

C/40027/2017

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

C/40027/2017

(Arising out of Order-in-Appeal C.Cus.II No. 930/2016 dated 18.10.2016 passed by the Commissioner of Customs (Appeals-II), Chennai).

M/s. SDS Ramcides Crop Science Pvt. Ltd.

Appellant

CC, Chennai-II

Respondent

Appearance

Shri Hari Radhakrishnan, Advocate
for the appellant

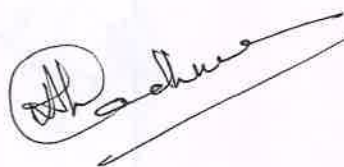
Shri K.Veerabhadra Reddy, JC (AR)
for the Respondents

CORAM :**Hon'ble Smt. ARCHANA WADHWA, JUDICIAL MEMBER**Date of Hearing: **04.07.2017**

Date of Pronouncement : 07.07.2017

FINAL ORDER Nos. A1179 /2017

Briefly stated facts of the case are that the appellant are regular importer of insecticides; that they also import various raw materials required for the manufacture of fertilizers and other products; that in the course of their business, they had imported goods declared as "Cartap Hydrochloride Technical 98%" vide warehouse Bill of Entry No. 8647057 dated 19.03.2015; that the




proper officer of Customs did not clear the goods on the ground that the goods were not imported directly from the manufacturer, viz. M/s. Liyang Chemical Factory, China, as required in the Registration issued by Central Insecticide Board, but through their authorized distributor.

2.1 Accordingly, proceedings were initiated against them. During adjudication the appellant stated that the goods were imported from the distributor of the manufacturer M/s. Liyang Chemical Factory; that there is no condition in the certificate of registration that the goods must be directly shifted from the manufacturer's premises; that the commercial invoices clearly establish that the goods were consigned by the manufacturer through their authorized distributor and as such there has been substantial compliance of the registration of the certificate issued by the Central Insecticides Board.

2.2. The adjudicating authority did not agree with the above contention of the appellant and confiscated the goods with the permission to re-export the same on payment of redemption fine of Rs. 15,00,000/-. In addition, a penalty of Rs. 5,00,000/- was imposed upon the appellant under Section 112 (a) of the Customs Act, 1962. On appeal against the said order; the Commissioner (Appeals) upheld the same. Hence the present appeal.

3.1 After hearing both the sides and after going through the impugned order, I find that as per the certificate of registration issued by the Central Insecticides Board, the appellant was



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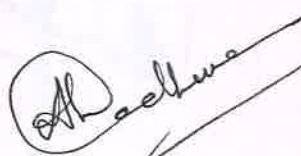
permitted to import the goods from the manufacturer mentioned therein including M/s. Liyang Chemical Factory, Jiangsu Province, China. Instead of importing the goods directly from the manufacturer's factory, the same stands routed through their distributor M/s. HC Agro Chemicals Co. Ltd., China. I have been shown the commercial invoice raised by the manufacturer to the said distributor and the commercial invoice issued indicating that the goods are required to be shifted to Chennai, India. In the Bill of lading the appellant's name appears as the notified party and the name of the manufacturer has been shown as M/s. M/s. Jiangsu Tianrong Co. Ltd., China formerly known as M/s. Liyang Chemical Factory. As such, it is clear that the goods imported by the appellant were actually manufactured by M/s. Liyang Chemical Factory, whose name appears in the registration certificate. The appellant's contention is that as per the provision of the Insecticides Act, such insecticides can be imported either from the manufacturer or thorough its distributor. In as much as the appellants were under the bonafide belief that the manufacturer would directly supply the goods instead of supplying through the distributor, they applied for only the manufacturer's at the time of obtaining the registration. Had they known that the goods would be supplied by the manufacturer through its authorized distributor, they could have applied for incorporation of the distributors name in the registration certificate and the same would have been done by Central Insecticide Board. As such, it is only a technical breach, if at all, not justifying the imposition of redemption fine and penalty.

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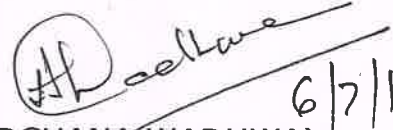
3.2 Ld. Advocate, Shri Hari Radhakrishnan, appearing for the appellant further submitted that in as much as goods were losing its shelf life they have already re-exported the same. The Tribunal in number of decisions has held while allowing re-export of goods, redemption fine should not be imposed. For the similar reason, the penalty imposition is not justified as it is only a technical venial breach of legal provision, which flow from the bonafide belief that the import from the distributor is also covered by the registration certificate.

3.3. After hearing the Ld. AR, I find that there is no dispute about the fact that the imported goods were actually manufactured by M/s. Jiangsu Tianrong Co. Ltd., China and as such the prime condition of the notification and registration is satisfied. I also find that such registration is required so as to ensure that the good quality insecticides only are imported. When the goods are admittedly manufactured by the empanelled manufacturer, the fact that the same have come through the distributor will not make much difference, in as much as the Insecticide Board itself could have allowed such import through the distributor. The commercial invoice, Bill of lading as also the Bill of entry clearly indicate that the goods have been manufactured and exported by M/s. Liyang Chemical Factory only and it may be for the business reasons that the documentation have been routed through the distributor. It can be safely concluded that there is no contravention of the registration certificate and even if it is there, it is too technical to be taken note of so as to penalize the assessee.



4. Further, in the case of *Padia Sales Corporation Vs. CC - 199* (61) ELT 90 (Tribunal), the Tribunal has held that redemption fine imposition is not justified while permitting re-export of the goods. As I have already observed that there is no violation of the registration certificate and it is only a hyper technical objection taken by the Revenue, I find no reasons to sustain the impugned order imposing redemption fine and penalty on the assessee. The same is accordingly set aside and the appeal is allowed with consequential relief to the appellant.

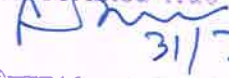
(Order pronounced in the open Court on 7/7/17 AP)


(ARCHANA WADHWA)
JUDICIAL MEMBER

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