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

APPEAL NO: C/418/2011

[Arising out of Order-in-Appeal No: 152 (GR.VI)/2010(JNCH)/IMP-114 dated 31.03.02011 passed by the Commissioner of Customs (Appeals), Mumbai-II Nhava Sheva.]

Creative Enterprise ***Appellant***

versus

Commissioner of Customs (Import)
Nhava Sheva ***Respondent***

<u>*Appearance*</u>*:*

Shri N.D. George, Advocate for appellant

Shri Chatru Singh, Assistant Commissioner (AR) / Darmendra Singh, Assistant Commissioner (AR) for respondent

CORAM:
Hon'ble Shri S.K. Mohanty, Member (Judicial)
Hon'ble Shri C.J. Mathew, Member (Technical)

Date of hearing: 18/01/2019
Date of decision: 18/01/2019

ORDER NO: A/85629 / 2019

<u>*Per: S.K. Mohanty*</u>

Brief facts of the case are that the appellant had imported "Exercise Equipments" namely, cross over bench, adjustable dumbbell bench, flat bench etc., and filed Bill of Entry No. 965724 dated 01.04.2010 for home consumption. It had claimed the benefit of Notification No. 29/2010 dated 27.02.2010, which exempts payment of SAD on "All pre-packaged goods intended for retail sale in relation to which it is required, under the provision of the Standards of Weights and Measures Act, 1976 (60 of 1976) or the rules made there under or under any law for the time being in force, to declare on the package thereof the retail sale price of such article". Revenue was of the view that "Exercise Equipments" are not displayed in sales outlets or sold from the sales outlets in a pre-packaged condition. The appellant paid the duty under protest. The adjudicating authority had held that the imported goods should be assessed, without extending the benefit of the said notification. By the impugned order, the Learned Commissioner (Appeals) has upheld the adjudication order and dismissed the appeal filed by the appellant.

2. Heard both sides and perused the records.

3. On perusal of the said exemption notification, we find that the goods would be "pre-packaged goods" and it is also "intended for retail sale". The contention of the appellant is that it had fulfilled the conditions of pre-packaged goods. But, the lower authorities concluded that the said goods are not intended for retail sale. It is observed that the impugned goods are not generally sold in retail and therefore, do not attract the provision of Chapter II of Standards of Weight and Measure (pre-packaged commodity) Rules, 1977. We find that the appellant had not placed any material to substantiate that

the imported goods were intended for retail sale.

4. The Tribunal in the case of Pooja Hardware Pvt. Ltd. Vs. Commissioner of Customs (Import), Nhava Sheva, reported in 2014 (306) ELT 626 (Tri.-Mumbai) has denied the benefit of exemption Notification No. 29/2010, Cus., (supra). In that case, the aluminum profiles, hardware for furniture fittings though imported in pre-packed form, but since the same were not meant for retail sale under the provisions of Legal Metrology Act, 2019 and rules framed there under, the exemption benefit was denied. In the present case, we have already observed that the appellant had not produced any evidence to show that the imported goods are intended for retail sale and thus, the benefit of exemption is not available.

5. In view of the above discussions, we do not find any reason to interfere with the impugned order. Accordingly, appeal filed by the appellant is dismissed.

(Operative part pronounced in court)

(C.J. Mathew)
Member (Technical)

(S.K. Mohanty)
Member (Judicial)

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