CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH AT MUMBAI

REGIONAL BENCH - COURT NO. 02

Customs Appeal No. 344 of 2009

(Arising out of Order-in-Appeal No. 427 to 429(AC/GR. IIA)/2008(JNCH) dated 31.12.2008 passed by Commissioner of Customs (Appeals), Mumbai-II)

Commissioner of Customs (Import), Nhava Sheva .....**Appellant**
Jawaharlal Nehru Custom House,
Nhava Sheva, Taluka-Uran,
Dist. Raigad, Maharashtra-400707

VERSUS

M/s Gargi Packaging Industries .....**Respondent**
D-112, MIDC,
Ambad, Nashik-422010

WITH

Customs Appeal No. 580 of 2009

(Arising out of Order-in-Appeal No. 427 to 429(AC/GR. IIA)/2008(JNCH) dated 31.12.2008 passed by Commissioner of Customs (Appeals), Mumbai-II)

Commissioner of Customs (Import), Nhava Sheva .....**Appellant**
Jawaharlal Nehru Custom House,
Nhava Sheva, Taluka-Uran,
Dist. Raigad, Maharashtra-400707

VERSUS

M/s Gargi Packaging Industries .....**Respondent**
D-112, MIDC,
Ambad, Nashik-422010

AND

Customs Appeal No. 581 of 2009

(Arising out of Order-in-Appeal No. 427 to 429(AC/GR. IIA)/2008(JNCH) dated 31.12.2008 passed by Commissioner of Customs (Appeals), Mumbai-II)

Commissioner of Customs (Import), Nhava Sheva .....**Appellant**
Jawaharlal Nehru Custom House,
Nhava Sheva, Taluka-Uran,
Dist. Raigad, Maharashtra-400707

VERSUS

M/s Gargi Packaging Industries .....**Respondent**
D-112, MIDC,
Ambad, Nashik-422010

Appearance:

Shri Bhushan Kamble, Authorized Representative for the Appellant
Shri N.D. George, Advocate for the Respondent

CORAM:
HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85046-85048/2020

Date of Hearing: 10.01.2020
Date of Decision: 10.01.2020

Per: S.K. MOHANTY

Heard both sides and perused the records.

2. Revenue has assailed the impugned order dated 31.12.2008 passed by the Commissioner of Customs (Appeals), Mumbai-II on the ground that the imported goods namely "Mono Potassium Phosphate" has been wrongly classified under CTH 31056000.

3. The issue arising out of the present dispute is no more *res interga* in view of the decision of this Tribunal in the case of Commissioner of Central Excise, Thane-I Vs. Tinco Chemicals – 2019 (365) E.L.T. 838 (Tri.-Mumbai) and C.C. (Import), Nhava Sheva Vs. Solufeed Plant Product & Services P. Ltd. – 2018 (364) E.L.T. 999 (Tri. – Mumbai). The finding recorded by the Tribunal in the case of Tinco Chemicals (supra) is extracted herein below:-

> *"**6.** The short issue involved for consideration is whether the product Potassium Nitrate and Mono Potassium Phosphate manufactured by the respondent merit classification under Chapter 28 as chemicals or Chapter 31 as fertilizers. The samples of the said product have been subjected to chemical test in the Fertilizer Testing Laboratory, Pune, Government of Maharashtra, wherein the test result revealed that the tested products were fertilizers since these products satisfied the parameters prescribed under Fertilizer Control Orders. Further, in the impugned order the Learned Commissioner (Appeals) took into consideration other evidences like the use of the said product by the buyers namely, M/s. RCF Ltd., wherein it has been informed by M/s. RCF that the same are used as fertilizers. Besides the Learned Commissioner (Appeals) during the course of hearing obtained a report from the Field formation about the*

classification of the product, which were tested to be fertilizers in the Govt. laboratory. In the report, the jurisdictional Assistant Commissioner has informed that the products merit classification under Chapter 31 of Central Excise Tariff Act, 1985. Even though in the grounds of appeal, the Revenue has claimed that the test reports cannot be relied upon since the samples were not drawn in the presence of the officers of the Department, we do not understand as to why department has not independently drew samples before and during issue of periodical demand notices of the respondent from time to time. In absence of any contrary test report, we do not find merit in not accepting the test report of the Fertilizer Testing Laboratory, Pune Govt. of Maharashtra that products in question are fertilizers. Also, we find that the Jurisdictional Asstt. Commissioner's report has not disputed the process of manufacture, its use, but on the contrary, reported that it merits classification as fertilizers. Consequently, we do not find any reason to interfere with the findings of the Learned Commissioner (Appeals)."

4. In view of the fact that the issue arising out of the present dispute regarding classification of the product namely "Mono Potassium Phosphate" is no more open for any debate, we do not find any merits in the appeals filed by Revenue. Accordingly, same are dismissed.

(Dictated and pronounced in the open court)

(S.K.Mohanty)
Member (Judicial)

(Sanjiv Srivastava)
Member (Technical)

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