IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

BENCH-SM

COURT –IV

Customs Appeal No.C/51460/2017 [SM]

[Arising out of Order-in-Appeal No.CC(A) US/D-II/ ICD/ TKD/ 346/ 2017 dated 24/05/2017 passed by the Commissioner (Appeals), Customs, New Delhi]

M/s.Oriflame India Pvt. Ltd. **...Appellant**

Vs.

C.C., Tughlakabad **... Respondent**

Present for the Appellant : Mr.Abhinav Jagannath, Advocate
Present for the Respondent: Mr.G.R. Singh, D.R.

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

Date of Hearing/Decision: 06/10/2017

FINAL ORDER NO. __57923/2017__

PER: S.K. MOHANTY

This appeal is directed against the impugned order dated 24.05.2017 passed by the Commissioner of Customs (Appeals), New Delhi. In this case, the authorities below have denied the benefit of amendment in the shipping bills filed by the appellant on the ground that the invoices, packing lists, ARE-I and the Licence submitted by the appellant reflected the description of export goods as 'Ecollagen – Anti Wrinkle 4 Week Trat (16.32 gm)'. Thus, the amendments sought for showing the description of the export goods as 'Ecollagen – Anti Wrinkle 4 Week Trat (40.80 gm)' cannot be considered, since no documents were available at the time of filing the shipping bills that the grade of 40.80 gm. were in-fact exported by the appellant.

2. The ld. Advocate appearing for the appellant submits that due to inadvertence, certain documents were not produced by the appellant in respect of the product 40.80 gm. at the time of filing the shipping bills, which were actually exported by the appellant. To support such stand, he has produced the documents, namely, Bill of Entry, Product Literature, report issued by the office of DGFT. He further submits that since the imported goods were used for manufacture of the goods exported by the appellant and the same were duly endorsed/certified by the licensing authority, the fact is evident that 'Ecollagen – Anti Wrinkle 4 Week Trat (40.80 gm)' were actually exported by the appellant.

3. The ld. D.R. appearing for the respondent submits that since the document relied on at this juncture were not produced by the appellant before the authorities below, the request for amendment of the shipping bill in terms of Section 149 of the Customs Act, 1962 has been rightly turned down and the same cannot be considered at the appellate stage. He further submits that the report of DGFT was not available at the time of exportation of the goods, inasmuch as, the export of the subject goods took place in the year 2008-09, whereas the DGFT has issued such report in the year 2013.

4. Heard both sides and perused the records.

6. Section 149 ibid provides discretion to the proper officer for amendment of certain documents in respect of the bill of entry or the shipping bills. Such amendment is subject to the condition that the documents on the basis of which the amendment is sought for must be available at the time of either import or exportation of the goods. It is an admitted fact on record that the documents relied on by the appellant at this juncture, were not produced before the authorities below. Accordingly, the request of the appellant for amendment of the shipping bills was not considered by the proper officer. Since the appellant submits that the documents produced for the first time before the Tribunal are related to the shipping bills against which the goods were exported, I am of the view that said documents can be verified by the original authority to ascertain that those documents were in fact relevant for the shipping bills, under which the goods were exported by the appellant. If he satisfies himself that those documents can be considered for entertaining the request of the appellant, may grant permission for necessary amendment in the shipping bills. Alternatively, he has to communicate his decision to the appellant for not entertaining such request. Since the documents produced at this juncture have to be verified by the original authority himself, I am not expressing any opinion with regard to the manner of disposal of the matter by him. Therefore, after setting aside the impugned order, I remand the matter back to the original authority for consideration of

the prayer of the appellant, in terms of Section 149 ibid for amendment of the shipping bills filed by it.

7. In the result, the appeal is allowed by way of remand to the original authority.

[Dictated and pronounced in the Open Court]

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita