

Garg and Co. Vs. Cc

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-17-2005

Judge : S Kang, Vice

Appellant : Garg and Co.

Respondent : Cc

Judgement :

1. Heard both sides. The appellants filed this appeal against the Order-in-appeal passed by the Commissioner (Appeals).
2. Brief facts of the case are that the appellants made import of Kraft Cheddar Cheese and filed a Bill of Entry dt. 25.3.2000. The goods were released on provisional basis to the appellants. The cheese was directly imported from M/s. Craft Wood Ltd., Australia.
3. Sample taken by the revenue sent to the Chemical Examiner and Chemical Examiner vide his report dt. 4.5.2000 find that the samples of Kraft Cheddar Cheese were not conformity with the PFA Rules, 1955. In the report it is mentioned that the milk fat content is less than the minimum prescribed limit. It is also mentioned that batch/Logt No., month and year of manufacturing is also not mentioned on the label.

Hence, sample is adulterated as well as misbranded. Dy. Commissioner of Customs wrote a letter to the appellants on 21.8.2000 to the effect that the

appellants are directed to bring back the said goods at CD, Tughlakabad, for taking further necessary action in terms of undertaking executed by them. In addition, the appellants were also directed to call back the remittance of foreign exchange made by the appellants. The appellants filed an appeal and Commissioner (Appeals) vide impugned order dismissed the appeal.

4. The contention of the appellant is that they imported the cheese from the manufacturer through trader to Singapore. The goods in question were consumable and goods were provisionally released to the appellant which was sold inputs market. The contention of the appellant is also that they procured certificate from the manufacturer regarding the date of manufacture and also certificate regarding the fat content of the goods in questions. The contention is that the Kraft Food Ltd. also certified that cheese is manufactured by hem is being exported to numerous countries in he Asia Pacific and Middle East Regions. Kraft is a brand name that is internationally recognised and goods are checked for compliance with Kraft Standards before being released for sale.

These laboratory tests are all carried out in nationally accredited National Association of Testing Authorities, Australia. The contention of the appellant is that after release of the goods, appellant also sent samples to different laboratories. One sample is sent to the Food Laboratory Govt. of NCT of Delhi and other to Shriram Institute for Industrial Research and both the test reports shows that the samples confirms to the standard of processed cheese. The contention of the appellant is that the Commissioner (Appeals) in the impugned order relied upon the Public Notice dt. 1.11.2001 wherein the present import was made in the year March, 2000, therefore, the Board's circular is no applicable to the present import.

5. The contention is that no SCN was issued for confiscation of the goods or for imposition of penalty, only direction was given by the Dy.

Commissioner to bring back the said goods at ICD, Tughlakabad. The contention is that the goods are sold in the market being consumable goods are not available for bringing back.

6. The contention of the revenue is that the processed cheese is not as per the provisions of Prevention of Food Adulteration Rules and as per the circular dt. 25.10.2001, it was clarified that if the product does not specify the requirements of Adulteration Act or Rules, clearance should not be allowed. Therefore, the impugned order was rightly passed.

7. The contention of the appellant is that cheese imported by them was provisionally released by the Customs authority which was subsequently sold in the market. The contention of Revenue is that the cheese imported by the appellant is not as per the parameters laid down under the Prevention of Food Adulteration, therefore, it is not liable for clearance as per Board's circular dt. 25.10.2001.

8. I find that Board's circular was issued on 25.10.2001 whereas the goods were provisionally released in March, 2000 and if the revenue was of the opinion that the goods are not with inconformity with the provisions of Prevention of Food Adulteration Rules, the goods should have been confiscated and goods should not be released on provisional basis to the appellant. There is no SCN issued by the adjudicating authority and in absence of any SCN for confiscation or for imposition of penalty, the adjudication order whereby it was directed them the appellants to bring back the goods which were originally released and by relying upon the circular dt. 1.11.2001 whereas the goods were imported in the month of March, 2000 is not sustainable hence set aside. The appeal is allowed.

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