



सीमा शुल्क आयुक्त का कार्यालय
नव सीमा शुल्क गृह, पणंबूर, मंगलूर -10
OFFICE OF THE COMMISSIONER OF CUSTOMS
NEW CUSTOM HOUSE, PANAMBUR, MANGALORE – 10

मि. सं. /S-03/262/2009

पारित दिनांक /Passed on: 16/07/2010

क्रम सं. /Sl. No: 03/2010

जारी किये गये दिनांक /Issued on: 16 /07/2010

मूल आदेश
ORDER-IN-ORIGINAL

श्री ई.सुकुमारन , एप AÉrÉÑ£ü (qÉÔsrÉÉÇMÜIÉ), सीमा शुल्क, मंगलूर सीमा शुल्क आयुक्तालय, से पारित।

Passed by Shri. E. Sukumaran, Deputy Commissioner of Customs(Appraising), Mangalore Customs Commissionerate

उद्देशिका
P R E A M B L E

१. यह प्रति उस व्यक्ति के व्यक्तिगत उपयोग के लिए बेशुल्क दी जाती है, जिसके लिए जारी की जाती है।

1. This copy is granted free of charge for the private use of the person to whom it is issued.

२. कोई भी व्यक्ति जो इस आदेश से व्यथित है, वे इस आदेश के विरुद्ध, सीमा शुल्क और केंद्रीय उत्पाद शुल्क (अपील्स) नियम 1982 के साथ संलग्न प्रपत्र फार्म सी.ए.-1/सी.ए.-2 (द्विप्रति में) में आयुक्त (अपील्स), सीमा शुल्क, बेंगलूर को अपील कर सकते हैं। इस आदेश के पावती के दो महीनों के अंदर अपील दायर कराा चाहिए। इस अपील में यायालय शुल्क स्टॉप रु. 1.62/- (रुपये एक और पैसे बासठ मात्र) लगाा चाहिए। उसके साथ मूल आदेश की दो प्रतियाँ, जिसमें से एक प्रमाणित प्रति होा चाहिए और जिसपर यायालय शुल्क नियम, 1870 के खंड मुद्दे सं. 6 में विर्दिष्ट के अनुसार 2 रुपये (दो रुपये मात्र) की यायालय शुल्क स्टॉप होा चाहिए।

2. Any person deeming himself aggrieved by this order may appeal against the order in Form C.A-1/C.A-2 (in duplicate) appended to the Customs and Central Excise (Appeals) Rules,1982 to the Commissioner of Customs (Appeals), 16/1, SP Complex, 5th Floor, Lal Bagh Road, Bangalore 27. The appeal must be filed within 60 days from the date of communication of this order. An appeal should bear a Court Fee Stamp of Rs.1.62 (Rupee One and sixty two paise only). It should be accompanied by two copies of order in original, one copy of which shall be a certified copy and must bear a court fee stamp of Rs.2/-(Rupees two only) as prescribed under Schedule I, Item 6 of the Court Fees Act 1870.

3. इस आदेश के विरुद्ध अगर कोई व्यक्ति अपील कराा चाहते हैं तो वे अपील करो के पहले लगाये गये दंड तथा मॉगे गये शुल्क को भुगताा करें और अपील के साथ ऐसे भुगताा के साक्ष्य प्रस्तुत करें, हीं तो सीमा शुल्क अधिनियम, 1962 की धारा 129 ई के उल्लंघा के कारण अपील अस्वीकृत किया जा सकता है।

3. Any person desirous of appealing against this order shall pending the appeal, deposit the duty demanded or penalty levied thereon and produce proof of such payment along with the appeal, failing which the appeal is liable to be rejected for non-compliance of the provisions of Sec 129 E of the Customs Act 1962.

Brief facts of the case:

M/s.Victory Soaps and Cosmetics Pvt. Ltd., Kinfra Park, Mysore Road, P.O.Chundale, Wayanad-673 123, Kerala (herein after referred to as "M/s.VSC") imported 81.350 Mts Palm kernel Oil of Industrial grade falling under the CTH 15132910 per vessel M.V.Tiger River . M/s.VSC have cleared the subject cargo under Bill of Entry No.230609/18.06.2009-60Mts and 230618/18.06.09-21.350Mts on provisional assessment basis after executing PD bond Nos.262/2009 and 263/2009 pending submission of documents, completion of further enquiries and chemical or other tests.

2. M/s.VSC declared the cargo as Palm Kernel Oil of Industrial grade and claimed NIL rate of duty under Notfn. No.21/2002-Cus dated 01.03.2002 as amended (Sl. No.33A). As M/s.VSC declared the cargo as Palm Kernel Oil of Industrial grade, and had filed an application for availing exemption under the Customs (Import of Goods at the concessional rate of duty for manufacture of Excisable Goods) Rules, 1996 for the manufacture of Soap. The sample of the item was drawn and sent for test in the NITK, Surathkal. The test result of the samples was reviewed to ascertain whether the same conforms to the condition laid down under the Notification No.21/2002-Cus dated 01.03.2002 as amended Sl.No.30 I (B) applicable for goods imported for the manufacture of soaps, for allowing concessional rate of duty. As per the condition under Sl.No.30 I (B) of the said Notification, all goods(except crude palm oil and crude palm stearin) having Free Fatty Acid (FFA) 20 per cent or more and falling under heading 1507, 1508, 1509, 1510, 1511, 1512, 1513, 1514 or 1515, imported for the manufacture of soaps, industrial fatty acids and fatty alcohol by a manufacturer having plant for splitting up of such oils into fatty acids and glycerols, can be cleared under concessional rate of duty of 12.5%. The Test reports Ref.Nos./ChE/T&C/4162A/2009-2010 and ChE/T&C/4162B/2009-2010 both dated 05.08.09, in respect of samples drawn from the subject import consignment pertaining to Bills of Entry No.230609 and 230618 both dated 18.06.09 respectively, received from NITK, Surthkal, indicated that the FFA in terms of Lauric Acid present by weight is less than 20%, which emphasized that the cargo was not entitled for the concession under Notification No.21/2002-Cus dated 01.03.2002 as amended. The said reports were furnished to the M/s.VSC vide this Office letter S-31/04/2009 Import Sample dated 18.08.09. In response to the said letter, M/s.VSC vide their letter dt. 26.08.2009 submitted that they had imported the goods at the concessional rate subject to following the procedure under the Customs (Import of Goods at Concessional

Rate of Duty for Manufacture of Excisable Goods) Rules, 1996; that the goods have in fact been so used in the manufacture of soaps only; that the duty leviable for goods covered under serial Nos. 30B and 33A of the table attached to notification No.21/2001 Cus dated 01.03.2002 had been revised to NIL under Notification No.42/2008 Cus dated 01-04-2008; that at the time of import the goods were liable to NIL duty, also as per the Free Fatty Acid results of the material; that there had not been any loss of revenue. They requested for re-test of samples in the Central Revenue Laboratory at Cochin as they did not agree with the test reports and the sample was sent for re-test to Custom House, Cochin.

3. The remnant sample of Palm Kernel Oil in sealed condition was received from M/s.NITK, Surtkal vide letter dated 15.09.09 which in turn was sent to the Customs laboratory, Cochin vide this Office letter S-31/04/2009 PD Bonds dated 16.09.2009 endorsing a copy to the importer.

4. The reports of re-test No. L-221(mg)/06.10.09 and L-225(mg)/06.10.09 both dated 13.10.2009 in respect of samples drawn from the import consignment pertaining to Bills of Entry No.230609 and 230618 both dated 18.06.09 respectively, received from the Chemical Examiner, Custom House, Cochin further confirmed that the FFA in terms of Lauric Acid present by weight is less than 20%.

5. The details of test reports of samples of Palm Kernel Oil received from NITK, Surtkal and Custom House, Cochin are furnished below:-

Sl.No	B/E & Date	Name of the lab	FFA content
01	230609/18.06.09	NITK, Surtkal	11.69
02		Custom House, Cochin	16.7 (Re-test)
03	230618/18.06.09	NITK, Surtkal	1.26
04		Custom House, Cochin	3.4 (Re-test)

6. M/s VSC vide their letter dt. 25.01.2010 that Customs cleared both materials are under Palm Kernel Oil Industrial Grade; that as per the test report of the Cochin Customs Houes Lab, they have mentioned the detailed specification of the both materials, and noted there is no reference available for Palm Kernel Oil Industrial Grade; that as per Iodine value results both materials are Palm Kernel Oil, because the Iodine Value of Palm Kernel Oil is 12 to 19; that they had imported the goods at the concessional rate subject to following the procedure under the Customs (Import of Goods at Concessional Rate of duty for manufacture of Excisable Goods)

Rules 1996; that the goods have in fact been so used in the manufacture of soap only; that they had also independently tested the goods in their factory before process;

7. Accordingly, a show-cause notice No.S-3/262/2009 PD bonds dated 25.02.2010 and a corrigendum dated 08.03.2010 was issued to M/s. VSCL, asking them to show cause as to why:

- (i) the provisional assessments of Bills of Entry No.230609/18.06.09 and 230618/18.06.09 should not finalized under Section 18(2) of Customs Act, 1962 denying the benefits of Notification No.21/2002-Cus dated 01.03.2002 as amended and applicable duty amounting to Rs.2076404/- (Rupees Twenty Lakhs Seventy Six thousand four and four only) as detailed in Annexure A & B to the show cause notice should not be levied;
- (ii) interest on the Customs duty mentioned at (i) above should not be recovered from them under Section 18(3) of the Customs Act, 1962 as applicable under Section 28AB of the Customs Act, 1962 .

8. The importer has given a written reply to the show-cause notice as well as to the corrigendum vide letter dt. 05.05.2010 and asked for opportunity for the personal hearing. In the written reply to the show cause notice, M/s. VSCL have submitted that the goods were imported at the concessional rate subject to following the procedure under the Customs (Import of Goods at Concessional Rate of duty for manufacture of Excisable Goods) Rules 1996 and executed bond in the regard; that the Cochin Customs Lab mentioned the detailed specification of the materials and noted there is no reference available for Palm Kernel Oil- Industrial Grade; that based on these test reports benefit of the notification cannot be denied; that the items imported by them is of industrial grade; alternatively they have requested the samples may be sent to any other Customs Approved Lab or CRCL, New Delhi:

9. As requested by them, the opportunity for personal hearing was granted on 16.06.2010. Sri. M. Muhammed, Managing Director, M/s VSC appeared for the personal hearing on 16.06.2010. During the personal hearing he has stated that the tests certifying varying of FFA content; that they have imported above 20% FFA material, but the result shows that is below 20%; that the below 20% FFA content material also included in this duty free scheme; that concessional rate of duty may be granted to them.

Findings:

10. I have carefully gone through the records of the case and reply submitted to the show-cause notice, both written and oral submissions made during personal hearing.

11. M/s.VSC declared the cargo as Palm Kernel Oil of Industrial grade and claimed NIL rate of duty under Notfn. No.21/2002-Cus dated 01.03.2002 as amended (Sl. No.33A). As per the condition under the said notification, all goods crude and edible grade are entitled for concessional rate of duty. The subject imported goods used for manufacture of soap and they had filed an application for availing exemption under the Customs(Import of Goods at the concessional rate of duty for manufacture of Excisable Goods) Rules, 1996 for the manufacture of Soap. As the goods imported were used for the manufacture of soaps, the benefit of notification No.21/2002-Cus dated 01.03.2002 as amended under Sl.No.30 I(B) is available subject to fulfillment of conditions laid down thereon and the imported goods does not cover within the ambit of the Notification No.21/2002-Cus dated 01.03.2002 as amended (Sl. No.33A). It is well settled that the assessment which is made provisional for a particular reason, will be provisional for any other reasons. This has been reaffirmed in the decision taken by the CESTAT, South Zonal Bench, Bangalore in the case of IJM Gayatri Joint Venture Versus Commissioner of Customs and Central Excise, Hyderabad reported in 2008 (231) E.L.t.683 (Tri.-Bang).

12. As per the condition under Sl.No.30 I(B) of the said Notification, all goods(except crude palm oil and crude palm stearin) having Free Fatty Acid (FFA) 20 per cent or more and falling under heading 1507, 1508, 1509, 1510, 1511, 1512, 1513, 1514 or 1515, imported for the manufacture of soaps, industrial fatty acids and fatty alcohol by a manufacturer having plant for splitting up of such oils into fatty acids and glycerols, can be cleared under concessional rate of duty of 12.5%.

13. The Test reports Ref.Nos./ChE/T&C/4162A/2009-2010 and ChE/T&C/4162B /2009-10 both dated 05.08.09 in respect of samples drawn from the subject import consignment pertaining to Bills of Entry No.230609 and 230618 both dated 18.06.09 respectively received from NITK, Surthkal, indicated that the FFA in terms of Lauric Acid present by weight is less than 20%, which emphasized that the cargo was not entitled for the concession under Notification

No.21/2002-Cus dated 01.03.2002 as amended. The reports of re-test received from the Chemical Examiner, Custom House, Cochin further confirmed that the FFA in terms of Lauric Acid present by weight is less than 20%. Further, to decide whether the goods are entitled for clearance at concessional rate of duty, only FFA content need to be ascertained and no other reference is required and as per the test results so received from Cochin Chief Examiner, the FFA content is less than 20% which clears the doubt of its eligibility of the exemption notification no. 21/2002-Cus dt.1.3.2002 as amended. I further relied upon decision of 2005 (182) E.L.T. 376 (Tri.-Chennai) that “*any analysis after a period of 3 months from the date of draw of sample would not serve any purpose*”.

14. Accordingly I pass the following order:

ORDER

15. I finalise the provisional assessment of Bills of Entry No. 230609/18.06.2010 and 230618/18.06.09 under Section 18(2) of the Customs Act, 1962 denying the benefits of Notification No. 21/2002-Cus dated 01.03.2002 as amended and observe total duty amounting to Rs. 2076404/- (Rupees Twenty lakhs Seventy Six thousand four hundred and four only) and interest under section 18(3) of the Customs Act, 1962 as applicable under Section 28AB of the Customs act, 1962.

(D.xÉÑMÑüqÉÉUIÉ/E.SUKUMARAN)
 एए AÉrÉÑ£ü (qÉÔsrÉÉÇMülÉ)/DEPUTY

COMMISSIONER

Encl:

सेवा म/टॉ,

M/s.Victory Soaps and Cosmetics Pvt. Ltd.,
 KINFRA Park, Mysore Road,
 P.O.Chundale,
 WAYANAD- 673 123

By Speed Post with AD

KERALA.

Copy submitted to: The Commissioner of Customs (Review Section),
 New Custom House, Mangalore.

Copy to Master file (Adjudication section).

