CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 86197 of 2021

(Arising out of Order-in-Appeal No. 405 & 406(Gr.I)/2021(JNCH)/Appeals dated 19.05.2021 passed by the Commissioner of Customs, (Appeals) Mumbai zone-II.)

M/s M. V. B. Enterprises .... **Appellant**
Shop No. 4, Max Residency,
Opp. Dadra Garden, Village-Tighra,
Dadra and Nagar Haveli- 396 230.

Versus

Commissioner of Customs, Nhava Sheva-I .... **Respondent**
JNCH, Nhava Sheva,
Dist-Raigad- 400 707.

Appearance:

Shri N.D. George, Advocate for the Appellant

Shri Ram Kumar, Auth. Representative for the Respondent

CORAM:

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

FINAL ORDER NO. A/86236/2023

Date of Hearing: 18.08.2023

Date of Decision: 18.08.2023

Per: S.K. MOHANTY

Brief facts of the case are that the appellant herein M/s M.V.B. Enterprises had filed Bill of Entry No. 6227554 dated 25.12.2019 before the Customs Authority, claiming the imported goods as "Mineral Hydrocarbon Oil". However, on investigation into the matter, the Department felt that the description of the goods provided in the Bill of Entry cannot be accepted and accordingly sent the representative sample of imported goods for testing to Deputy Chief Chemist, CRCL. The report submitted by CRCL confirmed that the specification of the imported goods was Kerosene (SKO) confirming the standards under IS 1459:2018. On the basis of the test report, the Department initiated show cause proceedings against the appellant, which culminated into the adjudication Order-in-Original dated 23.11.2020, wherein the original authority has rejected the classification claimed by the appellant under CTH 27101990 as "Mineral Hydrocarbon Oil" and ordered for classifying the imported goods under CTH 27101910. The said classification was adopted by the Department considering the imported goods as "Kerosene". Upon rejection of the declared value, the original authority has re-determined the value of the goods at Rs.48,08,806/-. The original authority has confiscated the imported goods under Sections 111(d) and 111(m) of the Customs Act, 1962 by giving an option to the importer for redeeming the same on payment of redemption fine of Rs.31,44,000/-. Further, the impugned order has also imposed penalty of Rs.10,00,000/- and Rs. 7,00,000/- on the appellant's firm as well as the proprietor under Sections 112(a) *ibid* and 114AA *ibid* respectively. The said original order was appealed against before the learned Commissioner (Appeals), who vide order dated 19.05.2021 (for short referred to as 'impugned order'), has 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. Learned Advocate appearing for the appellant submitted that the parameters prescribed in the IS 1459:2018 has not been adhered to by the testing agency inasmuch as all the parameters prescribed have not been complied with while testing the samples drawn from the imported consignment. Further, he also submitted that the Department has not investigated the matter in proper perspective inasmuch as no statements were recorded from the proprietor of the firm and the purpose for which the product was imported by the appellant. He further submitted that issue arising out of the present dispute is no more *res integra* in view of the Final Order Nos. A/85436-85437/2022 dated 09.05.2022 passed by this Tribunal in the case of Shri Jethanand Rohra and others Vs. Commissioner of Customs (Import).

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

4. Heard both sides and examined the case records.

5. We find that the Department has proceeded against the appellant mainly based on the test report dated 15.01.2020 furnished by the CRCL, certifying the imported goods to be of Kerosene (SKO). However, we find that while testing the imported goods, the said agency has not confirmed to the IS 1459:2018 by testing all the ten parameters specified therein; instead they tested only few of such specified parameters for giving the technical opinion that the sample is Kerosene. We further find that by relying upon the test report in respect of product in question, this Tribunal in the case of Shri Jethanand Rohra (supra) has set aside the adjudication order. The relevant paragraphs in the said order are extracted herein below:-

> "27. Having considered the rival contentions, we find that the issue involved in these appeals is whether the Revenue was correct in re-classifying the imported goods declared as "Mineral Hydrocarbon Oil-CTH 27101988 and Mixed Mineral Hydrocarbon Oil-CTH 27101990" as diesel under CTH 27101944 and as Superior Kerosene Oil under CTH 27101932.
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> 28. It is admitted position of law that for a product to be classified under CTH 27101944/27101932 as SKO, it has to meet with the specifications in Supplementary Note- (C) under Chapter 27 which reads as under:-
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> "Superior Kerosene Oil (SKO)" means Hydrocarbon Oil Confirming to Indian Standards Specification of Bureau of Indian Standards IS 1459 : 1974(reaffirmed in 1996)."
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> 29. Thus, the product or material shall consist of refined petroleum distillates. It shall be free from visible water sediments and suspended material. The material shall also comply with the requirements given in Table-I, when tested according to the appropriate method prescribed under 'P' Series of IS:1448, reference to which is given in Col.4 of the Table-I (provided at para-37 below).
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> 30. It is also not the case of the Revenue that the said three parameters can be established by any inferential process or otherwise. So far as sulphur is concerned, though no testing has been undertaken, we, for the sake of discussion, assume that the said parameter have been met, as the same forms a part of the suppliers' test reports and is within the parameters specified in IS 1459:1974."

6. In view of the fact that the investigation has not been properly conducted to ascertain the nature of goods imported by the appellant and in absence of proper substantiation of test report by CRCL, we are of the view that the adjudged demands confirmed on the appellant cannot be sustained for judicial scrutiny. Therefore, by setting aside the impugned order, we allow the appeal in favour of the appellant. Since the goods are lying under seizure and in the custody of the Department for over three years, the concerned authorities are directed to issue proper certificate for waiving the detention and demurrage charges within a period of four weeks from the date of receipt of this order.

7. The appeal is disposed of in the above terms.

(Dictated and pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha