IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT NO. I

Customs Appeal No. 40089 of 2022

(Arising out of Order-in-Appeal Seaport C.Cus. II No. 766/2021 dated 14.12.2021 passed by the Commissioner of Customs (Appeals-II), No. 60, Rajaji Salai, Custom House, Chennai – 600 001)

M/s. DSM Nutritional Products India Private Limited : Appellant
B-502, Delphi Building, Orchard Avenue,
Hiranandani Business Park, Powai,
Mumbai – 400 076

VERSUS

The Commissioner of Customs : Respondent
Chennai-II Commissionerate
No. 60, Rajaji Salai, Custom House, Chennai – 600 001

APPEARANCE:

Shri Santhana Gopalan D., Learned Advocate for the Appellant

Shri M. Ambe, Learned Deputy Commissioner for the Respondent

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

FINAL ORDER NO. 40016 / 2023

DATE OF HEARING: 11.01.2023

DATE OF DECISION: 30.01.2023

Order :

This appeal is filed by the appellant against the impugned Order-in-Appeal Seaport C.Cus. II No. 766/2021 dated 14.12.2021 passed by the Commissioner of Customs (Appeals-II), Chennai, whereby the rejection of refund claim filed by the taxpayer under Section 27(1) of the Customs Act, 1962, as made by the Adjudicating Authority, came to be upheld.

2. Brief facts, that are relevant and undisputed, *inter alia* are that the appellant imported Vitamin Premixes from its parent company, which were to be used as raw materials in the trial products such as biscuits, chocolates, etc.; that four Bills-of-Entry were filed for clearance; that the appellant also paid Basic Customs Duty (BCD) on provisional assessment basis since the transaction between the appellant and its parent company was a related party transaction; that the Department directed the production of clearance from the inspecting authority namely, the Food Safety and Standard Association of India (FSSAI); that the above inspecting authority found that the label on the goods indicated that the shelf life of the same had already expired and that therefore No-Objection was not given by the FSSAI.

3. The appellant requested the authorities for permission to re-export the imported goods in question, but however, the same came to be rejected by the authorities and the Joint Commissioner of Customs ordered for destruction of the goods in question. Subsequently, the appellant requested the Customs authorities for issuing final assessment in respect of the Bills-of-Entry in question and thereafter, also sought for refund of the Customs Duty paid by it in respect of the imported goods.

4. The Adjudicating Authority, however, vide communication dated 11.09.2020 proceeded to reject the refund claim of the appellant as "untenable" for the reasons, *inter alia*, that the refund application was filed beyond the specified time limit of one year as per Section 27 of the Customs Act, 1962; that the claim of the appellant was hit by Section 26A (3) *ibid.* and that the appellant did not comply with the Deficiency Memo issued by it. The appellant filed an appeal before the First Appellate Authority, who vide impugned order having rejected the appeal only on the ground that the appellant's claim was hit by Section 26A (3) *ibid.*, the present appeal has been filed before this forum.

5. Heard Shri Santhana Gopalan D., Learned Advocate for the appellant and Shri M. Ambe, Learned Deputy Commissioner for the Revenue.

6. After hearing both sides, I find that the only issue that is to be decided is: whether the rejection of refund claim of the appellant, as confirmed in the impugned Order-in-Appeal, is in order?

7. After going through the impugned Order-in-Appeal, I find that the First Appellate Authority has confirmed the rejection of refund only on the ground that the refund claim of the appellant was hit by the provisions of Section 26A (3) *ibid.* This finding is specifically challenged by the appellant since, according to it, the claim for refund was under Section 27 only.

8.1 The provisions of Section 26A and 27 of the Customs Act operate in different situations: Section 26A (1) specifically covers the refund of import duty in certain cases where the imported goods are found to be defective or not in conformity with the specifications, are identified to the satisfaction of the Assistant Commissioner, there is no claim of drawback and such goods are exported or the importer abandons the goods or they are destroyed or rendered commercially valueless. Thus, all the conditions at (a), (b), (c) and (d) provided under Section 26A (1) are to be satisfied cumulatively.

8.2 Sub-section (3) to Section 26A prescribes that "no refund under sub-section (1) shall be allowed in respect of perishable goods and goods which have exceeded their shelf life..". Thus, in my view, the scope of sub-section (3) is limited to the cumulative conditions under (a) to (d) of Section 26A (1) *ibid.* and the refund claim of any duty that has been paid could be entertained provided the said goods are cleared for home consumption. By ordering destruction, the imported goods in question could never be cleared for home consumption and consequently, the provisions of Section 26A *ibid.* would not apply. The only

provision, therefore, that applies is Section 27 and hence, the rejection of refund by taking recourse to Section 26A (3) by the authorities below is incorrect.

9. Section 27 also prescribes a time-limit of one year, but the same is subject to the saving proviso provided under sub-section (1B). There is no dispute that the appellant paid the duty provisionally and the same is reflected in the orders of lower authorities, including the order of destruction dated 27.05.2015 and thus, in terms of clause (c) to sub-section (1B) of Section 27 *ibid.*, the limitation (of one year), if at all, would apply from the date of adjustment of duty after the final assessment thereof. I find that even there is no dispute that the Revenue authorities have not passed the final assessment order as yet, as could be gathered from the grounds-of-appeal.

10. In view of my above discussions, I am of the considered view that the authorities below have erred in rejecting the refund claim, in a haste, even before a final assessment could be made as required under law.

11. For the above reasons, the impugned order cannot sustain and hence, the same is set aside and the appeal is allowed with consequential benefits, if any, as per law.

(Order pronounced in the open court on **30.01.2023**)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

Sdd