

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH - COURT NO. III

Customs Appeal No. 52364 of 2019

(Arising out of Order-in-Appeal No. CC(A)/CUS/D-I/IMPORT/NCH/186/2019-20 dated 24.05.2019 passed by the Commissioner of Customs (Appeals), New Custom House, New Delhi).

M/s Veekay Connectors Pvt. Ltd.,
H-12, H-13, UPSIDC Ind. Area, Naini
Allahabad -211010 (U.P.)

Appellant

VERSUS

Commissioner of Customs
New Custom House
New Delhi.

Respondent

APPEARANCE:

Sh. Rajesh Chhibber, Advocate for the appellant
Sh. Rakesh Kumar, Authorised Representative for the respondent

CORAM:

HON'BLE SH. P. V. SUBBA RAO, MEMBER (TECHNICAL)
HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)

FINAL ORDER NO. 50350/2023

DATE OF HEARING: 01.03.2023
DATE OF DECISION: 17.03.2023

BINU TAMTA:

The present appeal has been filed against the Order-in-Appeal No. CC(A)/CUS/D-I/IMPORT/NCH/186/2019-20 dated 24.05.2019 passed by the Commissioner of Customs (Appeals), New Custom House, New Delhi.

2. The appellant filed the bill of entry No. 5387305 dated 03.05.2014 under section 46 of the Customs Act, 1962 through their authorised customs broker under the invoice issued by PPI, Republic of Korea for clearance of goods declared as "PLC Splitter Module". The said bill was self assessed by the importer in terms of section 17(1) of the Customs

Act, 1962. The goods were examined 100% on first check basis and the goods were found as per the invoice and bill of entry.

3. The importer sought duty exemption under the Notification No. 12/ 2012-Cus dated 17.03.2012, Sr. No. 376, List No. 21 & Sr. No. 15 where duty benefit is granted for "Microlens and Splitter". The goods imported by the appellant did not have lenses and therefore did not meet the criteria of the exemption under the said notification for the item namely, "PLC Splitter Module". The relevant entry in the Notification is given below:

"376. 84, 85 or 90 The goods specified in List 21 Nil - -

(15) Passive optical parts, namely, Microlens and splitters, Micropositioners, Optical filters and gratings and Phase plates".

4. At the request of the appellant the consignment was cleared on provisional basis without any duty benefit under the notification and the said bill of entry was assessed provisionally charging duty on merit and on execution of PD Bond in terms of Section 18 of the Customs Act, 1962. The appellant requested that the sample of the product be tested by a competent and independent technical lab or specialist to ascertain whether the sample qualifies as, "Microlens and Splitter" so as to be eligible for exemption under the notification. Sample of the goods was drawn by the department from the imported consignment in the presence of the appellant/ CHA and the same sample was sent to IIT, Delhi for knowing whether the goods contained microlens or not. The test report dated 21.8.2014 was received from the IIT, Delhi through Professor Thyagarajan who tested the sample and found that there was no microlens in the said sample.

5. The appellant on his own sent a sample to Motilal Nehru National Institute of Technology, Allahabad, however, it is disputed that the sample provided by the appellant was from the same consignment which were imported by them under the bill of entry number 5387305 dated 03.05.2014. The appellant then submitted a test report dated 14.08.2014 of Dr Y K Prajapati, Assistant Professor, Department of Electronics and Communication Engineering, Motilal Nehru National Institute of Technology, Allahabad which confirmed the presence of microlens inside the "Splitter Module".

6. Here the appellant tried to claim the benefit of the exemption notification which as per the specifications was not available to them. Accordingly, show cause notice dated 19.05.2015 was issued to the appellant as to why the goods should not be confiscated under section 111 (m) of the Customs Act and why penalty be not imposed under section 112 and 114AA of the Customs Act. Since the goods were provisionally released redemption fine should not be imposed under section 125 of the Customs Act. SCN was confirmed by the adjudicating authority vide Order in Original dated 10.05.2016. The appeal preferred by the appellant was also rejected by the Commissioner (Appeals) vide Order in Appeal dated 24.05.2019. Hence the present appeal is filed before this Tribunal by the appellant/importer.

7. We have heard the learned Counsel for the appellant and the authorised representative for the revenue and have perused the record.

8. The short question in the present case is whether the product declared as "PLC Splitter Module" is entitle to the benefit of Duty exemption under the notification.

9. That from the notification it is clear that the goods, i.e. 'Microlens and Splitter' are only entitled to the benefit of exemption. Though the sample was taken in the presence of the appellant from the consignment imported, however he raised doubts on the veracity of the test report. As per the settled principles of law, the competency of the expert opinion cannot be doubted. The opinion of expert in the field of trade, who deals in those goods cannot be ignored rather due importance has to be given, **Commissioner of Customs (Import), Mumbai Vs. Konkan Synthetics Fibres, MANU/SC/0272/2012**. Therefore, the expert opinion given in the test report by the IIT, Delhi is not open to challenge. The High Court of Calcutta in **Collector of Customs Vs. National insulated Cable Company Limited, MANU/WB/0334/1993**, took the view that the test report of IIT, Kharagpur merits more attention and credibility.

10. The appellant had also obtained an expert opinion from Dr. Y. K. Prajapati, Assistant Professor, Department of Electronics and Communication Engineering, Motilal Nehru National Institute of Technology, Allahabad but the authenticity of the sample sent for testing was not there, as it was not sure that it pertained to the same consignment and therefore no reliance could be placed on it. However, we feel that when two contradictory expert opinion were on record, the proper course for the authorities below was to send the sample for a third report, which could have conclusively decided the issue. The failure to do so is improper which could not be rectified at this late stage.

11. As per the facts of the present case, goods imported by the appellant were examined 100% on first check basis and the goods were

found as per the invoice and bill of entry. Merely because the appellant sought for duty exemption on the belief that the goods imported by him fall within the scope of the exemption notification and the revenue took the view that the goods imported were not as per the specifications under the notification, it is not a case where goods have been improperly imported or mis-declared so as to confiscate the goods invoking section 111(m) of the Customs Act. Consequently, the appellant was not granted duty exemption and the goods were provisionally released on payment of regular duty. There was no reason for confiscation of goods or redemption fine of Rs. 1,00,000/- or the penalty to be levied under the Customs Act. We feel that justice will be done, if the penalty amount of Rs.9,44,601/- is set aside as no case is made out for penalty under section 112 and 114AA of the Customs Act. Also, there is no reason to confiscate the goods under Section 111(m) and consequently impose the redemption fine. We would like to refer to the decision in **Surana Industries Ltd Vs. Commissioner of Customs MANU/SC/0481/2015** where the Apex Court, in similar circumstances set aside the penalty amount of Rs. Six lakhs in the interest of justice while maintaining the impugned order, observed as :-

"3. This is also in the fitness of things considering that the National Metallurgical Laboratory had differed from the other expert opinions and therefore there were two views possible."

12. The appeal is disposed of accordingly and the impugned order is modified by upholding the demand of differential duty but setting aside the confiscation, fine and penalty.

(Order pronounced on 17th Mar., 2023).

(P. V. Subba Rao)
Member (Technical)

(Binu Tamta)
Member (Judicial)