CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 87506 of 2019

(Arising out of Order-in-Appeal No. MUM-CUSTM-PREV-APP-962/2018-19 dated 28.12.2018passed by the Commissioner of Customs (Appeals), Mumbai Zone-III)

M/s Ashish Sulphur Dyes Pvt. Ltd. .... Appellant
213, Laxmi Plaza, Laxmi Industrial Estate,
New Link Road, Andheri (East), Mumbai – 400 053

Versus

Commissioner of Customs (Prev), Mumbai.... Respondent
New Custom House, Ballard Estate, Mumbai – 400 001

WITH

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M/s Ashish Life Sciences Pvt. Ltd. .... Appellant
213, Laxmi Plaza, Laxmi Industrial Estate,
New Link Road, Andheri (East), Mumbai – 400 053

Versus

Commissioner of Customs (Prev), Mumbai .... Respondent
New Custom House, Ballard Estate, Mumbai – 400 001

Appearance:

Ms. Dishya Pandey, Advocate for the Appellant
Shri D.S. Mann, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85530-85331/2024

Date of Hearing: 30.01.2024

Date of Decision: 30.01.2024

Per: M.M. Parthiban

These appeals have been filed by the appellants M/s Ashish Sulphur Dyes Pvt. Ltd. and M/s Ashish Life Sciences Pvt. Ltd. (herein after referred together as "appellants") assailing the Order-in-Appeal No. MUM – CUSTM – PREV – APP-962/2018-19 dated 28.12.2018 (hereinafter referred to as "the impugned order) passed by the Commissioner of Customs (Appeals), Mumbai Zone-III, Mumbai.

2.1 Brief facts of the case are that the appellants have imported 'Bright Yellow Crude Sulphur' in bulk through PNP (Dharamtar) Port, Shahabaj, Alibaug by classifying the imported goods under Customs Tariff Item 2403 0010 vide Bills of Entry No. F-91/2004-2005 dated 13.08.2004 and F-124/2004-2005 dated 20.06.2004. The appellants have claimed the benefit of concessional rate of Basic Custom Duty (BCD) under Notification No. 21/2002-Cus dated 01.03.2002. Both the Bills of Entry were assessed provisionally pending test reports of the imported goods. The original authority upon receipt of the test reports proceeded to finalize the provisionally assessed Bills of Entry by denying the exemption claimed by the appellants. Being aggrieved with the original authority's order passed in May, 2011, the appellants filed an appeal before the learned Commissioner (Appeals), who after examining the factual matrix of the case and upon finding that principles of natural justice have not been followed in providing opportunity for personal hearing in denial of the exemption claimed and the valuation adopted for enhancing the value of imported goods, allowed waiver of pre-deposit and subsequently vide Order-in-Appeal dated 31.08.2016 remanded the matter back to the adjudicating authority for passing appropriate speaking order.

2.2 On the basis of above directions, the original authority passed final assessment order dated 31.01.2018 in finalization of the Bills of Entry in deciding the issues remanded to him, by enhancing the value of imported goods and denial of exemption claimed by the appellant after giving an opportunity for personal hearing on 18.12.2017. Feeling aggrieved with the original order, the appellants have filed an appeal before the Commissioner of Customs (Appeals), who disposed of the case by rejecting the appeals on the ground that the appellants have failed to deposit mandatory pre-deposit of 7.5% of the amount demanded under Section 129E of the Customs Act, 1962. The relevant paragraph of the said order is extracted and given below:-

> *"7. In view of the position above, I find that as the appellant has failed to deposit 7.5% of the amount demanded on account of duty drawback and penalty imposed vide impugned order, the present appeal is liable for rejection. As the impugned appeal is not maintainable on account*

> *of non-payment of pre-deposit prescribed for appeal, I have not gone into the merits of the appeals."*

3.1 From the facts of the case, I find that in respect of the imported goods for which B/Es were filed on 20 June, 2004 and 13 August, 2004, the first test reports were obtained by Customs authorities from the Chemical Examiner, CRCL Laboratory, JNCH, Nhava Sheva on 03.11.2004 and 15.09.2004, respectively. However, the appellants have produced a letter dated 14.09.2004 of the Director, Central Revenue Control Laboratory, New Delhi, which have re-tested the imported goods in question and have reported that the imported goods are soluble Sulphur other than precipitated, colloidal or sublimed Sulphur. This re-test reports have been provided in the form of a letter issued by the Director, CRCL, who is the highest authority of the Central Revenue Control Laboratory functioning under the Ministry of Finance to assist the Customs in proper classification of the goods at various ports/places. In the said re-test report, the Director had also stated they have taken into consideration the views of the Tariff Unit of the Ministry of Finance about classification of the Sulphur and the applicability of Notification benefit to such goods and reported as follows: -

> *"Whether the samples are Crude or Refined Sulphur cannot be ascertained by Chemical test in the light of the Chapter Notes to Chapter Subheading 25.03 of HSN. It is the method of manufacturing and source of origin which is the criteria to decide whether Crude or otherwise. A copy of clarification on the issue is enclosed for your ready reference."*

3.2 Further, in respect of valuation of goods, the original authority had not followed the Customs Valuation (Determination of Price of Imported Goods) Rules, 2007, inasmuch as no specific ground has been mentioned for rejection of declared value under Rule 12 ibid and for determination of assessable value in terms of Rule 3 by sequentially proceeding through Rule 4 to Rule 9 ibid. Further, the decision of the Hon'ble Supreme Court laid down in case of *Coromandal Fertilizers Ltd. Vs. Collector of Customs*–2000 (115) E.L.T. 7 (S.C.) providing the guidelines on how the landing charges should be calculated has not been taken into account.

4. I further find that the learned Commissioner (Appeals) in the impugned order has not examined the merits of the case and

disposed of the appeal only on the ground that the appellants failed to deposit the mandatory pre-deposit under Section 129E ibid. From the records of the case, I find that the appellants have fulfilled the requirement of pre-deposit in terms of Section 129E ibid subsequently. Further, there are sufficient grounds on the merits of the case as discussed above, which needs to be examined in order to decide the issue in terms of legal provisions of the Customs Act, 1962 and the rules and regulations made thereunder. The appellants have also relied upon the Explanatory Notes of Harmonized System of Nomenclature (HSN) of World Customs Organization (WCO), which provides various types of unrefined sulphur or crude sulphur and the HSN have equal force of law as decided in the case of *Deepak Fertilizers& Petrochemicals Corp. Ltd. Vs. Commissioner of Customs, Nhava Sheva* – 2002 (139) E.L.T. 328 (Tri.–Mumbai) in determination of the question of classification of imported goods, as the Customs Tariff are derived from the HSN formulated by the World Customs Organization through international convention to which India is a signatory and a Member country of WCO.

5. In view of the above, I find that the ends of justice would be met if the entire issues are examined in detail by the original authority on the basis of grounds submitted by the appellants in these appeals and also on the basis of other grounds to be submitted before the original authority. Needless to say that adequate opportunity for personal hearing should be given to the appellants to explain their case and also to take into account the various documents relied upon by them before deciding the case.

6. In the result, the impugned order dated 28.12.2018 is set aside and appeals are allowed by remanding the cases back to the original authority for passing *de novo* order on merits by issue of appropriate speaking order.

(Operative portion of the order pronounced in open court)

(M.M. Parthiban)
Member (Technical)

Sinha