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

Appeal No.C/41490/2016

[Arising out of Order-in-Appeal No.28/2016 dt. 6.5.2016 passed by the Commissioner of Customs & Central Excise (Appeals-2), Tiruchirapalli]

Bunge India Private Ltd. Appellant

Versus

Commissioner of Customs,
Tiruchirapalli Respondent

Appearance:

Ms.S. Sridevi, Advocate
For the Appellant

Shri K.P. Muralidharan, AC (AR)
For the Respondent

CORAM:

Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of hearing/decision : 30.06.2017

FINAL ORDER No. 41107/2017

The appellant had imported Crude Palm Oil at Nil rate of duty for manufacture of final products like Margarine, Acid Oil etc. in terms of Rule 4 of the Customs (Import of Goods at Concessional Rate of Duty for manufacture of Excisable Goods), Rules, 1996 as amended. The said goods were stored at Chennai port and removed to the factory premises in piecemeal manner, according to the requirement, in tanker lorries. On scrutiny of records, it appeared to the department that against 6007.721 MTs of crude palm oil imported vide two Bills of Entry, only 5990.466 MTs was utilized for the intended purpose, hence 17.255 MTs of crude palm oil was not so utilized. Accordingly, proceedings were initiated proposing demand of differential duty of Rs.3,73,288/- on the said unutilized quantity along with interest and penalty under various provisions of customs law. These proposals were confirmed by the original authority and also upheld by the Commissioner (Appeals) vide impugned order dt. 06.05.2016. Aggrieved, appellants are before this forum.

2. Today when the matter came up for hearing, on behalf of the appellant, Ld. Advocate Ms. S. Sridevi submits that the difference between the imported and used quantity has occurred only due to loss during transit. She submits that in their own case, for an earlier period, CESTAT Chennai vide Final Order No.41051-41052/2016 dt. 27.06.2016 has categorically held that "the appellant not having abused the imported goods upon clearance, but were lost in transit beyond control of the appellant, it cannot be denied the benefit of the notification. Accordingly, differential duty is not recoverable."

3. On the other hand, Ld. A.R supports the adjudication.

4. Heard both sides and have gone through the facts. I find that the issue is already covered in the Tribunal's decisions in the appellant's own case cited by ld. Advocate.

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5. I find that the said decision has relied upon the law laid down by Hon'ble Apex Court in the case of *State of Haryana Vs Dalmia Dadri Cement Ltd.* – 2004 (178) ELT 13 (SC). This ratio has been relied upon and reiterated in *BPL Display Devices Ltd. Vs CCE Ghaziabad* – 2004 (174) ELT 5 (SC) which, in turn, has been followed in a number of decisions of other higher appellate courts, for example, by the Hon'ble High Court of Himachal Pradesh in *CCE Chandigarh Vs Suraj Industries Ltd. – 2010 (254) ELT 72 (H.P.)* and by the Hon'ble High Court of Allahabad in *Jhunjhunwala Vanaspati Ltd. Vs CCE Allahabad* - 2015 (323) ELT 681 (All.). It is further noted that the quantity of 17.255 MTs not utilized in the manufacture of final products, in any case, constitutes only 0.57% of the total quantity imported.

6. Viewed in this light, and respectfully following the judgments and decisions cited supra, I find that the appeal has merit and therefore it succeeds. Appeal is allowed with consequential relief, if any, as per law.

(Dictated and pronounced in open court)

30/06/2017

(MADHU MOHAN DAMODHAR)
MEMBER (TECHNICAL)

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Customs, Excise & Service Tax Appellate Tribunal

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सहायक पंजीकार/Asst. Registrar
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चेन्नै/Chennai