CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH REGIONAL BENCH AT HYDERABAD
BENCH - DB
COURT - I

Appeal(s) Involved:

C/270/2009-DB

(Arising out of Order-in-Appeal No. 82/08 (V-II)Cus dated 16/12/2008 passed by Commissioner of Customs Central Excise & Service Tax Visakhapatnam)

Commissioner of Central Tax Visakhapatnam — Appellant(s)

Versus

Reckitt Benkiser (India) Ltd — Respondent(s)

Appearance:

Mr Bhanu Kiran, A.R. for the Appellant.
None for the Respondent.

CORAM:

HON'BLE Mr. M.V.Ravindran, MEMBER (JUDICIAL)
HON'BLE Mr. P. Venkata Subba Rao, MEMBER (TECHNICAL)

Date of Hearing: 20/02/2019
Date of Decision: 20/02/2019

Final Order No. A/ 30240 / 2019

[Order per: M.V.Ravindran.]

This appeal is filed by the Revenue against order-in-appeal No. 82/08 dated 16/12/2008

2. None appeared on behalf of the respondent despite notice. Since the matter is of 2009, we take up the same for disposal even in the absence of any representation.

3. Heard learned A.R. and perused the records. Issue that falls for consideration in this appeal is whether the imported goods i.e. "crude palm kernel oil of non-edible industrial grade" would merit classification under Chapter Heading No. 15132110 claiming concessional rate of duty under Sl No 30(A) of Customs Notification No. 21/2002-Cus as amended of otherwise.

4. It is seen from the records that the respondent herein had claimed benefit of such Notification on the basis of the content of free fatty acid (FFA) in the consignment imported by them As per the load port analytical report, the FFA content was shown as 20%. When the consignment was received, samples were drawn by the Customs Authorities through the Deputy Chief Chemist. Deputy Chief Chemist of the Customs Department reported FFA content as 18.3%.B ased upon report of the Deputy Chief Chemist, the adjudicating authority held that the respondent is not eligible for concessional rate of customs duty as per the Notification No. 21/2002-Cus. The respondent herein exercises his right of getting the sample retested by CRCL New Delhi and the report of CRCL New Delhi also indicated that the FFA content is 17.8% only.

5. The respondent herein filed an appeal before the 1st Appellate Authority against the order-in-original and the 1st Appellate Authority by the impugned order held that the respondent's case merits acceptance and set aside the speaking order of the adjudicating authority.

6. We find that the 1st Appellate Authority has erred in appreciating the fact that Deputy Chef Chemist and CRCL, have reported that FFA content of imported goods is less than 20%. To counter the said analytical report, nothing is produced by the respondent to indicate that the FFA content was incorrectly ascertained by these authorities. The only reliance which has

been placed is on the load port analytical test report. In our view, the law is now fairly settled inasmuch that the test report of the authorities attached to the Customs Department needs to be followed. In view of the foregoing, we hold that the 1st Appellate Authority was in error and accordingly we set aside the impugned order and allow the appeal of the Revenue and restore the order of the adjudicating authority.

7. The impugned order is set aside and the appeal is allowed.

(Order pronounced and dictated in open court)

P. Venkata Subba Rao	**M.V.Ravindran**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

Neela Reddy