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

REGIONAL BENCH – COURT NO. 1

Custom Appeal No. 612 of 2011 – DB

(Arising out of Order-in-Original No. 11/CUS/2011 dated 8.8.2011 passed by the Commissioner (Adjudication), Amritsar)

M/s Punjab Concast Steels Appellant
(Now Nahar Industrial Enterprises Ltd.)
Focal Point Phase-4,
Near Giaspur Railway Crossing,
Ludhiana.

Versus

Commissioner of Customs, Amritsar Respondent
Customs & Central Excise Office,
Amritsar

Appearance

Shri Surjit Bhadu, Advocate - for the appellant

Shri Tarun Kumar, DR - for the respondent

CORAM:
HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR. BIJAY KUMAR, MEMBER (TECHNICAL)

Date of Hearing/Decision: 21.5.2019

Final Order No. 60719/2019

Bijay Kumar :

The present appeal is filed against the Order-in-Original No. 11/CX/2011 dated 8-9.8.2011 passed by the Commissioner (Prev.), Amritsar, vide which he has classified the goods imported by the appellant as the 'Palm Kernal Fatty Acid' against the Palm Kernal Acid Oil declared by the appellant. The adjudicating authority has also reassessed the imported goods' valued at Rs. 21,84,384/- against the declared price of Rs. 12,45,354/- by the appellant. The adjudicating authority also ordered the confiscation of imported goods under Section 111(m) of the Customs Act, 1962 (hereinafter referred to as 'the Act'). However, the same was allowed to be released on payment of redemption fine of Rs. 3,00,000/- (Rupees three lakhs) under Section 125 of the Act. As the imported goods were not available for confiscation on account of having been released provisionally to the appellant. Further, a penalty of Rs. 1,25,000 (One lakh Twenty Five thousand) was also imposed under Section 112A of the Act for mis-declaration of the imported goods for value and the description.

2. Being aggrieved, the appellant is in appeal before us.

3. The present order is in terms of CESTAT remand order dated 29.6.2010 vide Final Order No. C/107/2010, wherein the earlier adjudication order dated 28.2.2005 was set aside with the direction that the original authority shall take into account the grounds of appeal advanced by the appellant and Commissioner, and shall also grant opportunity of hearing to the respondent before passing the de novo order. The impugned order is in terms of the said remand direction by the CESTAT.

4. The brief facts of the case are that the appellants had imported consignment of 'Palm Kernal Acid Oil' and filed a Bill of Entry No. 314 dated 21.2.2000 through CHA M/s Pooja Travel & Cargo Services for the clearance of 93.100 MTs of Palm Kernel Acid Oil of Malaysian origin classifiable under Customs Tariff Heading 3823.19, through Container Freight Station (PSWC), Ludhiana. The appellant had claimed exemption from payment of Special

Additional Duty @ 4% under Notification No. 22/99-Cus. dated 28.2.1999 for the import of said goods. In order to ascertain the nature of the imported goods, samples were drawn from the imported consignment and sent for chemical test to Central Revenue Control Laboratory (CRCL), New Delhi. Pending test report, the Bills of Entry was assessed provisionally on execution of Test Bond and also Provisionally Duty bond dated 21.2.2000. The chemical examiner, CRCL, New Delhi after chemical analysis forwarded the test result, which is as under :

> "The sample is in the form of dark brown coloured pasty mass. It has the characteristics of Palm Kernel Fatty Acid FFA content = 78.8 by weight" .

3. In view of above, it appeared to the Revenue that the appellant had mis-declared the imported products as Palm Kernel Acid Oil instead of Pam Kernel Fatty Acid with intention to evade Customs duty wilfully. Further, the product was Palm Kernel Fatty Acid and, therefore, the value declared by the appellant was also proposed to be re-determined in terms of Rule 6 read with rule 10A of Customs Valuation (Determination of Price of Imported Goods) Rules, 1988, after obtaining the contemporary import price from Mumbai port which was @ USD 530 PMT CIF against invoice value @ USD 301.00 PMT CIF by the appellant. The differential duty recoverable worked out to Rs. 521755/- as mentioned in the Show Cause Notice. The appellant contested the test report and submitted that the parameters, which were considered for testing of the samples by the CRCL, were not as per the standard prescribed for such test, and also supplier test report, which

indicated that the goods were in fact, Palm Kernel Acid Oil only was not taken into account. Therefore, request was made to the adjudicating authority to permit the re-test of the sample of the imported goods which were in the custody of the Department, however, the same was not denied by the adjudicating authority.

Therefore, it was also submitted before the adjudicating authority that the product imported by them is Palm Kernel Acid Oil and Revenue has incorrectly held it to be Palm Kernel Fatty Acid based on the test report of the CRCL which was incorrect. This fact was not appreciated by the adjudicating authority in spite of clear direction from Hon'ble CESTAT in its remand order. Therefore, the order is not sustainable.

4. Learned Advocate on behalf of the appellant submits that there is a complete denial of natural justice in this case as the learned adjudicating authority has not permitted the re-test of the sample drawn by the Department in spite of specific request being made. The denial of re-test is in contravention of Department's instruction contained in the supplementary manual published by CBEC. Learned Advocate also relied upon the decision of **Punjab Stainless Steel Industries Vs. Commissioner of Customs, Kandla – 2000 (122) ELT 428 (Tri.)** and in the case of **M/s O.C. Crochets Pvt. Ltd. Vs. CCE, Delhi –III – vide Final Order No. 60437/2019 dated 3.4.2019** and he, therefore, prays for setting aside the impugned order with consequential benefit.

5. Learned Authorised Representative on behalf of the Revenue reiterates the grounds of confirmation of demands as contained in the impugned order.

6. We have considered the rival submissions and also perused the case record.

7. The basic issue to be decided in this case is regarding the description of the imported goods as to whether the Palm Kernel Acid Oil or Palm Kernel Fatty Acid and also the valuation adopted by the adjudicating authority for the imported consignment. We find a considerable force in the submission made by the learned Advocate regarding denial of the re-test of the product imported. We also find that the test report has not indicated the various chemical parameters prescribed for the test of the imported goods in terms of fatty acid contents moisture and impurities and iodine and saponification value. The appellant has produced the test report from the supplier of the goods which clearly indicated that the imported consignment is having the characteristics of Palm Kernel Acid Oil and not Palm Kernel Fatty Acid, as held by the Revenue based on the CRCL report. Further, the value obtained from the Mumbai port regarding import price, which has been applied for the imported consignment is for Palm Kernel Fatty Acid distillate and cannot be applied in the present case. We find that the impugned order is not sustainable on account of findings in the case of **Punjab Stainless Steel Industries** (supra) and **M/s OC Crochets Pvt. Ltd.** (supra) as the re-test of the sample has been denied to the appellant.

8. In this regard we refer and rely on the decision of this Tribunal in case of **M/s OC Crochets Pvt. Ltd.** (supra) wherein it is held as under:

> "6. We find that although CRCL given a report, but, the said report has been challenged by the appellant vide its letter dated 17.05.2004 on the basis of various case laws and requested to visit their factory to know the manufacturing process as well as the machinery is used, but, the said request has not been accepted. We have gone through the CBEC Central Excise Manual, the procedure for retested is provided. Admittedly, in this case, the appellant has ask for retest and same has been denied on the flimsy ground, therefore, there is a violation of principle of natural justice as held by this Tribunal in the case of **Punjab Stainless Steel Industries vs. Commissioner of Customs, Kandla-2000 (122) ELT 428 (Tribunal)** wherein this Tribunal observed as under:-
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>> "10.We find that the Commissioner of Customs, in the impugned order, denied the request for re-test on the ground that no valid reason for the same has been given and the request was based on flimsy grounds. The show cause notice was issued to the appellants on 20-5-1996 alongwith the test reports and the appellants on 17-9-1996 made a request to the Commissioner (Appeals) for re-testing of the samples giving reasons as now pleaded in the appeal before us. In the facts and circumstances of the case, to remove doubts, the request for retesting of samples by the appellants cannot be said to be on flimsy ground. The Tribunal, in appellants' own case vide Final Order No. A/707/98-NB, dated 14-8-1998, held that declining the request of re-testing amounts to violation of principles of natural justice." Further, we find that in the case of Orient Apparels Pvt. Ltd.(supra) this Tribunal has examined the issue and after relying on the report of Department of Textile Technology, IIT, Delhi and the Technological Institute of Textile & Sciences, Bhiwani observed that to determine the classification in the case of braid and laces, examination of process of manufacture is required. Admittedly, while determining the classification by the CRCL, no process of manufacturing was examined and retest of the samples were denied. Therefore, we hold that there is a gross violation of principle of natural justice. Accordingly, the impugned order observes no merit, the same is set-aside.

9. In view of above, we set aside the impugned order and allow appeal with consequential benefit.

(Pronounced in open Court)

(Bijay Kumar)
Member (Technical)

(Ashok Jindal)
Member (Judicial)