IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH, ALLAHABAD
COURT NO. I

Customs Appeal No.70545 of 2016

Arising out of Order-in-Original No.24/COMMISSIONER/NOIDA-II/2015-16, Dated: 08.03.2016
Passed by Commissioner (Appeals), Customs, Central Excise and Service Tax, Ghaziabad

Date of Hearing: 14.05.2019
Date of Decision: 14.05.2019

M/s BHARAT IMMUNOLOGICALS AND BIOLOGICAL CORPORATION LTD

Vs

COMMISSIONER OF CENTRAL EXCISE
NOIDA-II

Appellant Rep by: Shri Anurag Mishra & Ms Pragya Pandey, Advs.
Respondent Rep by: Shri Gyanendra Kumar Tripathi, AR

CORAM: Archana Wadhwa, Member (J)
Anil G Shakkarwar, Member (T)

Cus - The assessee is a PSU which manufactures Polio Drops - For this it imports bulk polio vaccine manufactured by the WHO in terms of Notfn No 21/2002-Cus - The bulk drugs manufactured by the assessee were mostly consumed in its factory for further manufacture of Polio drops supplied to the Govt - There is no dispute as to the quantity of the drugs - But, since the orders placed by the Govt were not up to expectation, a part of the bulk drugs were left unutilized - Since such drugs had short shelf-life, the assessee sold them to another party which used them for manufacturing Oral Polio Drops - Since the assessee did not use the bulk drugs for the intended pupose of manufacturing Polio Drops at its factory, the Revenue opined that the assessee was not entitled for exemption under Notfn No 21/2002-Cus - SCN was issued proposing to raise duty demand & the same was confirmed upon adjudication with demand for interest being raised along with equivalent penalty - Besides, the bulk drugs sold by the assessee were confiscated & redemption fine was imposed owing to the goods not being available for physical confiscation - Hence the present appeal by the assessee.

Held: The Notfn No 21/2002 exempts bulk drugs, subject to condition that the procedure laid down in the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996 is followed by the assessee - The Rules provide concessional rate of duty conditional upon the importer using the goods in own factory for further manufacture of final product - The Rules also require the importer to maintain detailed records of the use of the imported goods & the same were maintained by the assessee - The fact that sale of the goods in 2007-08 were part of records maintained under such Rules, shows there to be no *mala fide* intent on part of the assessee - By considering the date of sale of bulk drugs as the relevant date, the proceedings initiated by the SCN are beyond even 5 years as per Section 28 of the Act - Besides, the assessee is a PSU and so no *mala fide* intent to evade duty can be attributed to it - Hence the demand is beyond even the maximum limitation period and so is hopelessly barred by limitation: CESTAT

Assessee's appeal allowed

FINAL ORDER NO. 70953/2019

Per: Archana Wadhwa:

After hearing both the sides, we find that the appellant is a Government of India entity engaged in the manufacture of 'Polio Drops'. For the said purpose they require bulk polio vaccine as prepared by World Health Organization which is being imported by them. In anticipation of Government's order for polio vaccines the appellant imported huge quantity of bulk polio vaccines under exemption in terms of Notification No.21 of 2002-Cus dated 01.03.2002. Serial No.83 of the said Notification grants full exemption from payment of duty to the bulk drugs used in the manufacture of life saving drugs or medicines, subject to the fulfillment of conditions annexed there to. In terms of conditions No.5 of the Notification, the importer is required to follow the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996. The said rules prescribe an elaborated procedure to be followed by the importer/manufacturer. Rule 4 refers to a certificate required to be obtained by the importer certifying that he intends to import goods for using the same in his factory at concessional rate of duty. Further, Rule 7 requires him to maintain simple accounts indicating the quantity and value of goods imported, a quantity of imported goods consumed for the intended purpose and the quantity remaining in stock, bill of entry wise and the importer is under a legal obligation to produce the said account as and when required by his jurisdictional Central Excise Officers.

2. The bulk drugs were manufactured by the appellant during the period April 2007 and the major part of the same was consumed in their factory for further manufacture of Polio Oral Drops which were supplied by them to Ministry of Health, Government of India. There is no dispute about the said quantity. However, as the orders placed upon them by the Health Department was not up to their expectation a part of the bulk drugs imported by them was left unutilized with them. As the said bulk drug has a short shelf life, the appellant instead of wasting the same, sold it to another party who further utilized it in manufacture of Oral Polio Drops. The said sale took place in the year 2007-08.

3. Inasmuch as the appellant did not use the imported bulk drugs for the intended purpose of manufacture of Polio Drops in their factory, Revenue entertained a view that they were not entitled to the benefit of Exemption Notification inasmuch as they have not fulfilled the conditions of the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996. Accordingly, proceedings were initiated against them by way of issuance of show cause notice dated 27 March, 2015 proposing to confirm the demand of duty of Customs to the extent of around Rs.99 Lakhs. The said show cause notice culminated into the impugned order passed by the Commissioner confirming the demand along with confirmation of interest and imposition of penalty of identical amount under Section 112(a) of the Customs Act. In addition he confiscated the said bulk drugs which had been sold by the appellant and were not available for physical confiscation. Accordingly, he put redemption fine of Rs.2 crore upon the appellant. The said order of Commissioner is impugned before us.

4. After hearing both the sides duly represented by learned advocate Shri Anurag Mishra and Ms. Pragya Pandey appearing for the appellant and learned A.R. Shri Gyanendra Kumar Tripathi appearing for the Revenue, we note that the main allegation against the appellant is that they have not used the imported bulk drugs in their own factory for further manufacture of Polio Vaccines which was the intended purpose for the scheme. Instead the said bulk drugs stand sold by them and thus there is violation of 1996 Rules. On going through the notification in question, we note that the same grants exemption to the Bulk Drugs subject to the conditions that the procedure as laid down in 1996 Rules is followed by the appellant. The said Rules are detailed Rules requiring importer to follow a detailed elaborate prescribed procedure. As already noticed, the said Rules provided concessional rate of duty subject to the conditions that the importer would use the goods in his own factory for further manufacture of the final product. Admittedly in the present case the imported Bulk Drugs has not been utilized by the appellant in his own factory for further manufacture of Polio Drop. Instead the Bulk Drugs stands sold by them to another private party who have though used the same for intended purposes for manufacture of Polio Drops only and further supplied them to the Ministry of Health.

5. However, we find that the proceedings against the appellant stand initiated by way of issuance of a show cause notice dated 27 March, 2015. As already observed, the imports took place during the period April to October, 2007 and the sale of the imported goods was during the financial year 2007-08. In terms of the Rules in question the importer is required to maintain the detailed records of the use of the imported goods, which appellant had been undisputedly maintaining. The said Rules requires the assessee's Jurisdictional Central Excise officers to produce the said account before him as and when required. Rule 8 enjoins an obligation on the Assistant Commissioner or Deputy Commissioner to ensure that the goods imported are used by the manufacturer for the intended purpose. As such it is seen that the records are required to be maintained by the importer and are required to be scrutinized by the Jurisdictional officers. The fact of sale of the goods in the year 2007-08 has found its way in the records maintained by the appellant in terms of the said Rule. As such, it cannot be said that there was any mala fide on the part of the appellant who violated the conditions of the Notification or the Rules. By considering the date of sale of bulk drugs as the relevant date, the proceedings initiated by show cause notice dated 27 March, 2015 are even beyond the period of 5 years, as provided in Section 28 of the Customs Act, 1962. Otherwise also we note that the appellant is a Government enterprise and according to the well settled law, there cannot be any mala fide intention on the part of the Government to evade any duty. As such we hold that the demand is hopelessly barred by the limitation and is in fact even beyond maximum period prescribed under the law.

6. In view of the above, we set aside the demand on the point of time bar and allow the appeal by setting aside the demand of duty, interest, penalty and redemption fine.

(Dictated and Pronounced in open Court)