

prove their stance. Serial No.4 is altogether irrelevant. Serial No.10 pertains to “edible products”. The clearance Collectorate has not substantiated its claim with any evidence or valid argument that “Ethanol / Undenatured ethyl alcohol of an alcoholic strength by volume of 80% vol or higher” is an edible product and requires conditions like labeling and Halal Certification etc. However, the contents of Examination Report give reference to USP (United States Pharmacopeia). The available literature also suggest that Ethanol / Ethyl Alcohol with chemical formula C₂H₅OH is a drug. It is classified as a depressant drug. In some cases, it is an addictive drug. In the light of above discussion, the import of impugned goods being drug and of pharmaceutical grade is restricted and is allowed only subject to fulfillment of conditions envisaged under Serial No. 7 of Part-II of Appendix-B of Import Policy Order 2020 read with Serial No.40 of Part-1 of Import Policy Order, 2020 as detailed at para 6 above of this order. Since the appellant a commercial importer, has not fulfilled requirements as per Serial No. 7 of Part-II of Appendix-B of Import Policy Order, 2020 read with Serial No.40 of Part-1 of Import policy Order, 2020, the impugned goods have rightly been confiscated outright by the Adjudicating Authority. In view of above discussion and the available record, the undersigned does not find any reason to interfere with the impugned Order-in-Original which has been passed in accordance with law and is based on facts & merits of the case. The same is upheld. The appeal being devoid of merits is rejected accordingly.”

The Respondent being further aggrieved preferred appeal before the Tribunal and the Custom Appellate Tribunal has set aside the order passed by the forms below including the Collector (Appeals) in the following terms:-

- “14. The record of the case suggests that the Appellant is a non-pharmaceutical entity and the subject goods have not been imported as raw materials for the pharma industries rather the purpose of the same is analytical and research. This fact was intimated to the assessing officer vide Appellant's letter dated 17.03.2022.
15. Secondly, the pharma industry enjoys a concessionary rate of duties under the Fifth Schedule to the Customs Act, 1969. Had the said product imported as pharma raw material, the same was to be used in the manufacture of pharma product by a pharma company and it would have been advantageous to claim such exemption by fulfilling the requisite conditions of IPO 2022 instead of paying 90% Customs duty as against 5% concessionary duty. However, the Appellant has made payment of duties and taxes at the standard duty structure without claiming the benefit of Fifth Schedule. This gives credence to the argument of the Appellant that the subject product is not a pharmaceutical raw material.
16. Lastly, the Respondent department has based its conclusion on some Wikipedia information, which in any case cannot be relied upon and accepted as evidence. Unless there is any concrete evidence in rebuttal of the Appellant's stance, the subject goods cannot be regarded as a pharma raw material because it is a settled proposition of law that evidence has precedence over presumption.
17. Given the foregoing deliberations, it is concluded that the subject product, imported by the Appellant for non-pharma use as a non-pharma entity, is not hit by the IPO 2022. Accordingly, I allow this appeal and set aside the

Impugned Order to the extent of the non-fulfillment of the conditions of Serial No. 7 of Appendix B Part II of IPO 2022, outright confiscation of the goods and Imposition of penalty. Accordingly, the subject goods are ordered to be released to the Appellant forthwith unconditionally and without payment of the penalty imposed on the Appellant.”

From the perusal of the aforesaid finding of the Tribunal, it appears that though it has been held by the Tribunal that the restriction as mentioned in the Show Cause Notice is not applicable, however, the reasoning assigned by the Tribunal is only on the fact that the Respondent was paying statutory rate of duty, whereas the information available on Wikipedia cannot be entertained.

On the other hand, there is a finding of the Collector Appeals that the product in question is a drug / depressant drug / addictive drug and such finding has been overturned by the Tribunal without any reasons of its own except as noted hereinabove. In our considered view the Tribunal was required to give its reasoning to hold that the product in question is neither a drug nor a pharmaceutical product and is not hit Para-07 of the Appendix as noted hereinabove. Until the Tribunal comes to this conclusion, the order of the forums below cannot be set-aside.

In view of hereinabove, the order of the Tribunal is not sustainable and is hereby set aside and matter stands remanded to the Tribunal to decide the same in accordance with law with specific finding in respect of the observations of Collector of Customs (Appeals) in Paragraph-7 as reproduced hereinabove after affording opportunity of hearing to all concerned.

Since the goods are detained, it is expected that the matter be decided by the Tribunal preferably within thirty (30) days from today. Let a copy of this order be issued to the Tribunal in terms of sub-section (5) of Section 196 of Customs Act, 1969.

ACTING CHIEF JUSTICE

J U D G E

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