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

REGIONAL BENCH - COURT NO. 02

Customs Miscellaneous Application No. 86392 of 2019
(on behalf of Appellant)
in
Customs Appeal No. 86973 of 2019

(Arising out of Order No. SG/INV-148/2018-19/'D' Cell/SIIB (I) JNCH dated 28.06.2019 passed by Commissioner of Customs, Nhava Sheva)

M/s VKC Nuts Pvt. Ltd. .....**Appellant**
B-23, Ground Floor,
Sector 63, Noida,
Uttar Pradesh - 201301

VERSUS

Commissioner of Customs, Nhava Sheva - V .....**Respondent**
Jawaharlal Nehru Custom House,
Nhava Sheva, Tal.Uran, District Raigad,
Maharashtra - 400707

Appearance:

Shri Anil Balani, Advocate for the Appellant
Shri B. Kamble, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85730/2020

Date of Hearing: 11.11.2019
Date of Decision: 11.09.2020

Per: S.K. MOHANTY

This appeal is directed against the communication/order F. No. SG/INV-148/2018-19/'D' Cell/SIIB(I) JNCH dated 28.06.2019 issued by the learned Commissioner of Customs (NS-V), Nhava Sheva-I, JNCH for provisional release of seized In-shell Walnuts imported under the DFIA Scheme. In the impugned communication, the learned Commissioner has permitted for provisional release of 791 bags of the subject goods, upon fulfilment of the condition of execution of Bond of Rs.36,54,847/-, covering the total value of seized goods;

furnishing Bank Guarantee of Rs.18,27,423/-, with self renewal clause; and submission of undertaking that the importer (the appellant, herein) shall pay the duty, fine and/or penalty as may be adjudged by the adjudicating authority, subject to appellate provisions provided under the Customs Act, 1962.

2. The facts of the case, leading to this appeal are that the appellant had imported 794 bags of In-shell Walnut covered under Bill of Entry No. 9878513 dated 31.01.2019 and claimed exemption under Notification No. 98/2009-Cus dated 11.09.2009 on the strength of the DFIA Nos. 0310704333 and 0310740591 against import item of 'dietary fibre' under SION E5; that the Proper officer assessed the bill of entry by allowing the exemption benefit and thereafter, the goods were cleared without payment of duty by debiting the DFIA scrip; that post clearance of the said In-shell walnuts, the Customs authorities seized 791 bags lying in the godown of Hemkunt Agro Care Private Limited, on the belief that they are liable for confiscation as the benefit of duty exemption was wrongly claimed. The learned Commissioner of Customs vide the impugned communication dated 28.06.2019 has held that the goods are liable for confiscation under Section 111(o) of the Customs Act, 1962 and therefore, the said goods were rightly seized under Section 110 *ibid*. Feeling aggrieved with the said impugned communication, the appellant has preferred this appeal before the Tribunal.

3. The learned Advocate appearing for the Appellant submitted that imported In-shell walnuts are not liable to confiscation and seizure itself is contrary to the provisions of Section 110 *ibid*. In this context, he has placed reliance on the judgment dated 11.10.2018 of the Hon'ble Madhya Pradesh High Court (Indore Bench), delivered in the case of M/s Global Exim & Another vs. the Union of India & Others (Writ Petition No. 17023/2018) and also the Final Order No. A/30410/2019 dated

25.03.2019 passed by the Hyderabad Bench of this Tribunal in the case of M/s UniBourne Food Ingredients LLP.

4. On the other hand, the Ld. AR appearing for Revenue reiterated the findings recorded in the impugned order. He further submitted that the department is not objecting to import of the In-shell Walnut as Nut and Nut products. However, the seized In-shell walnuts are imported as dietary fibre which is incorrect.

5. Heard both sides and perused the records.

6. Prima facie, we are of the view that the imported In-shell walnuts are not liable for confiscation and the exemption claimed by the Appellant appears to be correct in view of the judgement of the Hon'ble Madhya Pradesh High Court in case of M/s. Global Exim (supra) and the order of the co-ordinate Bench of this Tribunal in case of M/s. Uni Bourne Food Ingredients LLP (supra). It has been held in the said decided cases that In-shell Walnut is allowed to be imported against the DFIA issued for export of assorted confectionery and biscuits under SION E1 and E5 respectively as input items namely, Nut and Nut products, relevant food flavour, flavouring agent/flavour improvers, dietary fibre and fruit/cocoa powder. However, the ratio of the judgment in the case of Global Exim (supra) was held to be inapplicable to the facts of the present case by the learned Commissioner of Customs on the ground that the said judgment delivered by the Hon'ble Madhya Pradesh High Court was accepted by the department and not appealed against on the monetary limit fixed by the CBEC. With regard to the precedential value of the decision of this Tribunal in the case of M/s Unibourne Food Ingredients LLP (supra), the learned Commissioner of Customs has held that such order of the Tribunal has not been accepted and the department is in the process of filing an appeal before the Hon'ble High Court of Telangana.

7. Further, we also find that the technical opinion dated 08.08.2018 furnished by the Joint Director, JNCH Lab, opining that walnuts may be used of source of dietary fibres in the manufacture of Biscuits/Cookies and confectionery was not discussed by the learned Commissioner of Customs in the impugned communication dated 28.06.2019.

8. Thus, we are of the prima facie view that in order to meet the ends of justice, as an interim measure, the impugned communication directing the appellant for execution of Bond/Bank Guarantee and submission of undertaking for payment of the future adjudged dues should be stayed till final disposal of the case through proper adjudication process.

9. In view of the foregoing discussions, we allow the appeal and set aside the impugned communication/order, with direction to the department for unconditional release of the seized goods. The authorities are directed to return the bond and bank guarantee furnished by the Appellants, duly cancelled within two weeks of receipt of this order. Miscellaneous application is disposed of.

(Order pronounced in the open court on 11.09.2020)

(S.K.Mohanty)
Member (Judicial)

(P. Anjani Kumar)
Member (Technical)

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