CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 87124 of 2019

[Arising out of Order-in-Appeal No: 1013(Gr.I/IA)/2019(JNCH)/Appeal-II dated 28th June 2019 passed by the Commissioner of Customs (Appeals), Mumbai – II.]

Nathi Mal Rugan Mal … ***Appellant***
Khari Baoli, Delhi – 110 006

versus

Commissioner of Customs (NS-I) ***…Respondent***
JNCH, Nhava Sheva, Uran, Raigad

APPEARANCE:

Shri B R Tripathi, Advocate for the appellant

Ms Trupti Chavan, Assistant Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE DR SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO: A/85380 / 2020

DATE OF HEARING:	16 & 21/01/2020
DATE OF DECISION:	28/02/2020

PER: C J MATHEW

M/s Nathi Mal Rugan Mal is alleged to have imported 'Khubkalan (Sisymbriumlrio)' valued at ₹ 9,43,243/- weighing 26

MTs, *vide* bill of entry no. 9335289/20.12.2018 with duty liability of ₹ 2,10,579/- following rejection of their claim for classification under heading no. 1211 9099 of First Schedule to Customs Tariff Act, 1985 and redetermined under heading no. 1211 9019 of First Schedule to Customs Tariff Act, 1975, attendant upon this revised classification is the restriction on import under ITC (HS), 2017, Schedule I of the Import Policy. The goods were confiscated and directed to be destroyed at the cost of the importer besides being saddled with penalty of ₹ 2,00,000/- under section 112(a) of Customs Act, 1962. On appeal, Commissioner of Customs (Appeals), Mumbai – II *vide* order-in-appeal no. 1013(Gr.I/IA)/2019 (JNCH)/ Appeal-II dated 28th June 2019 confirmed order of confiscation but set aside the order of destruction with the rest of the order remaining unchanged. Aggrieved, the appellant is before us contending that the absolute confiscation is not warranted.

2. Learned Counsel for the appellant submits that, even if the goods are restricted, the option to redeem should have been granted. Furthermore, he draws attention to various imports of the same goods at different customs stations and allowed without insisting on any licensing restrictions.

3. We have heard Learned Authorised Representative who submits that the goods are ‘crude drugs’ as admitted in the bill of entry and that

the Plant Quarantine Department had certified the same to be seeds. It is also pointed out that the restriction was made inapplicable for the import of some of the seeds if procured by actual user.

4. On perusal of the ITC (HS), Schedule I of the import policy, we find that seeds are covered by heading no. 1211 9019 of the First Schedule to the Customs Tariff Act, 1975 and that, other than ‘ambrette seed’, nuxvomica’, ‘psyllium’ and ‘neem’, all other seeds are restricted. The policy condition is

> *‘(1) Plants and parts of plants (including seeds and fruits), of a kind used primarily in perfumery, in pharmacy or for insecticidal, fungicidal or similar purposes, fresh or dried, whether or not, crushed or powdered as covered under Exim Code 12.11, import of which has been shown as restricted and which are not covered by the list mentioned in licensing note 2 below, may be permitted freely by the Actual Users without an import license subject to plant protection quarantine certificate. However, import of opium (papaver species), cannabis (cannabis species) and coca (erythroxylon species) shall not be permitted. This free importability shall not be applicable to the items, poppy, flowers and unripe heads of dried poppy, psyllium husk (isobgul), psyllium seed (isobgul), poppy husk and jojoba seed.’*

and from which it would appear that free importability is permitted only for actual users.

5. The appellant, admittedly, is a trader and the import of seeds,

covered by the revised heading of the First Schedule to the Customs Tariff Act, 1975, is restricted. The existence of such restriction, from the elaboration in the ITC (HS), 2017, Schedule I, can only be attributed to the intent of imposing quantitative restrictions. We are, therefore, not certain about the source from which the first appellate authority could deduce that

> *12.2 The goods of tariff item 12119019 are not allowed for import without authorization from DGFT. If such prohibited goods are allowed for domestic clearance on redemption fine, the very purpose of making the requirement of authorization from DGFT for import under the condition of Foreign Trade Policy issued by the Government would get defeated. This is more serious when the imported goods can be used in medicinal preparations also, having implication on the health of population. Hence these prohibited goods should be confiscated absolutely instead of giving any option of redemption to the importer.'*

6. Neither is there any discussion nor do any of aspects in the records sustain this conclusion. As the actual user condition has not been complied with, the goods are liable for confiscation. However, in the absence of any elaboration on the restriction, other than licensing condition, we find no reason to approve the absolute confiscation. Even if the apprehension of the first appellate authority that use of these seeds in medical preparations may jeopardise health of human beings, in the absence of explicit authority devolving on officers of customs for taking upon themselves such authority, we are of the opinion that the

government agencies entrusted with the task of ensuring public health would not fail in discharging their responsibilities.

7. In view of the above, we modify the impugned order to allow the confiscated goods to be released on payment of redemption fine of ₹50,000/-. The penalty under section 112(a) of Customs Act, 1962 is modified to ₹50,000/-.

8. Appeal is accordingly disposed off.

(Order pronounced in the open court on 28/02/2020)

(C J Mathew)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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