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

REGIONAL BENCH – COURT NO. 02

CUSTOM Appeal No. 10042 of 2021

[Arising Out Of OIA-MUN-CUSTM-000-APP-132-20-21 Dated-03/12/2020Passed By Commissioner of CUSTOMS-AHMEDABAD]

SHIRAZEE TRADERS **.....Appellant**
967 Raviwar Peth Guamali Chambers
Pune, Maharashtra,

VERSUS

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

APPEARANCE:
Shri. Anil Balani, Advocate for the Appellant
Shri. A R Kanani, Superintendent (AR) for the Appellant

CORAM: HON'BLE MEMBER (JUDICIAL), MR. SOMESH ARORA
HON'BLE MEMBER (TECHNICAL), MR. C. L. MAHAR

FINAL ORDER NO.A / 12060 /2023

DATE OF HEARING:15.09.2023
DATE OF DECISION:15.09.2023

SOMESH ARORA

The matter in this case pertains to import made by the appellants of cocoa powder which at the relevant time was covered under free trade agreement. The same as per certificate of origin produced before us was wholly obtained in Malaysia. The Customs Authority after going through the documents at Mundra port allowed clearance on 07.12.2014. In the subsequent investigation done by the department on the basis of a DRI communication in relation to some other exporters wherein it found that in their case, goods were exported from Ghana and at least 35% of material/manufacturing was of Ghana origin. Authorities therefore suspected those certificates to be incorrect and made reference to Malaysian authorities about the authenticity of the certificates issued in those cases. On verification, in those cases Malaysian Customs Authorities expressed their inability because of non disclosure of cost data by the manufacturer to authenticate those certificates. In the present instance, show cause notice has been issued and stands confirmed by lower authorities on the basis that what transpired in those cases might have happened in this case also. There is nothing on the record to show that in present instance, the certificate of origin was sent to Malaysian Customs Authority for verification or that the goods in any case were concerned with the same set of suppliers in Malaysia as well as Ghana.

2. In view of the foregoing, the Learned Advocate pleads that the whole case of the department is based on presumptions and assumptions that all the above might have transpired in their cases also vis-a-vis the cases which were investigated by the DRI. Specifically his submission is that the confirmation of any duty on the basis of such presumption and assumption is not maintainable in law. Learned Advocate further points that even those cases were DRI conducted investigation the proceedings were eventually dropped as exhibited in order No. 126/2016-17/CC/NS-I/JNCH pertaining to M/s. Morde Foods Pvt. Ltd. delivered on 2nd February, 2017.

3. Learned AR confronted with the position fairly reiterates the order of the Commissioner (Appeals) as well as the lower authority.

4. Considered, we find that in the present case, the lower authorities have confirmed order simply on the basis of a communication of DRI which

pertained to different parties about which verification was done. In the present instance, there is no evidence of department having conducted any verification of the certificate of origin as is the requirement under Annexure-III the Customs Tariff (determination of Origin of Goods under the Preferential Trade Agreement between the Governments of the Republic of India and Malaysia) Rules, 2011. The relevant Clause of Annexure-III (see under rule-14) is reproduced below:-

> ***"9. Origin verification.-*** *(1) The customs authority of the importing Party may request the Issuing Authority of the exporting Party to perform a retroactive check at random or when it has reasonable doubt as to the authenticity of the certificate of origin or as to the accuracy of the information regarding the true origin of the goods in question or of certain parts thereof.*
>
> *(2) The request for a retroactive check shall be accompanied with the relevant certificate of origin and shall specify the reasons and any additional information suggesting that the particulars given on the said certificate of origin may be inaccurate, unless the retroactive check is requested on a random basis.*
>
> *(3) The Issuing Authority of the exporting Party shall, on receipt of such request, conduct a retroactive check on the cost statement of the exporter or the producer based on the current cost and prices and shall send a reply to the customs authority of the importing Party within three months of the date of receipt of request.*
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> *(4) The retroactive check process, including the actual process and the determination of whether the subject goods are originating or not, should be completed and the result should be communicated to the importer within six months of the date of presentation of the certificate of origin to the customs authority of the importing Party."*

4.1 We find that to displace the certificate of origin issued by the Malaysian authority, which is in the nature of documentary evidence, the verification process by the Customs Authorities of India reference to issuing authorities to do a retroactive check is required. In the present instance no such request for verification report in respect of the appellant has been brought on record. We find that this fails to comply with the requirement of the Annexure-III (ibid) of the relevant free trade agreement.

5. We are accordingly inclined to allow the appeal with consequential relief. Appeal is allowed.

(Dictated and pronounced in the open Court)

(SOMESH ARORA)
MEMBER (JUDICIAL)

(C. L. MAHAR)
MEMBER (TECHNICAL)

Prachi