

CUSTOMS APPEAL NO.35 OF 2017

The Commissioner of Customs, NS-I (Nhava Sheva)	Appellant
versus	
Anjeny Loys Private Limited	Respondent

Mr.Vijay Kantharia with Mr.Jitendra B. Mishra for appellant.

Mr.V.M.Doiphode i/by V.M.Doiphode and Co. for respondent.

CORAM : S.C.DHARMADHIKARI AND
PRAKASH D. NAIK, JJ.

DATE : 26th March 2018

PC :

1. By this appeal the Revenue challenges the order of the Customs, Excise and Service Tax Appellate Tribunal ('Tribunal') dated 20th February 2017. The Tribunal reversed the order of Commissioner (Appeals) and the order-in-original.

2. Mr.Kantharia appearing on behalf of Revenue in this appeal would urge that the substantial questions of law, as proposed by Revenue at pages 5 and 6 of the paper book, squarely arise from the order of Tribunal. The contention of Mr.Kantharia is that the goods were liable for confiscation. The respondent-assessee is an importer. He filed a bill of entry dated 25th October 2015 for import of the goods stated to be not for human consumption, uncleaned and unsorted. The import was from a USA party. The assessee declared the assessment value of Rs.15,76,480.84 under Heading

No.23099039 of Customs Tariff Act. As the goods were declared not for human consumption, they were ordered for first check examination and the samples were forwarded to a laboratory. Intelligence was gathered which indicated that the assessee had imported the goods in a container from USA through JNPT Port, Raigad, Mumbai. The suspicion was that the consignment may contain the goods fit for human consumption, which has not been declared while filing the bill of entry in order to evade higher custom duty and a mandatory no objection certificate of the Food Safety Standards Authority of India ('FSSAI' for short). These standards are prescribed for certifying the goods as safe for human consumption in India.

3. That is how the confiscation was ordered, the order-in-original was passed and our attention is invited by Mr.Kantharia to the findings in the appellate order. The appellate order in paragraphs 11 and 12 refers to the above facts, according to Mr.Kantharia, and paragraph 13 refers to the certificates. These certificates, inter alia, include the certificate of FSSAI declaring that they will not come into picture as the goods are not meant for human consumption. Thus, the appellate authority also suspected that this is a modus operandi to bypass FSSAI and thereafter clear the goods for home consumption. The goods might then be consumed by human beings. That is how they may enter the market. The documents provide only a declaration that the goods are meant for industrial use. This by itself, according to Mr.Kantharia, was not enough. In any event, the reversal of such findings and conclusions would raise a substantial question of law.

4. Learned counsel for assessee, on the other hand, would submit that the issue was in respect of mis-declaration. The invoices from the supplier indicated that these are Pistachio Kernels Oil Stock Feed Grade for industrial use. The bill of entry was consistent with same description namely not for human consumption, uncleaned and unsorted. Thus, the assessee itself sought examination of the goods on the first check basis. The investigation report also indicates that samples of the goods were drawn by Appraising Officer and Revenue itself forwarded the goods/samples to the laboratory of their choice. The certificate of analysis of the samples drawn and sent by the Assistant Commissioner of Customs, indicated that the consignment is an animal feed and not for human consumption. That is how the Tribunal concluded that the authorities were in error that there was mis-declaration and secondly there was never any attempt to bypass the authority under the Food Safety Standards Act. Hence, there is no substantial question of law, according to learned counsel for assessee and the appeal deserves to be dismissed.

5. With the assistance of both the advocates we have perused the memo of appeal together with annexures thereto including the impugned order. It is apparent from the impugned order that the Tribunal decided purely a factual matter. It relied upon the findings in the report of the laboratory and chosen by Revenue officials themselves. Secondly, the findings themselves would indicate that the goods were not fit for human consumption. Then only question would remain whether the goods which were stated to be brought for industrial use, were fit for animal consumption. The issue raised by Revenue revolves on suspicion that these goods would be passed

off as goods certified to be fit for industrial use/animal consumption but would be consumed in preparing sweets etc., which would be detrimental to the safety of those consuming them. It is on this basis that the samples were drawn and they were forwarded to the laboratory. The laboratory on examination of the same certified that the goods are an animal feed and not for human consumption. It is in these circumstances that consistent with the declaration of the assessee, the Tribunal concluded that factually the FSSAI certificate would not be necessary. In the light of the fact that consignment has not been mis-declared, there was no scope for any confiscation. Further the Tribunal posed a specific query to the Departmental Representative whether there was any prohibition for import of the goods for industrial use but to be consumed as animal feed, he could not point out anything beyond stating that they are not fit for human consumption. This definitely was not the answer to the query of the Tribunal. In these circumstances the limited factual issue was dealt with and decided by the Tribunal.

6. To our mind, such a finding and conclusion cannot be termed as perverse or inconsistent, leave alone to the materials placed on record or any provision of law. Consequently the appeal fails. It is dismissed, but with no order as to costs.

(PRAKASH D. NAIK, J.)

(S.C.DHARMADHIKARI, J.)

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