CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 88081 OF 2019

[Arising out of Order-in-Appeal No: MUM-CUSTM-GEN-APP-229/2019-20 dated 28th June 2019 passed by the Commissioner of Customs (Appeals), Mumbai– III.]

Avivet Nutritional Services Pvt Ltd
A-10 Anandvan, Vrundavan Complex,
Opposite Guruganesh Nagar, Kothrud, Pune - 411029 … ***Appellant***

versus

Commissioner of Customs – V (General)
Air Cargo Complex, Sahar, Mumbai - 400099 ***…Respondent***

APPEARANCE:

Shri Shankar Patil, Advocate for the appellant

Shri Ramesh Kumar, Assistant Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: A / 86647 /2021

DATE OF HEARING:	04/08/2021
DATE OF DECISION:	04/08/2021

PER: C J MATHEW

The dispute of M/s Avivet Nutritional Services Pvt Ltd, in their appeal against order-in-appeal no. MUM-CUSTM-GEN-APP-

229/2019-20 dated 28th June 2019 of Commissioner of Customs (Appeals), Mumbai – III, pertains to rejection of four refund claims for an amount of ₹ 94,59,133/- that had been filed, in accordance with notification no. 102/2007 dated 14th September 2007, against entitlement for post-import exemption from 'special additional duty' on goods imported for further sale.

2. The appellant had imported several varieties of probiotics, classified under heading 3002 9030 of the First Schedule to Customs Tariff Act, 1975, on which the refund of said duties was denied for not having discharged 'appropriate' tax on sale and for failure to correlate the invoices of sale with the bills of entry pertaining to the imports.

3. Learned Counsel for the appellant contends that the sale of goods subsequent to import is not in dispute and that the entitlement to exemption from 'value added tax' on sale had been certified by a qualified Chartered Accountant. It was also pointed out that several documents including the certificate dated 30th May 2018 issued by the Government of Maharashtra in the Department of Animal Husbandry had been disregarded by the first appellate authority.

4. We have heard Learned Authorised Representative who contends that the impugned order has enumerated the several grounds on which satisfaction of discharge of appropriate rate of tax on sale

was found wanting.

5. From the submissions made before the lower authorities, it is seen that the imported goods, upon sale in the domestic market, are entitled to *post facto* exemption from ‘special additional duty’ upon furnishing of sales invoices and that, despite the impugned goods being exempted from tax on sale, the eligibility for refund of special additional duties of customs is not, thereby, discountenanced. Though, in a manner of speaking, there is no specific finding that the goods claimed to have been sold were other than the goods on which ‘special additional duty’ had been discharged at the time of import, the exemption available under Maharashtra VAT Act, 2002 combined with the description in the sale invoices were stated to have caused disquiet. The appellant was unable to reconcile the difference in description and entitlement to refund was the casualty. It would appear that the absence of any clarification from the Joint Commissioner of Animal Husbandry, sought for *vide* letter dated 15th June 2018 and 27th June 2018, also contributed to doubt.

6. In these circumstances, it would be appropriate for the appellant herein to furnish all necessary information to the original authority for a proper determination that the goods, covered by the furnished invoices, were the same as those imported which is the only satisfaction prescribed in notification no. 102/2007 dated 14th

September 2007. In order to enable this, we set aside the impugned order and direct the original authority to consider the application afresh and to dispose off the claim for refund accordingly within a period of three months from the receipt of this order.

7. The appeal is disposed off by way of remand to the original authority.

(Operative part of the order pronounced in the open court on 4th August 2021)

(Ajay Sharma)	**(C J Mathew)**
Member (Judicial)	***Member (Technical)***

**/as*