CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 618 OF 2009

[Arising out of Order-in-Original No: 78/2009 CCI JNCH dated 21st April 2009 passed by the Commissioner of Customs (Import), Jawaharlal Nehru Custom House, Mumbai-II, Raigad.]

Hazel Mercantile Ltd
701/712A Embassy centre
Nariman Point, Mumbai – 400021 …***Appellant***

versus

Commissioner of Custom (Import)
Jawaharlal Nehru Custom House, Mumbai-II
Nhava Sheva, Tal: Uran, Dist: Raigad ***…Respondent***

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/85793 / 2021

DATE OF HEARING:	05/03/2021
DATE OF DECISION:	05/03/2021

PER: C J MATHEW

Though none appeared for M/s Hazel Mercantile Ltd, the appellant challenging order-in-original no.78/2009 CCI JNCH dated

21st April 2009 of Commissioner of Customs (Import), Jawaharlal Nehru Custom House, Mumbai, we proceed to dispose it off on the basis of records and the submissions made by Learned Authorised Representative as the matter has been subjected to delay by repeated adjournments and as the issue in dispute lies within a narrow compass.

2. According to Learned Authorised Representative, the appellant had, *vide* bill of entry no. 700/19.11.2003 and no. 933758/15.12.2003 for 66 metric tons and 22 metric tons respectively, imported two consignments of ‘citric acid monohydrate’ which, by notification no. 78/2000-Customs dated 26th May 2000, was liable to anti-dumping duty to the extent of being in excess of US$ 1677.06 per metric ton if imported from Peoples’ Republic of China at value less than the stipulated benchmark. It was held by the adjudicating authority that the goods, though claimed to be from Republic of Korea, did; from the evidence of meagre exports of the product from that country and of having been only transhipped through Korea, originate in Shanghai, China and, thus, liable to duty of ₹ 38,99,602, comprising of ₹29,35,142.43 and ₹ 9,82,459.72 against the respective bills, under the said notification.

3. In the grounds of appeal, it is contended that the liability of anti-dumping duty on ‘citric acid monohydrate’ ceased with expiry of the term of the notification on 23rd November 2003 and that the

shipment entered for clearance on 19th November 2003 had not originated from Peoples' Republic of China. It was further contended that the adjudicating authority had wrongly stretched the latitude of flexibility in paragraph no. 2.12.2 of Handbook of Procedures (Vol I) appended to the relevant Export Import Policy, intended as beneficial to importer, despite section 9B of Customs Tariff Act, 1975 mandating applicability of provisions of Customs Act, 1962.

4. We find no evidence in the submissions of the appellant to counter the trace records of movement of the containers in which the consignments were landed in India; these do indicate the source as Peoples' Republic of China. Nor is there any further substantiation of their claim that the goods originated in Korea save a bald assertion. In these circumstances, we cannot find fault with the conclusion in the impugned order that the goods were required to be subject to test of compliance with conditions in notification no. 78/2000-Customs dated 26th May 2000.

5. The appellant is correct in pointing out that the cited provisions of the Export Import Policy are intended to protect importers from detriments arising from restrictive impositions under the policy mechanism after effecting shipment from port of export. Levy of duties is governed by section 15 of Customs Act, 1962 in accordance with which duties existing on the date of filing of bill of entry imposes

liability. As notification no. 78/2000-Customs dated 26th May 2000 had ceased to have effect from 23rd November 2003, imports against bill of entry no. 933758/15.12.2003 could not, irrespective of origin, be subjected to duty thereon. Accordingly, liability to anti-dumping duty is limited to the import of 66 metric tons against bill of entry no. 700/19.11.2003; while upholding the demand of ₹29,35,142.43 the rest is held to be not sustainable.

6. Appeal is partly allowed by modifying the impugned order to that extent.

(Operative Part of the Order Pronounced in the Open Court on 5th March 2021)

(Dr. D M Misra)
Member (Judicial)

(C J Mathew)
Member (Technical)

**/as*