CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 20663 of 2022

(Arising out of Order-in-Appeal No.1592/2022 dated 22.06.2022 passed by the Commissioner of Customs (Appeals), Bangalore.)

The Commissioner of Customs
City Customs Commissionerate,
C. R. Building, Queen's Road,
P.B.No.5400,
Bengaluru-560 001.

Appellant(s)

VERSUS

M/s.Pavan Enterprises,
EP V/67A, Eppikkad
Post-Edappatta, Dist-Mallapuram,
Kerala-679 326.

Respondent(s)

APPEARANCE:

Shri K. A. Jathin, Dy. Commissioner (AR) for the appellant.
Shri Shripad Hegde, Chartered Accountant for the respondent.

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

Final Order No. 21626 / 2024

DATE OF HEARING: 16.12.2024
DATE OF DECISION: 16.12.2024

PER : D.M. MISRA

This appeal is filed by the Revenue against Order-in-1592/2022 dated 22.06.2022 passed by the Commissioner of Customs (Appeals), Bengaluru.

2. Brief facts of the case are that the respondent M/s. Pavan Enterprises had imported 'Defatted coconut' under CTH 2306 5020 from Sri Lanka. Show-cause notice dated 18.12.2020 was issued to the respondent alleging that 'Defatted coconut' has to be considered "Desiccated coconut' and merits classification under CTH 0801 1100 and not CTH 2306 5020 as claimed by the respondent. On adjudication, short-paid duty of Rs.1,09,16,605/- was confirmed along with interest, redemption fine of Rs.50,00,000/- and penalty of Rs.1,00,00,000/- was imposed. Aggrieved by this, respondent preferred appeal before the learned Commissioner (A), who allowed the appeal of the respondent. Hence, Revenue is in appeal before us.

3. Learned Authorised Representative for the Revenue submitted that on examination it was notice that the goods were white coloured coconut powder and declared under 2306 5020. The description under the said CTH 2306 5020 is "Oil cake and oil cake meal, solvent extracted variety" whereas the declared products are in powder form. He referred to test report from Coconut Development Board, Kochi which indicated that the oil content varied from 35.94% to 53.30% and further comparing the same with the Technical Standards of the coconut products, the imported products contained low fat desiccated coconut classifiable under CTH 0801 1100. He has further submitted that imported goods are prohibited for import as per DGFT Notification No.40/2015-2020 dated 08.01.2020 since the CIF value was less than Rs.150/- per Kg. and the importer had no FSSAI license. Hence, the imported products are rightly classifiable under CTH 0801 1100.

4. Learned Chartered Accountant for the respondent reiterated the findings of the learned Commissioner (A). He submits that in a similar set of facts in appellant's own case, this Tribunal vide Final Order No.20150/2024 dated 13.03.2024

decided the issue in favour of the respondent and dismissed the Revenue's appeal.

5. Heard both sides and perused the records. The only issue to the decided in this appeal is whether the imported goods declared as "Defatted Coconut" are to be classified under CTH 2306 5020 as claimed by the respondent or under CTH 0801 1100 as reclassified by the Revenue. We find that this Tribunal in appellant's own case in Final Order No.20150/2024 dated 13.03.2024 upheld the classification of the imported goods under CTH 2306 5020 and observed as:

> "4. Heard both sides and considered the submissions. As per the first test report dated 11.11.2020, oil content is 46.8% and it confirm to the FSSAI (Food Products Standards and Food Additives) standard of defatted coconut. There is no reason given in the impugned order-in-original to discard the said finding. Thereafter another set of sample were drawn and sent to Coconut Development Board. Vide report dated 08.12.2020, they have also classified that sample submitted is defatted coconut and oil content was 45.51%. Alleging that the said report was not clear about the parameter for identifying the defatted and desiccated coconut, on further query was made and they have confirmed that as per Codex committee there is no difference between defatted and desiccated coconut. The adjudicating authority proceed with technical standards for desiccated coconut as per CODEX standard (CODEX STAN 177-1991) and concluded that goods which was defatted coconut is low fat desiccated coconut classifiable as under CTH 08011110. Such presumption is drawn on conclusion that to bring the goods under CTH 2306, oil should have removed from them and in the nature of residues material suitable for any subsequent use after their primary use in food industry. Such finding is arrived without considering the standard prescribed by the FSSAI and only based on the standard of Codex. Such method adopted by the adjudicating authority for classification of food articles is prima facie unsustainable. Moreover, Revenue is not disputing the fact that similar goods are being imported through Chennai port.

> 5. In view of the above there is no infirmity in the order issued by the Commissioner (Appeal). Considering the above, Revenue is directed to classify the goods as per the declaration made by the respondent by extending the benefit of notification as applicable."

6. In view of the above, the impugned order is upheld and the Revenue's appeal is dismissed.

(Dictated and pronounced in Open Court.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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