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

Date of Hearing/Decision:27.12.2017

Customs Appeal No.180/2011-DB

[Arising out of Order-in-Appeal No.CC(A)Cus/ICD/26 & 28/2011 dated 31.01.2011 passed by the Commissioner of Customs (Appeals), New Customs House, New Delhi]

M/s.Brij & Co. Appellant

Vs.

CC, New Delhi Respondent

Appearance:
Rep. by Shri Prem Ranjan, Advocate for the appellant.
Rep. by Shri P.Juneja, AR for the respondent.

Coram: Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. B. Ravichandran, Member (Technical)

Final Order No.58618/2017

Per Justice Dr. Satish Chandra

This appeal is filed against the order-in-appeal dated 31.01.2011 passed by the Commissioner of Customs (Appeals), New Delhi.

2. The issue involved in the present appeal is regarding the leviability of CVD on Gum Arabic Waste/Rejects.

3. After hearing both sides and on perusal of materials available on record, it appears that identical issue has come up before the Tribunal in the assessee's own case vide Final Order No.C/A/141-142/2012 dated 15.05.2012, wherein it has been observed as under:-

> "5. An identical issue was considered by the Tribunal in the case of Jugar Kishore Shivlal and Final Order No.A/37-38/2012/CSTB/C-I dated 17.01.2012, the Bench observed as under:-
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> > "6. After going through the contentions of both the sides, we find that in this case the Bills of Entry had been filed by describing the goods as 'Gum Arabic Waste Rejects' and classifying the same under Chapter Heading 1301 2000. The same

was assessed holding that the appellant are liable to pay CVD on them. While assessing and confirming the liability to payment of CVD, no sample has been drawn and the basis for arriving the CVD is payable was not communicated to the appellant as they have claimed classification under 1301 2000 which covers the goods 'natural gum' and while importing natural gum, as per clarification of CBEC dated 28.06.2007 there is no CVD leviable on the imported 'Gum Arabic'. We find force in the contention of the learned advocate, who has explained how the 'Gum Arabic Waste/Rejects' was obtained and he has explained that while obtaining natural gum, a hole has to be made in the tree and gum comes out and some of the gum falls on the soil and that gum, which fell on the soil is called as 'Gum Arabic Waste Rejects'. In the absence of any test report, we hold that the 'Gum Arabic Waste/Rejects' is only 'Gum Arabic' obtained by natural process.

7. In view of these observations and clarification of CBEC dated 28.06.2007, we hold that CVD is not leviable on the impugned goods imported by the appellant. We, further find that the decision in the case of Oriental Tiles (supra) relied upon by the first Appellate Authority has been overruled by the Division Bench of the Hon'ble High Court of Calcutta and the same cannot be relied upon".

4. By following our earlier order supra, we find no reasons to sustain the impugned order. The same is set aside. The appeal is allowed.

[Order dictated & pronounced in open court]

(Justice Dr. Satish Chandra)
President

(B. Ravichandran)
Member (Technical)

Ckp.