IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT No. I

APPEAL No. C/539/2011

(Arising out of Order-in-Appeal No. 157(Gr.II C&D)/2011 (JNCH)/IMP-117 dated 31.3.2011 passed by Commissioner of Customs (Appeals), Mumbai-II, Nhava Sheva)

Nestle India Ltd. **Appellant**

Vs.

Commissioner of Customs (I), Nhava Sheva **Respondent**

Appearance:

Shri T. Viswanathan, Advocate, for appellant
Shri Roopam Kapoor, Commissioner (AR), for respondent

CORAM:

Hon'ble Dr. D.M. Misra, Member (Judicial)
Hon'ble Mr. Sanjiv Srivastava, Member (Technical)

Date of Hearing: 15.6.2018
Date of Decision: 15.6.2018

ORDER No. **A/86760/2018**

Per: Dr. D.M. Misra

Heard both sides.

2. This is an appeal filed against order-in-appeal No. 157(Gr.II C&D)/2011 (JNCH)/IMP-117 dated 31.3.2011 passed by Commissioner of Customs (Appeals), Mumbai-II.

3. The short issue involved in the present appeal is whether the imported goods viz. Vitamin Premix Nutr9261 MR1 is classifiable under CTH 29362990 or under CTH 21069090.

4. Learned Advocate for the appellant submits that the issue of classification of the same item has been considered by this Tribunal and the matter has been remanded to the adjudicating authority vide order No.A/1056/13/CSTB/C-I dated 1.5.2013.

5. Learned AR for the Revenue does not dispute the aforesaid facts.

6. This Tribunal, on similar issue in its order dated 1.5.2013, observed as follows:-

> *"5.1 The issue for decision in this case is whether by addition of potassium iodide and maltodextrin or any other ingredients, whether the vitamin pre-mixtures have been made suitable for a specific use or is still capable of general use. This is a question of fact which has to be decided after subjecting the impugned goods for chemical analysis and test. The department has not undertaken any action for drawal of samples and getting the same tested. On a query from the Bench, the Advocate for the appellant submitted that the item is regularly imported by the appellant from the same supplier and therefore, the samples of the same can be drawn from any of the future imports for testing by*

the competent authority such as the Central Food Laboratory in Pune or the Deputy Chief Commissioner's office in Mumbai. In view of the above position, we direct the Customs authorities to draw samples from the future consignments when imported by the appellant consisting of the same ingredients, from the same supplier and subject the same for testing so as to ascertain whether the addition of maltodextrin or potassium iodide or other ingredient has rendered the vitamin pre-mixtures suitable only for specific use or the product is still capable of general use and thereafter, decide the classification of the product in accordance with the Section and Chapter Note to Chapter 29. As regards the request of the appellant for recalling the records of the past imports for verifying whether the chemical analysis certificates had been submitted by the appellant or not, we direct the department to recall the records and verify these facts. If it is found the appellants have submitted the chemical analysis certificates along with the import documents, there cannot be any suppression on the part of the appellant and the extended period of time for demand of duty cannot be invoked. All issues are kept open. The impugned order is set aside and the matter is remanded back to the original adjudicating authority for fresh consideration as directed above."

Following the aforesaid judgment, we also remand the matter to the adjudicating authority to decide the issue afresh after affording an opportunity of hearing to the appellant.

7. Appeal is allowed by way of remand.

(Pronounced in court)

(Sanjiv Srivastava)
Member (Technical)

(Dr. D.M. Misra)
Member (Judicial)

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