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

APPEAL Nos. C/473,742-744/2011

(Arising out of Order-in-Appeal No. 118 to 121/Mumbai-III/2010 dated 29.11.2010 passed by Commissioner of Customs (Appeals), Mumbai)

Ruchi Soya Industries Ltd. **Appellant**

Vs.

Commissioner of Cus. (ACC & Imp.), Mumbai **Respondent**

Appearance:

None for appellant (written request to decide on merits)
Shri Bhushan Kamble, Assistant Commissioner (AR), for respondent

CORAM:

Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon'ble Mr. Sanjiv Srivastava, Member (Technical)

Date of Hearing: 04.01.2019
Date of Decision: 04.01.2019

ORDER No. A/**85272-85275/2019**

Per: Sanjiv Srivastava

These appeals are directed against the order in appeal no 118 to 121/Mumbai-III/2010 dated 29.11.2010 of Commissioner (Appeals) Mumbai –III. By the said order Commissioner (Appeal) has upheld the Assessment made on Bill of entries No 246103 dated 29.09.2009, 238061 dated 22.09.2009, 205037 dated 26.08.2009 and 196119 dated 19.08.2009.

2. Commissioner (Appeal) has in his order upholding the Assessment made held as follows:

"3. The issue involved is classification of Germinated Oil Palm Seeds, Variety Tenera Hybrids (Elaeis Guineensis), imported by the appellants. The impugned goods were assessed under CTH 1201 00 10 with Basic Custom Duty @ 5% + Education Cess @ 3% + SAD @ 4%. The appellants' contention is that it should be assessed under CTH 1209 29 90 with BCD @ 5% + Education Cess @ 3%, with exemption of 4% SAD vide Notification No.20/2006-Cus dated 01.03.2006. They also claimed the benefit of Notification No.21/2002-Cus dated 01.03.2002.

4. It is observed that Chapter Note 3 of Chapter 12 mentions that "Heading 1209 does not, however, apply to the following even if for sowing: (a) .... (d) products of headings 1201 to 1207 or 1211."

Headings 1201 to 1207 cover oil seeds. By virtue of the said Chapter Note 3, oil seeds even if for sowing is excluded from classification under heading 1209. Hence, the Appellants' claim that impugned goods should be classified under CTH 1209 29 90 is not tenable.

5. It is also observed that the impugned goods have been given exemption from additional duty leviable under sub section (1) of the Section 3 of the Customs Tariff Act according to Notification No.21/2002-Cus dated 01.03.2002. The Appellants have been granted the said exemption rightly, in the impugned assessments.

6. Further, it is also seen that under serial No.52 of Notification No.20/2006-Cus dated 01.03.2006, "All seeds other than Oil Seeds, falling within CTH 1209" are exempted from additional duty of customs leviable under sub Section (5) of Section 3 of Customs Tariff Act (commonly known as SAD). As the impugned goods are oil seeds, and they are also not classifiable under CTH 2009, they are not eligible for the benefit under the said Notification.

7. In view of the above, I do not find any reason to interfere with the impugned assessments. They are therefore upheld.”

3.1 Appellant have challenged the order of Commissioner (Appeal), stating that the correct classification of the *“Germinated Oil Palm Seeds”* imported by them would be under heading 1209 and not under heading 1207. The seeds imported by them were not meant for extraction of oil, hence they assumed the category of seeds in general. Once the imported goods were for the purpose of cultivation they ceased to be oil-seeds, hence squarely falls under the category of seeds which is classifiable under the heading 1209, which reads as “seeds, Fruits and Spores, of a kind used for sowing.”

3.2 They have contended that the exemption Notification No 20/2006 dated 01.03.2006 is not applicable, and clearance should be granted by applying the Notification No 21/2002 dated 1st March 2002. In their view Chapter Note 3 of Chapter 12 is not applicable in their case, as that note would apply only when the goods are not subject to any exemption notification. In the instant case the assessment is done under exemption notification. Exemption Notifications provide for exceptional conditions and not general conditions and hence general provisions are not applicable. They rely on the decisions in case Government of India Vs Indian Tobacco Association [2005 (187) ELT 162 (SC)] in their support.

3.3 They further stated *"Admittedly the clearance has been granted by applying the notification No 21/2002 dated 01.03.2002 and while making the assessment also partially followed and applied the necessary conditions subject to which the benefit was permissible, further, the condition contents recited is that it should be for the purpose for cultivation. The engrafting of such condition clearly reflects that the incentive is accorded for promotion of cultivation. Further on base scrutiny of the contents of the said Notification it is very clear that in the Column No 5 the additional duty is not mentioned which would be deemed to be "Nil". Had the intention of the of the legislature been to levy additional duty the rate would have reflected in the respective column as that column specifically reflects the rate of additional duty. From the above submission it is very clear that the import was not subject to any additional duty. It is submitted that the assessment so made is contrary to the provisions of the contents of the said Notification. It is settled principle of Law that once a Notification is applied for clearance and assessment it should be applied as whole."*

4.1 When the matter was listed for hearing, Appellant's sought leave from appearance and requested for decision on merits in view of the Tribunal Order No A/203/2012/STB/CE dated 09/10/2012.

4.2 We have heard Shri Bhushan Kamble, Assistant Commissioner (Authorized Representative) for the revenue. He distinguished the decision referred to by the Appellants in their written submissions stating that issue involved in the case referred by the appellants was in respect of refund claim, filed by the appellant claiming the benefit of exemption Notification No 21/2002, which they had not claimed at the time of filling/ assessment of Bill of Entry. As the refund claim was filed without challenging the assessment order, following the Supreme Court decision in case of Flock India and Priya Blue, department disallowed the refund. Tribunal following the decision of Delhi High Court in case of Aman Medicals, allowed the appeal. In the present case the benefit of exemption has been claimed and allowed by the Revenue even at the time of assessment, hence this decision is not applicable in the present case. Thus he prayed for rejecting the appeals.

5.1 We have considered the submissions made in appeal, the written submissions filed by the appellant and by the Authorized Representative while arguing the Appeal.

5.2 The issue for consideration in the present case is not in respect of the refund claim filed by the appellant without challenging the order of assessment, hence the decision of the Tribunal cited by the appellants in their written submission will not be applicable in the present case. Tribunal has in that case held as follows:

"2. The facts of the case are that the appellant procured one consignment of Germinated Oil Palm Seed for home consumption. The goods were classifiable under CTH 12092990 which were exempted under Notification 21/2002, dated 1-3-2002. While filing bill of entry appellant did not claim exemption under Notification 21/2002 and the assessing officer assessed the bill of entry. Later on they realised that they are entitled for exemption under Notification 21/2002 and they filed refund claim. The same was rejected on the premise that as the appellant has not challenged the assessment of bill of entry, therefore they are not entitled for refund claim.

3. The ld. counsel for the appellant appeared and submitted that in this case by mistake appellant could not claim exemption under Notification 21/2002. It is admitted the appellant did not claim Notification 21/2002 but he has complied with all the condition of Notification at the time of filing of bill of entry. It is the duty of the assessing officer to assess the goods properly. In these circumstances, when he realised that they paid duty which was not warranted, therefore they are entitled to refund claim as held by Aman Medical Products - 2009-TIOL-566-H.C.-Del. = 2010 (250) E.L.T. 30 (Del.).

4. On the other hand, the ld. AR reiterates the impugned order and contended that as assessment was done and the Notification was conditional, the appellant did not claim the exemption under 21/2002, therefore, they are not entitled for refund claim without challenging the assessment.

5. Heard both sides.

6. It is not disputed at the time of filing of bill of entry the appellant has complied with Condition of Notification 21/2002. Therefore, it is duty of the assessing officer to give benefit of exemption under Notification 21/2002 as the assessing officer failed to assess the goods properly. In this case the appellant are entitled to claim refund without challenging the assessment of bill of entry as held by the Tribunal in the case of Sasa Goa Ltd. - 2010-TIOL-1729-MUM wherein this Tribunal has held that when the exemption is available it is the duty of the assessing officer to give the exemption to the assessee. As the assessing officer failed to give the exemption, therefore appellant are entitled to claim refund without challenging the bill of entry and the facts of this case are distinguishable from the decision in the case of Flock India and Priya Blue. With these observations, I hold those appellants are entitled to refund claim. Accordingly, the impugned order is set aside. Appeal is allowed with consequential relief."

5.3 In the present case the benefit of Exemption Notification as claimed by the Appellants under Notification No 21/2002-Cus dated 01.03.2002 has been allowed by the lower authorities. However the issue that appellants have raised is two folds-

i. The classification of the goods imported by them should have been done by following the classification as per the exemption notification and not by application of Chapter Note 3 to the Chapter 12.

ii. Since no rate of duty has been mentioned under column 5 of the Notification No 21/2002-Cus, assessment should have been made allowing them full exemption from Additional Duty.

5.4 We are not in position to agree with the said submissions-

i. as per rule 1 of ***"General Rules of Interpretation of Import Tariff"***

> *"1. The titles of Sections, Chapters and sub-chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions:"*

Thus by application of the said rule classification of the goods is to be done in accordance with the terms of headings and any relative Section or Chapter Notes. It is not the case of the appellant that by application of the above Rule 1, the classification as done by the revenue is erroneous but appellants are contending that the classification should have followed the exemption notification. We are not in position to agree with the said contention. The decision of Indian Tobacco Association referred by the appellants in their appeal do not advance the case of appellant as the said decision do not state so and is also not on the issue of classification. The said decision is authority for giving liberal interpretation to the exemption notification in accordance with the objective of the notifications. Hence the contentions of appellant in respect of classification cannot be agreed to.

ii. In the Notification, in column 5, which specifies the effective rate for additional duty, where full exemption from additional duty has been granted, clearly notification indicates "Nil". In case where nothing is provided and rate indicated as "-", no exemption from additional duty is contemplated. It is now settled law that an exemption notification needs to be construed strictly and any ambiguity in notification needs to be interpreted in favour of state. In case of Commissioner of Customs (Import) Mumbai vs Dilip Kumar & Company [2018 (361) ELT 577 (SC)] five member bench Hon'ble Supreme Court held as follows:

"52. *To sum up, we answer the reference holding as under -*

(1) Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.

(2) When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue.

(3) The ratio in Sun Export case (supra) is not correct and all the decisions which took similar view as in Sun Export case (supra) stands overruled."

6.0 In result all the appeals are dismissed.

(Pronounced in court)

(S.K. Mohanty)
Member (Judicial)

(Sanjiv Srivastava)
Member (Technical)

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