

GRAM : CEGCANAL

REGISTERED/A.D

THE CUSTOMS, EXCISE & GOLD (CONTROL) APPELLATE TRIBUNAL,

West Block No. 2, R.K. Puram, New Delhi - 110066.

BENCH - NB(SM)

Appeal No. C/CO/22/01/NB(SM)

Dated : 16/2/2021

CEGAT
NEW DELHI
To,

CC Amritsar

In the matter of :

CC Amritsar

Appellant

vs.

M/s Bajaj Sons

Respondent

I am directed to transmit herewith a certified copy of Final Order No. A/284/01/NB(SM)
Dated : 12/2/2021 passed by the Tribunal under Section 35-C(1) of Central Excise
& Salt Act, 1944/Section 129 (B) of the Customs, Act, 1962.

Copy to :

Asstt. Registrar

1. M/s. Bajaj Sons, D-1412
New Sabzi Mandi
Badli, Delhi
2. CCE / CC / (Appeal) Chandigarh
3. Chief Commissioner of Central Excise / Customs. Chandigarh
4. Adv. / Consult. A.S. New, Adv
S2-B, Mayapuri Vihar - Phase - 2
Delhi - 31.
5. S.D.R. - NB(SM)
6. JCDR
7. Bar Association, CEGAT, New Delhi
8. Library, CEGAT, New Delhi
9. Director (Review), C.B.E.C. North Block, New Delhi
10. Guard File.
11. M/s Deeparchic Publications, M-93, Marg-46, Saket, New Delhi.
12. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah Marg, opp. Sachdeva P.T. College of
Defence Colony, New Delhi-110003
13. M/s Lex Site Com. Ltd., Mumbai
14. Office Copy

15. Consent.

Asstt. Registrar NB(SM)

CUSTOMS, EXCISE & GOLD (CONTROL) APPELLATE TRIBUNAL
NEW DELHI

No.C/CO/22/01/NB(SM) in A.No.C/393/2000-NB(SM)

(Arising out of Order-in-Appeal No.3/CUS/CHD/2K dated 30.6.2000 passed by the Commissioner (Appeals), Central Excise & Customs, Chandigarh)

C/S: Amritsar .. Appellants
(Rep. by Shri S.C. Pushkarna, CJDR)

vs.

M/s. Bajaj Sons .. Respondents
(Rep. by Shri H.S. Mew, Advocate)

FINAL Order No. A/284/01/NB (S/M) dt. 12.2.2001

Per K.K. Bhatia, Member (T):

The brief facts in this case are that M/s. Bajaj Sons, Delhi imported 200 bags of Garlic weighing 10,000 kgs. from Pakistan and filed a Bill of Entry No.2669/99 dated 31.7.99 through M/s. Kishore International, Amritsar (the CHA) for the clearance of the same at Customs Rail Cargo, Amritsar. The importer classified the goods under sub-heading 071290.40 under the Customs Tariff Act, 1975 and also under the same EXIM Code of the ITC (HS) for classification of Export and Import Policy, 1997 - 2000.

2. The Customs Authorities felt that the goods imported did not appear to be classifiable under the aforesaid EXIM Code, as the same related to the dried vegetables. The imported Garlic did not appear to be the dried one. The samples were drawn from the consignment and sent to the Plant Protection Officer, Plant Quarantine and Fumigation Station, Amritsar asking them to clarify as to whether the imported Garlic were fresh or dried. The Plant Protection Officer, Plnt Quarntine and Fumigation Station, Amritsar vide his letter dt. 20.8.99 stated that

the sampled Garlic was not a dried Garlic and that it had got water contents and was soft and spongy. Accordingly, it was felt that the imported goods were classifiable under sub-heading 0703.20 (Fresh Garlic) of the EXIM Code.

3. The importers also wrote a letter dt. 23.8.99 to the Asst. Commissioner of Customs, Amritsar. The relevant portion of this letter is reproduced below:

" We have filed Bill of Entry No.2669/99 dt. 31.7.99 with Rail Cargo Complex, Amritsar for the clearance of Garlic imported from Pakistan under Sub-heading 071290.04. This product falls under Exim Code 0703.20 of the New Export Import Policy ITC (HS) Classification of Export & Import Items. It is restricted items and can be imported against licence or in accordance with a Public Notice. Since we do not have any import licence with us in support of this product, our case may please be decided without issuing Show Cause Notice or without fixing a personal hearing, and on taking a lenient view".

" As regards Invoice Value of this product, it is US \$ 350/- P.M.TON (C & F Wagma). But it is being assessed at the price of US \$ 480/- P.M.TON. In case of assessment at this rate our margin of profit shall go NIL which can be verified by conducting market enquiry".

4. Since the importer waived the show cause notice as well as personal hearing, the Joint Commissioner of Customs, Amritsar passed an Order dt. 31.8.99/21.10.99 classifying the imported goods under sub-heading 0703.20. He further ordered for confiscation of the goods under Section 111 (d) of the Customs Act, 1962 but gave an option to the importer to redeem the same on payment of a fine of Rs.86,416/-. He further imposed a penalty of Rs.43,208/- on the party under Section 112(a) of the Customs Act, 1962.

5. The party filed an appeal against the above order and the Commissioner (Appeals), Chandigarh vide his Order dt. 30.6.2000 observed that it appeared to be a borderline case, and therefore, he would confirm the classification of the imported goods as arrived at by the original authority, specifically when the same was not disputed at the adjudication stage. The Commissioner (Appeals), however reduced the amount of redemption fine and personal penalty to Rs.864/- and Rs.432/- respectively, as he felt that the same were excessive and disproportionate.

6. The present appeal is filed by the Revenue against the above order of Commissioner (Appeals). The Respondents have also filed Cross Objections. I have heard Shri S.C. Pushkarna, JDR for the appellants and Shri H.S. Mew, Advocate for the Respondents. It is contended by the ld. JDR for the Revenue that the lower appellate authority has drastically reduced the redemption fine and penalty on the importers without assigning any reason. It is contended that the Commissioner (Appeals) has confirmed the classification of goods as arrived at by the original authority and has also observed that the same could have been imported only against the Import Licence and since the party could not produce the valid Import Licence, the confiscation of the imported goods and imposition of penalty were justified. Under these circumstances, it is argued that there was no valid ground to reduce the redemption fine and penalty imposed on the party by the Appellate Authority. The ld. Advocate for the Respondents on the contrary contends that the original authority has relied on the report of the Plant Quarantine

and Fumigation Station, Amritsar without providing them a copy of the same and without giving them an opportunity to contest it. On these grounds, therefore, the ld. Advocate would contend that the fine and penlty sustained by the Commissioner (Appeals) should be set aside and the appeal of the Department should be dismissed.

7. I have considered the submissions made before me. As could be seen from the letter dt. 23.8.99 of the Respondents addressed to the Customs Authorities - extracts from which are appended above - the Respondents had given up their right to contest this case on merits before the original authority. They had submitted before the Asst. Commissioner of Customs that they admit that the import of goods required a licence and they did not have any Import Licence and their case should be decided without issuing a show cause notice or without fixing a personal hearing. In pursuance of having received such undertaking from the Respondents, the Joint Commissioner passed the impugned order against the party. The Respondents never contested their case on merits at any stage of the present proceedings. In view of these facts, therefore, they cannot now turn around and contend that they were not given an opportunity to rebut the report of the Plant Quarantine Department as referred to above.

8. As regards the appeal of the Department on the reduction in redemption fine and penalty on the party by Commissioner (Appeals), it is observed that in terms of the first proviso to Section 125 of Customs Act, 1962, the redemption fine shall not exceed the market price of the goods confiscated, less in the case of imported goods, the

duty chargeable thereon. Even the original authority has no where indicated in his order about the margin of profit on the imported goods which lead him to impose the quantum of fine as he did for the release of the goods in lieu of confiscation. To that extent, even the order of the original authority is non-speaking and would call for reconsideration. The amount of redemption fine would have a bearing on the penalty amount also . In this view of the matter, the orders passed by the lower authorities so long as they relate to the amounts of fine and penalty only are set aside and the matter is remanded to the original authority to pass a de novo speaking order in this regard. The Respondents shall be afforded a reasonable opportunity of hearing, if they so desire.

9. The appeal is thus allowed by remand and the Cross Objection are also disposed of in the same terms.

(Announced and dictated in the Court)

(K.K. Bhatia)
Member (Technical)

MS.
13.2.01