**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI**
**PRINCIPAL BENCH, COURT NO. I**

**Customs Appeal No. 51621 of 2017**

[ Arising out of Order-in-Appeal No. CC(A) Cus/D-I/ Import/227/2017 dated 13.6.2017 passed by the Commissioner of Customs (Appeals), New Delhi. New Delhi ]

**Alaska Multi Polymers P Ltd.** **Appellant**

Vs.

**Commissioner of Customs** **Respondent**
**New Delhi**

Appearance:

**Shri Dhruv Matta, Advocate for the Appellants**
**Shri R K Majhi, AR for the Respondent**

**<u>CORAM</u>:**
**Hon'ble Mr. Justice (Dr.) Satish Chandra, President**
**Hon'ble Mr. V. Padmanabhan, Member (Technical)**

Date of Hearing/ Decision: 22.1.2018

**FINAL ORDER NO.50287 /2018**

**Per: Justice (Dr.) Satish Chandra**:

The present appeal is filed by the appellant against the Order-in-Appeal No. CC(A) Cus/D-I/ Import/227/2017 dated 13.6.2017.

2. Brief facts of the case are that the appellant has imported parts from Vietnam through CHA M/s. Devender Laxmi Chand Cargo. The CHA has declared it as "Aluminium Sleeves" which falls under Chapter 8437.90.90. The appellant has paid the duty accordingly, Later, the appellant has claimed that said parts are Rice

Rubber Rolls (Aluminium Drum). It is the submission that inadvertently, the CHA has mentioned the wrong name as "Aluminium Sleeve" which falls correctly under Chapter 40 of the Tariff Act. So, a request is being made to correct the mistake.

3. After hearing both the parties, it appears that appellant has already paid the duty and redemption fine by accepting their mistake, if any. The request of change of tariff heading is nothing but an after-thought which cannot be sustained at this stage, especially when in the Bill of Entry, items were declared as "Aluminum Sleeves". So, the ground taken by the appellant is not sustainable. In this regard, we uphold the impugned order for the reasons mentioned therein.

4. However, during the course of arguments, learned advocate submits that when the items have been billed as "Aluminium Sleeves" under Chapter 8437 90.90, then the appellant is entitled for the benefit under **Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India, Rules 2009.**

5. In this regard, it appears that the Commissioner (Appeals) in its order observed that :-

> ***"Regarding the Appellant's claim for the benefit of concessional rate of BCD under Sl. No. 534 (1) of Notification No. 46/2011-Cus dated 01.06.2011, I find that no such concession was sought during filling Bill of Entry and***

***clearance, It is required to be examined whether goods imported "Rice Rubber Roll (Aluminium Drum)" fulfils the conditions as prescribed in the said notification. For re-assessment of the Bill of Entry by the Assessment Officer, the appellant h may file an application in that regard which is left open. "***

6. In view of the above, we modify the impugned order and remand the matter to the Assessing Officer to examine the claim of the appellant regarding the benefit of concessional rate under ASEAN and the Republic of India Rules, 2009 (supra). The Assessing Officer is requested to provide an opportunity of hearing to the appellant and if necessary, fresh evidence may be admitted as per law.

7. In the result, impugned order is modified and appeal is partially allowed by way of remand.

(Dictated and pronounced in the open Court)

**( V. Padmanabhan )**
**Member (Technical)**

**(Justice (Dr.) Satish Chandra)**
**President**

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