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

REGIONAL BENCH-COURT NO. 3

CUSTOMS Appeal No. 10686 of 2023 - DB

(Arising out of Order-In-Original/Appeal No. OIO-MUN-CUSTM-000-APP-156-23-24 dated 27/09/2023 passed by Commissioner of Customs (A), Ahmedabad Customs House, Ahmedabad)

FRUNUTS EXIM LLP **........Appellant**
F-59, APMC Market No.1
Phase-II, Sector-19
Vashi, Navi Mumbai

VERSUS

COMMISSIONER OF CUSTOMS **......Respondent**
Office of the Pr. Commissioner of Customs, Customs House, Mundra, Kutch, Mundra Port and Special Economic Zone, Mundra Kuchchh, Gujarat- 370421

APPEARANCE:
Shri Prakash Shah & Mihir Mehta, Advocate for the Appellant
Shri R R Kurup, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU

Final Order No. 12621/2023

DATE OF HEARING: 02.11.2023
DATE OF DECISION: 16.11.2023

RAMESH NAIR

The instant appeal is filed by M/s. Frunuts Exim LLP (the appellant herein) against an order passed by the Commissioner of Customs (Appeal) vide impugned Order-in-Appeal No. MUN-CUSTM-000-156-23-24 dated 27.09.2023.

1.1 Briefly stated facts of this case are that the appellant imported Extra Virgin Olive Oil and claimed exemption from basic customs duty under DFIA Scheme as per Notification No. 25/2023-Cus dated 01.04.2023. The exemption was sought under DFIA No. 3111002557 dated 10.08.2023 covered by the description of 'Salad Oil (HS code: 1509) against Export of Vegetable Pickles issued as per SION E-126 & DFIA No. 0311022667 dated 24.05.2023 covered by the description of Fats-Edible Vegetable Oil (HS Code 1513,1516) against Export of Biscuits issued as per SION E-1. The lower authority after due examination of the documents in hand denied the exemption on the ground that in terms of Para 4.12 of FTP (2015-20) & 2023 only input together with quantity which has been used in manufacturing the export product shall be allowed for import of DFIA. It further stated that there is no evidence to show that Extra Virgin Olive Oil is used in Export goods. It was further stated that ITC (HS) No 1509 is mentioned in DFIA No. 3111002557 dated 10.08.2023, though it matches with ITC(HS) No. 1509 of the imported goods 'Extra Virgin Olive Oil', however differs as there is a mismatch of production description of Salad Oil and further there is mismatch of CTH Nos., mentioned in DFIA 0311022667 dated 24.05.2023 against Vegetable Oil (HS Code 1513.1516). It was further pointed out that goods are packed in smaller packs and therefore DFIA benefit under Notification No. 25 of 2023 cannot be extended.

2. Shri Prakash Shah, Learned Counsel along with Shri Mihir Mehta, Advocate appearing on behalf of the appellant submits that the 3 issues raised by the revenue are identical to the issues raised in the case of Pace Ventures Ltd., Vs. Commissioner of Customs (Ahmedabad) in Final Order No. A/11615/2019 dated 30.08.2019. In the said case, it is pointed out that the issue raised by the department was that specific name of Green Cardamom is not mentioned in the list of inputs, hence unless actual use in the export product is established, the appellant was not entitled to claim DFIA benefit. This Tribunal inter alia held that the description food additives/or food flavouring clearly covers the Green Cardamom, therefore , it cannot be said that only because the specific name of Green Cardamom is mentioned, the benefit will not be given.

2.1 He further submits that as regards reason for denial that CTH is not mentioned in the license, the Hon'ble Tribunal relied upon the order passed by the Tribunal in the case of USMS saffron, inter alia, held that it can be seen that ITC heading is not significant, once the imported goods is covered under the description, the benefit is available. Similar view was taken in the judgment of Devoir Trading Ltd.,

2.2 As regards, the actual use, he submits that there is no requirement of actual use, only requirement is that whether the imported goods is capable of being used in the export goods. In the instant case there is no dispute that Extra Virgin Oil is used as Salad Oil in Vegetable Pickles and also in biscuits as Edible Vegetable Oil. Lastly, he submits that the conditions of Notification No. 25 /2023 stands fulfilled, DFIA benefits cannot be denied.

3. Learned Counsel further submits that the only requirement for extending the benefit under DFIA notification is that the description and other specifications wherever applicable, value and quantity of materials imported are mentioned in the authorization and the value and quantity are within the limits specified in the said authorization. Since the appellant has fulfilled the requirements, benefit of notification cannot be denied in this case. Further he submits that there is nothing in the notification to restrict import of goods in smaller packs. Once the description, quantity, value is covered under the license, DFIA benefit is available.

4. On the other hand , Shri R R Kurup Learned Superintended (AR) supports the findings of the impugned Order and further submits that the imported goods viz., Extra Virgin Olive Oil is packed in smaller packs and therefore DFIA benefit is not available to the appellant.

4.1 After considering the submissions of both the sides and perusal of the record, we find that the issue is squarely covered by several judgments of this Tribunal in identical cases. In this regard, we fully agree with the submissions made by the Ld. Counsel for the appellant that the three issues raised by the revenue is fully covered by the Order by this Tribunal in the case of Pace Ventures Ltd., Therefore, we find that there is no justification in remanding back the matter to the lower authorities since the issue stands concluded by the aforesaid judgment of this Tribunal.

4.2 In view of the above, we further proceed to decide the appeal itself.

4.3 The Learned Counsel was right in his argument, that once the imported goods are covered by description, value and quantity as per the details mentioned in the DFIA, benefit of exemption of customs duty cannot be denied. In the case of Pace Ventures*, (supra),* this Tribunal has inter alia held that if revenues' contention regarding specific product being not covered is accepted, then since License does not mentioned specific name of any goods, no goods can be allowed to be imported under the license, which is not the intention of DGFT in issuance of license. We further find in the case of Unibourne Food Ingredients, this Tribunal has held that even though the license was bearing description of 'Relevant Fruit Juice/Pulp/Puree' and the objection was raised that the imported goods is 'Apple Juice Concentrate' and the same is not covered under the description, this Tribunal has taken a view that it cannot be justified as how 'Apple juice Concentrate' would not be covered under the description of 'Relevant Fruit Juice/Pulp/Puree when that 'Apple Juice Concentrate' can inter alia be used in the manufacture of export product ..."

4.4 Therefore by applying the ratio of judgments which was relied upon by the appellant, a consistent view has been taken by this Tribunal in catena of judgments, and in our view the issue is no longer *res integra.*

4.5 Another argument of the Learned Counsel for the appellant is that CTH nos. are not relevant for claiming benefit under DFIA Scheme. The inputs allowed under SION E-5 and SION E-126 does not mention ITC(HS) Numbers. We fully agree with this contention that neither SION, nor provisions of the foreign trade policy and hand book of procedures or the customs notification stipulates any such condition to claim DFIA benefit under Custom Notification No.25 of 2023 as held by this Tribunal in several judgments.

4.6 Coming to other merits of the case, we find that the appellant has relied upon two technical opinions of IIT, Kharagpur. The one opinion dated 23.02.2023 confirms that Olive Oil can be considered for usage in edible purpose like cooking, in salads and in the preservation of food like specific pickle items , the other opinion dated 05.09.2023 inter alia confirms that " *It may be seen from the above referred list of edible vegetable oils the consumers are free to choose the fats and oils as per easy availability and affordability for the consumption in food as well as baked products such as biscuits/cookies/crackers and savoury items. In view of the potential health benefits of different olive oils on account of its composition as the richest source of monosaturated vegetable oil alongwith its minor constituents like polyphenols and tocopherols".*

4.7 In the face of the aforesaid technical opinions and facts as recorded, we find that the imported goods viz., Extra Virgin Olive Oil is fully covered by the Transferable DFIA's produced by the appellant.

4.8 On a conjoint reading of Para 4.12 (i) and 4.12 (ii) and para 4.29 of the FTP(2023) as specified in Custom Notification No. 25/2023-Cus dated 01.04.2023, it reveals that it is only in respect of inputs specified in para 4.29 that the material permitted in the authorization shall be of the same quality and technical characteristics and specifications as the materials used in the resultant product are permitted for import. We find that neither the imported goods viz., Olive oil nor Salad oil/Vegetable Oil are specified as sensitive input under Para 4.29 of FTP.. Therefore as per Board Circular No. 46 of 2007 and DGFT Policy Circular No. 50 of 2008, no correlation is required to be established for technical specification, quality and characteristics of inputs used in export goods and imported goods.

4.9 Further, we find that the appellant has relied upon the judgment and order of Bombay High Court in the case of Shah Nanji Nagsi Exports Pvt. Ltd., Vs. UOI – 2019(367) ELT 335 (Bom) , whereby, under Para 13 of the order, it was inter alia held that " *Basically, DFIA is post export scheme in which exporter has to first export goods and after realization of proceeds, exporter has to make an application to the authority, who after verification, grant DFIA certificate which is transferable. Therefore, there is no actual user condition inbuilt under the scheme'.*

4.10 The aforementioned decision has been followed by the Allahabad High Court (Lucknow) Bench in the case of Sachin Pandey vs. UOI reported 2020(371) ELT 34 (All).

4.11 As regards the objection of the revenue that the goods imported under smaller packs are not eligible for DFIA benefits, we agree with the submissions of the Learned Counsel of the appellant that there is nothing in the notification to suggest that there is a restriction in import of goods in smaller packs. As long as the imported quantity is covered within the quantity mentioned in the DFIA, there is no restriction in import of goods whether it is in smaller packs or otherwise.

4.12 As per our above discussion and finding, we hold that the appellant is entitled to claim exemption from Basic Customs Duty under Notification No. 25/2023-Cus dated 01.04.2023 for their import of Extra Virgin Olive oil under the Transferable DFIA's against Export of Vegetable Pickles and

Biscuits. As regards the revalidation of DFIA's in question, we direct the lower authorities to issue a certificate in terms of Para 2.20 (c) of Hand book confirming the period of dispute , in case such a request is made by the appellant.

5. In the result, the impugned Order-In-Appeal is set aside. The appeal is allowed with consequential reliefs.

(Pronounced in the open court on 16.11.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Raksha