CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH

Excise Appeal No. 1831 of 2011

(Arising out of Order-in-Appeal No. PKS/74/Bel/2011-12 dated 15.07.2011 passed by the Commissioner of Central Excise (Appeals), Mumbai-III.)

M/s. Jabs International Pvt. Ltd. ....Appellant
A-350, TTC Industrial Area,
Mahape, MIDC,
Navi Mumbai – 400 708

VERSUS

Commissioner of Central Excise, Belapur ....Respondent
1st Floor, C.G.O. Complex,
CBD, Belapur,
Navi Mumbai – 400 614

APPERANCE:

Shri Jayasankar V., Advocate for the Appellant

Ms. Anuradha S. Parab, 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/86742 / 2021

Date of Hearing: 05.08.2021
Date of Decision: 05.08.2021

PER: DR. SUVENDU KUMAR PATI

Short issue involved in this appeal is if "Pippali" that had been cleared by the appellant EOU to the domestic tariff area is the same product as long pepper/pepper long concerning which export licence was obtained by the appellant, for which appellant was exempted to pay the duty that has been confirmed by the Commissioner of

Central Excise (Appeals), Mumbai-III in his above referred order dated 15.07.2011 with a finding to the contrary.

2. We have heard submissions from both the sides and perused the case record. Learned Counsel for the appellant Mr. Jayasankar V. submitted that "Pippali" is Sanskrit name of a "pepper long" commonly known as an Indian spice. With reference to decision of this Tribunal reported in *2004 (169) ELT 284 (Tri.-Mumbai)* in the case of *Ganesh International Vs. Commissioner of Customs, Nagpur* and *[2012 (278) ELT 72 (Tri.-Mum.)]* in respect of same *Ganesh International*, that "Pippali" in Sanskrit and "pepper long" or "long pepper" in English are one and same, he further submitted that though stay of realisation of duty was granted by this Tribunal on 26.03.2012 upon pre-deposit of excise duty of Rs.1,00,000/-, Jurisdictional Superintendent of Belapur Commissionerate forcefully realised the rest of duty demand of Rs.2,14,874/- on the ground that stay was valid for six months only and therefore appellant had paid the rest amount on protest for which it can be stated that the entire excise duty demand of Rs.3,08,700/- + Cess of Rs.6,174/- was paid by 23.06.2014. Further, learned Counsel for the appellant submitted that in order to avoid the litigation to linger more, they have also filed an application under Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 for waiver of interest and penalty but the same was rejected against which they raised grievance up to the Revenue Secretary, Government of India but no result reimbursed. In citing the expert opinion obtained by them from the Spices Board,

Government of India indicating that both "pepper long" and "Pippali" are same, he pleaded to set aside the order passed by the Commissioner of Central Excise (Appeals), Mumbai-III along with consequential relief as deemed fit and proper by this court.

3. In response to such submissions, learned Authorised Representative for the respondent-department Ms. Anuradha S. Parab argued that in the authorisation letter of the DGFT, "Pippali" was not found reflected as an item for export by the appellant and only those items which the appellant is authorised to export, a portion of it up to the extent of 50% can be released to the DTA. Further, to her, appellant failed to show any licence for export of "Pippali" *vis-a-vis* export document concerning such export of "Pippali" for which the order passed by the learned Commissioner (Appeals) confirming duty demand as proper in the Order-in-Original needs no interference by this Tribunal.

4. On perusal of the case record, we have noticed it with disappointment that Spices Board clarification, made to the query raised by the appellant about confirmation of "Pippali" and pepper long are one and same, that was issued on 15.11.2010 wherein it has been clearly mentioned that the matter was referred to the Indian Institute of Spices Research, Kozhikode and they had confirmed that the sample sent was "pepper long", which is also known as "Pippali" in Sanskrit. Though it had been noted in para 5.1 of the Order-in-Original (page 4 of the Order-in-Original) no finding

was given by the adjudicating authority about it and learned Commissioner (Appeals) had not even touched upon this aspect despite the fact that since 2004, this issue has been settled by this Tribunal and attained finality, in the absence of any contradictory findings of the Apex Court or any High Court. More importantly, it is not understood as to why the expert opinion received from Spices Board, which is a Government of India concern, is completely disregarded by the adjudicating authority and the Commissioner (Appeals), if they are not literate enough in Sanskrit. We are, therefore, of the firm opinion that the order passed by the Commissioner (Appeals) is unsustainable in law and fact and therefore we set it aside. Hence the order.

ORDER

5. The appeal is allowed and the order passed by the Commissioner of Central Excise (Appeals), Mumbai-III vide Order-in-Appeal No. PKS/74/Bel/2011-12 dated 15.07.2011 is hereby set aside. Appellant is entitled to get refund of the duty paid along with applicable interest from the date of forceful realisation of the same when stay granted by this Tribunal was in force.

(Pronounced in the open court)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

(Sanjiv Srivastava)
Member (Technical)

Prasad