'ble Mr. Pallela Nageswara Rao, Member (Technical)

FINAL ORDER No. 20883 of 2024

Date of Hearing: 20.03.2024

Date of Decision: 19.09.2024

Per: Pallela Nageswara Rao

M/s. Kriztle Bath and Wellness Pvt. Ltd., appellant had imported goods and out of charge was given as per the declaration made by the appellant in the Bill of Entry. However, on post clearance Audit it is alleged that exemption of 4% of SAD claimed by the appellant against at Sl.no.2 of table to Notification No.21/2012-Cus dated 17.03.2012 is not available to the appellant, since they have failed to comply with provisions of Legal Meteorology Act, 2009 and the Rules made there under.

2. Accordingly, notice was issued for levy of duty amounting to Rs.83,918/-. Adjudication authority as per Order-in-Original No.08/2014 dated 09.07.2014 held that since the appellant failed to comply with the conditions of Notification No. 21/2012-Cus dated 17.03.2012, at the time of import, they are not eligible to claim the benefit and the correct procedure to be followed is to pay applicable SAD on importation and then claim refund of SAD paid after selling the goods as per provisions of Notification No. 102/2007 dated 14.09.2007. Aggrieved by the said order, an appeal is filed before the Commissioner (Appeals) and Commissioner (Appeals) as per the impugned order rejected the appeal. Aggrieved by impugned order present appeal is filed.

3. Learned Counsel for the appellant during the hearing submitted that; the entire allegation is made on the basis of documentary evidence; the allegation against the appellant can be proved only at the time of release of goods by proper examination of the goods; the respondent was totally convinced with the declaration made by the appellant at the time of import, and it is quite unjustifiable to make such allegation by verifying the documents during Audit; the goods are pre-packed commodities and are for retail sale as they sell only through their retail showrooms; retail prices of the commodities are declared on the packages as seen in the photographs; there is no requirement under the notification to declare the MRP in the import documents. Learned Counsel also drew our attention to the required declarations as per Rule 6 of Legal Meteorology Package Commodities Rules, 2007 and submitted that these declarations were very much available on the goods at the time of import. The proper officer, who examined the goods has just mentioned as 'Bulk Packing' and he has not mentioned

about whether the goods are pre-packed commodities and are for retail sale and Retail prices are declared on the packages.

4. Learned Counsel further submitted that not mentioning by the proper officer regarding non fixing of MRP on the package at the time of clearance of the goods does not amount to non-declaration of MRP by the appellant on those packages. The allegations for denying the benefit of notification are possible only through physical examination of the goods and not by verifying the documents produced at the time of import/clearance.

5. Learned Authorised Representative (AR) for the Revenue reiterated the finding in the impugned order and submits that in the absence of any evidence regarding affixing of MRP in the concerned packages, the appellant is not eligible for claiming the benefit of Notification No. 21/2012-Cus dated 17.03.2012.

6. Heard both sides and perused the records.

7. We find that as per the evidence available on the record, the goods were cleared under Bill of Entry 4213981 dated 30.12.2013 and, the respondent had intimated the appellant regarding short levy of Rs. 83918/- in respect of the above bill of entry on the ground that on Post Clearance Audit of Bill of Entry, it is noticed that for few of the items in the bill of entry, 4% SAD exemption was claimed under Notification No. 21/2012-Cus. However, to claim the exemption, the goods should be pre-packaged and intended for Retail Sale and Retail Sale Price should be declared on the packages. Thus, for the above omission, the demand was raised. Subsequently the impugned order confirmed the demand for the very same reason. As submitted by the Learned Counsel at the time of import, declaration was made regarding

the SAD as applicable as per the Notification No. 21/2012-Cus as 'NIL' and it was assessed as per the declaration made by the appellant. In case the respondent had a reason to believe that the benefit of notification was claimed without complying with the requirement of affixing of MRP as per the provisions of law, proceedings should have been initiated at the time of clearance rather than issuing, a demand at a later stage on assumptions and presumption. There is no allegation that the goods do not fall under MRP statutory provisions to claim eligibility of the benefit of Notification No. 21/2012-Cus under the Legal Meteorological Rules, 2011. As per the finding in the impugned order, it is alleged that the importer failed to declare the MRP details in any of the import document. However, there is no requirement under any provision of law to make declaration of MRP in the bill of entry and requirement is only to affix the MRP on the retail packages. In the absence of any such requirement under the Notification No. 21/2012-Cus. dated 17.03.2012, no presumption can be drawn that after the clearance of the goods, the packages were not affixed with MRP to meet the requirement of the Notification No. 21/2012-Cus.

8. In view of the above discussion, the appeal is allowed with consequential relief, if any as per law.

(Order pronounced in open court on 19.09.2024)

(P.A.Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)