CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-SM

COURT –III

Customs Appeal No.C/50330/2016- EX [SM]

[Arising out of Order-in-Appeal No. CC (A) CUS/D-II/ICD/439/2015 passed by the Commissioner (Appeals), Customs, Central Excise and Service Tax, New Delhi]

M/s.Alchemist Foods Ltd. …Appellant

Vs.

C.C., New Delhi … Respondent

Present for the Appellant : Shri.Pawan Kumar, Advocate
Present for the Respondent: Shri. H.C. Saini, D.R.

Coram: HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

Date of Hearing/Decision: 09.09.2016

FINAL ORDER NO. 56527/2016

PER: S.K. MOHANTY

Brief Facts for the case are that the appellant had filed the Bill of entry No. 7236483 dated 28.06.2012 for home consumption of the imported goods. The Additional Commissioner of Customs vide Order No. A.O No.441/2012 dated 30.10.2012, partially allowed clearance of goods (i.e. non food items) having assessable value of Rs 6,54,432/- and rejected clearance of rest of goods (i.e. food products in respect of which NOC was not extended by FSS Authority) of assessable value Rs 21,29,284/-. Accordingly, the appellant had deposited duty of Rs 27,64,468/- in respect of the food items assessed at Rs.21,38,286/-. Since the goods were not allowed for clearance for home consumption, the appellant sent back the same to the Overseas Seller with the permission of the Customs Authorities. Thereafter, the Appellant had filed the refund application, claiming refund of Rs.27,64,468/- under Section 27(1) of the Customs Act, 1962. The Department initiated show cause proceedings against the appellant for rejection of the refund application under Third Proviso to Section 26 A ibid. The matter was adjudicated vide order dated 03.01.2014, wherein refund claim filed by the appellant was rejected on the ground that as per the proviso (3) to Section 26A ibid, no refund of custom duty on the imported goods shall be granted in case an offence has been committed at the time of import. In appeal the ld. Commissioner (Appeals) vide the impugned order 17.04.2015 has upheld the original order. Hence, the appellant has filed this appeal before the Tribunal.

2. The ld. Advocate appearing for the appellant submitted that since the Refund claim was filed under Section 27(1) ibid, the same cannot be rejected under the Proviso to Section 26A ibid and the authorities below should specifically decide the issue as to whether the appellant is entitled for refund under Section 27 ibid or not. In this context, the ld. Advocate has relied on the decision of the Tribunal in the case of

Commissioner of Customs, Bangalore vs. BPL Ltd. – 2002 (145) E.L.T. 634 (Tri. – Bang.) and BASF India Ltd. Vs. Commissioner of Customs, Nhava Sheva – 2006 (204) E.LT. 474 (Tri. – Mumbai).

3. On the other hand, the ld. DR appearing for the respondent reiterated the finding recorded in the impugned order.

4. Heard both sides and perused the records.

5. The fact is not under dispute that the duty amount of Rs.27,64,468/- was paid by the appellant at the time of filing of the Bill of Entry on 11.07.2012 and thereafter, the Bill of Entry in question was assessed by the Department. Since the NOC was not obtained from FSSI, the Department did not allow clearance of the food products and the same were returned by the appellant to the Overseas Supplier. Thus, it is evident from the fact of this case that the subject goods were not cleared by the Department for home consumption. Hence, the duty paid on such goods should be eligible for refund under Section 27 ibid. Since the refund sanctioning authority has dealt with the refund claim of the appellant, he should only have confined his findings to the facts of eligibility of the refund claim under the said statutory provisions. Therefore, rejection of refund application under the Third Proviso to

Section 26 A ibid is not in conformity with the statute inasmuch as, the said Section deals with the situation, which is entirely different form the present facts of the case as to whether, the appellant was entitled to refund claim under Section 27 ibid or not. With regard to eligibility for refund of duty on the goods not being cleared for home consumption, this Tribunal in the case of BASF India Ltd.(supra) has held that in case the goods were not cleared for home consumption and re-exported by the importer, refund claim of duty on such goods cannot be denied.

6. In view of above, I do not find any merits in the impugned order. Accordingly, after setting aside the same, the appeal filed by the appellant is allowed with consequential relief.

[Dictated and pronounced in the Open Court]

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita