CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

Customs Appeal No: 888 of 2009

[Arising out of Order-in-Original No: 101/2009 CC(I) JNCH dated 13th May 2009 passed by the Commissioner of Customs (Import), Nhava Sheva, Mumbai – II.]

Elder Pharmaceuticals … ***Appellant***
Elder House, Plot No. C-9, Dalia Industrial Estate,
Off: Veera Desai Road, Andheri(W), Mumbai

versus

Commissioner of Customs (Import) ***…Respondent***
JNCH, Nhava Sheva, PO Uran, Dist: Raigad

APPEARANCE:

None for the appellant

Shri Ramesh Kumar, Assistant Commissioner (AR) for the respondent

CORAM:

HON'BLE DR D M MISRA, MEMBER (JUDICIAL)
HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)

FINAL ORDER NO: A/88447 / 2018

DATE OF HEARING: 15/10/2018
DATE OF DECISION: 15/10/2018

PER: C J MATHEW

M/s Elder Pharmaceuticals Ltd is in appeal against order-in-original no. 101/2009 CC(I) JNCH dated 13th May 2009 of Commissioner of Customs (Appeals), Nhava Sheva in which the import of ‘orthopedic synthetic castings and pop bandages’ against various bill of entries between August 2006 to April 2008 classifying them under heading no. 9021 10 00 of First Schedule to Customs Tariff Act, 1975 which was altered to heading no. 3005 of the First Schedule to the Customs Tariff Act, 1975. Consequent differential duty of ₹ 24,50,351/- was ordered for recovery, the goods confiscated but offered for redemption on payment of ₹ 25,00,000/- and penalty of ₹ 24,50,351/- imposed under section 114A of Customs Act, 1962 on Elder Pharmaceuticals Ltd.

2. None appeared for the appellant. Learned Authorised Representative points out that the heading claimed by the appellant is intended to cover orthopedic appliances and not the goods imported by the appellant which is akin to bandage that is impregnated, or coated, with pharmaceutical substances justifying inclusion under heading intended for ‘bandages’. Drawing our attention to the technical literature pertaining to the goods, he contends that the bandages, in relation to treatment of orthopedic injuries, is also not close to being an appliance, and the description in the Explanatory Notes makes it clear that these are intended for specific purpose and not therapeutically.

3. Accordingly, we find no reason to interfere with the classification ordered in the impugned order.

4. It is seen that the adjudication order has recorded that the goods are not available for confiscation. In the absence of the goods and relying upon the decision of the Hon'ble Supreme Court in *Weston Components Ltd v. Commissioner of Customs, New Delhi [2000 (1) SCR 26]* and of the Hon'ble Bombay High Court in *Commissioner of Customs (Import), Mumbai v. Finesse Creation [2009 (248) ELT 122 (Bom)],* we set aside the redemption fine. However, the goods being liable to confiscation, we uphold the penalty imposed on the appellant but at the same time allow option of payment of 25% of penalty as provided for in section 28(5) of Customs Act, 1962.

5. Subject to above modification, we uphold the impugned order and the appeal is disposed off accordingly.

(Pronounced in open court)

(Dr. D M Misra)
Member (Judicial)

(C J Mathew)
Member (Technical)

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