courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 21/08/2026

(2021) 10 CESTAT CK 0052

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 20486 Of 2020

Sanson Chemicals Industries — APPELLANT

Vs

Commisisoner Of Customs — RESPONDENT

Date of Decision : 25-10-2021

Acts Referred:
Customs Act, 1962 — Section 111(d), 112(a), 125

Citation : (2021) 10 CESTAT CK 0052

Hon'ble Judges : P. Dinesha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

1. The only issue to be decided in this case is, whether the Revenue is justified in imposing redemption fine under Section 125 and penalty under Section 112(a) of the Customs Act, 1962?

2. Facts are not in dispute. The appellant imported "Copper Sulphate Pentahydrate Industrial grade (powder)" from Taiwan. It was the case of the Revenue that the said goods was an insecticide, the import of which was permitted only through designated ports; Cochin Port was not one of the designated ports as per the Ministry of Agriculture and Farmers Welfare Notification dt. 22/12/2017 and hence, the imported goods were liable for confiscation under section 111(d) of the Customs Act. Accordingly, Order-in-Original was passed ordering confiscation; however giving an option of redemption on payment of fine under Section 125 ibid and also imposing a penalty under Section 112(a) ibid. The appellant filed appeal before the Commissioner of Customs (Appeals), Cochin, who vide impugned order, has rejected the appellant's appeal against which the present appeal has been filed before this forum.

3. Heard Shri P.A. Augustian, learned advocate for the appellant and Shri K.B. Nanaiah, Assistant Commissioner, learned AR for the Revenue and perused the

documents placed on record. I have also gone through the decisions / orders relied upon during the course of arguments.

4. The appellant has all along claimed that the goods imported was not an insecticide per se, but is used in the manufacture of insecticide, for which the appellant had already obtained registration under the relevant ministry. Further, the appellant has also claimed that agreement was entered into with its overseas supplier on 01/02/2018, the goods were thereafter exported under Bill of Lading dt. 11/02/2018. Bill of Entry on arrival of the said goods was filed on 06/03/2018 for the clearance, but it was on 07/03/2018 that the Revenue issued a Trade Notice bearing No.7/2018 communicating that the import of insecticides through Cochin Port was not permitted. In an identical situation, the Hon'ble High Court of Kerala has held that imposing port restriction by invoking the provisions of Insecticide Rules, 2017 is unsustainable, in the case of M/s. Chemplast Sanmar Ltd. Vs. Deputy Commissioner of Customs, in Writ Petition (c) No.34268 of 2017 vide judgment dt. 06/06/2018. The appellant also relied on the said judgment in its case also since facts are identical, but the same was not accepted by the Revenue.

5. The learned AR while supporting the reasons in the orders of the lower authorities, has also relied on an order of New Delhi Bench of the CESTAT in the case of Rajhans Fertilisers Ltd. Vs. CCE&ST, Indore [2018(7) TMI 1300 - CESTAT New Delhi] to justify the levy of fine and penalty.

6. Having considered the rival contentions, I find that the Revenue has nowhere doubted the bona fides of the appellant. Moreover, Hon'ble High court of Kerala in its order dt. 12/04/2018 in Review Petition No.357 of 2018 in Writ Petition (C) No.9193/2018 filed by the appellant, has also directed the Revenue to examine whether the goods imported was an insecticide itself, in the following words :

"5. In the light of the submissions made at the Bar, the issue whether the cargo imported is Copper Sulphate or Copper Sulphate Pentahydrate needs to be considered, and since the same cannot be considered in a proceedings of this nature, I deem it appropriate to recall the judgment so as to dispose of the writ petition directing the competent authority under the Customs Act to complete the adjudication in respect of the cargo, so that the issue now raised also could be raised by the petitioner in the said adjudication process. Ordered accordingly."

7. There is a Bill of Entry wherein the goods is described, there are other documents like contract with foreign supplier, Bill of Lading, etc. which when examined/considered, could throw light in deciding what was imported, but nothing is placed on record. Strangely, the lower authorities have, without adhering to the directions of Hon'ble High court in the appellant's own case, appears to have relied on the conclusions of Hon'ble High court in the case of M/s. Chemplast Sanmar Ltd. (supra). The essence of directions of Hon'ble High court in the appellant's case was for placing proper facts on record, application of case laws would follow provided the proper facts are placed on record. Now, the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/sanson-chemicals-industries-…

doubt expressed in the appellant's writ petition as to what was imported still remains at large. The revenue therefore could not have proceeded without carrying out this exercise since it is the direction of Hon'ble High court. Strangely and without placing anything on record, the Order-in-Original has proceeded to confiscate and offer redemption fine only for the reasons that the appellant had violated the port restriction. Port restrictions would apply if the cargo imported is per se insecticide.

8. Penalty under Section 112(a) could be fastened only if the facts point out to the possible commission or omission as described therein, but when there is miserable failure in considering/examining as what was actually imported, to jump the gun alleging port restrictions is clearly arbitrary and unjustified.

9. I find strength from ratio of the Hon'ble High Court of Kerala in the case of M/s. Chemplast Sanmar Ltd. (supra) wherein it has been held that port restrictions imposed by invoking the provisions of Insecticide Rules, 2017 was unsustainable. Moreover, the doctrine of precedence mandates that it is the ratio in the decision which is to be followed and not mere conclusions. Going by the ratio of the Hon'ble High Court, I am of the view that the redemption fine imposed as also the penalty fastened on the appellant is unjustified and accordingly, I set aside the impugned order insofar as the same relates to the redemption fine and penalty are concerned. The appeal is allowed on the above terms.

(Order pronounced in the Open Court on 25/10/2021)

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/sanson-chemicals-industries-…