IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA
REGIONAL BENCH - COURT NO.1
Customs Appeal No.77896 of 2018
(Arising out of Order-in-Appeal No.KOL/CUS(Port)/AA/734/2018 dated 09.04.2018 passed by Commissioner of Customs (Appeals), Kolkata.)

Commissioner of Customs (Port), Kolkata
(15/1, Strand Road, Custom House, Kolkata-700001.)

...Appellant

VERSUS

M/s. Shalimar Pellet Feeds Limited

.....Respondent

(46C, Chowringhee Road, Everest House, 17, B & C, Kolkata-700071.)

APPEARANCE

Shri S.Debnath, Authorized Representative for the Revenue
Shri Amit Kumar, Advocate for the Respondent

CORAM: HON'BLE SHRI ASHOK JINDAL, MEMBER(JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER(TECHNICAL)

FINAL ORDER NO. 75641/2024

DATE OF HEARING : 19.03.2024
DATE OF DECISION : 19.03.2024

Per : ASHOK JINDAL :

The Revenue is in appeal against the impugned order.

2. The facts of the case are that the respondent imported one consignment of 6000 Kg. Microtech 5000A (Phytase activity 5000U/G) and 6000 Kg QinlewangA (Powder) (B-Mannanase activity 1000U/G) in the month of November, 2013 and classifying the goods under Tariff item No.2309 9090 as poultry feed supplement. The Bill of Entry was self-assessed with duty @ 20% + 3% Cess on the basis of Sl.No.106 of the Notification No.12/2012-Cus dated 17.03.2012. The Revenue did not accept the said classification and re-assessed the Bill of Entry under Tariff Item No.3507 9099 considering the same as Enzymes. The assessment was done under section 17(4) of the Customs Act, 1962 and no speaking order was passed under section 17(5) of the Customs Act, 1962. The said order was challenged by the appellant before the

Ld.Commissioner(Appeals), who held that the item in question is classifiable under Tariff Item No.2309 9090 and are eligible for concessional duty under Sl.No.106 of Notification No.12/2012-Cus dated 17.03.2012. Against the said order, the Revenue is before us.

3. Today the matter was taken up for consideration. A clarification was issued by the Central Board of Indirect Tax & Customs (CBIC) dated 30.12.2022 vide F.No.401/92/2022/Cus-III, which clarifies that 5000-65000 FTU per gram Feed Grade is to be treated animal feed additives and combination of fibre degrading enzymes is to be used in cattle feed. As it has been clarified by the CBIC that the items in question are animal feeds, therefore, we hold that the item in question are to be classified as animal feeds and having merit classification under 2309 9090. The similar issue came up before this Tribunal in the case of Indian Trading Bureau Pvt.Ltd. vs. CC(Port), Kolkata and vide Final Order No.75088-75096/2024 dated 23.01.2024, this Tribunal held that the items in question are animal feeds and are not fit for human consumption for preparation of medicines.

4. Therefore, we hold that the classification claimed by the appellant is correct and the impugned goods are to classify under CTH 2309 9090 as held by the Ld.Commissioner(Appeals) in the impugned order.

5. In view of this, we do not find any infirmity in the impugned order, the same is upheld and the appeal filed by the Revenue is dismissed.

(Operative part of the order was pronounced in the open Court.)

Sd/
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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