

**CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH,
COURT NO. I

Customs Appeal No. 52274 of 2019

[Arising out of the Order-in-Appeal No. IND-EXCUS-000-APP-054-19-20 dated 31/05/2019 passed by The Commissioner (Appeals), CGST & Central Excise, Indore.]

(i)M/s B.L. Goyal

404, 4th Floor, Wallfort Ozone,
Fafadih Chowk,
Raipur (C.G.).

Appellant

VERSUS

**Commissioner (Appeals)
Customs, Central Goods &
Service Tax & Central Excise,**

Indore Maik Bagh Palace, Post Box No. 10,
Indore (Madhya Pradesh).

Respondent

WITH

Customs Appeal No. 52779 of 2019

[Arising out of the Order-in-Appeal No. IND-EXCUS-000-APP-054-19-20 dated 31/05/2019 passed by The Commissioner (Appeals), CGST & Central Excise, Indore.]

(ii)Shri Anil Kumar Tiwari,

Director M/s Bharati Freight Forwarders Pvt. Ltd.

A/76, Ashok Bohar, Ring Road No. 2,
Near Durga Petrol Pump, Gondwara,
Raipur – 493 221.

Appellant

VERSUS

**Commissioner (Appeals)
Customs, Central Goods &
Service Tax & Central Excise,**

Manik Bagh Palace, Pose Box No. 10,
Indore.

Respondent

AND

Customs Appeal No. 50065 of 2020

[Arising out of the Order-in-Appeal No. IND-EXCUS-000-APP-054-19-20 dated 31/05/2019 passed by The Commissioner (Appeals), CGST & Central Excise, Indore.]

**(iii)M/s Bharati Freight Forwarders Pvt. Ltd.
Director (Anil Kumar Tiwari)**

Appellant

A/76, Ashok Bohar, Ring Road No. 2,
Near Durga Petrol Pump, Gondwara,
Raipur – 493 221.

VERSUS

Commissioner (Appeals)
Customs, Central Goods &
Service Tax & Central Excise,
Manik Bagh Palace, Pose Box No. 10,
Indore.

Respondent

APPEARANCE

Ms. Aakriti Mathur, Advocate – for the appellants.

Shri Rakesh Kumar, Authorized Representative (DR) – for the Respondent.

CORAM : **HON'BLE SHRI JUSTICE DILIP GUPTA, PRESIDENT**
HON'BLE SHRI C.L. MAHAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 50715/2020

DATE OF HEARING : 03/02/2020.

DATE OF DECISION : 14/07/2020.

C.L. MAHAR :-

The appellant M/s B.L. Goyal in the First Customs Appeal No. 52274 of 2019 is engaged in import of natural gums of various kinds classifiable under the Customs Heading No. 1301. The appellant imported consignments of natural gum against 23 bills of entries during the period spanning between October 2011 to September 2014. The consignments imported by the appellant were described under bills of entry as natural gum sifting/natural gum reject/natural gum No. 3 reject. In the bills of entry the appellant claimed benefit of Notification No. 96/2008 – Customs dated 13 August 2008 under which basic customs duty is exempted treating it as "Gum Arabic" falling under Customs Tariff Chapter Heading No. 13012000. The appellant also sought exemption from Counter Veiling Duty (CVD), taking shelter of CBEC Circular dated 28 June 2007. At the time of import of the consignments, a representative sample was drawn and sent for chemical examination to the Central Revenue Chemical

Laboratory, Vizag for determination of the true nature and description of the import consignment. The chemical examiner in the examination reports dated 24 April 2016 and 28 October 2016 reported that "each of the samples under reference (U/R) does not meet the requirements for Gum Arabic as per standard specification of IS 6795-2007".

2. Thus, on the basis of the above-mentioned chemical examination reports, two show cause notices came to be issued. The details are given below :-

Sl. No.	Show Cause Notice No. & Date	Amount involved CVD (including Ed. Cess & S&H Ed. Cess) (Rupees)	(in Rupees) SAD	Total (Rupees)
1.	VIII (6-a) Import - CUS/BL/RPR/03/2014/254-59 dated 07/09/2016	2,66,659/-	96,964/-	3,63,623/-
2.	VIII (6-a) Import - CUS/BL/RPR/06/2016/10368-72 dated 04/10/2017	26,51,592/-	8,17,864/-	34,69,456/-
	Total	29,18,251/-	9,14,828/-	38,33,079/-

3. The show cause notices takes note of the fact that the goods imported under 23 bills of entry were described Natural Gum - Others and were classified under Customs Chapter Tariff Heading 13012000. The Department's contention is that the goods deserve to be classified under Heading 13019019 under the category of 'Natural Gum - Others' and accordingly, the classification of goods claimed as Gum Arabic under Customs Tariff Heading 13012000 was wrong and the appellant was not entitled to the benefit of Notification dated 13 August 2008 or exemption of CVD and SAD as per CBEC Circular dated 28 June 2007.

4. The Appellant M/s B.L. Goyal also filed a Miscellaneous Application for consideration of certain additional import documents. The Miscellaneous Application was allowed and the documents submitted by the appellant have been taken on record.

5. The above-mentioned two show cause notices were adjudicated vide a common order dated 17 October 2018. The learned Adjudicating Authority accepted the contention of the importer - appellant that goods were classifiable under Customs Tariff Heading 13012000 and they were entitled for exemption Notification No. 96/2008 dated 13 August 2008. The impugned order-in-original dated 17 October 2018 was reviewed by the Department as per the provision of sub-Section (2) of Section 129D of the Customs Act, 1962 and an appeal was preferred by the Department against the above order-in-original before the Commissioner (Appeals). The learned Commissioner (Appeals) vide order dated 31 May 2019 allowed the appeal of the Department and the order is reproduced :-

"In respect of SCN F. No. VIII (6-a) Import-CUS/RPR/06/2016/ 10368-72 dated 4 October 2017 :

- (i) The impugned goods imported by the Respondent No. 1 are as classifiable under chapter sub-heading 13019019 of Customs Tariff as "Natural Gum - others"
- (ii) The demand of Customs duty of Rs. 34,69,456/- (Rupees Thirty Four Lacs Sixty Nine Thousand Four Hundred and Fifty Six only) is confirmed against the Respondent No. 1 in terms of Section 28 of the Customs Act, 1962 readwith Section 18 (2) of the Customs Act, 1962 ;
- (iii) The interest on confirmed demand of Rs. 34,69,456/- (Rupees Thirty Four Lacs Sixty Nine Thousand Four Hundred and Fifty Six only) at Sr. No. 1 above is confirmed in terms of Section 18 (3) of the Customs Act, 1962 readwith Section 28AB of the Customs Act, 1962 ;
- (iv) The penalty of Rs. 34,69,456/- (Rupees Thirty Four Lacs Sixty Nine Thousand Four Hundred and fifty Six only) is imposed upon the Respondent No. 1 in terms of under Section 114A of the Customs Act, 1962 ;
- (v) The penalty of Rs. 9,00,000/- (Rupees Nine Lacs only) is imposed upon the Respondent No. 2 in terms of Section 112 (b) (v) of the Customs Act, 1962 ;
- (vi) The penalty of Rs. 9,00,000/- (Rupees Nine Lacs only) is imposed upon the Respondent No. 3 in terms of Section 112 (b) (v) of the Customs Act, 1962 ;
- (vii) The imported goods valued at Rs. 2,13,22,787/- are confiscated under Section 111 (m) of Customs Act, 1962 and fine of Rs. 22,00,000/- (Rupees Twenty Two Lacs only) in lieu of confiscation is imposed upon Respondent No. 1 in terms of Section 125 of the Customs Act, 1962.

In respect of SCN F. No. VIII (6-a) Import-CUS/RPR/03/2014/2054-58 dated 07 September 2016 ;

- (i) The impugned goods imported by the Respondent No. 1 are held as classifiable under chapter sub-heading 13019019 of Customs Tariff as "Natural Gum - Others" ;
- (ii) The demand of Customs duty of Rs. 3,63,623/- (Rupees Three Lacs Sixty Three Thousand Six Hundred and Twenty Three only) is confirmed against the Respondent No. 1 in terms of Section 28 of the Customs Act, 1962 readwith Section 18 (2) of the Customs Act, 1962 ;
- (iii) The interest on confirmed demand of Rs. 3,63,623/- (Rupees Three Lacs Sixty Three Thousand Six Hundred and Twenty Three only) at Sr. No. 1 above is confirmed in terms of Section 18 (3) of the Customs Act, 1962 readwith Section 28AB of the Customs Act, 1962 ;
- (iv) The penalty of Rs. 3,63,623/- (Rupees Three Lacs Sixty Three Thousand Six Hundred and Twenty Three only) is imposed upon the Respondent No. 1 in terms of under Section 114A of the Customs Act, 1962;
- (v) The penalty of Rs. 1,00,000/- (Rupees One Lac only) is imposed upon the Respondent No. 2 in terms of Section 112 (b) (v) of the Customs Act, 1962 ;
- (vi) The penalty of Rs. 1,00,000/- (Rupees One Lac only) is imposed upon the Respondent No. 3 in terms of Section 112 (b) (v) of the Customs Act, 1962 ;
- (vii) The imported goods valued at Rs. 21,57,433/- are confiscated under Section 111 (m) of Customs Act, 1962 and fine of Rs. 2,00,000/- (Rupees Two Lacs only) in lieu of confiscation is imposed upon Respondent No. 1 in terms of Section 125 of the Customs Act, 1962".

6. The appellants have filed the Appeals against the impugned order-in-appeal dated 31 May 2019. The main contention of the learned Counsel appearing on behalf of importer - appellant is that the import consignments reported were "Gum Arabic" and the Department is wrong in classifying the goods under Chapter Sub-Heading 13019019 on the basis of the examination report submitted by the chemical examiner because the product imported is in natural raw form and no manufacturing process takes place. It is vegetable sap and extracts and its classified plant exudates natural gum and the same satisfies the plant quarantine order 2003. The plant quarantine department had provided no objection in classification of the product under Chapter Tariff Heading 13012000 and they have given no

objection certificate for clearance of the import consignment.

7. The Appellant has further stated that the examination report of the chemical examiner of the Central Revenue Chemical Laboratory only states that as per IS 6795-2007, the imported consignments do not comply with food grades – 'Gum Arabic'. They have also stated that they have not imported food grade 'Gum Arabic', but this does not disqualify them from availing the benefit of Exemption Notification dated 13 August 2008 since for availing the exemption under the said notification, the consignment need only to be of 'Gum Arabic' nature and not necessarily fit for human consumption.

8. It has further been contended that the Commissioner (Appeals) failed to appreciate that during the course of cross-examination, the learned chemical examiner was asked whether the Gum Arabic rejects and Arabic Gum had any defined chemical parameters or any chemical definition in the relevant literature. The examiner replied that though Gum Arabic is not chemically defined but as per the definition given under Indian Standards IS 6795-2007, Gum Arabic has been defined as : "the Arabic (Acacia) Gum shall be a dried gummy exudation obtained from the stems and branches of Acacia Senegal (L) Wild, Acacia Seyal (L) Wild or of related species of Acacia (Fam Leguminosae). Acacia Gum consists chiefly of a high molecular weight polysaccharides and their calcium, potassium and magnesium salts which hydrolysis yield arabinase, galactase, rhymmase and glycuronic acid. Item of commerce may contain extraneous matter like pieces of bark which shall be removed before use in foods."

9. From the above, an attempt has been made by the learned Counsel to establish that Standards IS 6795-2007 are not applicable in the instant case as the imported goods were Natural Gum Arabic which required various technical and chemical processes for making the same fit for human consumption and to

qualify for being classified as food grade under IS 6795-2007 standards.

10. It has further been submitted that the Commissioner (Appeals) failed to appreciate that the goods were of Natural Gum category and the Adjudicating Authority had made clear observations in the Order-in-Original that "During the proceedings of cross-examination dated 24/05/2018, Dr. Mistry, Chemical Examiner, in reply to question No. 5, 8 & 24 has categorically stated that all the samples tested by him were 'NATURAL GUM'. He had also stated that the samples were not of food grade; the same were not adulterated and not chemically processed. As the samples were not of food grade; the same were not adulterant and not chemically processed. As the samples drawn from the consignments imported under the 23 Bills of Entry, in question, were not of the food grade, as stated by Dr. M. Mistry, Chemical Examiner, it is found that the same were not subject to test under IS 6795-2007"

11. It was also submitted that the Commissioner (Appeals) has based the order entirely on the chemical report, but, it is clear from the report that the goods were Natural Gum. Hence, the report is of no significance in the absence of any classification about the characteristic and properties of Gum Arabic. However, from the cross examination it is clear that the Chemical Examiner accepted that Gum Arabic reject is not defined anywhere. The Indian Institute, Natural Resins and Gums, Namkum Ranchi was requested to send their report on comprehensive chemical analysis of the goods to arrive at a conclusion whether the same were "GUM ARABIC" or "OTHER NATURAL GUM". In response, Indian Institute, Natural Resins and Gums, Namkum Ranchi vide their letter dated 10/09/2018 informed that they were unable to ascertain that the impugned goods are "GUM ARABIC". The content of the letter is :

“It is further added that estimation of quality parameters here are not sufficient enough to ascertain that the given material is of Gum Arabic. Only testing of quality parameters related to Gum Arabic sample may be taken up on charge basis as per BIS standards but without affirming that the supplied material is Gum Arabic”.

12. The learned Counsel, therefore, submitted that it is wrong to conclude that subject goods were not Gum Arabic.

13. The learned Counsel appearing on behalf of the appellant Nos. 2 and 3, namely Anil Kumar Tiwari, Director and M/s Bharti Freight Forwarders Pvt. Ltd., which is a CHA firm, contended that the Commissioner (Appeals) has not gone into the details of the facts and without appreciation has imposed penalty on the clearing agent and its Director without establishing that the appellants were having knowledge or reason to believe about the mis-classification and wrong availment of the exemption notification.

14. It is further been submitted that in the instant case they have been provided with import consignment documentation as invoice, packing list, Bill of landing by the importer and all the import documents were prepared on the basis of such documents. The appellants have not changed or added any false description and/or classification in the matter and they have gone by the description given in the import shipment documents while preparing the Bill of entry and at the time of presentation of same for assessment. It has further been added that the consignment were provisionally assessed, subject to the confirmation of the description and classification from the chemical test of the import consignment. This itself proves that the appellants, namely M/s Bharti Freight Forwarders Pvt. Ltd. – clearing agent and its Director, had no role in wrong classification or wrong availment of exemption notification. In the entire proceedings it has also nowhere been reflected that the

appellants did any omission or commission which resulted in evasion of duty conscientiously and therefore the Commissioner (Appeals) has grossly erred in imposing penalty on them under Section 112 (b) (v) of the Customs Act, 1962.

15. We have also heard learned Departmental Representative who has reiterated the findings given in the order-in-appeal.

16. After hearing both the sides and after perusal of the appeal papers in detail, we find that the importer - appellant has filed bills of entry describing the import consignment as Natural Gum/ Natural Gum No. 3/Natural Gum Sifting. The import consignments were classified under CTH 13012000 (which is for 'Gum Arabic') and claimed exemption from payment of customs duty by availing benefit of Notification No. 96/2008 – Customs dated 13 August 2008. The import consignments were allowed clearance after provisional assessment of duty under Section 17 of Customs Act subject to confirmation of description of goods under CTH 13012000 by a test report.

17. Before proceeding further in the matter, it will be relevant to have a look at the scheme of the classification under Chapter 13 as provided under the Customs Tariff Act, 1975. The relevant entries of Chapter 13 are reproduced here below :-

Tarif Item	Description of goods	Unit	Rate of Standard	Duty Preferential Areas
(1)	(2)	(3)	(4)	(5)
1301	Lac; natural gums, resins, gum-resins and oleoresins (for example, balsams)			
1301 20 00	Gum Arabic	Kg.	30%	20%
1301 90	Others			
	Natural gums			
1301 90 11	Asian gum	Kg.	30%	--
1301 90 12	African gum	Kg.	30%	--
1301 90 13	Asafoetida	Kg.	30%	--
1301 90 14	Benjamin ras	Kg.	30%	--
1301 90 15	Benjamin cowrie	Kg.	30%	--
1301 90 16	Karaya gum (Indian tragacanth) hastab	Kg.	30%	--
1301 90 17	Tragacanth (adraganth)	Kg.	30%	--
1301 90 18	Storax	Kg.	30%	--
1301 90 19	Other	Kg.	30%	--

18. A perusal at the above scheme of classification makes it clear that only "Gum Arabic" is classifiable under Chapter sub-heading No. 13012000 and for other natural gums the classification are provided under the Chapter CTH 130190 and its sub-headings. The sub-classification under CTH 13019011 to 13019018 are for specific categories of natural gums such as Asian gum; Asafoetida (Hing), Karaya gum etc. and the other natural gums. Since, natural gum without any specific description is classifiable under 13019019, for which customs duty exemption is not available and accordingly the Department formed a view that since the consignment imported are not of the Gum Arabic but that other natural gums it classified the import consignment under CTH 13019019 and denied the benefit of exemption Notification No. 96/2008 – Customs dated 13 August 2008.

19. With regard to appellant No. (i) i.e. importer - appellant, the only issue before us for decision is whether the imported consignment are Gum Arabic or other Natural Gum. In this regard some of the import documents filed by the appellant with the relevant bills of entry have been perused. We find that the bills of entry alongwith bill of landing and relevant invoice describe the goods as natural gum only. For example, the bill of entry No. 21 dated 15 October 2015 describes the import consignment as Natural Gum/ Natural Gum No. 3 and goods have been classified under the Customs Tariff Heading 13012000 claiming the benefit of Notification No. 96/2008 – Customs dated 13 August 2008. We find that the corresponding bill of landing also describes the goods as Natural Gum. Some of the invoices which are available in the file also give the description of the goods as the Natural Gum No. 3. It can be seen that though all the import documents and the bills of entry described the goods as Natural Gum, except one or two bills of entry, where Gum Arabic has also been mentioned, but, the fact remains that none of the accompanying import documents describe the subject

import consignment as 'Gum Arabic' and, therefore, in a way the classification of Natural Gum under CTH 13012000 (which is specific to Gum Arabic) becomes arbitrary.

20. We find that the Department did not reject the claim of the appellant for classifying the subject consignment under the CTH 13012000 straight away at the time of filing of the bills of entry, though there is no document which may indicate that import consignments are Gum Arabic. The goods were assessed provisionally as per the importers claim and sent for chemical examination for determining the true nature of the import goods. The test report given by the chemical examiner is a detailed report and it is reproduced below :-

"As per the query raised by you, the detailed study done on the test results of the samples U/R and verified standard technical literature available in the laboratory. The following findings are submitted for your kind perusal.

- **Natural Gums** are polysaccharides of natural origin, capable of causing a large increase in a solution's viscosity, even at small concentrations. In the food industry they are used as thickening agents, gelling agents, emulsifying agents, and stabilizers. In other industries, they are also used as adhesives, binding agents, crystal inhibitors, clarifying agents, encapsulating agents, flocculating agents, swelling agents, foam stabilizers, etc. Most often these gums are found in the woody elements of plants or in seed coatings.
- Natural gums can be classified according to their origin. They can also be classified as uncharged or ionic polymers (polyelectrolytes).
- **Gum Combretum** is *Combretum nigricans* occurring throughout tropical West Africa, particularly in northern Nigeria, Mali and Niger, is the major source of combretum gum. Gum combretum is selling it under false names like 'gum Niger' or 'Dark Nigerian gum arabic No. 2' or actually mixing it with gum Arabic **as a adulterant**.
- **Gum Arabic** is having Bureau of Indian Standards IS 6795-2007 and International specification published by Food and Agriculture Organization of the United Nations (FAO, 1990), defines gum Arabic as the "dried exudation obtained from the stems and branches of *Acacia Senegal* (L) Willdenow or closely related species".
- **Gum Arabic is a Natural Gum but All Natural gums are not Gum Arabic**
- **Combretum gum is very different from Gum Arabic.** Vigilance is necessary to detect such misrepresentations because Combretum gums differ greatly from gum Arabic. (*Acacia Senegal* (L) Wild). Moreover, because there is no toxicological evidence for their safety in use, Combretum

gums are not included in any of the international lists of permitted food additives”.

21. It can be seen from the above report that it specifically mentions that Gum Arabic is Natural Gum but all Natural Gums are not Gum Arabic. We take note of the fact that the supplier of the import consignment has only described the import consignment as Natural Gum. We are of opinion that if the importer – appellant had entered into purchase agreement with the foreign supplier for purchase of ‘Gum Arabic’, then in that case the purchase invoice would be for ‘Gum Arabic’ and the supplier cannot give a general description to the import consignment while finalizing purchase of specific goods. It is commonsense and prudent trade practice that any purchase agreement has to be for a specific variety/category, quality of goods because such details only determine the nature and value of the import goods. It is an established trade practice that the goods negotiated need to be specifically described in the accompanying import documents such as letter of credit, invoice, Bill of lading and packing list. This is a necessary and legal requirement in case of any dispute that may arise between parties in the course of business. The Natural Gums have several varieties, such as Asafoetida, Benjamin ras, Karaya gum as well as Gum Arabic. It is a common knowledge that market price of all these Natural Gum differ widely and, therefore, the import consignments have to be invoiced as per their actual nomenclature and not by a general name like “Natural Gum”. Thus, we understand that by giving a general description to the import consignments, the importer had not made a true description of the import consignments. We, therefore, find that the appellant is not justified in claiming that consignment pertained to ‘Gum Arabic’ and accordingly claiming classification under CTH 13012000. The Appellant has also not adduced any evidence to claim that consignment is Gum Arabic. The import documents and the chemical examination report of the consignments establish that consignments were ‘other Natural

Gum'. As the exemption Notification No. 96/2008 – Customs dated 13 August 2008 exempts only Gum Arabic, classifiable under CTH 13012000 from the levy of the customs duty and it is established that the consignments are not Gum Arabic but other Natural Gum, it has to be held that the imported consignment were classifiable under Chapter sub-heading 13019019 and are not entitled for exemption notification benefit under Notification No. 96/2008 – Customs dated 13 August 2008. Thus, we find no infirmity in the order of the Commissioner (Appeals) and, accordingly, we uphold the findings made in this regard.

22. Coming to the appeals filed by the Custom House Agent firm and Anil Kumar Tiwari, the only allegation which has been levelled against the said appellants is that they presented import documents to the custom house which contained incorrect details and declarations regarding the description and classification under CTH 13012000 and thereby they colluded with the appellant – importer in an attempt to evade the customs duty by mis-declaration of the description and chapter heading of the import consignments.

23. We find from a perusal of the records that the custom house agent firm namely M/s Bharti Freight Forwarders Pvt. Ltd. and its Director Anil Kumar Tiwari only described the goods in the bills of entry as provided in the bills of landing and the invoices. It is also a matter of record that in the show cause notice no evidence has been brought forward to indicate that the clearing agent and its Director had conscientiously done anything to evade the customs duty. They have described the goods as given in the bill of landing and in the invoices as is the practice, though the classification was wrongly done under chapter sub-heading 13012000. No malafide can be attached to such a mistake, when the goods were provisionally assessed and samples were drawn from the import consignments to determine the true nature and identity of the import consignments. Thus, we find no substance

that the clearing agent did any omission and commission consciously which led to evasion of customs duty.

24. Penalty on the CHA firm and its Director has been imposed under Section 112 (b) which reads as follows :-

"Section 112 (b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111,

shall be liable, -

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty [not exceeding the value of the goods or five thousand rupees], whichever is the greater;

[(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher :

Provided that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent. of the penalty so determined;]

[(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty [not exceeding the difference between the declared value and the value thereof or five thousand rupees], whichever is the greater;

(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty [not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest;

(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty [not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest.]"

25. From the entire proceedings, we find that none of the requirements provided under Section 112 (b) have been

established against the clearing agent. Since the importer - appellant himself has sought benefit of the exemption notification by classifying the goods under chapter sub-heading CTH 13012000, which was allowed by provisionally assessing the Bills of entry subject to chemical test by the Department itself, the Department is not justified in alleging any malafide on the part of the CHA firm and its Director. Thus, there is no ground to levy any penalty on the appellant CHA firm – M/s Bharti Freight Forwarders Pvt. Ltd. and its Director – Anil Kumar Tiwari. The penalty which has been imposed by the impugned order-in-appeal is, accordingly, set aside.

26. As a result, there is no merit in the appeal filed by M/s B.L. Goyal and it deserves to be dismissed. However, the Appeals filed by M/s Bharti Freight Forwarders Pvt. Ltd. and its Director Anil Kumar Tiwari, deserve to be allowed.

27. Accordingly, Appeal No. Customs/52274 of 2019 filed by M/s B.L. Goyal is dismissed. Appeal No. Customs/52779 of 2019 filed by Anil Kumar Tiwari and Appeal No. Customs/50065 of 2020 filed by M/s Bharti Freight Forwarders Pvt. Ltd. are allowed and the penalty imposed upon them are set aside.

(Order pronounced in open court on 14/07/2020.)

(Justice Dilip Gupta)
President

(C.L. Mahar)
Member (Technical)