CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 736 of 2007-DB

[Arising out of Order-in-Original No. 1/JM/Cus/07 dated 07.09.2007 passed by the Commissioner, Gurgaon I]

M/s Vanick Oils and Fats Pvt. Ltd **......Appellant**
(Commodity Exchange Building Plot No. 2, 3 & 4, Sector 19, Vashi, Mumbai-400705)

VERSUS

Commissioner of Central Excise, Delhi-III, Gurgaon **......Respondent**
(Udyog Minar, Udyog Vihar, Vanijya Nikunj, Phase V, Gurgaon-122016 Haryana)

With

Customs Appeal No. 192 of 2008-DB

[Arising out of Order-in-Original No. 03-CUS-JM-07 dated 12.12.2007 passed by the Commissioner, Gurgaon I]

M/s Vanick Oils and Fats Pvt. Ltd **......Appellant**
(Commodity Exchange Building Plot No. 2, 3 & 4, Sector 19, Vashi, Mumbai-400705)

VERSUS

Commissioner of Central Excise, Delhi-III, Gurgaon **......Respondent**
(Udyog Minar, Udyog Vihar, Vanijya Nikunj, Phase V, Gurgaon-122016 Haryana)

APPEARANCE:

Present for the Appellant: Shri Naveen Bindal, Advocate

Present for the Respondent: Ms. Swati Chopra, Authorized Representative

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 60113-60114/2023

DATE OF HEARING: 15.03.2023
DATE OF DECISION: 28.04.2023

PER P. Anjani Kumar

Heard both sides and perused the records of the case.

2. Brief facts of the case in appeal no. C/736/2007-DB are that M/s Vanick Oils & Fats Ltd. have imported 2,26,800 kgs of Hydrogenated Vegetable oils (Vanaspati Ghee) and filed bill of entry no. 1203 dated 11.07.2007. On the basis of test report dated 02.08.2007 given by Central Food Laboratory, a quantity of 45,120 Kg was found to be adulterated and unfit for human consumption as it was found be not conforming to the standards laid down under item No. A-19 of Appendix B of the PFA Rules, 1955'. On the request of the importer, show cause notice was waived and Order-In-Original No. I/JM/Cus-Excus-07 dated 07.09.2007 was passed confiscating the impugned quantity of Vanaspati and imposing penalty of Rs. 18,10,851/- under Section 114 A of the Customs Act, 1962, an appeal filed by the appellant Tribunal vide order dated 27.03.2012 set aside the fine & penalty. Revenue challenged the order of the Tribunal in the High Court of Punjab and Haryana vide Cus-App-09 of 2012. The court vide order dated 21.03.2013 set aside the Tribunal's order and remanded the case back to the Tribunal. In the remand proceedings, Tribunal vide order dated 05.02.2015 dismissed the appeal of the party for non-prosecution. The importer filed an application for restoration of appeal which was dismissed by the Tribunal vide order dated 14.07.2014. Hon'ble High Court vide order

dated 05.09.2014 in Customs Appeal No. 30/14 has remanded the matter back to the Tribunal to decide the same afresh in accordance with law. Tribunal vide order dated 01.04.2015 upheld the Order-In-Original.

3. Brief facts of the case in appeal no. C/192/2008-DB are that the importer has also imported 323.55 MTs of Bakery Shortening and filed bill of entry no. 1201 dated 11.07.2007 and 1210 dated 12.07.2007. On the basis of test conducted by the Central Food Laboratory was found to be not conforming to the standards laid down under PFA Act, 1954. In this instance also the show cause notice was waived and an Order-In-Original again 03/Cus/JM/07 dated 14.12.2007 was passed confiscating 323.55 MTs of bakery Shortening; allowing it to be re-exported on payment of redemption fine of Rs. 10,00,000/- and imposing a penalty of Rs. 5,00,000/- under section 112(a)(i) of Customs Act, 1962. On an appeal filed by the appellant, the CESTAT vide order dated 27.03.2012 reduced the redemption fine to Rs. 3.5 lakhs and set aside the penalty of Rs. 5,00,000/-. On an appeal filed by the Revenue Punjab and Haryana High Court vide order dated 21.03.2013 remanded the matter to CESTAT to examine the question as to whether the consignment in question was stray import warranting concession in redemption fine and penalty or not? CESTAT vide order dated 05.02.2014 rejected the appeal and upheld the order dated 12.12.2007. ROA application was dismissed vide order dated 14.07.2014. On an appeal filed by the importer Punjab and Haryana High Court vide order dated 05.09.2014 remanded the matter back to CESTAT to decide the same afresh in

accordance with law and after affording an opportunity to the concerned parties. CESTAT vide final order dated 01.04.2015 restored appeal.

4. On an application filed for restoration of appeal, CESTAT Vide order dated 29.11.2019 restored both appeals C/736/2007 and C/192/2008.

5. Learned Counsel for the appellants submits that during the relevant period i.e. April, 2006 to September, 2008 they had imported as many as 159 consignments of Hydrogenated Vegetable oils, bakery Shortening; they submitted list of bills of entry. On going through the list it can be seen that there are more than 150 consignments imported by the appellants. This fact is not controverted by the Revenue either. In this context, it can be easily gleaned that the appellant is regular importer and the impugned consignments are not stray consignments. The consignments in which items were found to be non conforming to the PFA standards are in a very low proportion in comparison with the total imports. The query of the Hon'ble High Court of Punjab & Haryana as to whether the imports in question are stray is answered by the fact that though the appellant has imported about 160 consignments discrepancies were found in some packages in impugned in appeal no. C/736/2007 & C/192/2008 as above. However, when it came to appeal no. C/192/2008 the omission is of recurring value.

6. Coming to the question of confiscation and imposition of penalty, it is seen that some consignments have been found to be

non conforming to the standards as per PFA Act and being tested by National Food Laboratory. It is the argument of the appellants that all the consignments in question and also the other consignments carried a chemical analysis report issued by the respective authorities at the load-port and that a few consignments have been found to be marginally variant in some parameters like melting point from fatty acids etc. Learned counsel submits that National Food Laboratory certified some consignments to be unfit for human consumption only because the reading in respect of one or two parameters are at variance. The difference parameters can be attributed to the temperature in the importing country, storage, samples taken and the methodology of testing. He submits that in case any goods do not conform to the standards, they are required to be re-exported as per the PFA Rules; there is no reason whatsoever to impose any penalty or redemption fine as there was no *men rea* on the part of the importer appellant. He submits that in the case of appeal no. C/736/2007 penalty was imposed under Section 114A of the Customs Act, 1962 and such penalty can only be imposed when there is evasion of duty; as there is no evasion of duty and further as there is no demand of duty, penalty under section 114 A is not at all maintainable.

7. Learned Authorised Representative for the department submits that the appellants have violated the conditions of PFA Act and therefore the goods have become liable for confiscation; when the goods held liable for confiscation no *mens rea* is required to be established in terms of Section 112 of the Customs Act, 1962. He

submits that original orders of adjudication authority be maintained and appeals be dismissed.

8. In view of the above discussion, we find that the appellant importer have imported above 150 consignments, among which in about 2-3 consignments some lots were found non conforming to the standards under PFA Act. The fact that these consignments were inspected before shipment from the foreign country and respective authorities have issued certificates of analysis, which prove bona fides of the appellant importer. It is not the case of the department that the appellant importer was aware of the fact that the impugned goods were not conforming to the standards. Therefore, it cannot be held at least that the appellants had *mens rea*. We find that in terms of Notification No. 3(RE-2001) 1997-2002 dated 31.03.2001 that the products will have to comply with the quality and packaging requirements as laid down under PFA Act and that compliance of these conditions is to be ensured before allowing customs clearance of the consignments. We understand that customs authorities have detained these consignments for this reason and have imposed penalties and fine after following due process of law as contained in board circular No. 58/2001-CUS dated 25.10.2001 vide which it is directed that if the products fails the test, the customs authorities will ensure that the goods are re-exported out of the country by following the usual adjudication procedure or destroyed as required under the relevant rules.

9. In view of this, we find that the action of the department in proposing for confiscating the goods and imposition of fine and penalties is legally tenable. However, we find that the quantum of penalty and fine should be commensurate with the offence committed. In the instant case, it is established that the appellant has not violated the provisions intentionally and that there was no *mens rea* or any motive that can be attributed to the appellant. We find that neither section 111 nor section 112 of the customs act prescribed *mens rea* to be a pre-condition for the imposition of penalty. It is sufficient if, by the acts of commission or omission on the part of the importer, goods are rendered liable for confiscation. In this case impugned goods have been undoubtedly rendered liable for confiscation and accordingly the confiscation and imposition of penalty under section 112 is legal and proven. However, looking into the facts and circumstances of the case and the long history of litigation of the case, we find that ends of justice could be met if the redemption fine and penalty are suitably imposed in respect of appeal no. C/192/2008.

10. Coming to the other appeal i.e. C/736/2007 we find that in the instant case no redemption fine has been imposed and the goods were allowed to be re-exported imposing a penalty under section 114 A has been imposed. We find that penalty under Section 114 A is invariably linked to the quantum of duty evaded and therefore penalty under Section 114 A cannot be imposed in isolation. As there is no demand of duty in the impugned case, the imposition of penalty under Section 114 A cannot be sustained.

11. In view of above, the Appeal No. C/192/2008 is partially allowed by restricting the redemption fine to Rs. 3,00,000/- (three lakhs) and penalty under Section 112 to Rs. 1,00,000/- (One lakh). Other Appeal No. C/736/2007 is allowed.

(Order pronounced in the court on 28.04.2023)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

Kailash