Customs, Excise & Service Tax Appellate Tribunal

SCO 147-148, SECTOR-17-C, CHANDIGARH-160017

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Appeal No. C/60538/2017

(Arising out of OIA NO. CHD-EXCUS-001-APP-68-17-18 dated 15.06.2017 passed by the Commissioner (Appeals) of Customs, Ludhiana)

M/s Chander Chemical Company : Appellant (s)

Vs

Commissioner of Customs, Ludhiana : Respondent (s)

Represented by:
For Appellant (s) : Shri Sudhir Malhotra, Advocate
For Respondent (s): Shri Tarun Kumar, AR

CORAM :
Mr. Ashok Jindal, Hon'ble Member (Judicial)
Dr. Devender Singh, Hon'ble Member (Technical)

Date of Hearing/Decision: 04.07.2018

ORDER No. 62509 / 2018

Per : Mr. Ashok Jindal

The appellant is in appeal against the impugned order wherein goods imported by the appellant declaring lubricate oil has been held as hazardous waste, therefore, directed to be re-exported and redemption fine and penalty were also imposed.

2. The facts of the case are that the appellant filed bill of entry No. 8060152 dated 21.01.2015 for clearance of 44306.90 Kg. of Lubricant Oil-Open Gear. The samples were drawn were sent to CRCL who vide Report dated 19.02.2015 hold that the goods in question are hazardous waste as PAH contained is more than the prescribed limit. Thereafter, the appellant give a representation to the department for clearance of the goods, stating
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the goods are not hazardous waste. The Revenue sought clarification with regard to the report of CRCL dated 19.02.2015. CRCL clarified the said Report vide their letter dated 22.06.2015 and thereafter the show cause notice dated 30.07.2015 which was served on the appellant on 24.09.2015. The said show cause notice was replied by the appellant vide their reply dated 26.09.2015 received by the Revenue on 28.09.2015. On the basis of the interim reply filed by the appellant, certain clarifications were sought from the chemical examiner CRCL. As no clarification was forwarded to the adjudicating authority, the appellant was compelled to approach to the Hon'ble High Court of Punjab and Haryana and the Hon'ble High Court vide order dated 28.04.2016 directed the concerned adjudicating authority to adjudicate the show cause notice within two months from the date of receipt of the certified copy of the order of the Hon'ble High Court. Thereafter, the adjudication order was passed which was challenged by the appellant before the Ld. Commissioner who upheld the order of the adjudicating authority as referred in paragraph 1 herein above. Against the said order, the appellant is before us.

3. After hearing both the sides, we find that the adjudicating authority considered the interim reply dated 20.09.2015 filed by the appellant and sought clarification from the chemical examiner, CRCL. The reply from CRCL has been received vide letter dated 27.01.2016 the same is extracted herein below:-

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भारत सरकार
वित्त मन्त्रालय, राजस्व विभाग
केन्द्रीय उत्पाद शुल्क एवं सीमा शुल्क बोर्ड
केन्द्रीय राजस्व नियन्त्रण प्रयोगशाला
हिल साइड रोड, पूसा कैम्पस, नई दिल्ली –110012

Government of India
Ministry of Finance, Department of Revenue
Central Board of Excise & Customs
Central Revenues Control Laboratory
Hillside Road, Pusa Campus, New Delhi - 110012
Tel. – 01125847926/25843494/25843499; Telefax-01125843495

D.O No. 35-Cus/Misc. corres./2015-16(V)
Dated the 27th January, 2016

G.R. Bharti
Joint Director (NFSG)

Dear Sir,

Sub: Clarification regarding test report C.No. 35-CRCL/2014/CI-34541/04.03.2015, 35-CRCL/2014/CI-34521/04.02.2015 and 35-CRCL/2014/CI-34531/04.02.2015 all dated 19.02.2015 in respect of Bill of Entry No. 8060152 dated 21.01.2015 conducted by Shri Arun Kumar Maurya-reg..

Please refer to your D.O. C.No. VIII-Cus/HQ/ADC/ADJ/Chander/94/2015 dated 21.01.2016 regarding the test reports mentioned as above in the subject matter.

In this regard, it is to inform that, on scrutiny of the records maintained in this office it is seen that, the samples pertaining to Bill of Entry No. 8060152 dated 21.01.2015 as mentioned in the subject matter have been received and registered here under Cl. No. 3952 to 3954 (I) dated 04.02.2015, described as Lubricating Oil. These samples have been reported by Shri A.K. Maurya, Chemical Examiner Gr.II and the test reports thereof have been handed over to Shi Mahavir Singh, Havaldar, I.C. No. 81/Cus/2013 alongwith 17 Nos. of other test reports on dated 27.02.2015. However, the certified photocopies of office copies of these test reports are enclosed herewith to serve your purpose.

It is also mentioned that no samples have been registered here vide test-report C.No. 35-CRCL/2014/CI-34541/04.03.2015,35-CRCL/2014/CI-34521/04.02.2015 and 35-CRCL/2014/CI-34531/04.02.2015 all dated 19.02.2015, reported by Shri A.K. Maurya, Chemical Examiner Gr.II. It is, therefore, requested that the discrepancy may be got rectified at your end.

With regards

Yours Sincerely

27.1.16.

(G.R. BHARTI)

To,

Shri Sunil Singh Katiyar (I.R.S.)
Additional Commissioner
Customs Commissionerate, Ludhiana
ICD-GRFL, GT Road,
Sahnewal, Ludhiana.

Thereafter, again on 14.03.2016 the adjudicating authority sought clarification from CRCL as per letter extracted herein below:-

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Fax/ Speed Post

कार्यालय आयुक्त सीमा शुल्क
आई.सी.डी.- जी.आर.एफ.एल., साहनेवाल, लुधियाना-141120
OFFICE OF THE COMMISSIONER OF CUSTOMS
ICD-GRFL, G.T.ROAD, SAHNEWAL, LUDHIANA-141120
टेलीफ़ोन न. / Tel no. 0161- 2847360 (फैक्स / FAX 0161-2845360)

C.No.VIII-CUS/ Ldh/HQ/ADC/ADJ/Chander/94/2014 / 1085 Dated 14.03.2016

To

The Joint Director,
Central Revenue Control Laboratory,
Hill Side Road, PUSA Road,
New Delhi- 110012

Sir,

Sub: Clarification regarding test report C.No. 35-CRCL/2014/CL-3454-I/04.02.2015, 35-CRCL/2014/CL-3452-I/04.02.2015 and 35-CRCL/ 2014/CL-3453-I/04.02.2015 all dated 19.02.2015 in respect of bill of entry no. 8060152 dated 21.01.2015 conducted by Sh. Arun Kumar Maurya– reg.

Please refer to refer to your DO letter no. 35-Cus/Misc. Corres/2015-16(V) dated 27.01.2016 and this office letter of even C. No. 1366 dated 05.02.2016 (copy enclosed) on the above cited subject.

2. This office has requested for offering comments on the importer's claim made in the letter dated 26.09.2015, but the same are still awaited.

3. Since this is **a live consignment** and already one year has passed [bill of entry dated 21.01.2015], the importer is requesting again and again to take decision in the matter.

4. It is, therefore, again requested to offer your comments on the claim of the importer urgently so that the adjudication of the live consignment could take place immediately.

Encl. As above.

Yours faithfully,

14/03/16

Assistant Commissioner (Adj.)

No reply has been received till date from CRCL and without affording cross examination of chemical examiner impugned order has been passed which is in gross violation of principle of natural justice. Moreover, when the adjudicating authority, itself is in doubt with regard to the chemical examiner's report, in that circumstances, it would be in the interest of justice to grant cross examination to chemical examiner, CRCL to the appellant. Therefore, we set-aside the impugned order. As it is a case of live consignment, therefore, we remand the matter back to the adjudicating authority to adjudicate the same within 2 months from the date of receipt of this order after affording cross examination of chemical examiner to the appellant. After granting cross examination to chemical examiner, the adjudicating authority shall pass an appropriate order in accordance with law.

4. Appeal is disposed of by way of remand.

Order be given Dasti

(Dictated & pronounced in the open Court)

(Devender Singh)
Member (Technical)

(Ashok Jindal)
Member (Judicial)

G.Y.