IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

BENCH-DB

COURT –III

Customs Appeal No.50408 /2017 CU [DB]

[Arising out of Order-in-Appeal No.CC(A) CUS/ DI/ IMP/ NCH/ 882/16 dated 30.11.2016 passed by the Commissioner of Customs (Appeals), New Delhi]

M/s.Rasi Hyveg Pvt. Ltd. …Appellant

Vs.

C.C., New Delhi … Respondent

Customs Appeal No. 50660/2017 CU [DB]

[Arising out of Order-in-Appeal No.CC(A) CUS/ D-I/ ACC/ 877/16 dated 30.11.2016 passed by the Commissioner of Customs (Appeals), New Delhi]

M/s. Swami Seed Agencies …Appellant

Vs.

C.C., New Delhi … Respondent

Present for the Appellant : Mr.B.L.Garg, Advocate
Present for the Respondent: Mr.R.K. Maji, D.R.

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

Date of Hearing / Decision : 29/08/2017

FINAL ORDER NO. 56637-56638/2017

PER: B.RAVICHANDRAN

These appeals are against orders dated 30.11.2016 of Commissioner (Appeals), Customs (Airport), New Delhi. The appellants herein have imported "Tagetes seeds F I MarIgold : Moon sapphire '(Flower seeds for sowing purpose)" and classified the same under Customs Tariff Heading 12099990. They have claimed the exemption under Sl. No.17 of Notification No. 12/2012. The Assessing Officer denied the said exemption and assessed the goods under CTH – 12093000, under Sl. No.41 of the same Notification, applying BCD of 15%. The lower authorities held that Sl. No.17 is not applicable to flower seeds and as such, the miscellaneous exemption under Sl. No. 41 of the said Notification only can be made available to the importers.

2. The ld. Counsel contesting the findings of the Assessing Officer as well as in the impugned orders, submitted that the appellants imported seeds of flowering plant, which is very much covered under Sl. No.17. They are eligible for the exemption claimed, as they have filed a declaration in terms of condition No.2 annexed to the said Notification that the imported seeds are for the purpose of sowing or planting only.

3. The ld. A.R. submitted that Sl. No. 17 of the Notification do not apply to seeds of flowers, as the entry is restricted to oil seeds, seeds of vegetables. Flowers and ornamental plants are only exempted and not the seeds of flowers. He relied on certain decided cases to argue that the terms of exemption Notifications are to be strictly construed.

4. We have heard both the sides and perused the appeal records. Sl. No. 17 of the Notification reads as under:-

Sl.No.	Chapter of Heading or sub-heading or tariff item	Description of goods	Standard rate	Additional duty rate	Condition No.
17	06, 07,08,09 or 12	Planting materials, namely, oil seeds, seeds of vegetables, flowers and ornamental plants, tubers and bulbs of flowers, cuttings or saplings of flowers plants, seeds or plants of fruits and seeds of pulses	5%		2

5. Irrespective of the heading or sub-heading of the imported items, the exemption is available for Chapter 12, under the said entry. As such, presently we are not concerned with the correct classification of the imported items. We are only concerned about the availability of exemption under Sl. No.17 to the seeds imported by the appellant. Admittedly, the seeds imported by the appellants are of flowering plants. The entry as above is very clear to the affect that planting materials, namely, oil seeds, seeds of Vegetables, flowers and ornamental plants, ……….. "In other words, seeds of vegetables and flowers and ornamental plants are apparently eligible for the concessional rate of duty. The plain reading of the entry makes the position clear. Further, the impugned order has misdirected in examining the scope of Sl. No.17. Planting materials, which apparently includes seeds, was held to be not

including flowers. We find no reason for such conclusion, which is irrelevant to the current dispute. The scope of the entry is plain and clear to the effect that seeds of vegetables, flowers and ornamental plants are eligible for exemption. Otherwise, it will mean that planting materials, namely, "……….. flowers and ornamental plants" will be eligible for exemption. We find that such interpretation apart from being against the very basis of the wording of the entry will also lead to absurd interference i.e. flowers will be treated as planting materials, which cannot be correct. Based on the plain reading of Sl. No.17, it is clear that seeds of flowers are eligible for exemption and denial of such exemption is not sustainable. Accordingly, we set aside the impugned orders and allow the appeals.

[Dictated and pronounced in the open Court]

(B. RAVICHANDRAN)
MEMBER (TECHNICAL)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita