IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
EAST REGIONAL BENCH : KOLKATA

Cus.Appeal Nos.121,122/10

(Arising out of Order-in-Appeal Nos.Kol/Cus/CKP/73 & 74/2010 dated 11.03.2010 passed by Commissioner of Customs (Appeals), Kolkata)

M/s Ruchi Soya Industries Ltd.

Applicant (s)/Appellant (s)

Vs.

Commr. of Customs, Kolkata

Respondent (s)

Appearance:

Shri Amit Kumar, Adv. for the Appellant (s)
Shri S. K. Naskar, Asstt. Commr. (AR) for the Revenue (s)

CORAM:

HON'BLE SHRI P. K. CHOUDHARY, JUDICIAL MEMBER
HON'BLE SHRI BIJAY KUMAR, TECHNICAL MEMBER

Date of Hearing : 06.07.2018
Date of Pronouncement : 18.09.2018

Final Order No.FO/76640-76641/2018

Per Shri Bijay Kumar :

The appellants have filed the present two appeals against a common impugned order passed by the Commissioner of Customs (Appeals), Kolkata, wherein he has partly allowed the appeals of the appellants regarding classification of the goods imported. However, he did not allow the benefit of Notification No.20/2006-Cus. dated 01.03.2006 at Sl.No.52.

2. The issue involved in these appeals is regarding assessment made in Bill of Entry Nos.590494 dated 04.01.2010 & 591081 dt. 08.01.2010, vide which, the appellant has imported the consignment of "germinated oil palm seeds". The appellant claimed the

classification under Tariff Heading No.12092990 of Customs Tariff Act, 1975 and claimed the benefit of Notification No.20/2006-Cus. dated 01.03.2006. The dispute was regarding the assessment done by the Assessing Officer, who classified the goods under 12072010 with the benefit of Notification No.19/2006-Cus. dated 01.03.2006 and therefore, the appellant was made to pay countervailing duty @ 4% at the relevant time. Against this Order, the appellant has approached the Commissioner (Appeals) for change of the classification of the product and also for availment of exemption as claimed by them. The Commissioner (Appeals) has dealt with the classification in his order at Paras 6,7,8 & 9 and held that the classification of the product is required to be done under Heading 1290 instead of 1207 as done by the Assessing Officer. This change in classification was in view of the Explanatory Notes to HSN both for Headings 1207 & 1209. For better appreciation, Para 8 of the impugned order is reproduced below :

> *"8. It is pertinent to refer to Explanatory Notes to HSN, both for headings 1207 and 1209. It is clarified in the Explanatory Notes that heading 1207 covers those oil seeds which are used for extraction of oil, whereas heading 1209 covers those seeds which are used for sowing. If that was not so, why then have heading 1209. That is why in Note 3 to Chapter 12, clause (d), products of heading 1201 to 1207 or 1211 are rightly excluded. Thus from the reading of the descriptions of heading 1207 and heading 1209 as well as the Explanatory Notes, it is amply clear that those seeds which are meant for sowing would exclusively fall under the heading 1209. The appellant has imported germinated oil palm seeds. Being germinated, these are used for sowing only. Therefore, these*

imported goods would get covered under heading 1209. Further, Notification No.G/SPS/N/PER/241 dated 26.01.10, cannot be the basis of classification of goods under the Customs Tariff for goods which have been imported into India and hence this submission of the department is without basis."

3. So far as the claim of the benefit of Notification No.20/2006-Cus. dated 01.03.2006 is concerned, the Commissioner (Appeals) in the impugned order, has held that the same is not applicable in the case of product imported by the appellants as the Notification excludes from its purview oil seeds. In other words, oil seeds of a kind used for sowing, which otherwise would fall under Heading 1209 and therefore, the benefit of Notification claimed by the appellants is not application. However, he has granted the benefit of Notification No.19/2006-Cus. dated 01.03.2006 to the appellants for the product imported by them.

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

5. After going through the submissions made by both sides, we find that the Commissioner (Appeals) has passed the impugned order as per law with adequate deliberation regarding the provisions of Notification and the Tariff Entries. Therefore, we do not find any reason to interfere with the impugned order. Accordingly, both the appeals are dismissed.

(Pronounced in the open Court on 18.09.2018)

Sd/ Sd/

(P. K. CHOWDHARY)
MEMBER (JUDICIAL)

(BIJAY KUMAR)
MEMBER (TECHNICAL)

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