IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI

C/40714/2017

(Arising out of Order-in-Appeal No. 10/2017 (Cus.) dated 14.02.2017 passed by the Commissioner of Central Excise (Appeal-II), Trichy).

M/s. Vinay Enterprises — Appellant

Vs.

CC, Tuticorin — Respondent

Appearance

Shri A.K. Jayaraj, Advocate
for the appellant

Shri A. Cletus, ADC (AR)
for the Respondent

CORAM :

Hon'ble Smt. ARCHANA WADHWA, JUDICIAL MEMBER

Date of Hearing: **09.08.2017**
Date of Pronouncement: 10/8/17

FINAL ORDER No. 41586 **/2017**

As per facts on record the appellant imported 23000 Kgs. of "Monosodium Glutamate" from China and filed Bill of Entry dated 18.01.2016, for clearance of the same. The above goods was referred to FSSAI for NOC since, the above imported goods was food item. Thereafter, a Test Report dated 25.01.2016 was issued by FSSAI, Tuticorin, after testing the same from NAWaL

Laboratories, Hosur. The above test report certified that the imported cargo contains Chloride content more than the maximum permissible limit ie., 1.39% as against the maximum permissible limit of 0.2% and had stated that sample does not conform to the standard laid down for "Monosodium Glutamate" under FSS Act, 2006. Thereafter, sample was subsequently forwarded to Food Laboratory, Kolkatta for retest and the above laboratory had given the report dated 21.03.2016 stating that the purity percentage of the imported cargo found to be low ie., purity has been found as 97.16% as against prescribed specification of 98.05% - 101.5% and stated that sample does not conform to the standard laid down under item 13 of FSSAI methods and Food Safety and Standards Regulations 2011, and also stated that sample is sub-standard as per FSS Act, 2006.

2. On the above basis, proceedings were initiated against the appellant for confiscation of the goods as also for imposition of penalties, resulting in passing of an order by the Joint Commissioner holding the goods liable to confiscation and as such permitting the re-export of the same, within a period of one month from the date of receipt of the order on payment of redemption fine of Rs. 1,00,000/-. In addition penalty of Rs. 1,00,000/- was imposed on the importer, in terms of the provisions of Section 112 of the Customs Act, 1962. The said order of the original adjudicating authority was appealed against before the Commissioner (Appeals), who rejected the appeal. Hence the present appeal.

3. After hearing the Ld. Advocate Shri A.K. Jayaraj, appearing for the appellant and Ld. DR, Shri A. Cletus, ADC, appearing for the Revenue, I find that there is no contrast to the test reports of both the laboratories and a feeble argument that the two test reports do not match and are contrary to each other stands argued. I find whereas the NAWaL Laboratories has intimated the Chloride content to be more than the permissible limit 0.2%, the Food Laboratory, Kolkata has gone by the purity of chemicals which has been found to be 97.16% as against the prescribed specification of 98.05% minimum. The rating of both test reports establishes that the goods are not in consonance with the purity standards laid down under FSS Act, 2006. In as much as clearance of the same can cause health hazards to the people of India, the authorities below have rightly denied the clearance of the same and have allowed re-export.

4. At this stage the question comes whether such re-export on payment of fine and penalty is justifiable or not. The appellants have placed sales contract on record from where I find that the order placed upon the supplier describes the goods as "Monosodium Glutamate" 98 % MIN. 30 MESH. As such it is seen that even the order placed by the importer was of Mono sodium 98% purity, whereas the minimum purity prescribed under the Act is 98.5%. As such, I am of the view that the order placed by the assesse was itself in contravention of FSS Act and it cannot be said the goods of inferior quality was sent by the exporter

inadvertently. In such a scenario, imposition of redemption fine and penalty is justified. However, taking into account the circumstances and the fact that the difference in purity was only to the extent of 0.5% and by extending the benefit of doubt to the appellant, I reduce the redemption fine and penalty to Rs. 25,000/- each. But for the above modification in the quantum of redemption fine and penalty, the appeal is otherwise rejected.

(Order pronounced in the open Court on 10/8/17

10/8/17
(ARCHANA WADHWA)
JUDICIAL MEMBER

BB

Customs, Excise & Service Tax Appellate Tribunal
सत्यमेव जयते

प्रमाणित प्रति / Certified True Copy
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सहायक पंजीकार / Asst. Registrar
सामाशुल्क उत्पादशुल्क एवं सेवा कर अपील अधिकरण / (CESTAT)
चेन्नै / Chennai