

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, CHENNAI**

Customs Appeal No.41065 of 2018

(Arising out of Order-in-Appeal Sea C. Cus. II No. 45/2018 dated 27.2.2018 passed by the Commissioner of Customs (Appeals – II), Chennai)

M/s. Priyanka Enterprises

Old No. 16/2/393, New No. 16.06.129
Srinvasa Agraharam
Nellore, Andhra Pradesh – 524 002.

Appellant

Vs.

Commissioner of Customs

Chennai II Commissionerate
Custom House
No. 60, Rajaji Salai
Chennai – 600001.

Respondent

And

Customs Appeal No.41955 of 2018

(Arising out of Order-in-Appeal Sea C. Cus. II No. 45/2018 dated 27.2.2018 passed by the Commissioner of Customs (Appeals – II), Chennai)

Commissioner of Customs

Chennai II Commissionerate
Custom House
No. 60, Rajaji Salai
Chennai – 600001.

Appellant

Vs.

M/s. Priyanka Enterprises

Old No. 16/2/393, New No. 16.06.129
Srinvasa Agraharam
Nellore, Andhra Pradesh – 524 002.

Respondent

APPEARANCE:

Shri L. Gokulraj, Advocate for the Appellant
Shri R. Rajaraman, AC (AR) for the Respondent

CORAM

Hon'ble Shri S.S. Garg, Member (Judicial)
Hon'ble Shri M. Ajit Kumar, Member (Technical)

Final Order Nos. 40089 & 40090/2024

Date of Hearing : 22.01.2024

Date of Decision: 25.01.2024

Per M. Ajit Kumar,

These appeals arise out of a common Order-in-Appeal passed by the Commissioner of Customs (Appeals - II), Chennai dated 27.2.2018 (impugned order). Both the appeals were heard together and are being disposed of by this common order.

2. Brief facts of the case are that the importer M/s. Priyanka Enterprises, had filed a Bill of Entry No. 3450978 dated 3.10.2017 for the clearance of the goods declared as 'GSL Artemia Brine Shrimp Foods' by classifying them under CTH 05119911 and sought to avail the preferential rate of IGST under Sl. No. 33 of the Notification No. 002/2017-Cus dated 28.6.2017. The department felt that the goods were eligible for the benefit of IGST Notification No. 001/2017 under Sl. No. 21 of Schedule I which attracts IGST @5% and not under Notification No. 002/2017-Cus. The importer requested adjudication without issue of Show cause Notice and personal hearing. The learned Joint Commissioner in his order confirmed IGST @ 5% as per IGST Notification No. 001/2017 and also held that the importer had cleared the same goods previously under Bill of Entry No. 2311679 dated 04.07.2017 without payment of 5% IGST and demand differential duty of Rs. 31,70,083/- on the same. The goods were not confiscated as they were not available for confiscation. The goods imported vide Bill of Entry No. 3450978 was confiscated under Section 111(m) ibid with an option to redeem the goods on payment of Redemption Fine of Rs. 60,00,000/-. A penalty of Rs.6,55,000/- was also imposed on the importer. Pursuant to the same, the importer has filed the appeal before the Commissioner of Customs (Appeals), Chennai, who vide the impugned order rejected the appeal. Aggrieved by the order, the

importer has filed an appeal before this Tribunal, assailing the impugned order. The department on the other hand is aggrieved by the impugned order for not having imposed redemption fine on goods imported under Bill of Entry No. 2311679 dated 4.7.2017.

3. We have heard learned counsel Shri L. Gokulraj for M/s. Priyanka Enterprises and Shri R. Rajaraman, learned AC (AR) for the Revenue.

3.1 The learned Counsel for the importer submitted that as the goods were perishable and required urgently and further since demurrage and detention charges were mounting, the importer was constrained to give a letter allowing the department to adjudicate the issue regarding eligibility for duty exemption without issuance of show cause notice. He submitted that they had sought a change of classification of the goods before the Commissioner (Appeals) from that declared in the Bill of Entry i.e. CTH 0511 9919 which only covers "Artemia". The goods under import are 'Artemia Brine Shrimp Eggs', which are admittedly used as prawn feed. Prawn feed is specifically covered under CTH 2309. He however stated that since duty has already been paid and a long time had passed, they are not contesting the classification and are now only pleading for dropping the demand for differential duty made without issue of SCN along with setting aside the confiscation, fine and penalty confirmed by the impugned order without any valid reason.

3.2 The learned AR stated on behalf of Revenue that the imported goods were "Artemia" and were covered under the specific Customs Tariff Heading 0511 9919. Further the impugned order, relies for the classification of the goods upon the decision of the Mumbai Bench of the Hon'ble Tribunal, in the case of the Commissioner of Customs (Preventive), Mumbai Vs. Atherton Engineering Private Limited reported

in 2001 (129) ELT 502 (Tri-Mum) which was upheld by the Hon'ble Supreme Court [2002 (144) ELT A293 (SC)]. He stated that the order came to be passed without the issue of a SCN as the appellant had waived the issuance of show cause notice. He hence prayed that the impugned order may be modified and redemption fine be imposed for the past clearances in line with the judgment of the Hon'ble Madras High Court in CMA No. 2857/2011 dated 11.8.2017.

4. We have gone through the appeals and have heard the rival parties. During the hearing, the learned counsel for M/s. Priyanka Enterprises stated that they were no longer seeking to change the classification of 'GSL artemia Brine Shrimp Eggs' under CTH 05119911, which had been originally declared by them. They are also not contesting for the eligibility of benefit under Notification No. 002/2017-Cus dated 28.6.2017, pertaining to Bill of Entry No. 3450978 dated 3.10.2017, since duty in this case has already been paid. Their main objection is regarding the confiscation of the goods pertaining to the said Bill of Entry, the burden of verifying the eligibility of exemption of the imported goods was to be done by the department. Hence no suppression or misstatement could be charged against the importer, as held by the Apex Court in Northern Plastics. Further no penal action can be taken merely for claiming the benefit of an exemption notification. He hence prayed that the confiscation of the impugned goods as ordered and the redemption fine imposed may be dropped. Secondly, with respect to Bill of Entry No. 2311679 dated 4.7.2017, he stated that since the adjudicating authority had not given them a Show Cause Notice or personal hearing, they were unaware of the charges that were made and they could not respond to the same. Hence this

was in violation of the principles of natural justice and such an order cannot sustain. He hence prayed that the differential duty demanded in this case may also be set aside. Finally, he prayed that since there was no violation of any provisions of the Act or Rules done by them, there was no ground for imposition of penalty which also needs to be quashed and justice rendered.

4.1 On the other hand, Revenue had appealed for the imposition of redemption fine on goods already cleared. We find that a penalty can be imposed and goods confiscated only if there is a breach of any specific provisions of the Act or law framed there under. What is made punishable under the Customs Act is the 'blameworthy' conduct of the importer. A mere claim of exemption by the importer cannot be visited by confiscation of goods along with fine and penalty. Further, charge of suppression could not have been brought against an importer if he has correctly described the goods in the Bill of Entry as held by the Apex Court in **Northern Plastic Ltd Vs. Collector of Customs and Central Excise** [1998 (101) ELT 549 (SC)]. Since the description of goods and classification done by the importer has been found correct and accepted by the department, we find that the confiscation of the goods and imposition of fine was improper and merits to be set aside. In the case of Bill of Entry No. 3450978 dated 3.10.2017, Revenue has erred in reopening a finally assessed Bill of Entry without even giving the importer the grounds on which action is sought to be taken through the issue of a Show Cause Notice. The fundamental purpose behind the serving of a show cause notice is to make the noticee understand the precise case set up against him, which he has to meet. Without meeting this fundamental requirement the order cannot sustain as it is

in violation of principles of natural justice and the demand of differential duty in this regard also merits to be set aside. The question of confiscation of the goods hence does not arise. Having found that the importer-appellant has not violated any provisions of the Act or rules, we also set aside the penalty imposed upon them. The Hon'ble Apex Court **in Associate Builders v. Delhi Development Authority** [(2015) 3 SCC 49] held that the principle of judicial approach demands a decision to be fair, reasonable and objective. On the obverse side, anything arbitrary and whimsical would not satisfy the said requirement. We hence find that the impugned order merits to be modified.

5. In view of the discussions above, we do not disturb the classification of 'GSL artemia Brine Shrimp Eggs' under CTH 05119911 along with duty as finalized with respect to Bill of Entry No. 3450978 dated 3.10.2017. However, the confiscation of the goods and the fine imposed on the goods imported by the said Bill of Entry is set aside. We also set aside the differential duty demand in respect of Bill of Entry No. 2311679 dated 4.7.2017. Since no violation of law has been established the penalty imposed on M/s. Priyanka Enterprises is quashed. Both the appeals are disposed of on the above terms, with consequential relief to M/s. Priyanka Enterprises, if any, as per law.

(Pronounced in open court on 25.01.2024)

(M. AJIT KUMAR)
Member (Technical)

(S.S. GARG)
Member (Judicial)