CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 85840 of 2014

(Arising out of Order-in-Appeal No. 1351 (ADJN-IMP)/2013(JNCH)/IMP-1091 dated 12.12.2013 passed by the Commissioner of Customs (Appeals), Mumbai-II, Jawaharlal Nehru Custom House, Nhava Sheva.)

Paradeep Phosphates Ltd. **.... Appellant**
Pt. Jawaharlal Nehru Marg,
Bhubhaneshwar, Odisha- 751 001.

Versus

Commissioner of Customs (Import), Mumbai-II **.... Respondent**
Jawaharlal Nehru Customs House,
Nhava Sheva, Raigad- 400 707.

Appearance:

Ms Madhura Khandekar a/w Shri Akhilesh Kangsia, Advocates for the Appellant

Shri Krishna Murari Azad, Authorized 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/85332/2024

Date of Hearing: 11.03.2024
Date of Decision: 11.03.2024

Per: S.K. MOHANTY

Briefly stated, facts of the case are that the appellants are engaged in the manufacture of fertilizers, falling under Chapter 31 of the Customs Tariff Act, 1975. During the disputed period, the appellants had imported different types of fertilizers, without payment of Additional Duty of Customs (CVD) in terms of Notification No. 4/2006-Central Excise dated 01.03.2006, as amended by Notification No. 4/2006-Central Excise dated 01.03.2011. As per the said notification, the imported goods were required to be used in the manufacture of other fertilizers. However, without using the same for the intended purpose, the appellants had sold such imported goods in the open market. Since, the condition of the notification (Supra) was not fulfilled by the appellants, the Department initiated show cause proceedings, seeking for confirmation of the CVD amount along with interest and for imposition of penalty. The matter arising out of the show cause notice dated 02.07.2012 was adjudicated by the Additional Commissioner of Customs vide order dated 08.10.2012, wherein CVD amount of Rs.1,12,826/- was confirmed along with interest and an amount of Rs.1,23,064/- was confirmed as penalty under Section 114A *ibid*. On appeal against the said adjudication order, the learned Commissioner of Customs (Appeals) vide order dated 12.12.2013 (impugned herein) has upheld confirmation of the adjudged CVD demand along with interest and modified the original order in reducing the quantum of penalty to Rs.31,000/-. Feeling aggrieved with the impugned order, the appellants have preferred this appeal before the Tribunal.

2. Heard both sides and perused the case records.

3. The notification dated 4/2006-C.E., dated 01.03.2006 at Sr. No. 63 had prescribed the 'nil' rate of CVD on "all goods, other than those which are clearly not to be used in the manufacture of other fertilizers, whether directly or through the stage of an intermediate product". The said notification was amended vide notification dated 4/2011-C.E., 01.03.2011, providing the narration as "all goods, other than those which are clearly not to be used- (a) as fertilizers; or (b) in the manufacture of other fertilizers, whether directly or through the stage of an intermediate product". The effect of such amending notification was that the exemption from payment of CVD is available only on the eventuality, where the goods are used in the manufacture of other fertilizers and not to the goods, which were sold in the open market.

4. It is an admitted fact on record that the impugned goods imported by the appellants were not used for the intended purpose as per the terms of the notification and the same were sold by them. We find that the appellants have furnished the explanation that the change in the text of Sr. No. 63 of notification dated 01.03.2006 had gone un-noticed by them and that upon detection of such mistake, they had voluntarily deposited the difference in CVD amount along with interest and prayed for closure of the proceedings initiated by the Department. The facts are also not under dispute that the appellants had discharged their liability for payment of CVD and

interest amount before issuance of the show cause notice by the Department. Insofar as the liability for payment of CVD along with interest is concerned, the appellants in this appeal are not contesting the same and their grievance is confined only for imposition of penalty by invoking the provisions of Section 114A *ibid*.

5. Section 114A *ibid* deals with the situation for imposition of penalty, in the case of short-levy or non-levy of duty in certain situations. It has been mandated that in the eventuality of collusion or any willful misstatement or suppression of facts, the penal provisions contained therein can be invoked and not otherwise. We find that the learned Commissioner (Appeals) at paragraph 10 in the impugned order has specifically recorded that there is no element of *mensrea* on the part of the appellant in quoting of the appropriate notification. Further, at paragraph 11, he has also recorded that the mistake on the part of the appellant in claiming wrong notification dated 01.03.2006, as against notification dated 01.03.2011 appears un-intentional. Reading of the impugned order transpires that there is no element of suppression etc., on the part of the appellants in defrauding the Government Revenue. Thus, under such circumstances, we are of the opinion that the provisions of Section114A *ibid* cannot be invoked for penalizing the appellants.

6. In view of the foregoing discussions, we do not find any merits in the impugned order, insofar as it has confirmed demand of penalty on the appellants. Therefore, the impugned order to the extent, it has confirmed the penalty on the appellant is set aside and the appeal to such extent is allowed in favour of the appellants.

(Operative part of order pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Mirani