CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Appeal(s) Involved:

C/20531/2019-SM

[Arising out of Order-in-Appeal No. 11/2019 dated 04/02/2019 passed by the Commissioner of Customs, Bangalore]

Commissioner of Customs
Bangalore
C.R. Building, Queens Road,
P.B. No. 5400,
Bangalore – 560 001
Karnataka

Appellant(s)

VERSUS

Bluemount Beverages Pvt. Ltd.
No. 83, III Main, IV Phase,
J.P Nagar
Bangalore – 560 078
Karnataka

Respondent(s)

Appearance:

Mr. Madhup Sharan, Asst. Commr. (AR)	For the Appellant
Mr. T. Sundernathan, Advocate	For the Respondent

CORAM:
HON'BLE MR. S.S GARG, JUDICIAL MEMBER

Final Order No. 20613 / 2019

Date of Hearing: 01/08/2019
Date of Decision: 01/08/2019

Per: S.S GARG

The present appeal has been filed by the Revenue against the impugned order dated 04.02.2019 passed by the Commissioner (Appeals) whereby the Commissioner (Appeals) has set aside the Order-in-Original dated 27.09.2016 and allowed the appeal of the respondent. Briefly the facts of the present case are that the respondent/importer had imported goods i.e. Dietary supplements vide BOE No. 2533746 dated 26.06.2016, declaring the value of the imported goods and the duty payable thereon. The import consignment was subjected to first check examination by the Department and the samples were also sent to M/s. TUV SUD South Asia Ltd., P.I.E, Bangalore. The test report mentioned that, the goods were found to be fit for human consumption and that the shelf life study cannot be performed on the sample.

Subsequently, the goods were subjected to re-examination to ascertain the name of the products, name and address of the manufacturer, lot code, batch no., date of manufacture, expiry date etc. all the details were provided by the manufacturer in a write up and were also found vide slips affixed on the pallets and packing of the imported goods and as for expiry date, it was mentioned as 'no shelf life or expiration date'. The Department also sent the details to various authorities for appropriate clarifications. All the authorities found the imported goods to be fit for home consumption and the appropriate authority had also issued a NOC for the said imports. The Department issued a show-cause notice proposing to (i) confiscate the imported goods under Section 111(d) of the Customs Act, 1962 for destruction and (ii) impose penalty under Sections 112(a) and 114A of the Customs Act, 1962. The importer in their reply have mentioned that the requisite NOC from FSSAI was furnished along with the lab report from M/s. TUV-SUD and that the date of manufacture and expiry were mentioned on the pallets containing the imported goods and that have abided by all the rules for import. The adjudicating authority however culminated the proceedings vide Order-in-Original No. 460/2018 dated 27.09.2016 by (i) confiscating the goods, (ii) giving an option to redeem the goods for re-export on redemption fine of Rs. 3,00,000/- (Rupees Three Lakhs only) and (iii) imposing penalty of Rs. 3,00,000/- (Rupees Three Lakhs only) on the importer under Section 112(a) of the Customs Act, 1962. Aggrieved by the Order-in-Original, the appellant filed appeal before the Commissioner who allowed the appeal of the respondent.

2. Heard both the parties and perused the records.

3. Learned AR appearing for the Revenue submitted that the impugned order is not sustainable in law. He further submitted that the appeal filed before the Commissioner (Appeals) was hit by limitation of time as prescribed under Section 128(1) and (1A) of Customs Act and the Commissioner (Appeals) has ordered by overlooking the said provision. He further submitted that the Commissioner (Appeals) while discussing the limitation of time of appeal filed by the importer at para 7 of Order-in-Appeal in filing the appeal has blindly accepted the version of the importer that the Order-in-Original No. 460/2016 passed on 27.09.2016 was received by them on 25.01.2018 and condoned the delay of 28 days. He also submitted that Commissioner (Appeals) has failed to make any enquiry as laid down in Section 128(A)(3) of the Customs Act, 1962 with the Department on the claim of the importer or delayed receipt of Order-in-Original. Further the Commissioner (Appeals) deciding the appeal filed beyond the condonable period has exercised the power in

excess of jurisdiction and therefore he has prayed that the order of the Commissioner be set aside.

4. On the other hand the learned counsel appearing for the respondent justified the impugned order and further submitted that the Order-in-Original No. 460/2016 dated 27.09.2016 was in fact served on the respondent on 25.01.2018. He further submitted that in fact the Order-in-Original was sent to the old address in spite of the fact that the respondent intimated the Department regarding the change of address in the year 2015 and the Department has also taken note of the change of the address of the respondent and sent the personal hearing notice dated 12.04.2016 to the new address of the respondent but the Order-in-Original was sent to the old address. He further submitted that after receiving the Order-in-Original, the respondent filed appeal before the first appellate authority with a delay of 28 days along with the petition for condoning the said delay and in the appeal before the Commissioner, the Department did not raise any objection regarding limitation. Further the respondent had given detailed reasons in the application mentioning the circumstances and the manner of obtaining the Order-in-Original along with the grounds for condonation of delay and the learned Commissioner after satisfying himself that the impugned order before him was received by the respondent on 25.01.2018, condoned the delay of 28 days. Learned counsel for the respondent has also pointed out that the Department has failed to prove that the impugned order dated 27.09.2016 was served on him because the Department has not been able to bring on record any proof of delivery.

5. After considering the submissions of both the parties and perusal of the material on record, I find that the respondent has proved on

record that he received the Order-in-Original only on 25.01.2018. Further I find that the Order-in-Original dated 27.09.2016 was sent to their old address as per the dispatch register filed by the Revenue in spite of the fact that the respondent has intimated the change of its address to the Department in the year 2015 and that said letter is also on record. Further the Department was also aware of the change in address and sent the personal hearing notice dated 12.04.2016 to the new address of the respondent but in spite of this the Order-in-Original was sent to the old address which was not received by the respondent and finally the respondent received the Order-in-Original only on 25.01.2018 and thereafter filed the appeal before the Commissioner with a delay of 28 days which was condoned by the Commissioner. Further I find that before the Commissioner (Appeals) the Department did not raise the objection of limitation. Further I find that the Department has not been able to bring on record any evidence regarding the proof of delivery of the Order-in-Original. In view of these facts, I am of the considered view that there is no infirmity in the impugned order passed by the Commissioner (Appeals) condoning the delay of 28 days. Therefore, there is no infirmity in the impugned order which is upheld by dismissing the appeal of the Revenue.

(Operative portion of the Order was pronounced
in Open Court on **01/08/2019**)

(S.S GARG)
JUDICIAL MEMBER

iss...