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

REGIONAL BENCH- COURT NO. 3

Customs Appeal No. 10979 of 2017- DB

(Arising out of OIO-AHD-CUSTM-000-APP-080-081-16-17 dated 27/01/2017 passed by Commissioner of CUSTOMS-AHMEDABAD)

Jayesh Tribhovadas Patel **........Appellant**
C/501, Shivalik Apartment, Opp Manan Bangaloes,
New City Light
Surat, Gujarat

VERSUS

C.C.-Ahmedabad **......Respondent**
Custom House,
Near All India Radio Navrangpura,
Ahmedabad, Gujarat

WITH

Customs Appeal No. 11410 of 2017- DB

(Arising out of OIO-AHD-CUSTM-000-APP-080-081-16-17 dated 27/01/2017 passed by Commissioner of CUSTOMS-AHMEDABAD)

Diptiben Jayesh Patel **........Appellant**
Proprietor, M/s Jay Mahalaxmi Enterprise
C/501, Shivalik Apartment, Opp Manan Bangaloes,
New City Light
Surat, Gujarat

VERSUS

C.C.-Ahmedabad **......Respondent**
Custom House,
Near All India Radio Navrangpura,
Ahmedabad, Gujarat

APPEARANCE:
Shri Rahul Gajera, Advocate for the Appellant
Shri Anand Kumar, Superintendent (AR) for the Respondent

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

Final Order No. A/ 12346 - 12347 /2023

DATE OF HEARING: 26.06.2023
DATE OF DECISION: 25.10.2023

RAMESH NAIR

The issue in the present case relates to export of Muriate of Potash (MOP), by the appellant an authorized signatory of M/s. Jay Mahalaxmi Enterprise, declared as 'Sodium Chloride' in the shipping bills filed during the period April 2010 to July 2010. Learned Commissioner (Appeals) has upheld the adjudication order by which goods have been held liable to confiscation under section 113(d) and (i) of the Customs Act, 1962 and consequent imposition of penalties under section 114 and 114AA of the Customs Act, 1962.

2. Shri Rahul Gajera, learned counsel appearing on behalf of appellants submits that the entire case has been built against the appellant relying upon various statements recorded under Section 108 of the Act, that it is the case of the department that Shri Jayesh Tribhovandas Patel in his statement dated 25.09.2010 has confessed to have procured MOP from various fertilizer agencies and exported the same with the help of various persons namely Divesh Ruparel, Bharat Patel, Mayur Bhanushali, Rakesh Bhanushali, Bharat Goplani, Mathurbhai, Pundrik Trivedi. However, evidence on record in the form of test report shows that the goods exported by the appellant was Sodium Chloride and further Shri Jayesh Tribhovandas Patel has retracted his statement before magistrate. It is his submission that although appellant in his reply dated 22nd October 2012 specifically requested to grant cross-examination of deponents above named, however, the same was not properly appreciated. It was further submitted that findings given for denial of cross-examination to co-noticee cannot be made applicable to deny cross-examination to the present appellant; that examination/cross-examination of witnesses would be necessary to bring out the correct facts on record. Reliance in this behalf was placed upon the following decisions:-

- Basudev Garg Vs. CC – 2013 (294) ELT 353 (Del.)
- Chander Gauba Vs. CC – 2015 (327) ELT 506 (Tri. Del.)
- Swiber Offshore Construction Pvt. Ltd Vs. CC.–2014 (301) ELT 119 (Tri. Ahm.)

3. Shri Anand Kumar, Learned Superintendent (AR) appearing for the revenue has reiterated the impugned order and submitted that no prejudice is caused to the appellant and statements of various parties shows detailed

modus operandi and confession of the appellant corroborates the same; impugned order is therefore legal and proper.

4. We have carefully considered the submissions made by both the sides and perused the records. It can be observed that adjudicating authority at para. 66.11.2 of his order has denied the request of cross-examination of persons who are co-noticees in the instant case on the ground that it is not necessary in the facts and circumstances of the case and it is not a mandatory procedure. It is observed that first appellate authority has upheld the view of adjudicating authority without having properly appreciated various contentions raised on behalf of appellant discussed hereinabove. It thus appears that the denial of cross-examination has resulted in violation of principles of natural justice. Considering the peculiar facts of the case and decisions relied upon *supra*, it would be proper to examine witness/cross-examine before any decision is arrived at by the adjudicating authority.

4.2 In view of above, impugned order is liable to be set aside and matter needs to be remanded to the adjudicating authority for de-novo adjudication of matter afresh after compliance with the mandate of section 138B of the Act.

5. Accordingly, we set aside the impugned order and allow the appeals by way of remand to the adjudicating authority for passing a fresh de-novo order within a period of 2 months from the date of this order.

(Pronounced in the open court on 25.10.2023)

RAMESH NAIR
MEMBER (JUDICIAL)

C.L MAHAR
MEMBER (TECHNICAL)

Geeta