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

Customs Appeal No. 182 of 2012

(Arising out of Order-in-Original No. 71/2011/CC(I), JNCH dated 16.11.2011 passed by Commissioner of Customs (Import), JNCH, Sheva)

M/s. Paras Petrofils Ltd. **Appellant**
Block No.529, Village – Palsana,
Surat 394 221.

Vs.

Commissioner of Customs (I), Nhava Sheva **Respondent**
Jawaharlal Nehru Custom House,
Post Uran, Dist. Raigad,
Sheva 400 707.

Appearance:

Shri S. Suriyanarayanan, Advocate, for the Appellant
Shri Bhushan Kamble, Assistant Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)
HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. **A/86077/2021**

Date of Hearing: 18.03.2021
Date of Decision: 18.03.2021

PER: SANJIV SRIVASTAVA

This appeal is filed against Order in Original No 71/2011/CC (I), JNCH dated 16.11.2011 of the Commissioner Customs (Import), JNCH, Nhava Sheva. By the impugned order Commissioner has held as follows:

"(i) I confiscate the goods valued at Rs. 1,07,19,534/- imported vide Bill of Entry No. 4710861 dated 21.09.2011 under Section 111(m) of the Customs Act, 1962. However, importer is given the option to redeem the goods on payment of fine of Rs 2, 00,000/- (Rupees Two Lakhs only) under Section 125 of the

Customs Act, 1962 and on payment of appropriate duty and dues applicable.

(ii) I also impose a penalty of Rs.50,000/-(Rupees Fifty Thousand only) on the importer M/s Paras Petrofils Limited under Section 112(a) of the Customs Act, 1962."

2.1 Appellant had filed Bill of Entry No. 4710861 dated 21.09.2011 for import of 12 sets of JWA12/1380 Automatic Winders with Control Panel under CTH 84454090 as per invoice No. JWHX20110819CC dated 19.08.2011. They claimed benefit of Notification No. 21/2002 Sr. No. 425(1).

2.2 After examination docks staff reported goods imported were not one as those covered by Notification No. 21/2002-Cus, Sl No 425 (1). The imported goods were "Automatic Winders with Control Panel" while those as per Sl No 425 (1) of Notification No 21/2002- Cus were *"draw winder which is used for drawing twisted yarn"*.

2.3 Thus revenue opined that the importer has wrongly claimed the benefit of Notification No. 21/2002 Sr. No. 425 (1). Thus the goods were liable for confiscation under Section 111(m) of the Customs Act, 1962 and the importer is liable for penal action under Section 112(a) of the Customs Act, 1962.

2.4 Appellants vide their letter dated 3.10.2011 waived the requirement of Show Cause Notice and Personal Hearing. They reiterated their claim under the Sl No 425 (1) Notification 21/2002-Cus. They also produced the Chartered Engineer Certificate to substantiate their claim.

2.5 Commissioner adjudicated the matter as per impugned order. Aggrieved by the impugned order, Appellants have preferred this appeal.

3.1 We have heard Shri S. Suriyanarayanan, Consultant for the Appellant and Shri Bhushan Kamble, Assistant Commissioner Authorised Representative, for the Revenue.

4. 1 We have considered the impugned order along with the submissions made in appeal and during the course of hearing.

4.2 Commissioner has in impugned order recorded his findings stating as follows:

“6. I find that the importer has imported "Automatic Winders with Control Panel '' and classified the same under CTH 84454090 and claimed benefit of Notification No. 21/2002 Sr. No. 425 (1). On perusal of the list 45 of the said Notification it is seen that the goods which are eligible for the benefit of this notification are "draw winder". The importer in their written submission have contended that that the goods under import perform the function of Take up and Draw Winders and hence the same are eligible for benefit of this notification. ***In this regard, I find that the importer did not elaborate on their contention. Further I find that the Certificate is based on the product literature and not on physical inspection of the goods.*** *This further strengthens the docks examination report that the goods do not fall under the list 45 appended with the Notification. Factually, it is seen that the goods imported are "Automatic Winders'' which has a take up frame, yarn guide, air tube and traverse CAM. Yarn Guide, air tube and traverse CAM are used for the drawing of the yarn and Take up. Frame is used for the yarn take up and then winding of the yarn on a card box / polymeric / alloy cylinders. Hence find that the goods under import Automatic Winder with Control Panel' is different from 'draw winder' and do not appear in the List 45 as appended to Notification No. 21/2002 Sr. No. 425. Hence I am of the view that the importer is not eligible to claim the benefit of this notification.”*

4.3 From the above, it is quite evident that the Commissioner has summarily rejected the contentions raised by the Appellants in their letter dated 3.10.2011 including the Chartered Engineer Certificate submitted by the appellant and have placed sole reliance on the examination report of the docks. In our view the approach of the Commissioner while adjudicating the matter could not be appreciated as if he found that the appellant had not been able to substantiate their contention he should have recorded the reasons for the same. Further he should have examined the Chartered Engineer certificate and recorded his finding on that rather than summarily rejecting it by saying that the same is based on product literature and not the physical examination of imported goods. Since the Commissioner has not recorded any findings on the contentions raised by the appellants before him and also the chartered engineer certificate submitted by the appellants, we are not in position to uphold the order of Commissioner.

4.4 Since the impugned order to this extent is non speaking and does not consider the submissions made by the appellants at the time of adjudication, the matter needs to be reconsidered by the original authority.

5.1 In view of the findings as above we set aside the impugned order and allow the appeal filed by the appellants by remanding the matter to original authority for reconsideration and passing the speaking order.

5.2 Since the issue is of 2011, we direct the adjudicating authority to decide the matter afresh in remand proceedings within three months of the receipt of this order. Appellants should also fully cooperate in the matter and should attend the hearing on the day/days it is fixed by the adjudicating authority.

(Order pronounced in the open court)

(Sanjiv Srivastava)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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