Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO. 1

Customs Appeal No. 10348 of 2016-DB

(Arising out of OIA-JMN-CUSTM-000-APP-122-125-15-16 Dated-23/11/2015 passed by Commissioner of CUSTOMS-JAMNAGAR(PREV))

Mosaic India P Ltd **........Appellant**
14th Floor, Building 9a, Dlf Cyber City,
Phase-iii, GURGAON,
HARYANA

VERSUS

C.C.-Jamnagar(prev) **........Respondent**
Sharda House...Bedi Bandar Road,
Opp. Panchavati, Jamnagar
Gujarat

WITH

Customs Appeal No. 10354 of 2016-DB

(Arising out of OIA-JMN-CUSTM-000-APP-122-125-15-16 Dated-23/11/2015 passed by Commissioner of CUSTOMS-JAMNAGAR(PREV))

C.C.-Jamnagar(prev) **........Appellant**
Sharda House...Bedi Bandar Road,
Opp. Panchavati, Jamnagar
Gujarat

VERSUS

Mosaic India P Ltd **........Respondent**
14th Floor, Building 9a, Dlf Cyber City,
Phase-iii, GURGAON,
HARYANA

APPEARANCE:
Shri. Manish Jain, Advocate for the Appellant
Shri. G. Kirupanandan , Assistant Commissioner (AR) for the Respondent

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

Final Order No. A/ 10947-10948 /2023

DATE OF HEARING: 20.04.2023
DATE OF DECISION:20.04.2023

Raju

The appeals have been filed both the revenue as well as M/s Mosaic India P Ltd. The facts of the case are that M/s mosaic India P Ltd had imported 'Di-Ammonium Phosphate' (DAP) and claim benefit of Notification No. 20/2006-Cus dated 01.03.2006 and Notification No. 04/2006-CE dated 01.03.2006. The appellant exported the entire quantity under United Nation Development programme and shipping bills were also addressed to the United Nation Development programme representatives located in African Countries. In the identical facts a decision has been passed in appellant's own case vide Final Order No. A/10879/2023 dated 12.04.2023. In the said order following has been observed.

> *"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.*
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> *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.*
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> *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. 5 C/13520/2013 The notification nowhere 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".*

2. Consequently the appeal filed by the M/s mosaic India P Ltd is allowed.

3. Revenue's appeal relates to quantum of penalty, since the demand itself is set aside there is no question of penalty. The appeal of revenue is consequently dismissed.

(Dictated and pronounced in the open court)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)

PRACHI