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

APPEAL No. C/969/2012

(Arising out of Order-in-Appeal No. 403/MCH/JC/Gr.IIA/2012 dated 19.7.2012 passed by Commissioner of Customs (Appeals), Mumbai-I)

Srishti Speciality Chemicals Pvt. Ltd. — **Appellant**

Vs.

Commissioner of Customs (I), Mumbai — **Respondent**

Appearance:

Written submissions on behalf of appellant
Shri Bhushan Kamble, Assistant Commissioner (AR), for respondent

CORAM:

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

Date of Hearing: 09.01.2019
Date of Decision: 09.01.2019

ORDER No. **A/85027/2019**

Per: Dr. D.M. Misra

This is an appeal filed against order-in-appeal No. 403/MCH/JC/Gr.IIA/2012 dated 19.7.2012 passed by Commissioner of Customs (Appeals), Mumbai-I.

2. Briefly stated the facts of the case are that the appellant had imported one "MIT-50% and CIT/MIT-14%" i.e. "5-chloro-2-methyl-4-isithiazolin-3-one" and

"2-methyl-4-isothiazolin-3-one", respectively, classifying the product under Customs Tariff Heading 29349900 of Customs Act, 1975. Sample of the said goods was drawn and forwarded to the Deputy Chief Chemist for test and on the basis of test report, the product was classified under CTH 38089400 as 'disinfectants'. Consequently, the goods were confiscated with an option to redeem the same on payment of fine of Rs.25,000/- and penalty of Rs.10,000/- imposed under 112(b) of the Customs Act, 1962. Aggrieved by the said order, the appellant filed appeal before the learned Commissioner (Appeals) who, in turn, rejected their appeal. Hence, the present appeal.

3. The appellant has filed a written submission with a request to decide the appeal on the basis of the said submission dispensing personal hearing. It is the contention of the appellant that the imported goods were used by them as 'preservatives' in their finished goods to prevent growth of bacteria in order to increase its shelf life as the said finished goods contain vegetable oil derivatives which are susceptible for biodegradation over a period of time on storage. The said goods are properly classifiable under Chapter sub-heading 29349900 and not under 38089400 of CTA, 1975 as held by the learned Commissioner (Appeals). It is their

contention that as per normal trade practice, disinfectants are largely used in hospitals, public sanitary block, residential complex etc. and the imported goods cannot be used for the aforesaid purposes. It is their contention that in order to obtain clarification from the Ministry of Agriculture on the nature of the said product, they filed an application under RTI Act and also to ascertain whether the aforesaid two products are included in the Schedule to the Insecticide Act, 1968. The information provided by the Directorate of Plant Protection, Quarantine & Storage, Faridabad, under the Ministry of Agriculture, stated that the said goods with anti-bacterial and anti-fungal properties are generally put to use as preservatives. It is their contention that the aforesaid information was rejected by the learned Commissioner (Appeals) observing that since the goods are classifiable under CTH 38089400, it is mandatory that it should be registered with the Central Insecticide Board, and ignored the said classification.

4. Learned AR for the Revenue reiterated the findings of the learned Commissioner (Appeals).

5. We find that the learned Commissioner (Appeals) in deciding the classification of the imported goods under CTH 38089400 of Customs Tariff Act, 1975,

ignored the information obtained by the appellant from the Ministry of Agriculture certifying that the goods in question do not fall under the Schedule to the Insecticide Act, being not used as an insecticide but as preservatives. Without any basis, the learned Commissioner (Appeals) has unilaterally come to the conclusion that these products are liable to be registered under Insecticide Act since classifiable under CTH 38089400. Also, we do not find any evidence has been adduced by the Revenue to establish that these products were used other than preservatives by the appellant.

6. In these circumstances, we do not find any merit in the impugned order. Accordingly, the same is set aside and the appeal is allowed.

(Pronounced in court)

(Sanjiv Srivastava)
Member (Technical)

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

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