

Per: Shri P. Dinesha

This Appeal challenges the denial of benefit of Notification No.125/2011-Cus. dated 30.12.2011 vide impugned Order-in-Appeal C.Cus. No.1213/2015 dated 29.12.2015.

2. Heard Shri Hari Radhakrishnan, Id. Advocate for the Appellant and Ms. Rajni Menon, Id. Deputy Commissioner for the Respondent. We have carefully perused the documents placed on record and also the judicial precedents relied upon during the course of arguments.

3. Brief and relevant facts as could be gathered upon a perusal of Order-in-Original and Order-in-Appeal and upon hearing the parties, are that the Appellant had imported goods declared as 'D&W Chicken Spicy Sausages' under Bill of Entry No.6592089 dt. 19.04.2012 by classifying the same under CTH 16010000; the same was assessed to Basic Customs Duty (BCD) at 8% in terms of Notification No.125 *supra* (Sl.No.33) apart from CVD at 6% on Retail Sale Price (RSP) value and Special CVD at Nil rate under the applicable

Notification. The Revenue having felt that Notification No.125 *supra* did not make the benefit applicable to goods falling under Sub-Heading 160100 as per Note 2 of the said Notification [Sl.No.233 of the Annexure thereto] and hence, the goods were not eligible for the exemption claimed by the Appellant. This prompted the Department to issue Demand Notice dated 25.04.2013 under Section 28 of the Customs Act, 1962 and a Show Cause Notice dated 'Nil' January 2014 was also issued for mis-declaration of RSP value. The Appellant having filed its replies which were considered during adjudication, the Original Authority vide Order-in-Original No.40985/2015 dt. 28.08.2015 however, rejected the RSP as declared for the imported goods as proposed in the SCN, confirmed the differential duty demand as proposed in the Demand Notice, apart from imposing penalty and ordering confiscation of the goods.

4. Aggrieved by the above order, the Appellant appears to have filed an Appeal before the First Appellate Authority and the First Appellate Authority also having dismissed their Appeal vide the impugned Order-in Appeal C.Cus. No.1213/2015 dated 29.12.2015, the present Appeal has been filed before this forum. In the background of the

above factual narratives, the only issue that arises for our consideration is, 'whether the claim of the Appellant for the benefit of Notification No.125-Cus. dated 30.12.2011 is entertainable ?'.

5. Notification No.125 *supra* provides for effective rate of duty at 8% for all the goods of Chapter 16, however Note 2 of the said Notification restricted the applicability of the said Notification, which reads as under :

'2. Nothing contained in this notification shall be applicable to goods specified in the ANNEXURE.'

Sl.No.233 of the Annexure mentioned at Note 2 covers Heading/Sub-Heading under 160100, which means the imported goods which were classified under 16010000 were not eligible for exemption under the above Notification.

6. It is the case of the Appellant that it had inadvertently claimed benefit under Notification No.125 *supra*, but however it was eligible for the benefit of Notification No.26/2000-Cus. dt. 01.03.2000, which claim was made for the first time before the First Appellate Authority. The First Appellate Authority, however, having observed that the above alternate claim of the Appellant was not supported by

any documentary evidence, rejected the alternate claim as well. Further, in the Grounds of Appeal before us, the Appellant claims that there was no misdeclaration when it claimed the benefit of Notification No.125 *supra* but, however, in the synopsis the Appellant admits that the above claim was made inadvertently; the fact remains that when this was pointed out by the Adjudicating Authority, the Appellant could not defend its claim, had also given up its claim for the benefit of Notification No.125 by claiming benefit of another Notification. It thus appears that the claim of the Appellant lacks merit.

7. We find that there is no dispute as regards the withdrawal of the benefit vide Note 2 to Notification No.125 *supra* and hence, clearly, the Appellant's claim for the benefit was not in order. Further, with regard to the Appellant's alternate claim for benefit of General Exemption (Notification No.26/2000 *supra*), the same is not an absolute, rather a conditional Notification and hence, the conditions prescribed thereunder ought to be fulfilled including the production of the supporting documents. When such a claim is made before the authority, the officer would verify the correctness of such claim in the context of

supporting documents. When required documents are not filed along with the claim, the officer would be left with no choice but to reject un-supported claims since in matters of exemption claims, it has been held by Hon'ble Apex Court in **CC (Import) Mumbai Vs Dilip Kumar & Company** [2018 (361) ELT 577 (SC)] that all conditions prescribed in the Notification should be fulfilled. The claim that the First Appellate Authority should have asked for the production, etc. will not help in any way. What is to be done should be done only when it matters; it is not as though the Appellant was unaware of procedural requirements in this regard. Hence, we do not find any fallacy in the rejection of the Appellant's claim by the First Appellate Authority. Also, when an alternate claim was made, the Appellant should have furnished all the documentary / supporting evidence to prove its *bonafides*, which is not done and nor do we find that the Appellant volunteered either in its written submissions or during the personal hearing before the First Appellate Authority to file such supporting documents and hence, the said claim was rightly rejected for want of supporting documents.

8. Rule 23 of CESTAT (Procedure) Rules, 1982 prescribes the procedure for filing additional documents and the same reads thus:

“RULE 23. Production of additional evidence. — (1) The parties to the appeal shall not be entitled to produce any additional evidence, either oral or documentary, before the Tribunal, but if the Tribunal is of opinion that any documents should be produced or any witness should be examined or any affidavit should be filed to enable it to pass orders or for any sufficient cause, or if adjudicating authority or the appellate or revisional authority has decided the case without giving sufficient opportunity to any party to adduce evidence on the points specified by them or not specified by them, the Tribunal may, for reasons to be recorded, allow such documents to be produced or witnesses to be examined or affidavits to be filed or such evidence to be adduced...”

It thus becomes clear that the above Rule was never followed by the Appellant and we find that along with Appeal the Appellant has filed the Country of Origin Certificate for the first time. This only shows the attitude of disregarding the procedures, which is not the correct approach. Further, we do not also see anywhere in the pleadings any reason for non-furnishing of the documentary evidence before the lower authorities along with their claim, nor do we find as to how the Appellant was prevented from not filing the above document before the lower authorities and nor is there any request made for verification to be made by the proper officer. Hence, the alternate claim which depends on factual

verification of documents cannot be entertained and thus, we do not take the same on record. The MA No.40030/2026 filed by Appellant stands rejected.

9. It was also contended that the Bill of Entry having been filed on 19.04.2012 for which the Demand Notice dt. 25.04.2013 was clearly barred by limitation as the Demand Notice was received by the Appellant beyond the period of one year in terms of Section 28 of the Customs Act, 1962. We find that one year starts from the end of the month and ends at the end of the month of the following year and reckoned thus, the Demand Notice is in time.

10. In view of the above discussion, we do not find any merit in the present Appeal and we also do not find any infirmity in the impugned order, for which reason we reject the Appeal.

(Order pronounced in open court on 30.03.2026)

sd/-

(VASA SESHAGIRI RAO)
Member (Technical)

sd/-

(P. DINESHA)
Member (Judicial)