CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 1200 of 2012

(Arising out of Order-in-Original No. 119/2012 dated 05.11.2012 passed by Commissioner of Customs (Import), Jawaharlal Nehru Custom House (JNCH), Mumbai-II Zone, Nhava Sheva, District Raigad, Maharashtra.)

Pacific Chemical Industries **.....Appellant**
1/3, Issaji Street
12, Parshottam Bhuwan, Second Floor
Vadgadi, Mumbai – 400 003.

VERSUS

Commissioner of Customs (Import) **.....Respondent**
Jawaharlal Nehru Custom House (JNCH), Nhava Sheva
Taluk Uran, District Raigad,
Maharashtra–400 707.

Appearance:

Shri Ashwani Kumar Prabhakar, Advocate for the Appellants
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/87127/2024

Date of Hearing: 06.03.2024
Date of Decision: 06.03.2024

PER : M.M. PARTHIBAN

This appeal has been filed by M/s Pacific Chemical Industries, Mumbai (herein after, for short referred together as 'the appellants'), assailing Order-in-Original No. 119/2012 dated 05.11.2012 (herein after, referred to as 'the impugned order') passed by Commissioner of Customs (Import), Jawaharlal Nehru Custom House (JNCH), Mumbai-II Zone, Nhava Sheva, District Raigad, Maharashtra.

2.1 Briefly stated, the facts of the case are that the appellants herein, *inter alia*, have imported goods vide Bill of Entry (B/E) No. 7468728 dated 23.07.2012 declaring it as 'Penta erythritol' classifiable under Customs Tariff

Item (CTI) 2905 4290 of the First Schedule to the Customs Tariff Act, 1975 with declared price of USD 1100 per MT under the cover of invoice No. INVCO/9275/12 dated 14.07.2012 and Bill of Lading (B/L) No. APLU 057477029. The appellants had claimed that the imported goods are of 'Malaysia Origin' and besides applicable customs duty payable on the imported goods, these goods are not liable to levy of Anti-Dumping Duty (ADD) under Notification No.47/2001-Customs dated 14.06.2011.

2.2 The Special Intelligence & Investigation Branch (SIIB) of JNCH Customs had gathered an intelligence that some of the importers are resorting to the misdeclaration of the country of origin, in order to evade payment of ADD leviable on the imports of Penta erythritol. On scrutiny of the B/E No.7468728 and connected records, it appeared that the said imported consignment covered in two containers were originally been loaded at China by M/s Puyang Yongan Chemical Co. Ltd., China and shipped to M/s Innovesco Pte Ltd. Singapore who in turn have supplied the said consignment to the appellants-importer by showing it as though such goods were originated from Malaysia. Therefore, the goods covered under B/E No. 7468728 imported by the appellants were subjected to 100% examination by SIIB officers and further investigation were conducted. Examination of imported goods by SIIB Customs of JNCH revealed that the imported goods were contained in total 1600 yellow coloured plastic bags totally weighing 40160 Kgs. and each bag was bearing the markings 'PENTAERYTHRITOL MALAYSIA'. However, there were no other marking in respect of standard details about manufacturer, supplier, weight, Batch No. Lot no. etc. Further investigation conducted by SIIB Customs of JNCH revealed that the shipper/ shipping line M/s APL India Private Limited had produced various documents indicating the said imported goods were shipped from Qingdao, China PR to port of delivery at Singapore before the same goods were sent to Nhava Sheva Port in India. These documents include Container Routing history and Seal tract for containers APZU 3799395 and GLDU 3854278; commercial invoice No. YACC0620 dated 20.06.2012 along with packing list, Material Safety Data Sheet, certificate of analysis, B/L issued by M/s Puyang Yongan Chemical Co. Ltd., China to M/s Innovesco Pte Ltd. Singapore covering the said two containers; ex-Singapore load port BL 057477029 dated 14.07.2012. Further, the department had also investigated about the past imports of the appellants made through B/E No. 7311090 dated 06.07.2012.

2.3 In the meantime, the proprietor of the appellants firm Shri Vipul Sheth, had moved to the Hon'ble High Court of Mumbai by filing W.P. No.8631 of 2012 whereby the Revenue assured to allow the imported goods on provisional release, and the petition was withdrawn by him accordingly. Subsequently, again another W.P. No. 9327 of 2012 was preferred by Shri Vipul Sheth, wherein the department assured to issue show cause notice (SCN) to the appellants by 29.10.2012 and the appellants had also agreed to reply to such SCN before 31.10.2012, and accordingly such Writ Petition was disposed by the Hon'ble Bombay High Court. On the basis of the investigation conducted, the department had issued SCN dated 25.10.2012 to the appellants covering the said imported goods, by proposing for demand of differential customs duty arising on account of under valuation, demand of ADD not levied, confiscation of goods and for imposition of penalty on the appellants. In adjudication of the same, learned Commissioner of Customs had confirmed the adjudged demands as proposed in the SCN. Feeling aggrieved with the above order, the appellants have preferred this appeal before the Tribunal.

3. Heard both sides and perused the records of the case.

4. The key issue for decision in the present appeal is as follows:

(i) whether the imported goods are subject to levy of anti-dumping duty in terms of Notification No. No.47/2001-Customs dated 14.06.2011;

(ii) whether the demand of differential duty of customs on account of re-determination of the assessable value, imposition of redemption fine and penalties on the appellants in the impugned order is legally sustainable.

5. On perusal of the records of the case, it is evident that the B/E No.7468728 dated 23.07.2012 filed by the appellants cover the imported goods 'Penta erythritol' classifiable under Customs Tariff Item (CTI) 2905 4290 of the First Schedule to the Customs Tariff Act, 1975, brought into the country vide container Nos. APZU 3799395 and GLDU 3854278 under the cover of invoice No. INVCO/9275/12 dated 14.07.2012 and Bill of Lading (B/L) No. APLU 057477029. It is also seen from the documentary evidence

recorded in the impugned order that imported goods were shipped from the loading port of 'Qingdao, China' to port of delivery at 'Singapore' by the supplier M/s Puyang Yongan Chemical Co. Ltd., China to the trader M/s Innovesco Pte Ltd. Singapore. The documentary evidences also indicate that the supplier from China had requisitioned the two empty containers for exporting the impugned goods, and the bottle seal No. APA10558217 on container No. APZU 3799395 and bottle seal No. APA10558219 on container No. GLDU 3854278, placed on the container by the shipping line was the same, as originating from China enroute through Singapore port and as was cut open before the importer and their Customs broker/CHA at JNCH port during examination of goods by SIIB. Therefore, the documentary evidences clearly prove that the imported goods were originating from 'China PR' and not from 'Malaysia', as claimed by the appellants importer and as incorrectly shown in the documents filed by them.

6. On perusal of the Notification No. 47/2011-Cus., dated 14.06.2011, it also transpires that on recommendation of the designated authority after conducting sunset review in the matter of continuation of final anti-dumping duty, the Ministry of Finance had imposed anti-dumping duty at the rate of US $ 515 per MT on all imports of 'Penta erythritol' falling under Sub-heading 2905 42 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), originating in or exported from China PR and imported into India. Therefore, it clearly transpires that the impugned goods being originated from China PR and covered under the description and Customs Tariff sub-heading as above, are leviable to anti-dumping duty upon its import into the country.

7. Further, the commercial invoice No. YACC0620 dated 20.06.2012 issued by the supplier M/s Puyang Yongan Chemical Co. Ltd., China to the trader in Singapore M/s Innovesco Pte Ltd. indicate that the goods were sold at a unit price of USD 1355 per M.T. Therefore, the price declared by the appellants-importer at USD 1100 per MT, for the same goods, is incorrect. Even during the personal hearing before the learned Commissioner in the adjudication proceedings, the appellants have not challenged the valuation but only sought lenient view as they have accepted the valuation proposed by the department. Thus, we find that the departmental authorities have rightly re-determined the assessable value based on Section 14 of the

Customs Act, 1962 read with the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

8.1 The facts of the case also indicate that the appellants through their Advocate have committed before the Hon'ble High Court in the W.P. 9327 of 2012, that they would file the reply to the SCN on or before 31.10.2012 to enable completion of adjudication of the show cause proceedings. Further, opportunity for personal hearing was also given on 02.11.2012, before adjudication of the case. Thus, the appellants cannot take the plea, that they had very short time and could not cross examine the shipping line/shipping agents, and therefore the documents submitted by shipping line/shipping agents cannot be taken into account as evidence. On the other hand, the documents produced by the shipping line had clearly established the entire modus of operation by the appellants in evasion of anti-dumping duty by mis-declaring the country of origin.

8.2 In the absence of any evidence contrary to what has been proved beyond doubt by the department in respect of mis-declaration of country of origin, undervaluation of imported goods, we are of the considered view that violations in respect of imported goods as per Section 111(d) and 111(m) ibid, have been established. Therefore, the proposal for confiscation of the impugned goods and imposition of redemption fine by the original authority is legally sustainable.

9. In view of the foregoing discussions and analysis, we are of the considered view that the impugned goods classifiable under CTI 2905 4290 of the First Schedule to the Customs Tariff Act, 1975 are liable to be charged with anti-dumping duty in terms of Notification No. No. 47/2001-Customs dated 14.06.2011. Inasmuch as the declared value of imported goods are incorrect, which have also been accepted by the appellants, the re-determination of value and demand of duty, appropriation of amount already paid by the appellants by the adjudicating authority in the impugned order is sustainable. Further, as the mis-declaration of country of origin and under valuation of imported goods have proved evidentially through various documents, we find that there is sufficient ground for imposition of penalty on the appellants. Therefore, we find that the impugned order in confirmation of adjudged demands on the appellants is legally sustainable.

10. In the result, by upholding the impugned order dated 05.11.2012, the appeal filed by the appellants is dismissed.

(Operative portion of the Order pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha