IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing/Decision:26.10.2017

Customs Appeal No.51387/2017-CU(DB)

[Arising out of Order-in-Appeal No.CC(A)CUS/D-II/ICD/PPG/285/2017 dated 8.5.2017 passed by the Commissioner of Customs (Appeals), New Customs House, New Delhi]

Smriti Products Pvt. Ltd. Appellant

Vs.

CC, Patparganj Respondent

Appearance:
Rep. by Shri Virender Kumar, Advocate for the appellant.
Rep. by Shri P. Juneja, AR for the respondent.

Coram: Hon'ble Mr.S.K. Mohanty, Member (Judicial)
Hon'ble Mr. B. Ravichandran, Member (Technical)

Final Order No.57512/2017

Per B.Ravichandran:

The appeal is against order dated 8.5.2017 of Commissioner (Appeals), Customs, New Delhi. The appellants filed bill of entry on 31.10.2014 for clearance of dried whole milk powder. The said shipment was originally exported from India to England. On rejection of the goods by importer in England, the goods were brought back resulting in filing of this bill of entry for clearance. The goods were examined on 19.11.2014 and the samples were also drawn and tested. The said test revealed that the goods were not conforming the standard as per the IS: 1165:2002 and it is held to be not fit for marketing . Accordingly, proceedings were initiated against the appellant for confiscation of the goods and for imposition of penalty for importation of such goods, which are not fit for consumption. The ld. Original Authority ordered absolute confiscation of the goods and imposed a penalty of Rs.5 lakh under Section 112 (A) of the Customs Act, 1962.

3. Ld. Counsel for the appellant submitted that the goods were exported by them and re-imported due to rejection of the same by foreign buyers. They are not contesting the confiscation of the goods as they have become unfit for consumption. However, no penal consequences can arise on such act. He submitted that residual shelf life of 60% had expired on 21.11.2014. As such, on the date of import, the goods valid shelf life might have met the quality stipulation. Since these goods were on reimport there is no malafide action on their part inviting penalty.

4. Ld. AR reiterated the findings of the lower authority.

5. We have heard both the sides and perused the appeal records.

6. The confiscation of the goods are not in contest. Regarding penalty, we note that the Original Authority mainly proceeded to imposed penalty on the ground that the products did not have 60% of the original shelf life and accordingly there is a violation of the Prevention of Food Adulteration Act, 1954.

7. We note that on the date of presentation of the goods by filing bill of entry admittedly, the goods had required residual shelf life as per PFA, 1954. Hence, no penalty can be imposed on this violation. It is also recorded that as per the test reports the goods did not conform to IS Standards and are not fit for human consumption. Originally the goods were shipped by the appellants and were re-imported on rejection by the foreign buyers. We note that there is no ground for penal action in these transactions. There is no malafide or fraudulent intent in filing

of bill of entry. The delay in processing the bills of entry resulted in the residual shelf life not being 60%

8. Having considered all the above points, we find that the penalty imposed on the appellant is not sustainable and accordingly, the impugned order is set aside only with reference to imposition of penalty.

[Order dictated & pronounced in open court]

(S.K. Mohanty)
Member(Judicial)

(B. Ravichandran)
Member (Technical)

Ckp.