
(2024) 12 CESTAT CK 1245

In the Customs, Excise And Service Tax Appellate, New Delhi

Case No : Custom Appeal No. 51986 of 2023

**M/s. R I Trading Co. @APPELLANT @Hash Commissioner of Customs
(Import) Inland Container Depot, Tuglakabad @RESPONDENT**

Date of Decision : 23-12-2024

Acts Referred:

Customs Act, 1962 — Section 46(4), 108, 111(m), 114A

Citation : (2024) 12 CESTAT CK 1245

Hon'ble Judges : Binu Tamta, Member (J); P. V. Subba Rao, Member (T)

Bench : Division Bench

Advocate : Madhumita Singh, Rakesh Kumar

Final Decision : Dismissed

Judgement

Binu Tamta, J

1. The present appeal has been filed challenging the Order-in-Appeal No. CC(A)/CUSTOMS/D-II/IMP/ICD/TKD/1333/2021-22 dated 05.11.2021 whereby the Commissioner (Appeals) confirmed the confiscation, interest and penalty under the provisions of the Customs Act, 1962, the Act along with anti-dumping duty.

FACTS:

2. Based on a specific intelligence regarding evasion of Anti-Dumping Duty by mis-declaration, the consignments imported by the Appellant vide Bills of Entry, B.E No. 2935486 dated 15.10.2015 were examined by SIIB, TKD Import. The goods were declared as "P.S. Printing Plates (Photosensitive Printing Plate)" under CTH 84425010 imported from China. During examination on 03.11.2015, the goods were found to be 75000 pieces of Aluminum Printing Plates having one side blue in colour and other side natural aluminum colour. Representative samples were drawn on the spot for further investigations and sealed with Customs Seal. The impugned goods were assessed provisionally and allowed to be released on Test Bond of bond value of Rs. 48,83,463/-.

3. After the available Government channels for testing of Aluminum Printing Plates refused to test the samples, the samples were referred for testing to one

private lab i.e M/s Don Bosco School of Printing (Don Bosco Technical Institute), New Delhi, vide Test Memo dated 14.02.2017. The said Testing Lab provided test report vide their letter dated 30.03.2017, for the impugned B/E, as under:-

"i) Nature and Composition: - Aluminum Plates with PS Coating for printing purpose.

ii) Whether it is Aluminum

a) CTCP Printing Plates: Yes

b) Violet Printing Plates: No

c) Thermal Printing Plates: No

Observation: - These are CTCP printing plates as tested on CTCP Machine.

These plates are sensitive to normal Ultra Violet light and can be developed manually with PS developer."

4. Based on Test Report, it appeared that the impugned goods were Compute to Conventional Plate (CTCP) Printing Plates and thus, as per Notification No. 51/2012- CUS (ADD) dated 13.12.2012, Anti Dumping Duty was leviable on Digital Offset Printing Plate of specification Violet/ Thermal/ CTCP imported from China under Tariff Heading 8442.

5. Statement of the importer, Shri Rajat Verma, the proprietor of the appellant company was recorded on 17.04.2017, where he raised an objection that the goods imported were not tested by conventional method and also the test has been conducted after expiration of the plates. Show Cause Notice dated 20.06.2017 was issued to the appellant, however he failed to submit any reply thereto. The personal hearings fixed by the adjudicating authority on 26.12.2017, 18.01.2018 and 15.02.2018 were not attended by the appellant. Subsequently, vide letter dated 04.04.2018 requested that the matter may be fixed in the third week of April, 2018. Accordingly, personal hearing was fixed on 07.06.2018, 20.08.2018 and on 25.03.2019, however, the appellant failed to appear nor sent any request for any accommodation. The adjudicating authority relying on the allegations raised by the proprietor of the appellant in his statement recorded under section 108 of the Act, that the plates were not tested by conventional method and were tested after the expiration of the plates considered the issues and decided against the appellant confirming the confiscation under section 111(m) of the Act and also the anti-dumping duty along with penalty of the same amount. In addition, penalty was imposed on the proprietor under section 114A of the Act. Being aggrieved, the appellant filed an appeal which has been dismissed by the impugned order. Hence the present appeal.

6. Heard Ms. Madhumita Singh, learned counsel for the appellant and Shri Rakesh Kumar, learned authorized Representative for the Department, and perused the record of the case.

7. Ms. Madhumita Singh, the learned counsel for the appellant has reiterated the arguments as taken before the Commissioner (Appeals). She submitted that the Shelf life of P.S. Plates for offset printing is 18 months and the samples of the goods in question were sent for testing to the lab on 20.02.2017 vide testing memo 982 after a period of one year three months and seventeen days. Elaborating her submissions, she argued that the relevant invoice is dated 18.04.2015, which implies that the plates were manufactured much before the said date and the test report is dated 30.03.2017 by which time the shelf life of 18 months of the plates had expired. The testing of the expired goods does not reflect the authenticate characteristics on testing the same. The learned counsel for the appellant has also raised an issue that the testing conducted by Don Bosco Technical Institute was without their consent and they were not having proper mechanism to conduct the test. The tests have not been conducted through conventional method of testing and therefore, the test report is not reliable. The learned counsel for the appellant has relied on the decision of this Tribunal in the case of Sun N Sand Exim (I) Pvt Ltd, Final Order No.58744/2024 in Customs Appeal No. 51231/2022 (dated. 30.09.2024) and also on the decision by the Ahmedabad Bench in Acme Micronised Minerals vs. Commissioner of Customs, Mundra, (2024)17CENTAX 1(Tri.-Ahmd) in support of her submissions. She therefore, prayed that the goods were not liable for confiscation and penalty and hence the present appeal may be allowed.

8. Shri Rakesh Kumar, the learned authorized representative submitted that on suspecting mis-declaration with respect to the description and ITC (HS), the consignments were examined in the presence of the authorized representative of the respondent and samples drawn were sent to Pusa Polytechnic for testing on 19.11.2015, however, they refused to carry out the testing due to non-availability of the facilities to test. Thereafter, Chemical Division MSME-TC, New Delhi and Senior Scientific Officer Testing Laboratory, Cuttack, but they also expressed their inability to test the same. The samples were sent vide Test Memo No.982 dated 14.02.2017 to a private lab, i.e., M/s. Don Bosco Technical Institute of Printing vide letter dated 20.02.2017. The learned authorized representative relied on the test report dated 30.03.2017 by the Don Bosco Institute and submitted that the appellant has not been able to prove contrary to the same. They had neither prayed for retesting nor requested for cross-examination of the technical person from M/s. Don Bosco. Referring to the Test Memo No.982, he submitted that the samples were sent for testing with the prior approval and consent of the respondent. The learned authorized representative has also relied on the decision of this Tribunal in the case of Sun N Sand Exim Ltd., 2017(357) ELT 624(Tri.-Delhi). Accordingly, it has been prayed that the appeal needs to be dismissed and the impugned order is required to be affirmed.

9. From the records of the case, we find that the basic challenge of the appellant is to the test report relying on the findings of this Tribunal in the later decision in Sun N Sand, where test report was held to be not reliable as the lab was lacking proper infrastructure for CTCP machine testing and, therefore, outsourced it for

testing. The facts of the present case are not identical to the case of Sun N Sand in so far as the authenticity of the test report is concerned. Though in both the cases, the Government labs had refused to conduct the test due to non-availability of the infrastructure and the testing was forwarded to the private lab, i.e., M/s. Don Bosco, however, the present case is distinguishable as the testing had not been outsourced by M/s. Don Bosco and it has also not been proved by the appellant herein that M/s. Don Bosco was not fully equipped to carry out the testing of the samples. In the case of Sun N Sand (*supra*), it was noted that on cross-examination of the technical expert from M/s. Don Bosco, the Commissioner (Appeals) had set aside the imposition of anti-dumping duty, whereas in the present case as noted by the original authority and as is evident from the absence of the appellant before the adjudicating authority, they have never sought for any cross-examination of the technical experts of M/s Don Bosco and in that view, the contention raised by the appellant that they have not been granted any opportunity of cross examination is unsustainable. Hence, the findings of the Tribunal in Sun N Sand are not applicable in the present case and no fault can be attributed to the test report.

10. We also cannot ignore the fact that as per the procedure for drawing the samples, one sample is given to the aggrieved party, i.e. the appellant herein and the appellant had an option to get the retesting done through the sample given to him, however, they refrained from exercising this right.

11. The contention raised by the appellant that the samples were sent for testing to Don Bosco Institute was without their consent and hence the test report cannot be relied upon is *prima facie* untenable. As per the Test Memo No.982 dated 14.02.2017, we find that it bears the signature in the column meant for CHA/IMPORTER REPRESENTATIVE. There is no reason to doubt the authenticity of the said document. The objection taken is contrary to the record and hence rejected.

12. The learned counsel also submitted that the Don Bosco Institute did not have the facility of testing and placed reliance on the decision in *Acme Micronised Minerals*, *supra* where it has been held that when the laboratories do not have testing facilities, its test report cannot be relied upon and the goods passed on the basis of such test report is unsustainable. On perusal of the said decision, we find that in the facts of that case, the Tribunal has relied on the earlier decision in *Gaurav Laboratories Industries vs. Commissioner*, 2024(387)ELT 211(Tri.-Ahmedabad) which had considered the various Circulars issued by the CBEC. It was found that the facilities to test waste oil or furnace oil was made available only as per the Circular dated 07.06.2009 and prior to that, the CRCL Vadodara and CRCC, Delhi did not have the facilities to test the waste oil/ furnace oil. Hence, the said decision is not applicable to the facts of the present case.

13. In continuation, the challenge to the method adopted by the testing agency being faulty as they were not tested by the conventional method. However, the appellant has not furnished any data that this is the only available method for

testing and what would be the possible difference in the test results by not adopting the said method. The adjudicating authority rightly observed that it is for the testing agency to decide and adopt the suitable method for the purpose of testing. Confirming the said view, we are of the opinion that the appellant cannot dictate the terms to the testing agency or the Department to have the test conducted by adopting a particular method as per their choice.

14. On the issue, that the test was conducted after the expiry period of 18 months and therefore, the test report cannot be relied upon has been rightly rejected by the adjudicating authority as the testing agency has no way stated in the test report that the shelf life of the Plates had expired. Nor the appellant had produced any evidence from the supplier about the shelf life of the plates. Considering that the invoice of the goods is dated 18.04.2015 and hence they could have been manufactured sometime before the said date, the samples drawn from the consignment on 03.11.2015 were initially forwarded to the Government lab on 19.11.2015 but due to the unforeseen circumstances, the samples were finally sent on 14.12.2017 and soon, thereafter, the test report was made on 30.03.2017. According to the appellant, the samples sent on 20.02.2017 was late by one year three months and seventeen days, however, it is not clear from what date the said period has been calculated as the date of manufacturing has not been mentioned. Since only the date of invoice as 18.04.2015 is available, the delay, if any, is not really very material as it would not change the nature and characteristics of the goods. The declared goods, as P.S. Plates, would remain the same even on the expiry of eighteen months and would not convert to CTCP Printing Plates. The simple illustration is, that if a food item, for example, bread which normally comes with the specification, "Best before" say 15th January 2025, if tested anytime after the said date would not convert into "Roti". The bread would remain bread and infact, is edible for a few days later even after the expiry date. Therefore, the argument of the learned counsel that expired goods no way reflect its authentic and correct characteristics on testing has no merit and is unsustainable.

15. We may also refer to the earlier decision in Sun N Sand case where the order of the Commissioner (Appeals) holding that the CTCP Aluminium are pre-sensitized Plates was upheld and the anti-dumping duty was confirmed.

16. From the discussion above, we are of the view that the test report by Don Bosco was not faulty and relying on the same the authorities below have rightly held that the subject goods have been mis-declared by the appellant as Aluminium P.S. Printing Plates so as to evade the imposition of anti-dumping duty under the notification no. 51/2012-CUS(ADD) dated 03.12.2012. The appellant having given wrong description have violated the provisions of section 46(4) of the Act as such the goods are liable for confiscation under section 111(m) of the Act. Consequently, the appellant is liable to pay the anti-dumping duty of Rs.44,15,360/- along with the penalty of the same amount under section 114 (A) of the Act.

17. We do not find any error in the impugned order and hence the same is affirmed. The appeal is accordingly, dismissed.

(Order pronounced on 23rd December, 2024)