CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH - COURT NO. 01

Customs Appeal No. 87939 of 2019

(Arising out of Order-in-Appeal No. MUM-CUSTM-AXP-APP-264/19-20 dated 28.06.2019 passed by Commissioner of Customs (Appeals), Mumbai-II)

Genex Pharma **.....Appellant**
1st Floor, Nahar Singh Building, Opposite Movie Star Theatre, Ram Mandir, Goregaon (W), Mumbai-400104.

VERSUS

Commissioner of Customs (Export) Mumbai (Air Cargo Export) **.....Respondent**
Air Cargo Complex, Sahar, Andheri (E), Mumbai-400 099.

Appearance:

Shri J. C. Patel along with Shamita Patel, Advocates for the Appellant
Shri D. S. Mann, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

FINAL ORDER NO. A/86309/2022

Date of Hearing: 21.10.2022
Date of Decision:21.10.2022

PER : S.K. MOHANTY

Briefly stated, the facts of the case are that during the period May 2014 to March 2015, the appellant had exported medicaments, classifying the same under CTH 30049082. The said classification was not objected to by the proper officer of customs and the Let Export Order was issued in accepting such classification. However, after clearance of the goods, the department issued the show cause notice dated 29.01.2018, contending that classification done under CTH 30049082 was incorrect and the same was wrongly claimed by the appellant in order to avail the benefit provided under the Focus Product Scheme. On the basis of such contention, the SCN had sought to reclassify the said goods under others sub-headings of 300490. The SCN also sought for confiscation of the goods under clauses (d) and (h) of Section 113 of the Customs Act, 1962 and for imposition of penalty under Section 114 *ibid* or Section 117 *ibid*. The matter arising out of the SCN was adjudicated vide order dated 24.09.2018, wherein the original authority had ordered for re-classification of the disputed goods and also held that the said goods are liable for confiscation and also imposed penalty of Rs.8,50,000/- on the appellant. On appeal against the said original order, the learned Commissioner (Appeals) vide the impugned order dated 28.06.2019 had upheld the original order and rejected the appeal filed by the appellant. Feeling aggrieved with the impugned order, the appellant has preferred this appeal before the Tribunal.

2.1 Learned Advocate appearing for the appellant submitted that mere claim of incorrect classification cannot render the goods liable for confiscation, as long as the description of the same are correctly mentioned in the shipping bill. He has relied upon the following judgment to support such contentions:-

a. Northern Plastic Ltd. Vs Collector of Customs & Central Excise - 1998 (101) ELT 549 (S.C.).
b. Commissioner of Customs Vs Gaurav Enterprises - 2006 (193) ELT 532 (Bom.)

c. C. Natwarlal & Co. Vs Commissioner of Customs (Import), Mumbai 2012 – TIOL – 2171 – CESTAT – MUM.
d. S. Rajiv & Co. Vs Commissioner of Customs - 2014 (302) ELT 412.
e. Lewek Altair Shipping Pvt. Ltd. Vs Commissioner of Customs, Vijayawada – 2019 (366) ELT 318 (Tri. – Hyd.). [upheld by Hon'ble Apex Court, reported in 2019 (367) ELT A 328 (S.C.)].

2.2 Learned Advocate further submitted that the appellant had never claimed the benefit of Focus Product Scheme and as such, the goods cannot be held liable for confiscation and no penalty can be imposed on the appellant.

3. On the other hand, learned Authorizing Representative appearing for the Revenue reiterated the findings recorded in the impugned order.

4. Heard both sides and perused the records.

5. I find that the table appended in the show cause notice had provided the detail of the products mentioned in the shipping bill by the appellant. There is no wrong mention of the goods, which were actually exported by the appellant. Thus, mere change in the classification of goods as per the Customs Tariff Head cannot render the same liable for confiscation. In this context, the law is well settled that in absence of mis-declaration of description of products, the goods are not liable for confiscation. Further, is not the case of Revenue that the appellant had sought classification of the goods under CTH 30049082, in order to claim the benefit provided under the FPS. Further, in respect of the goods exported by the appellant, there was no prohibition or restriction been imposed in the Parent Act or any other law and that since the disputed goods were freely exportable, the provisions of Section 113 (d)

ibid have also not been violated for imposition of penalty on the appellant. Similarly, the provisions of Section 113 (h) ibid have also no application to the facts of the present case inasmuch as the appellant had mentioned the description of the goods and the quantity actually exported by them. Since, the goods are not liable for confiscation, in my considered view, the penal provisions contained in Section 114 *ibid* cannot also be invoked for imposition of penalty on the appellant.

6. In view of the forgoing discussions, I do not find any merits in the impugned order, insofar as it has upheld the adjudged demands confirmed on the appellant in the adjudication order. Therefore, the impugned order is set aside and the appeal is allowed in favour of the appellant.

(Operative part of the order pronounced in the open court)

(S. K. Mohanty)
Member (Judicial)

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