CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO.

Customs Appeal No. 20325 of 2020

(Arising out of Order-in-Appeal No. 41-2020-21 dated 29/07/2020 passed by Commissioner of CUSTOMS , COCHIN)

Nitta Gelatin India Ltd
54-1446 Sbt Avenue Panampilly Nagar
COCHIN - 682036
KERALA

Appellant(s)

VERSUS

Commissioner of Customs Cochin-cus
CUSTOM HOUSE, WILLINGDON ISLAND
COCHIN - 682009
KERALA

Respondent(s)

Appearance:

Ms. Devika, ADVOCATE
#A5, HIG AVENUE, GANDHI
NAGAR ROAD, KADAVANTHARA COCHIN
COCHIN - 682020
KERALA

For the Appellant

Shri K.B. Nanaiah, Assistant Commisisoner(AR)

For the Respondent

CORAM: HON'BLE SHRI S.S. GARG, JUDCIAL MEMBER

Final Order No. 20102 / 2021

Date of Hearing: 08/04/2021

Date of Decision: 08/04/2021

Per : S.S GARG

The present appeal is directed against the impugned order dt. 29/07/2020 whereby the Commissioner(Appeals) has upheld the imposition of fine and penalty.

2. Briefly the facts of the present case are that the appellant filed Bill of Entry No.4421415 dt. 15/12/2017 for the clearance of 'Decalcified Fish scale for Collagen' (Fish Protein) under heading 35040099. The Bill of Entry was assessed provisionally under PD Bond and goods were cleared on 29/12/2017 on the basis of provisional clearance/NOC from Animal Quarantine Department. However the Animal Quarantine & Certificate Services under the Ministry of Agriculture, Department of Animal Husbandry, Dairying & Fisheries, Chennai vide their Final Order in File No.11-17C/2017/AQCS(SR)/2263 dt. 30/01/2018 addressed to the importer, declined clearance to the goods and directed Deportation/Destruction of the impugned goods as per Notification S.O.2666(E) dt. 16/10/2014 issued under the Live Stock Importation Act, 1898, on the grounds that the item found to contain pathogenic Salmonella on testing and directed the importer to move the cargo back to Customs jurisdiction immediately to comply with all norms for destruction/re-export as the case may be decided by the Customs authority. The appellant sought re-export of the cargo after one year by filing shipping bill under Section 74 of the Customs Act, 1962 claiming drawback of the duty paid on the imported goods. The adjudicating authority vide the impugned order, confiscated the impugned goods but allowed redemption for re-export on payment of a fine of Rs.50,000/- and penalty of Rs.25,000/-. The adjudicating authority also found that the goods can't be considered for re-export under section 74 as requested by the importer, as the impugned goods became prohibited for import in the light of AQ authority's rejection report and hence deemed to have not been cleared. Aggrieved by the Order-in-Original, appellant filed appeal before the Commissioner(Appeals) and the Commissioner(Appeals) modified the order of the original authority and allowed the benefit to the under Section 74 of the Customs Act, 1962 for reexport of the goods as the governing factors under Section 74 for reexport of the goods have not been violated but Commissioner(Appeals) upheld the penalty imposed under Section 112 and fine under Section 125 of the Customs Act.

Appellant is before me challenging the finding of the impugned order to the extent of imposition of fine and penalty.

3. Heard both sides and perused the records.

4. Learned counsel for the appellant submitted that the impugned order imposing the fine and penalty is not sustainable in law as the same has been passed without properly appreciating the facts and the law and the binding judicial precedent. She further submitted that the goods imported were not prohibited goods but was restricted goods and the appellant have been importing the said goods in the past also and only this consignment was withheld on account of presence of bacteria by name Pathogenic Salmonella. She further submitted that the appellant has not misdeclared the goods in the Bill of Entry which has been correctly filed along with the quantity and the value. She further submitted that once the goods have been allowed to be re-exported by the impugned order and it has been actually been rexported, there after imposition of redemption fine and penalty is not sustainable in law. For this submission, she relied upon various decisions wherein it has been consistently held that when the goods were allowed to be reexported, then the imposition of fine and penalty is not justified. The decisions are:-

i. Kenda Farben India Pvt. Ltd. Vs. CC, Noida [2019(369) ELT 1225 (Tri. All.)]
ii. HCL Hewlett Packard Ltd. Vs. Collector of Customs, Delhi [1997(92) ELT 367 (Tri.)]
iii. Siemens Public Communication Networks Ltd. Vs. CC(Airport), Calcutta [2001(137) ELT 623 (Tri. Kolkata)]
iv. SDS Ramcides Crop Science Pvt. Ltd. Vs. CC, Chennai-II [2018(359) ELT 239 (Tri. Chennai)]

5. On the other hand, the learned AR reiterated the findings of the impugned order.

6. After considering the submissions of both sides and perusal of the material on record, I find that the original authority has confiscated the goods and allowed reexport of the goods subject to payment of redemption fine of Rs.50,000/- under Section 125 and payment of penalty of Rs.25000/- under Section 112 of the Customs Act, 1962. Further I find that the Commissioner(Appeals) in the impugned order has specifically allowed the benefit to the appellant under Section 74 of the Customs Act, 1962 for reexport of goods as the governing factors under Section 74 for reexport of goods imported have not been violated by the appellant. Further I find that when the goods allowed to be reexported by the Commissioner(Appeals), then the imposition of redemption fine and penalty is not sustainable in view of the various decisions relied upon by the appellant cited supra. I find that the Tribunal in the case of Kenda Farben India Pvt. Ltd. cited supra, has held that imposition of redemption fine is not justified when permission was granted to reexport the goods. Similarly in the case of Siemens Public Communication Networks Ltd. cited supra, the Tribunal has held that "redemption fine and penalty cannot be imposed when the Commissioner(Appeals) vide his impugned order has given an option to the appellant to reship the goods back to the supplier, the redemption fine and penalty imposed by him was not justified.

7. By following the ratio of the above said decisions, I am of the view that imposition of fine and penalty is not sustainable in law. Hence I set aside the impugned order by allowing the appeal of the appellant.

(Operative portion of the Order was pronounced
in Open Court on **08/04/2021**)

(S.S. GARG)
JUDCIAL MEMBER

Raja...