CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH – COURT NO.504

Custom Appeal No. 85375 of 2013

(Arising out of Order-in-Appeal No. 626(Gr.II)/2012/JNCH/IMP-555 dated 06/11/2012 passed by the Commissioner of Customs (Appeals), JNCH, Nhava Sheva.)

M/s Sanjay Chemicals ....Appellant

VERSUS

Commissioner of Customs (Import), Nhavasheva ....Respondent

APPERANCE:

Shri J.C. Patel, Advocate for the Appellant
Ms. Trupti Chavan, Asst. Commr. Authorised Representative for the Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85967 / 2019

Date of Hearing: 03/05/2019
Date of Decision: 03/05/2019

PER: ANJANI KUMAR

This appeal is directed against the order-in-appeal no. 626(Gr.II)/2012/JNCH/IMP-555 dated 06/11/2012, wherein the appellate authority is confirmed the demand of Anti-Dumping Duty on sodium saccharin in terms of notification 41/2007.

2. Learned Counsel for the Appellants, M/s. Sanjay Chemicals, submits that the demand is time barred as the goods were imported *vide* Bill of Entry No. 736453 dated 27/10/2009; goods were examined and tested and were provisionally released against bond; provisional assessment was finalised and test bond was cancelled on 13/11/2009, show cause notice was issued on 21/10/2010 which is beyond six months. SCN is time based in view of the following cases.

(i) National Organics Chemicals Ltd. v CC - 2000 (126) ELT 1072
(affirmed in 2002 (142) ELT A280 SC)
(ii) Eagle Flask Industries Ltd v CCE - 2007 ELT 173
(iii) Kusum Ingots and Alloys v CCE - 2001 (137) ELT 550
(iv) Tata Oil Mills Company v CCE - 1996(88) ELT 463
(v) Sayani & Sons v CC - 2016 - TIOL - 198 - CESTAT - MUM
(vi) Ahmedabad Management Association v CST - 2015(9) TMI 883 - CESTAT

2. 1. Learned Counsel for the Appellants, further submits that in terms of Notification 41/2007 dated 19/03/2007 Anti-Dumping Duty is only on 'saccharin' and not on 'salts of saccharin'; impugned goods are not saccharin; therefore, the notification is not applicable. He pleads that Anti-Dumping Duty cannot be imposed on 'a salt' when it is proposes to impose on a chemical. He submitted that it is laid down in the following judgements that anti-dumping duty imposed on a Chemical will not apply to its Sodium Salt:

(i) CC v Kalgov Labs Ltd - 2018 (6) TMI 139 - CESTAT MuMBAI
(ii) Nicholas Piramal India Ltd v CCE - 2018 - TIOL - 2240 - CESTAT - MUM

(Bom), an entry in a provision which mentions a given chemical will not include its Salt .

He also submits that wherever the Government wants to impose Anti - Dumping Duty on a chemical as well as on the salt, the same is speci fi ally mentioned in the notification. He submits that it is pertinen t to see that the subsequent Notification No. 136/2009 - Customs dated 09/12/2009, also Central Government has mentioned only 'saccharin'.

3. The Ld. AR for the Department reiterates the findings of OIO & OIA argues that in the final findings, the designat ed authority mentioned the product to include sodium saccharin , therefore, the impugned order may be upheld. He relied upon *Elegan Pharmaceuticals* Vs *. Collector of Central Excise, Bombay* *[1998 (104) ELT (441) (Tri.)]* where it was held that saccharin is the most common term for the product sodium saccharin which was sweetening substitute for sugar in the market. The words ' saccharin ' used in the notification as to be given, it is generic and wider meaning to include pr eparation containing saccharin as main component. As such benefit of exemption under Notification No. 53/84 Central Excise dated 01/03/1994 would be available to the appellant. He further submits that this case was affirmed by Supreme Court in 1999 (107 E LT A 187 Sc) .

29.25 - Carboxyimide -function compounds (including saccharin an 1 its salts) and imine -function compounds.

-Imides and their derivatives; salt s thereof:

2925.11 - - Saccharin and its salts

2925.12 - - Glutethimide (INN)

2925.19 - - Other

- Imines and their derivatives; salts thereof:

2925.21 - - Chlordimeform (ISO)

2925.29 - - Other

(A) IMIDES

Imides have the general formula (R=NH), where R is a dibasic acyl radical.

(1) **Saccharin or 1,2 - benzisothiazolin - 3 - one 1,1 - dioxide and its salts*.** Saccharin is an odourless, white crystalline powder having a very sweet taste; its sodium and ammonium salts have a low er sweetening power but are more soluble. Tablets consisting solely of one of these produts remain in this heading. Preparations, used in human diets, consisting of a mixture of saccharin or its salts and a foodstuff, such as lactose, are however **excluded** from this heading and fall in **heading 21.06** (see Note 1(b) to Chapter 38). Those preparation consisting of saccharin or its salts and substances, other than a foodstuff, such as sodium hydrogencarbonate (sodium bicarbonate) and tartaric acid fall in **headin g 38.24**

We find form the above that though the Heading No. 2925.11= refers to saccharin and its salts. It is important to note that 'saccharin' and 'salts ' are not one in the same. We find that the Notification No. 41/2007 & 136/2009 mentions the item to b e only ' saccharin ' falling under Tariff item 2925.1100 and not Salts of Saccharin. W e also find

find that the interpretation of notification should be strictly in accordance with the wording of the notification, words cannot be added or deleted. The Learned AR contented that eh designated authority has come to a conclusion that the Anti-Dumping Duty is applicable to all grades of saccharin. However, we find that unless the notification is suitably worded cannot be claimed to be of all grades importantly, when Anti-Dumping Duty notification mentions the names of only the saccharin, it cannot be read to include its salts also. Therefore, we find that the notification did not intend to levy Anti-Dumping Duty on salts of saccharin as submitted by the appellant. We find that the Notification No. 82/2001 Customs dated 30/07/2001 imposing Anti-Dumping Duty on Theophylline, Caffeine and Salts, it is not the case by the department that the impugned notification are similarly worded. Coming to the issue of limitation, we find that the department has assessed the goods on provisional basis after obtaining a test report, the assessment was finalised and the bond was cancelled under such circumstances, suppression of fact etc. cannot be alleged to invoke extended period of limitation. We find that the goods laws cited by the appellant would support their case, we find that the show cause notice is barred by limitation. We find that the Case cited by AR would not be of any help to those as the same was revolved in respect of applicability of exemption.

5. In the result, we hold that the anti dumping duty is applicable

we allow the appeal with consequential relief, if any.

(Dictated & pronounced in open Court)

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

(P. Anjani Kumar)
Member (Technical)

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