

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

REGIONAL BENCH - COURT NO. 3

CUSTOMS Appeal No. 11972 of 2016-DB

[Arising out of Order-in-Original/Appeal No MUN-CUSTOM-000-APP-310-16-17 dated 28.10.2016 passed by Commissioner of CUSTOMS-AHMEDABAD]

Indian Chemical Corporation

203, Mandavi, Navajivan, 121/127, Kazi Sayed Street,
MUMBAI, MAHARASTHRA-400003

.... Appellant

VERSUS

Commissioner of Customs, Mundra

Office of the Principal Commissionerate of Customs,
Port User Buld. Custom House Mundra, Mundra
Kutch, Gujarat-370421

.... Respondent

APPEARANCE :

Shri Hardik Modh, Advocate for the Appellant

Shri Anand Kumar, Superintendent (AR) for the Respondent

**CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)**

DATE OF HEARING : 27.06.2023

DATE OF DECISION: 12.07.2023

FINAL ORDER NO. 11486/2023

RAMESH NAIR :

This appeal has been filed by M/s. Indian Chemical Corporation against denial of Exemption from payment of Basic Customs Duty under Custom Notification No. 98/2009-Cus dated 11.09.2009 against their import of Titanium Dioxide (Rutile) – ITC (HS No. (32061900) on the strength of Transferable DFIA License No. 0310787806 dated 08.08.2014 issued against Export of Glass Bottles as per SION A-3627 by M/s. Piramal Glass Limited.

2. Briefly stated the appellant imported Titanium Dioxide Rutile R-2195 and claimed exemption from payment of Basic Customs Duty under Custom Notification No. 98 of 2009 dated 11.09.2015 against Transferable DFIA issued against Export of Glass Bottles as per SION A-3627.

3. Shri Hardik Modh, Ld. Counsel for the appellant submits that the said DFIA inter alia allows import of Rutile against the description of 'Formers' as mentioned against serial No.1 of the DFIA and classified under CTH No. 32061900 which is nothing but Titanium Dioxide. In view of the above, it is submitted that they are eligible to claim benefit of Notification No. 98 of 2009. He further pointed out that the issue is no more *res-integra* and has been settled by the various of decisions in favour of the appellant by the following orders of this Tribunal:-

(i) VKC Nuts Pvt. Limited vs. CC Jamnagar (Prev.) –Final Order No. A/11365/2020 dated 08.12.2020;

(ii) Commissioner of Customs, Mundra vs. Global Exim – 2015 (328) ELT 385 (Tri-Ahmd).

3.1 The Ld. Counsel further submits that the benefit of notification no. 98/2009 is claimed against Transferable DFIA issued on 8.08.2014 covered for the policy period (2009-14) whereas the main plank of the department's case rests on the premise that neither the appellant nor the original license holder provide the details of actually used Former Rutile use in the manufacturing of the export product in compliance of the mandate contained in Para 4.12 (i) and 4.12(ii) of FTP 2015-2020. On the above premise, the Ld. Counsel for the appellant submits that neither there is any condition in the notification no. 98 of 2009 nor under any of the provision of FTP-2009-14 to suggest that only those inputs with actual quantities are used in the resultant product are entitled to claim DFIA benefit under Notification No. 98 of 2009.

3.2 In any event, he submits that Titanium Dioxide Rutile is specific entry in the DFIA and therefore Para 4.12 (i) of FTP has no application in the present case. It is further submitted that DFIA in hand is a post export replenishment license which is governed by SION A-3627. He relies upon the Final Order No. A/11365/2020 dated 08.12.2020 passed by this Tribunal in the case of *VKC Nuts Pvt. Limited vs. CC. Jamanagar (Prev.) (supra)* and submits that the provision of Para 4.12 (i) and (ii) have already been considered by the Hon'ble Bombay High Court in the case of *Shah Nanji Nagsi Exports Pvt. Limited vs. UOI*, inter alia holding that:

"There is no actual user condition so as to restrict the petitioner to import maize. So long as the export goods and the import item corresponds to the description given in the SION, it cannot be held to be invalid by adding something else which is not in policy". He further relies upon the order passed by this Tribunal in the case of *Commissioner of Customs, Mundra vs. Global Exim (supra)* wherein it was held that *"once the license is endorsed with transferability by the licensing authority, the nexus between the import goods used in export goods is not required to be established afresh by the transferee as held in various decisions relied upon by the Learned Advocate"*.

3.3 The Ld. Counsel for the appellant further relies upon the Order and Judgement of the Hon'ble High Court of Allahabad in the case of *Sachin Pandey vs. Union of India - 2020(371) ELT 34 (All.)* and contends that the Hon'ble High Court has already considered the provisions of 2009-14 Foreign Trade Policy as well as of 2015-2020 and dismissed the contentions of the Petitioner that duty free import of any goods under DFIA cannot be permitted unless each of the three essential conditions are satisfied. The three essential conditions according to the Petitioner are (a) the technical specification/quality and characteristics of the imported goods are

specifically declared in the shipping bills by the exporter (b) the imported goods are actually used as inputs in manufacture of export goods and (c) the imported goods are not merely alternative inputs or goods capable of using in the export product. The Hon'ble High Court dismissed the arguments of the Petitioner and under Para 16 it was inter-alia held that –

“We see no reason to take a different view to take away the benefits otherwise available under the DFIA Scheme under the Foreign Trade Policy, whether 2009-14 or 2015-20, merely to satisfy the petitioner. According to us the aforesaid judgements of the Punjab and Haryana High Court and Bombay High Court still hold the field. So far as permitting duty free imports under DFIA are concerned. The contention of the petitioner that duty free import of any goods under DFIA cannot be permitted unless each of the above mentioned ‘three essential conditions’ are satisfied clearly runs counter to the above judgements which are binding on authorities”.

3.4 He submits that the original exporter M/s. Piramal Glass Limited on a reply to the Dy. Commissioner of Customs, Mundra has stated that DFIA is issued as per Para 4.2.1 and 4.2.2 of FTP (2009-14) and governed by SION notified by DGFT as per Para 4.2.2 of FTP. There is no condition to show that Titanium Dioxide (Rutile) is actually used in export goods for claiming DFIA benefits under Notification No. 98 of 2009.

3.5 He further submits that there is no requirement of actual use of inputs and quantities for claiming DFIA benefits as held by this Hon'ble Appellate Tribunal in identical cases. It is submitted that DFIA is issued for Standard Input Output Norms are notified by the DGFT. As long as the imported goods are covered by the description, value and quantity of DFIA as per SION, DFIA benefits cannot be denied. The actual use of Titanium Dioxide in the resultant product is not necessary for claiming benefits so long as Former

Rutile is mentioned in the SION and in the DFIA. It is further submitted that Formers are required for glass forming process. He relied upon the order and judgement passed by the Hon'ble Bombay High Court in the case of Shah Nanji Nagsi Export Limited vs. UOI - 2019(367)ELT 335 (Bom.) and submits that this Tribunal has followed the judgement in the case of Unibourne Food Ingredients Llp wherein under Para 4.3 of the order it was held that

"With respect to actual use of goods in export products for claiming DFIA benefits, it has already been answered by the Hon'ble Bombay High Court in the case of Shah Nanji Nagsi Export Limited vs. UOI-2019(367) ELT 335 (Bom.). The Tribunal has followed the said order in the appellant's own case (supra). The Hon'ble High Court held that under post transferability of DFIA there is no actual user condition exists in the DFIA License."

3.6 Lastly, the Ld. Counsel for the appellant submits that he is entitled to get a revalidation of the DFIA and has inter alia prayed to direct the lower authorities to issue a certificate in terms of the provision of Para 2.13.1 of Hand book for the purpose of revalidation as held by the Hon'ble Punjab & Haryana High Court in the case of Pushpanjali Floriculture Limited vs. UOI - 2016 (340) ELT 0032 (P&H).

4. On the other hand, Shri Anand Kumar, learned Superintendent (AR) appearing for the revenue reiterates the findings of the lower authorities. He submits that Glass formers are mentioned as generic entry and therefore, are covered by Para 4.12 (i) of FTP and against that entry a single quantity has been indicated and allowed for import against a number of inputs. Therefore in terms of Para 4.12 (ii) the importer is permitted to import only proportionate quantity of former rutile actually used in production within the

overall quantity permitted against such group of inputs. The mandate contained in Para 4.12 (i) and 4.12 (ii) of FTP are not complied.

4.1 Learned AR further argues that the appellant was required to claim benefit based on the information about input utilization by original license holder is a sine qua non. Hence, though the DFIA in question is endorsed with transferability, the obligation of the importer cease to exist. Therefore, he submits that the appeal is devoid of merits and liable to be dismissed.

5. We have heard both sides and perused the records in detail. The appellant has imported Titanium Dioxide (Rutile) which is not in dispute. The DFIA produced by the appellant are endorsed with transferability by the RA which establishes that the Export obligation has been discharged by the Exporter M/s. Piramal Glass Limited and the license has been made freely transferable by licensing authorities.

5.1 As per the list of import goods permitted for duty free import, inter alia shows the input item 'Rutile' is mentioned under the description of Glass Formers. It is not in dispute that Rutile refers to Titanium Dioxide as we observe from the technical references produced by the appellant. The ITC (HS) Code 32061900 mentioned in the DFIA against 'Rutile' is fully covered by the import goods of Titanium Dioxide.

5.2 As per Para 4.2.2 of FTP (2009-14), a DFIA issued for which Standard Input output Norms are notified. In the present context, Export of Glass Bottles/vials/phials/ampoules etc., are covered by SION A-3627. One of the input item is Rutile which is mentioned under Glass Formers .

5.3 The learned Authorised Representative's contention is that Glass formers are generic and number of inputs are mentioned against single quantity which attracts the provision of para 4.12 (i) and Para 4.12 (ii) of FTP- (2015-20). We are not impressed by this argument of the Id. AR for the reason that the input item Rutile which is Titanium Dioxide is a specific entry. Moreover, the DFIA is governed by the provisions of (2009-14) FTP and HBP. The exemption from Basic Custom Duty is granted under Notification No. 98 of 2009.

5.4 We further find from the Order and Judgment of the Hon'ble Allahabad High Court which has already considered the provisions of both 2009-2014 FTP as well as of FTP -(2015-20) and has dismissed the contention of the Petitioner that duty free import of any goods under DFIA cannot be permitted unless each of the three essential conditions are satisfied. Under Para 16, it was held that:

"the contention of the petitioner that duty free import of any goods under DFIA cannot be permitted unless each of the above mentioned "three essential conditions are satisfied clearly runs counter to the judgements relied upon by the Hon'ble High Court which are binding on authorities".

5.5 In the present case, DFIA is issued post discharge of export obligation and endorsed with transferability. The Hon'ble Bombay High Court in the case of Shah Nanji Nagsi Exports Pvt. Limited vs. UOI has already held that under post transferability of DFIA, there is no actual user condition exists in the DFIA License, which is further concurred by the Hon'ble Allahabad High Court in the case of *Sachin Pandey vs. UOI*. Keeping in with the judicial

decorum and discipline, we are bound to follow the ruling rendered by the higher judicial forums which is binding on us.

5.6. This Tribunal in the case of *VKC Nuts Pvt. Limited vs. CC Jamnagar (Prev.)* inter alia held that:

"Para 4.29 (iv) and (v) refers to Para 4.12 of FTP while incorporating the provisions therein. However, the Hon'ble Bombay High Court in the case of Shah Nanji Nagsi Exports Pvt. Limited vs. UOI (supra) has already considered the provision of Para 4.12 for transferred DFIA while inter alia holding that so long as the export goods and the import item corresponds to the description given in the SION, it cannot be held to be invalid by adding something else which is not in the policy".

5.7. In view of the above cited Order of this Tribunal, we find that there is no merit in the argument as canvassed by the Revenue. The case laws cited by the learned Counsel for the appellant are squarely applicable in the present case. There is no requirement of actual use of inputs and quantities for claiming DFIA benefit as held by this Tribunal in identical cases. We agree with the submission that as long as the imported goods are covered by the description, value and quantity of DFIA as per SION, DFIA benefits cannot be denied. The actual use of Titanium Dioxide Rutile in the resultant product is not necessary for claiming DFIA benefit so long as Rutile is mentioned in the SION and in the DFIA.

6. In view of the above observations and findings, we set aside the impugned order. Consequently, the appellant is entitled to claim DFIA benefit under Custom Notification No. 98 of 2009 for their import of Titanium Dioxide (Rutile) as a glass former against the Export of Glass bottles under

DFIA Scheme. The lower authorities are directed to issue a certificate as per Para 2.13.1 of Hand Book for the purpose of revalidation, if such a request is filed by the appellant. The appeal is allowed.

(Pronounced in the open court on 12.07.2023)

(Ramesh Nair)
Member (Judicial)

(C L Mahar)
Member (Technical)

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