CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 787 OF 2008

[Arising out of Order-in-Appeal No: 190 (GR IIA)/2008 (JNCH) dated 15th May 2008 passed by the Commissioner of Customs (Appeals), Nhava Sheva, Mumbai – II.]

Commissioner of Customs (Import)
Mumbai – II
Jawaharlal Customs House, Nhava Sheva, Tal: Uran
Dist: Raigad - 400707 … ***Appellant***

versus

Aries Agro Ltd
Aries House, Plot No. 24, Deonar, Govandi (E)
Mumbai - 400043 ***…Respondent***

APPEARANCE:

Shri Ramesh Kumar, Assistant Commissioner (AR) for the applicant appellant

Shri T Viswanathan, Advocate for the respondent

CORAM:

HON'BLE MR ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)

FINAL ORDER NO: A / 87403 /2021

DATE OF HEARING: 02/12/2021
DATE OF DECISION: 02/12/2021

PER: C J MATHEW

M/s Aries Agro Limited had imported 'EDTA-Zn-15 (micronutrient fertiliser)’ against bills of entry no. 762946/27.03.2008 and no. 762948/27.03.2008 and sought classification against tariff item 3105 9090 of First Schedule to Customs Tariff Act, 1975. Their contention, on the disinclination of the assessing officer to accept the goods as ‘fertilizer’, of coverage in the First Schedule to the Fertiliser Control Order, 1985 and of the identical product -‘chelamin’ - manufactured by them being classified against the same tariff item in the Schedule to Central Excise Tariff Act, 1985 was discarded by the Assistant Commissioner of Customs who proceeded to assess the goods at the rate of duty applicable to ‘plant growth regulator’ corresponding to tariff item 3808 9340 of the First Schedule to Customs Tariff Act, 1975.

2. The reversal of the classification by Commissioner of Customs (Appeals), Jawaharlal Nehru Custom House, Nhava Sheva in order in-appeal no. 190 (GR IIA)/2008 (JNCH) dated 15th May 2008 prompted the competent review authority to seek remedy by this appeal. In the grounds of appeal, it is contended that the first appellate authority had placed reliance upon an order of the Tribunal in *Karnataka Agro Chemicals v. Commissioner of Central Excise, Bangalore [2007 (215) ELT 470 (Tri-Bang)]* which had since been set aside and remanded back to the original authority in *Commissioner of Central Excise, Bangalore v. Karnataka Agro Chemicals [2008 (227) ELT 12 (SC)]*for scrutiny of contention by Revenue that the ‘nitrogen content’

was a superficial additive to take advantage of more favourable duty structure and is, therefore, no longer binding precedent.

3. We have heard Learned Authorised Representative and Learned Counsel for the respondent.

4. It was pointed out by Learned Counsel that, in their own matter, the Tribunal had, in *Commissioner of Central Excise and Service Tax, Hyderabad-IV v. Aries Agrovet Industries Ltd [2017-TIOL-2635-CESTAT-HYD],* upheld the classification of the very same product manufactured by them under heading 310590 of Schedule to Central Excise Tariff Act, 1985. It was also further pointed out that the Tribunal in *Commissioner of Central Excise, Mumbai-II v. Aries Agro-Vet Industries Ltd (final order no. A/86615/2018 dated 31st May-2018 in appeal no. E/709/2007 challenging order-in-original no. 26/2006 dated 27th November 2006 of Commissioner of Central Excise, Mumbai-II]* had also similarly upheld the classification under heading 3105 of Schedule to Central Excise Tariff Act, 1985 and that the appeal of Revenue had not been entertained by the Hon'ble Supreme Court.

5. It is the contention of Learned Authorised Representative that the Hon'ble Supreme Court, while dismissing the appeal of Revenue, had left the question of law open. He further argued that the decisions cited by the respondent in their favour and not taken into account the

decision of the Tribunal in *Karnataka Agro Chemicals v. Commissioner of Central Excise, Bangalore [2012 (281) ELT 607 (Tri-Bang)]* and the rejection of the appeal of the assessee by the Hon'ble High Court of Karnataka. This argument of the Learned Authorised Representative appears to overlook the circumstances in which the referred decision of the Tribunal, disposing of application for stay of pre-deposit, does not offer, and never did offer, as binding precedent.

6. In view of the decisions of the Tribunal *supra* determining the classification of identical goods, even if these pertained to manufacture in India, and there being no judgement to the contrary, we find no reason to approve the findings of the original authority. Accordingly, we dismiss the appeal of Revenue against the order of the first appellate authority.

(Operative Part of the Order pronounced in the open court on 2nd December 2021)

(ASHOK JINDAL)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*