IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Customs Appeal No.40039 of 2021

(Arising out of Order-in-Appeal No. 38/2020-TTN (CUS) dated 19.10.2020 passed by the Commissioner of GST & Central Excise (Appeals), Trichy)

M/s. Chendur Enterprises **Appellant**
739, Opp. To Market, TVM Road
Vadaseri, Nagercoil – 629 001.

Vs.

Commissioner of Customs **Respondent**
Custom House
New Harbour Estate
Tuticorin – 628 004.

APPEARANCE:

Shri N. Manickam, Advocate for the Appellant
Ms. Sridevi Taritla, ADC (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri P. Anjani Kumar, Member (Technical)

Final Order No. **40046 / 2022**

Date of Hearing : 2.2.2022
Date of Pronouncement: 4.2.2022

Per Ms. Sulekha Beevi C.S.

Brief facts are that the appellants are engaged in packing and marketing of honey under the brand 'Mayil Mark Raw Honey'. They imported 5 different sizes of glass bottles in the nature of 45 ml, 80 ml, 180 ml, 380 ml and 730 ml from China and filed bill of entry dated 4.12.2019. The bottles were classified by appellant under CTH 70109000. The Apprising Group ordered for 100% examination of the cargo. After first check, the group officers instructed the appellant to classify the bottles under CTH 70139900. The said heading attracts anti-dumping duty vide Notification No. 22/2018 dated 18.4.2018. The appellant paid anti-dumping duty and also filed representation stating that the goods are classifiable under CTH 70109000. They requested to issue a speaking order vide letter dated 19.12.2019. However, no speaking order was issued and the appellant filed appeal before Commissioner (Appeals) who vide the order impugned herein held that the goods are classifiable under CTH 70139900 and rejected the appeal. The appellants are thus before this Tribunal.

2. The learned counsel Shri N. Manickam appeared and argued for the appellant. He submitted that the appellant is a small scale entrepreneur selling honey packed in glass bottles. The said product is marketed under the brand name 'Mayil Mark Raw Honey'. For packing they use glass bottles of different sizes. They imported five different sizes of glass bottled from China and this was their first consignment of import. The assessment group was of the view that the goods are classifiable under CTH 70139900. The appellant paid the anti-dumping duty as directed by the officers in order to get release of the goods. Though they requested for issuance of speaking order, it was not heeded to by the officers.

3. He submitted that the glass bottles are used for packing honey. They are correctly classifiable under CTH 70109000. The goods imported fit into the Tariff description 'containers of glass of a kind used for the conveyance or packing of goods'. All the glass bottles commonly used commercially for the conveyance or packing of liquids / food preparations is correctly classifiable under Tariff Heading 7010 only.

4. The Tariff description applied by the department under Heading 7013 is applicable only to 'glassware of a kind used for table, kitchen'. The imported glass bottles are not tableware or kitchenware like glass tumblers, glass bowl or wine glass. The glass bottles used for packing cannot be called as kitchenware or tableware. The imported glass bottles are specific to volume and is used for packing honey. He submitted that the tableware or dishware are used for setting a table, serving food and dining. It includes cutlery, glassware, serving dishes and other items for practical as well as decorative purposes. The glass bottles used for packing with specific commercial volume cannot be considered as glassware or tableware. He adverted to the Tariff Heading under 7010 as well as 7013.The HSN Explanatory Notes for Chapter Heading 7013 also makes it clear that the said Heading excludes glass bottles, flasks, jars and pots of a kind commonly used in commercial conveyance or packing of goods. He prayed that the appeal may be allowed.

5. The learned AR Shri S. Balakumar appeared for the department. He supported the findings in impugned order.

6. Heard both sides.

7. The goods imported by the appellant are glass bottles having specific measurement of 45 ml, 80 ml, 180 ml, 380 ml and 730 ml. The appellant has classified the goods under CTH 70109000 whereas the department has applied the classification under 70139900 to demand anti-dumping duty.

8. CTH 7010 reads as under:-

> *"The Tariff description under CTH 70109000 reads as under" carboys, bottles, flasks, jars, pots, phials, ampoules and other containers, of glass, of a kind used for the conveyance or packing of*

goods, preserving jars of glass; stoppers, lids and other closures, of glass".

9. The HSN Explanatory Notes of CTH 7010 is given below:-

70.10 *carboys, bottles, flasks, jars, pots, phials, ampoules and other containers, of glass, of a kind used for the conveyance or packing of goods, preserving jars of glass; stoppers, lids and other closures, of glass".*

7010.10 – Ampoules
7010.20 – Stoppers, lids and other closures
7010.90 – Other

This heading covers all glass containers of the kinds commonly used commercially for the conveyance or packing or liquids or of solid products (powders, granules etc.). They include:-

(A) Carboys, demijohns, bottles (including syphon vases), phials and similar containers, of all shapes and sizes, used as containers for chemical products (acids, etc.) beverages, oils, meat extracts, perfumery preparations, pharmaceutical products, inks, glues etc.

The above mentioned containers are generally designed for some type of closure; these may take the form of ordinary stoppers (of cork, glass etc.) glass balls, metal caps, screw caps (of metal or plastics), or special devices (e.g. for beer bottles, bottles for aerated waters, soda water syphons, etc.)."

10. The Tariff description under CTH 7013 reads as under:-

7013 - Glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 70.10 or 70.18)

11. The description of the goods falling under CTH 7013 shows that only glassware used as tableware or kitchenware fall under the said Heading. Further, HSN Note of 7010 specifically states that the said Heading covers all glass containers of the kind commonly used commercially for the conveyance or packing of liquids or solid products (powder, granules etc).

12. From the bare reading of the Chapter Heading, it is evident that the impugned goods fall under CTH 7010 and does not fall under 7013. The classification adopted by the appellant is correct. Consequently,

the anti-dumping duty collected alleging classification of the goods to be 7013 cannot sustain. We hold that the impugned goods are classifiable under 70109000.

11. In the result, the impugned order is set aside. The appeal is allowed with consequential relief, if any.

(Pronounced in open court on 4.2.2022)

(**SULEKHA BEEVI C.S.**)
Member (Judicial)

(**P. ANJANI KUMAR**)
Member (Technical)

Rex