(2021) 06 CESTAT CK 0023

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 20145 Of 2021

K.J. Associates APPELLANT

Vs

Commissioner Of Customs Cochin-cus RESPONDENT

Date of Decision : 18-06-2021

Acts Referred:
Customs Act, 1962 — Section 111(d), 112(a)

Citation : (2021) 06 CESTAT CK 0023

Hon'ble Judges : S.S. Garg, J;P. Anjani kumar, Technical Member

Bench : Division Bench

Advocate : Manu Tom Cheruvally, P. Gopakumar

Final Decision : Allowed

Judgement

1. The present appeal is directed against the impugned order dt. 02/02/2021 passed by the Commissioner of Customs(Appeals) whereby the

Commissioner(Appeals) has rejected the appeal of the Appellant and upheld the Order-in-Original.

2. Briefly, the facts of the present case are that the appellant had filed the Bill of Entry No.8634287/29.08.2020 for the clearance of the goods

declared as â??Pottassium Humate, Seemax LQ etc.â? with a declared assessable value of Rs.22,68,468/-. The appellant had classified the item

declared as â??Pottassium Humateâ? and the items declared as â??seaweed extract NPK water soluble fertilizers Seemax LQ5 Ltr & Seemax LQ-

1 Ltrâ? under the CTH 31059090 & 31052000 respectively. Representative samples were drawn by the officers during the examination of the goods

and the test results obtained from the Customs Lab showed that the first item was mainly composed of potassium salt of humic acid which may find

use as a plant growth regulator and the other two items demonstrated the characteristics of seaweed extract and accordingly re-classified them under

the CTH 38089340 & 31010000 respectively and the appellant had also accepted the classification changes vide their letter dt. 02/10/2020. The

appellant has requested vide letter dt. 05/10/2020 for the detention of the first item and release of the remaining items as they were not in a possession

of the required registration from the Central Insecticides Board and Registration Committee for the first item as stipulated under the Import Policy for

the CTH 38089340. As the authority arrived at a conclusion that the appellant had imported the first item declared as â??Pottassium Humateâ?

valued at Rs.9,61,805/- by violating the Policy Conditions to HS Code 3808 in the Import Policy of Foreign Trade Policy 2015-20 and therefore,

confiscated the impugned goods under the provisions of Section 111(d) of the Customs Act, 1962 and allowed redemption on production of the

necessary registration certificate. A penalty of Rs.25,000/- was also imposed on the appellant under the provisions of Section 112(a) of the Customs

Act, 1962. Aggrieved by the Order-in-Original, appellant filed appeal before the Commissioner(Appeals) who also rejected the appeal. Hence the

present appeal.

3. Heard both sides and perused the records.

4. Learned counsel for the appellant submitted that the impugned order is not sustainable in law as the same has been passed without properly

appreciating the facts and the law and the documentary evidence produced by the appellant before the learned Commissioner(Appeals). He further

submitted that both the authorities have failed to note the specific version of the appellant that the confiscated goods i.e Pottassium Humate is not

insecticide in the Insecticides Act 1968 and hence the same is not covered as an insecticide. He further submitted that even the laboratory test report

at the instance of the Customs Department also did not conclusively classify it as insecticide but the finding is that â??it may find use as a plant

growth regulatorâ?. The learned counsel also submitted that both the authorities have not given any reason or explanation for ignoring the entire

documents which were produced by the appellant along with his reply and subsequently obtained from Central Insecticide Board and Registration

Committee which clearly shows that the impugned goods does not fall in the category of insecticides and hence is not included in the Schedule of

Insecticides Act, 1968. Learned counsel further submitted that the Assistant Commissioner(Customs) passed the order on 05.10.2020 but the same

was not made available to the appellant in spite of the best efforts made by the appellant and finally the said order was issued by the Assistant

Commissioner only on 11.11.2020 and in the meantime the appellant was compelled to deposit a penalty amount of Rs.25,000/- on 06.10.2020 and the

appellant deposited the same under the impression that the goods are going to released but when the appellant got the original order, he was surprised

to find that the goods were confiscated.

5. On the other hand, the learned AR defended the impugned order.

6.1. After considering the submissions of both the parties and perusal of the material on record, we find that the appellant imported Pottassium

Humate vide Bill of Entry No.8634287 dt. 29.08.2020 which was declared as â?? other fertilizerâ? and classified as CTH 31052000. The import of the

said goods was denied by the Customs on the ground that it is a restricted item and requires registration from the Central Insecticide Board and

Registration Committee. Thereafter the appellant approached the said Insecticide Board and Registration Committee and vide letter dt. 05.11.2020

(Annexure G in the appeal memorandum), the Central Insecticide Board and Registration Committee, Faridabad informed that Pottassium Humate is

not included in the Schedule under the Insecticide Act and hence it does not require registration. We also find that both the authorities have relied upon

the test report issued by the Customs Department but the same does not conclusively classify the impugned goods as insecticide. The test report of

the Customs only says that â??it may find use as a plant growth regulatorâ? and on that basis, the Customs changed the classification and reclassified

the goods under CTH 38089340 which is also not tenable in law in view of the letter dt. 05.11.2020 issued by the Central Insecticide Board and

Registration Committee.

6.2. We also note that in the present case, the Assistant Commissioner of Customs passed the order on 05.10.2020 but did not provide the copy of the

same to the appellant in spite of the best efforts of the appellant to get the copy. Further the Assistant Commissioner issued the said order only on

11.11.2020 as stated in the order itself, which means after more than one month and in the meantime compelled the appellant to deposit the penalty amount which was deposited by the appellant on 06.10.2020 even without the issuance of the order by the original authority. We find no justification

for issuing the order by the Assistant Commissioner after the expiry of more than one month when there is a live consignment involved in this case.

We also do not find any reason why the appellant was compelled to deposit the penalty even without the issuance of the order by the Assistant

Commissioner of Customs. We do not appreciate the conduct of the original authority in dealing with this present case and withholding the order for

more than one month in case of live consignment. We are constraint to observe the conduct of the Assistant Commissioner in dealing with this case

and warn the Assistant Commissioner of Customs to be careful in future while dealing with live consignment.

7. In view of the letter dt.05.11.2020 issued by the Central Insecticide Board and Registration Committee, Faridabad informing that the impugned

items is not included in the Schedule under the Insecticide Act, 1968 and hence it is not required registration, we set aside the impugned order and

direct the Assistant Commissioner to release the confiscated consignments immediately and also return the penalty amount of Rs.25,000/- deposited

by the appellant prior to the issuance of the Order-in-Original. With these observations, we allow the appeal with consequential relief.

(Order was pronounced in Open Court on 18/06/2021)

