CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT AHMEDABAD

REGIONAL BENCH – COURT NO. 03

CUSTOMS Appeal No. 13520 of 2013-DB

[Arising out of Order-in-Original/Appeal No RJT-EXCUS-000-APP-327-13-14 dated 30.07.2013 passed by Commissioner of Central Excise and Service Tax-RAJKOT(Appeal)]

Mosaic India Pvt Ltd **...Appellant**
1st Floor, Jaydev Arcade,
Park Colony, Near Joggers Corner,
JAMNAGAR,
GUJARAT-361008

VERSUS

C.C.E. & S.T.-Rajkot **...Respondent**
Central Excise Bhavan,
Race Course Ring Road...Income Tax Office,
Rajkot,
Gujarat-360001

APPEARANCE:
Shri Manish Jain, Advocate for the Appellant
Shri. Anand Kumar, Superintendent (Authorized Representative) for the Respondent

CORAM: HON'BLE MEMBER (TECHNICAL),RAJU
HON'BLE MEMBER (JUDICIAL) ,SOMESH ARORA

FINAL ORDER NO. A/10879 / 2023

DATE OF HEARING:12.04.2023
DATE OF DECISION: 12.04.2023

RAJU

This appeal has been filed by M/s. Mosaic India Pvt Ltd., against demand of Customs Duty.

2. Learned Counsel pointed out that they had imported Di-Ammonium Phosphate (DAP) and warehoused the same in their private bonded warehouse. The goods were later repacked and exported to African Countries as donation. A small part of goods were retained in India. The appellant had paid the basic custom duty. However, the appellant has sought to avail benefit of Notification 04/2006-CE dated 01.03.2006 in respect of CVD and Notification No. 20/2006-Cus dated 01.03.2006 for the purpose of SAD.

Notification 04/2006-CE dated 01.03.2006 provides as exemption in following terms:

S.No.	Chapter or heading or sub-heading or tariff item of the First Schedule	Description of excusable goods	Rate	Condition No.
1.	31	All goods, other than those which are clearly not to be used- (a) As fertilisers; or (b) In the manufacture of other fertilisers, whether directly or through the stage of an intermediate product.	Nil	-

Notification No. 20/2006-Cus dated 01.03.2006 provides SAD exemption in following terms:

S. No.	Chapter, heading, sub-heading or tariff item of the First Schedule	Description of goods	Standard rate
1.	31 or any other Chapter	Fertilizers and all goods for manufacture of fertilizers	Nil

2.1 Learned Counsel argued that the item exported by them DAT is a fertilizer as can be seen from the Tariff Heading No. 31053000

3105	**Mineral or chemical fertilisers containing two or three of the fertilising elements nitrogen, phosphorus and potassium; other fertilisers; goods of this chapter in tablets or similar forms or in packages of a gross weight not exceeding 10 Kg.**			
31053000	Diammoniumhydrogenortho phosphate(diammonium phosphate)	Kg.	5%	-

2.2 He further pointed out that the explanatory notes volume 2 also covers DAP under the category of fertilizer as can be seen from the explanatory notes heading 3105 under the Sub-Heading of 3105.40

31.05-Mineral or chemical fertilisers containing two or three of the fertilising elements nitrogen, phosphorus and potassium; other fertilisers; goods of this Chapter in tablets or similar forms or in packages of a gross weight not exceeding 10 Kg.

3105.40- Ammonium dihydrogenorthophosphate (Monoammoniym Phosphate) and mixtures thereof with diammonium hydrogenorthjophosphate (diammonium phosphate)

2.3 He further pointed out that the goods are also covered by the fertilizer controlled order and in the scheduled-1 to the fertilizer controlled under the heading 1(d) NP (Complex Fertilizers) at Sr. No. 2 is specifically covers DAP.

2.4 He further pointed out that at the time of import the department has accepted this position that the goods are fertilizer and allowed that the benefit of 5% basic customs duty of these goods as fertilizer. He argued that in the aforesaid facts, it is apparent that there is no dispute in Department side that the goods are fertilizer.

2.5 He argued that Notification No. 20/2006-Cus dated 01.03.2006 specifically exempts fertilizers and therefore, the goods being fertilizers are exempts without any condition. He pointed out that the basic issue raised by the revenue is that the goods are not used in India and therefore the benefit has been denied. He argued that it is immaterial where the goods are used as far as the Notification No. 20/2006-cus is concern as all fertilizers are exempts in terms of the said notification irrespective of use.

2.6 He pointed out that Notification No. 04/2006-CE dated 01.03.2006 exempts all goods falling under chapter 31 except those which are clearly not to be used as fertilizers or in the manufacture of other fertilizers whether directly or through the stage of intermediate products. He pointed out that the goods have been imported as fertilizer and the said goods have been donated as fertilizer under the scheme of UN Millennium Village Projects. They are part of the fertilizer industry’s commitment to the Millennium Development Goals

(MDGs). As part of the said project they had donated these goods as fertilizers to African Countries. He further pointed out that the consignees in all the shipping bills is UNDP (United Nation Development Programme) representatives in respective of African Countries. The goods were also declared as fertilizer at the time of export and the same was accepted by revenue. In this circumstances, he argued that the benefit of Notification No. 04/2006-CE dated 01.03.2006 cannot be denied to them for the purpose of CVD.

3. Learned AR relied on the impugned order.

4. We have considered the rival submissions. We are in agreement with the argument by the Learned Counsel that chapter Sub-Heading 31053000 of the Customs Tariff, covers fertilizer imported by them specifically. The HSN also specifically covers these goods as fertilizer under the Heading 31053000. The goods are also covered by Fertilizer (Control) Order, 1985. In this background it is obvious that the goods are fertilizer.

4.1 Notification No. 20/2006-Cus dated 01.03.2006 is specifically covers fertilizers and therefore benefit of the said notification cannot be denied since the goods imported by them and which were partly exported to the African Countries as donation are fertilizer and that is not the matter in dispute. Benefit of Notification No. 20/2006-Cus dated 01.03.2006, is therefore to be allowed.

4.2 As regard benefit of Notification 04/2006-CE dated 01.03.2006, it is seen that the notification exempts all goods falling under chapter 31 except those which are "clearly not to be used as fertilizer" or in the manufacture of fertilizer. It is apparent that in the instant case the goods exported are to UN agency as a part of an international programme to help the African Countries.

The notification no where prescribes that the goods have to be used in India as fertilizer. The fact that goods are being used for any purpose other than fertilizer has not been established by revenue. In this circumstances the benefit of Notification 04/2006-CE dated 01.03.2006 also cannot be denied. As the goods are clearly to be used as fertilizer.

5. In view of above the impugned order is set aside. The appeal is allowed.

(Dictated & Pronounced in the open Court)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)

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