IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

APPEAL NOS: C/81 & 97/2011

[Arising out of Orders-in-Appeal No: 401(100% EOU)/2010(JNCH)/ EXP-34 and 400(100% EOU)/2010(JNCH)/EXP-33 both dated 13th December 2010 passed by Commissioner of Customs (Appeals), Mumbai – II.]

Micro Inks Limited
International Shipping Corporation … ***Appellants***

versus

Commissioner of Customs (Export)
Nhava Sheva ***…Respondent***

Appearance:

Shri N D George and Shri M L Grover, Advocates for appellants

Shri M K Mall, Assistant Commissioner (AR) for respondent

CORAM:

Hon'ble Shri C J Mathew, Member (Technical)
Hon'ble Dr. Suvendu Kumar Pati, Member (Judicial)

Date of hearing: 19/07/2018
Date of decision: 14/08/2018

ORDER NO: A/87088-87089/2018

Per: C J Mathew

These appeals have been filed by M/s Micro Inks Limited, importer of 16.8 MTs of 'dichlorobenzidine dihydrochloride' and M/s

International Shipping Corporation, Custom House Agent against Orders-in-Appeal No: 401(100% EOU)/2010(JNCH)/ EXP-34 and 400(100% EOU)/2010(JNCH)/EXP-33 both dated 13th December 2010 of Commissioner of Customs (Appeals), Nhava Sheva, which has upheld the orders of the lower authority confirming recovery of differential duty of ₹ 2,56,818/-, with applicable interest, confiscation of goods valued at ₹ 46,23,755/- under section 111 of Customs Act, 1962 to be allowed option of redemption on payment of fine of ₹ 11,93,228/- besides imposing penalty of ₹ 10,00,000/- on the former and ₹ 2,50,000/- on the latter.

2. Learned Counsel for appellants contends that they had imported the said goods *vide* bill of entry no. 649702/26.08.2009 at Jawaharlal Nehru Custom House and claimed benefit of notification no. 52/2003-Cus dated 31st March 2003 enabling the privilege of duty-free imports of raw materials to 100% Export Oriented Units. It was submitted that all the necessary documents had been filed and that every aspect of the import had been declared in one or the other document. Particular attention was drawn to the invoices which clarified the price of the said goods to be based on '100% of the amino content' and that the purchase price of US $ 69,720 (CFR Nhava Sheva) arrived at accordingly. It was also pointed out that the packing list makes it amply clear that the gross weight of 22829.76 kgs was reflected in the bill of entry against which the clearance was

sought.

3. Heard the Learned Authorised Representative who drew attention to the finding of the assessing authority that the goods weighed 22704 kgs.

4. It is seen that the importer is a 100% export oriented unit which entitled to the benefit of duty-free import. The imported goods are required to be bonded and the utilization thereon would have been under the supervisory, and documentary, control of customs bond personnel as well as the Development Commissioner concerned. To the extent that the imported goods are utilised for export, the quantity imported is irrelevant; nor is it of relevance in the context of the manufactured goods being cleared into the domestic tariff area. Even if the goods are found to be in excess of that declared, benefit of exemption notification should not have been denied. The recovery of duty ordered in the order of the adjudicating authority, as upheld by the appellate authority, is therefore, not correct in law.

5. Learned Counsel has submitted that the imported chemical is to be valued on the basis of its ‘amino content’ and the enhancement of value to encompass the gross weight is without any basis. It is seen from the orders of the lower authorities that this aspect does not seem to have been examined and in the absence of such ascertainment, across the board enhancement of value based on gross weight is not

sustainable. It is also amply clear from the contents of the various documents that there has been no mis-declaration inasmuch as the gross weight and the netted weight have been detailed. The goods cannot, therefore, be said to have been mis-declared and the confiscation thereof is also without authority of law.

6. For the above reasons, the impugned order is set aside and the appeals allowed.

(Pronounced in Court on 14/08/2018)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

(C J Mathew)
Member (Technical)

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