CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 85119 OF 2014

[Arising out of Order-in-Appeal No: 896(GR.II A-F)/2013(JNCH)/IMP-691 dated 16th September 2013 passed by the Commissioner of Custom (Appeals), Mumbai – II.]

Unilab Chemicals and Pharmaceuticals Pvt Ltd
107/108 Anjani Complex, Plot No. 316
Parera Hill Road, Off: Andheri-Kurla Road, Chakala
Andheri (E), Mumbai - 400099 … ***Appellant***

versus

Commissioner of Customs (Import)
Jawaharlal Nehru Customs House, Nhava Sheva
Tal: Uran, Dist: Raigad - 400707 ***…Respondent***

APPEARANCE:

Ms Pooja Reddy, Advocate for the appellant

Shri D S Maan, Deputy Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: 85974/2025

DATE OF HEARING: 12/11/2024
DATE OF DECISION: 13/05/2025

PER: C J MATHEW

M/s Unilab Chemicals and Pharmaceuticals Pvt Ltd is before us against order of Commissioner of Customs (Appeals), Mumbai – II which upheld the order of the original authority in relation to bill of entry no. 7764940//27.08.2012 for the import of 'farmin DM' from Philippine and in which the adjudicating authority re-assessed the duty liability, confiscated the goods under section 111(m) and 111(o) of Customs Act, 1962 that were ordered to be redeemed on payment of fine of ₹ 5,00,000 while imposing penalty under section 112 of Customs Act, 1962. Briefly, the appellant had, in terms of notification no. 127/2011 dated 30th December 2011 for implementation of the ASEAN-India Free Trade Agreement (AIFTA) and extended to Philippines though with rates of duty higher than on imports from Malaysia, Singapore, Thailand, Vietnam, Myanmar, Indonesia. Brunei, Lao and Cambodia, discharged duty liability before clearance of goods, against bill of entry no. 7203589/25.06.2012, 7346760/10.07.2012 and 7612888/08.08.2012, at the rate prescribed for countries other than Philippines and, upon this error having been brought to the notice at the time of assessment of bill of entries impugned in these proceedings, had made good differential duty of ₹ 6,21,404, and interest thereof amounting to ₹ 51,245, on 5th October 2012. On the single bill of entry pending before the customs authorities, proceedings were initiated for mis-declaration with consequent detriments which are in appeal before us.

2. It is common ground that the duty liability is not in dispute

and the appellant herein contests only the confiscation and penalty. On value of the goods in the impugned bill of entry, for 12.80 MTs of farmin DM DM 4098, 2098', the differential duty liability is mere ₹ 44,258 and consequence of confiscation with redemption fine of ₹ 5,00,000 and penalty of ₹ 2,50,000 for such lapse on the part of the importer is clearly disproportionate to benefit that may have been derived by the appellant. Learned Counsel for the appellant relied upon the decisions of the Tribunal in *Sundaram Finance v. Commissioner of Customs, Chennai [2012 (279) ELT 220 (Tri.-Chennai)]* in support of the submission that declaration of entitlement to lower rate of duty had been made in error and no other aspect impacting the assessment at the correct rate of duty is in evidence; and that it is not the case of the customs authorities that the goods were either from a country other than Philippine or that it had been claimed to be from one of the countries entitled for the lower rate of duty.

3. We have heard Learned Authorized Representative.

4. We have already noted that the detriments imposed on the appellant are disproportionate to any benefit that may have been derived if the assessment had gone through. The Tribunal, in *re Sundaram Finance Ltd* and *Commissioner of Customs (Import), Mumbai v. Vidhi Dyestuff Manufacturing Ltd [2015 (327) ELT 500*

(Tri. - Mumbai)] and brought to our notice by the Learned Counsel for the appellant, had held

> *'5.2 It is not in dispute that the appellant has discharged the anti-dumping duty liability in terms of the aforesaid notification, when it was pointed out along with interest. I have also perused the bill of entry concerning the impugned transaction. In the said bill of entry, the importer had declared country of origin as Turkey and the port of export as Iran. Thus, there is no misdeclaration on the part of the respondent importer with respect to the impugned transaction. It is true that the respondent did not discharge the anti-dumping duty liability. The customs authorities also validated the transaction without noticing the mistake committed by the importer and therefore, it cannot be said that the respondent alone was negligent and not the department. Further, no goods have been seized or confiscated. The law does not provide for imposition of fine on a consignment which has already been cleared and not available for confiscation and therefore, imposition of redemption fine by the original authority on the importer is clearly unsustainable in law and therefore, the appellate authority was right in dropping the demand of fine. As regards the imposition of penalty, the appellate authority has rightly observed that there was no mala fide on the part of the importer and it was only an inadvertent error. Section 111(m) of the Customs Act applies only when there is a misdeclaration of any material particulars. In the present case, the appellant has not misdeclared any material particulars and therefore, the provisions of Section 111(m) are not attracted in the fact of the case. Consequently, the liability to confiscation also does not arise and therefore, imposition of penalty on the appellant is also not warranted.*

> *Therefore, the lower appellate authority is absolutely correct in setting aside the imposition of fine and penalty.'*

5. Considering the totality of the facts and circumstances, and the manner in which lower duty came to be discharged, as well as the prompt rectification by the appellant, we find no reason to sustain the confiscation and penalty in the impugned order.

6. Accordingly, we set aside the impugned order and allow the appeal.

(Order pronounced in the open court on 13/05/2025)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*