CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH - COURT NO. 01

Customs Appeal No. 88693 Of 2018

(Arising out of Order-in-Appeal No.641/(Gr.2K)/2018(JNCH)/Appeal-II dated 12.07.2018 passed by Commissioner of Customs, (Appeals), JNCH, Nhava Sheva, Mumbai-II)

.....Appellant

Royal Carbon Black Pvt. Ltd.
New Era House, Mogul Lane,
Matunga West,
Mumbai – 400 016.

VERSUS

Commissioner of Customs, Nhava Sheva. I **.....Respondent**
JNPT, Custom House, Nhava Sheva,
Raigad, Maharashtra – 400 707.

WITH

Customs Appeal No. 89365 Of 2018

(Arising out of Order-in-Appeal No.641/(Gr.2K)/2018(JNCH)/Appeal-II dated 12.07.2018 passed by Commissioner of Customs, (Appeals), JNCH, Nhava Sheva, Mumbai-II)

Commissioner of Customs, Nhava Sheva-I **.....Appellant**
JNPT, Custom House, Nhava Sheva,
Raigad, Maharashtra – 400 707.

VERSUS

Royal Carbon Black Pvt. Ltd. **.....Respondent**
New Era House, Mogul Lane,
Matunga West,
Mumbai – 400 016.

Appearance:

Shri Roshil Nichani, Advocate , for the Appellant/Respondent
Shri Bhushan Kamble, Authorized Representative for the Revenue

CORAM:

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

FINAL ORDER NO. A/86617-86618/2021

Date of Hearing : 29.07.2021
Date of Decision : 29.07.2021

PER : P. ANJANI KUMAR

Heard both sides and perused the records of the case.

2. The appellants were imported Granules/Crumb of Vulcanized Rubber and declared the same under CTH 4008 and have produced NOC letter dated 17.08.2016 issued by the Ministry of Environment & Forest. Revenue's allegation is that the said item falls under CTH 4006 and as such in terms of the HSN classification permission by MOEF for import of granules is not required. However by virtue of the Heading CTH 4004, the goods squarely fall under the jurisdiction imposed by the DGFT and the appellants are not permitted to import the same without a valid license. The Revenue also submits that under the circumstances, the goods have obtained the character of being restricted goods and there by deemed to have been prohibited. Therefore, the goods cannot be permitted to be released on payment of redemption fine.

3. We find that as per HSN Heading 40.40 covers three sub-headings:

(i) Rubber waste parings and scrap from the manufacture or working of unvulcanised or vulcanized rubber (other than hard rubber).

(ii) Goods of rubber (other than hard rubber) definitely not usable as such because of cutting up, wear or other reasons.

(iii) Powers and granules obtained from goods of No. 1 and 2 above.

We find that in terms of para 2.08 of EXIM Policy any goods/service, the export or import of which is 'Restricted' may be exported or imported only in accordance with an authorization/permission or in accordance with the procedure prescribed in a Notification/Public Notice issued in this regard. We also find that as per schedule-1 of Import Policy at Section VII of Chapter 40. The Heading 40040000 i.e. waste, paring and scrap of rubber (other than hard rubber) and powders and granules obtained therefrom, fall under restricted category. In terms of sub-section (33) of Section 2 of the Customs Act, 1962, 'prohibited goods' means any goods import or export of which is subject to any prohibition under this Act or any other law for the time being in force who does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with. On a plain reading of the above subject, it is clear that the impugned goods are restricted goods and have acquired the nature of prohibited goods by virtue of the definition cited above. Now, the question that arises is as to whether such goods can be released on payment of redemption fine. We find that the Apex Court judgement in the case of Union of India and Ors. Vs. M/s. Raj Grow Impex LLP And Ors. [2021-TIOL-187-SC-CUS-LB] has held that the restricted goods cannot be released even on payment of redemption fine. Therefore, we find from the appeal filed by the department and allow the same.

4. As far as the appellant's appeal is concerned the same would not survive in view of the above observations.

5. During the course of the arguments the Ld. Counsel for the appellants has fairly submitted that their appeal may be treated as withdrawn.

6. In view of the above, we dismiss Appeal No.C/88693/2018 filed by M/s. Royal Carbon Black Pvt. Ltd. and allow the appeal No. C/89365/2018 filed by Revenue.

(Dictated and pronounced in the open court)

(S. K. Mohanty)
Member (Judicial)

(P. Anjani Kumar)
Member (Technical)

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