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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
SINGLE MEMBER APPEAL BRANCH

Appeal No. C/639 /2007-SM[BR] Date 01/04/2008

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S TEEJ IMPEX PVT. LTD.
205,TULSIANI CHAMBERS, NARIAMAN POINT,
MUMBAI,400021

M/S TEEJ IMPEX PVT. LTD. Appellant

Vs

C.C. (ICD) NEW DELHI Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 536 /2008 –SM [BR] Dated 4. 3.2008 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   C.C. (ICD) NEW DELHI
   ICD, TUGHLAKABAD, NEW DELHI 110020.
2. Adv. / Consult
   MR.RAWAL
   249, LAWYERS CHAMBERS, HIGH COURT OF INDIA, NEW DELHI.
3. S.D.R.
4. ~~J.C.D.R~~.
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New
7. M/s Centax Publictions (P) Ltd., 1512-E, Bhishm Pitamah
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301
9. R.Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,
12. Co, Law Institution
13. TAX INDIA, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

COURT – II

CUSTOMS APPEAL No. 639 OF 2007-SM

[Arising out of Order-in-Original No. 32/2007 dated 20.7.2007 passed by the Commissioner of Customs, ICD, TKD, New Delhi]

For approval and signature:

Hon'ble Mr. S.S. Kang, Vice President,

1.	Whether Press Reporters may be allowed to see the order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	yes
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	yes
3.	Whether their Lordships wish to see the fair copy of the order?	yes
4.	Whether order is to be circulated to the Departmental authorities?	yes

M/s. Teej Impex Pvt. Ltd., Appellants

Vs.

C.C., ICD, TKD, New Delhi Respondent

Appearance:

Shri Rajesh Rawal, Advocate for the appellants,
Ms. Archana P. Tiwari, Jt.CDR for the Revenue,

Coram:

Hon'ble Mr. S.S. Kang, Vice President,

Date of Hearing: 3rd March, 2008

FINAL ORDER NO. 536/08-SM(BR) dated 14.3.08

Per S.S. Kang:

Heard both sides.

2. Appellants filed this appeal against the impugned order whereby Hydro-generated Vegetable Oil (Vanaspati Ghee) valued at Rs. 1,46,79,214.30 was confiscated under Section 111(d) of the Customs Act on the ground that the same is adulterated as per the norms laid down under Prevention of Food Adulteration Act, 1954 and Prevention of Food Adulteration Rules, 1955. The Commissioner of Customs ordered the release of the same for the purpose of re-export on payment of redemption fine of Rs. 10 lakhs. A penalty of Rs. 5 lakhs was also imposed on the importer under Section 112(a) of the Customs Act.

3. Contention of the appellants is that Vanaspati Oil is imported from Sri Lanka and as per quality certificate given by the exporter, Melting Point is 40 Max. Contention is that as per the norms laid down under Prevention of Food Adulteration Act & Rules melting point of vanaspati oil should be between 30°C to 41°C. Contention is that the sample taken from the consignment and the same was tested by the Central Food Laboratory. As per test report melting point is 41.9°C which is beyond the parameter laid down under the Prevention of Food Adulteration Act & Rules. Contention is that there is a

marginal difference in the melting point, hence, the goods are not liable for confiscation. The applicants also submitted that the goods has already been re-exported.

4. Contention of the Revenue is that as per Customs Act adulterated goods are prohibited goods and as per the report of the Central Food Laboratory sample of vanaspati in question does not conform to the standards laid down under the Prevention of Food Adulteration Act and Rules and melting point is above the maximum prescribed limit. Hence, the goods are adulterated and it is liable for confiscation. Revenue relied upon the decision of the Tribunal in the case of Sheel Agro Oils P. Ltd. vs. C.C. & C.E., reported in 2006 (199) ELT 247 (Tri.-Del.) wherein the Tribunal upheld the confiscation of vanaspati oil imported into India having melting point not within the parameter provided under Prevention of Food Adulteration Act & Rules. Contention is that the importer filed appeal against the said decision of the Tribunal and the Hon'ble Delhi High Court upheld the decision of the Tribunal, reported in 2006 (204) ELT 31 (Del.)

5. In the present case sample taken from vanaspati oil found to be adulterated as per norms laid down under the Prevention of Food Adulteration Act & Rules. In similar situation in the case of Sheel Agro Oils P. Ltd. (supra) the Tribunal has upheld the confiscation, however, set aside the penalty on the ground that test report supplied

by the exporter shows melting point being 40°C. The Tribunal held as under:-

3. In the present case, the sample was tested twice and in both time, it shows that the melting point of the sample was 42.5°C. The standard prescribed under PFA Rules is that melting point of the vegetable oil shall be from 31°C to 41°C both inclusive. As per the PFA Act, 1954, Section 2(m) provides that if the quality or purity of the article falls below the prescribed standard or its constituents are present in quantities not within the prescribed limits of variability, the article is to be treated as adulterated. The adulterated food items are prohibited under the Customs Act. Further, we find that the Supreme Court in the case of *Dineshchandra Jamnadas Gandhi* (supra) held as under :

> "The object and purpose of Prevention of Food Adulteration Act are to eliminate the danger to human life from the sale of unwholesome articles of food. The legislation is on the Topic 'Adulteration of Food Stuffs and other Goods [Entry 18 List III Seventh Schedule]. It is enacted to curb the widespread evil of food adulteration and is a legislative measure for social - defence. It is intended to suppress a social and economic mischief - an evil which attempts to poison, for monetary gains, the very sources of sustenance of life and the well-being of the community.
>
> The evil of adulteration of food and its effects on the health of the community are assuming alarming proportions. The offence of adulteration is a socio-economic offence."

4. In view of the above decision of the Supreme Court, we find no infirmity in the impugned order wherein the goods were confiscated on the ground that these are adulterated. However, taking into accounts the facts and circumstances, as the appellant imported goods from Sri Lanka the test report supplied by the exporter shows the melting point being 40°C. Hence the appellants are not liable for any penalty, the penalty is set aside. Otherwise, the impugned order is upheld.

M/s. Sheel Agro Oils P. Ltd. filed the appeal against the said decision of the Tribunal and the Hon'ble Delhi High Court dismissed their appeal.

6. In view of the above decision I find no infirmity in the impugned order whereby imported vanaspati oil, was confiscated.

7. The appellants submitted that in the case of Sheel Agro Oils P. Ltd. (supra) the Tribunal set aside the penalty. I find that in that case the Tribunal after considering the test report supplied by the exporter showing melting point of vanaspati oil as 40°C set aside the penalty, but in the present case there is no such report. It is the quality certificate which simply shows 40 Max., hence, the imposition of penalty is justified. I find no infirmity in the impugned order. Appeal is dismissed.

(Dictated & pronounced in the Open Court.)

(S.S. KANG)
VICE PRESIDENT

Dated 4th March, 2008

RK