# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
## REGIONAL BENCH

### Customs Appeal No. 85167 of 2013

(Arising out of Order-in-Appeal No. 486, 487 & 488/Stay/Mumbai-III/2012 dated 27.11.2012 passed by Commissioner of Customs (Appeals), Mumbai-III)

**M/s. Maneesh Pharmaceuticals Ltd.** **Appellant**
Plot No.40, Anciliary Indl. Plots,
Govandi, Mumbai 400 043.

Vs.

**Commr. of Cus. (ACC & Imp.), Mumbai** **Respondent**
Air Cargo Complex,
Sahar, Andheri (E),
Mumbai 400 099.

WITH

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**M/s. Maneesh Pharmaceuticals Ltd.** **Appellant**
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Vs.

**Commr. of Cus. (ACC & Imp.), Mumbai** **Respondent**
Air Cargo Complex,
Sahar, Andheri (E),
Mumbai 400 099.

Appearance:

Shri Anil Balani, Advocate, for the Appellant
Shri Bhushan Kamble, Authorised Representative for the Respondent

**CORAM:**

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

FINAL ORDER NO. A/**86631-86632/2019**

Date of Hearing: 10.04.2019
Date of Decision: 10.04.2019

PER: S.K. MOHANTY

These appeals are directed against the impugned order dated 27.11.2012 passed by the Commissioner of Customs (Appeals), Mumbai-III.

2. Briefly stated, the facts of the case are that the appellant had filed the Bills of Entry for clearance of the imported consignments, viz. ‘Capsule of Dry Mix Powder of Soy/Tofu & Flaxseed’, classifying the same under CTH 12119011/12089000/12119099 of the Tariff Act, 1975. However, the said goods were ordered to be classified under CTH 21069099 in the adjudication order dated 24.02.2011 and accordingly, the differential duty along with interest was confirmed on the appellant. Besides, the said order also imposed redemption fine and penalties on the appellant. On appeal, the learned Commissioner (Appeals) vide the impugned order dated 27.11.2012 has upheld the classification adopted by the department on the ground that the impugned goods being the mixture of DT 56a (Tofu Extract) 322 mg and Flax 106 mg, cannot be said to be covered under the chapter headings declared by the appellant in the Bills of Entry. It has further been held that since the goods in question are highly specialised food supplement, used as a dietary supplement for menopause and bone health, as per the HSN Notes, the said goods should appropriately be classifiable under CTH 2106. With regard to imposition of fine and penalty, the learned Commissioner (Appeals) has held that the appellant had suppressed the fact regarding the description and composition of the subject goods and as such, imposition of fine and penalty are justified.

3. The learned Advocate appearing for the appellant submitted that just because Soya is dried, cleaned, powdered and processed, the classification of the subject

goods cannot be migrated from Chapter 12 to Chapter 21 of the Tariff Act. He further submitted that mere addition of a filler will not make a preparation for classification under Chapter 21. Further, the learned Advocate also submitted that since there is no misdeclaration or suppression of facts and the entire manufacturing process was explained to the department, the imported goods were not liable for confiscation and as such, no fine and penalty were required to be confirmed on the appellant.

4. On the other hand, the learned AR appearing for Revenue has reiterated the findings recorded in the impugned order.

5. Heard both sides and perused the records.

6. On careful examination of the report submitted by the Assistant Drug Controller, HSN Notes and product literature, we are of the considered view that the subject goods should appropriately be classifiable under CTH 21069099, as against the claim of the appellant under CTH 12119099. We also find from the available records that the appellant had accepted before the lower authorities that the imported goods are not classifiable under CTH 12119011 or CTH 12089000. It is also noticed from the original order dated 24.02.2011 that the subject goods though were held to be liable to confiscation under Section 111(m) of the Customs Act, 1962, but no redemption fine was imposed on the ground that the said goods have already been cleared and not available for confiscation.

7. In the present case, the only issue involved for consideration by the Tribunal is, whether the provisions of Section 114A *ibid* can be invoked for imposition of penalty on the appellant. The said statutory provisions are attracted in the eventuality, where the duty has not been

levied or has been short levied by reason of collusion or any wilful misstatement or suppression of facts. On perusal of the case records, including the adjudication and the impugned orders, we find that the authorities below have not adduced any plausible evidence to show that the ingredients mentioned in Section 114A *ibid* are present in the circumstances of the case. Thus, we are of the considered view that the provisions of Section 114A cannot be invoked for imposition of penalty on the appellant.

8. In view of above, the impugned order to the extent it has upheld imposition of penalty on the appellant under Section 114A *ibid* is set aside and the appeals to such extent are allowed in favour of the appellant.

(Pronounced in the open court)

**(S.K. Mohanty)**
**Member (Judicial)**

**(Sanjiv Srivastava)**
**Member (Technical)**

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