CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 85637 OF 2023

[Arising out of Order-in-Appeal No: 86 (Gr.I/IA)/2023(JNCH)/Appeals dated 1st February 2023 passed by the Commissioner of Customs (Appeals), Mumbai-II.]

Din Dayal and Sons
143/3, Gadodia Market, Khari Baoli, Delhi - 110 006 … ***Appellant***

versus

Commissioner of Customs (NS-I)
Jawaharlal Nehru Customs House, Nhava Sheva,
Tal: Uran, Dist: Raigad, Maharashtra- 400 707. ***…Respondent***

WITH

CUSTOMS APPEAL NO: 85638 OF 2023

[Arising out of Order-in-Appeal No: 87 (Gr.I/IA)/2023(JNCH)/Appeals dated 1st February 2023 passed by the Commissioner of Customs (Appeals), Mumbai-II.]

Din Dayal and Sons
143/3, Gadodia Market, Khari Baoli, Delhi - 110 006 … ***Appellant***

versus

Commissioner of Customs (NS-I)
Jawaharlal Nehru Customs House, Nhava Sheva,
Tal: Uran, Dist: Raigad, Maharashtra- 400 707. ***…Respondent***

APPEARANCE:

Shri Prashant Patankar, Consultant for the appellant

Shri Ram 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: 87238-87239/2023

DATE OF HEARING: 10/10/2023
DATE OF DECISION: 13/12/2023

PER: C J MATHEW

These two appeals of M/s Din Dayal and Sons arise from separate orders[1] of Commissioner of Customs (Appeals), Nhava Sheva, Mumbai – II in which imposition fine of ₹ 2,00,000/- and ₹ 1,25,000/- as condition for redemption of impugned goods as well as penalties of ₹ 3,00,000/- and ₹ 2,00,000/- respectively by the original authority were upheld. The appellant had sought to clear ‘musk melon dried seeds’ *vide* bill of entry no. 6087872/01.11.2021 and 6087682/01.11.2021 by which time the restriction on import, imposed *vide* notification no. 03/2015-20 dated 26th April 2021, by Directorate General of Foreign Trade (DGFT) under the empowerment of Foreign Trade (Development and Regulation) Act, 1992, had come into effect for initiation of proceedings for contravention of licensing conditions in Foreign Trade Policy leading to confiscation of goods under section 111(d) of Customs Act, 1962 and penalty under section 112 of

[1] [order-in-appeal no. 86 (Gr.I/IA)/2023(JNCH)/Appeals dated 1st February 2023 & order-in-appeal no. 87 (Gr.I/IA)/2023(JNCH)/Appeals dated 1st February 2023]

Customs Act, 1962.

2. On the facts relating to non-production of authorization being uncontroverted, the first appellate authority determined that there was no reason to interfere with the detriment fastened on the appellant herein as precondition for resumption of title to the goods for re-export.

3. We have heard Learned Consultant for the appellant and Learned Authorised Representative at length. It is common ground that the goods, as presented for import, were restricted and that the importer was not in possession of authorization issued by the competent authority for undertaking such imports. There are no provision that permit mitigation of import effected in contravention of prohibitions imposed under the Foreign Trade (Development and Regulation) Act, 1992.

4. Learned Consultant for the appellant submitted that the imports had been effected in ignorance of the restriction imposed under the relevant statute and that there was no reason to disallow the goods from being cleared into the domestic market. We find that the goods, being agricultural products, are subject to conditions of import which, if diluted, may cause outcomes that may not be particularly palatable to the agricultural interests of the country. Accordingly, we find no reason to entertain the plea that the restriction should be ignored by

us. The absence of authorization to import ‘musk melon dried seeds’ draws the consequence of confiscation under section 111(d) of Customs Act, 1962. Instead of regularization, which is the aftermath of such confiscation and consequential fiscal restitution, the imported goods had been deemed as not fit for home consumption and, therefore, ordered to be re-exported. We find no reason to interfere with barring the entry of goods into the territory of India.

5. It was on record that the amendment of the erstwhile policy on free import of the impugned goods was effected in April 2021 and the impugned goods had been shipped in the same year. It is quite possible that the appellant was in the dark about the changes in the policy and, considering that the goods have not been permitted for clearance for home consumption, it would be unjust to burden the goods with the detriments of redemption fine and imposition of penalty.

6. Accordingly, while holding the goods liable for confiscation under section 111(d) of Customs Act, 1962 and, as the same are directed to be re-exported but for which the central government would be saddled with possession of such prohibited goods with no evidence of deliberate contravention of restriction, we deem it appropriate to set aside the redemption fine. Likewise, the penalty is also set aside. Consequently, the appellants are directed to re-export

the goods forthwith after fulfilling the necessary formalities under customs law and procedure.

7. The appeals are disposed off in these terms.

(Order pronounced in the open court on 13/12/2023)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*