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

REGIONAL BENCH - COURT NO. 3

Customs Appeal No. 13879 of 2014-DB

[Arising Out Of OIA-KDL-CUSTM-000-APP-251-252-14-15 Dated 28/08/2014 Passed By Commissioner of CUSTOMS-KANDLA]

Gallant Metal Ltd **.... Appellant**
S No. 176, Village : Samakhiyali, Bhachau,
Kutch, Gujarat

VERSUS

C.C.-Kandla **...Respondent**
Custom House, Near Balaji Temple,
Kandla, Gujarat

WITH

Customs Appeal No. 13880 of 2014-DB

[Arising out of Order-in-Original/Appeal No KDL-CUSTM-000-APP-251-252-14-15 dated 28.08.2014 passed by Commissioner of CUSTOMS-KANDLA]

Gallant Metal Ltd **...Appellant**
S No. 176,
Village : Samakhiyali, Bhachau,
Kutch, Gujarat

VERSUS

C.C.-Kandla **...Respondent**
Custom House,
Near Balaji Temple,
Kandla,
Gujarat

APPEARANCE :
Shri Amal Dave, Advocate for the Appellant
Shri Sanjay Kumar, Superintendent (AR) for the Respondent

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

FINAL ORDER NO. A/12689-12690/2023

DATE OF HEARING : 19.10.2023
DATE OF DECISION :01.12.2023

RAJU

This appeal has been filed by M/s. Gallant Metal Limited against demand of Customs Duty on goods imported by them.

2. Learned counsel appearing for the Appellant pointed out that, the Appellant had imported certain goods and claimed the benefit of notification and no. 46/2011 dated 01.06.2011 which granted special concessional rate of Customs Duty to goods of Indonesian origin. At the time of import the Appellant submitted a certificate, claimed to be the certificate of origin, in respect of the goods imported by the Appellant. The said certificate was rejected by the original adjudicating authority on the grounds that the said certificate of origin did not mention the details of the impugned imports. The Appellant at the material time gave an undertaking to produce a corrected version of the said certificate of origin after removing the said defect. Thereafter, the goods were cleared on the strength of the undertaking given by the Appellant. Later on the Appellant failed to give the corrected certificate of original and therefore the demand of custom duty was confirmed by the origin adjudicating authority by denying the benefit of notification. The Appellant challenged the order of the original adjudicating authority before Commissioner (Appeal) on the ground that, the defect in the certificate of origin was defect of technical nature and benefit of the notification should not have denied on that ground. It was argued by them that the shortcoming was procedural and technical in nature and that should not come in way of grant of substantial benefit of the notification. It was argued that merely because the appellant had given an undertaking that, they will produce a corrected certificate from the Indonesian authorities should not be the reason for confirmation of demand.

2.1 Learned Counsel argued that the Commissioner (Appeal) in his order has examined none of the grounds raised by the Appellant in that Appeal before Commissioner (Appeal) and has simply brushed aside all the ground raised by the Appellant. He argued that the deficiency in the certificate of origin is merely procedural / technical flaw and that should not come in way of grant of benefit. Learned Counsel relied on the following decision in support of his argument:

- Chowgule & Company Pvt. Ltd. V/s. CC & C. Ex., 2014 (306) ELT (Tri-LB)
- Coromandal Stampings & Stones Ltd. V/s. CCE & ST, Hyderabad-II, 2016 (43) STR 221 (Tri.-Hyd.)
- Mangalore Chemicals & Fertilizers Ltd. V/s. DC, 1991 (55) ELT 437 (S.C.)

3. Ld AR relies on the impugned order.

4. We are considered the rival submission. We find that Notification No. 46/2011 grants special concession rate of custom duty to the goods originating from specified countries listed in appendix II of the said notification. The Appellant claimed to have imported 50,000/- MTs. of Indonesian origin coal by vessel MV. Jindal Varad to India. The bill of entry, the commercial invoice, the bill of lading and the certificate of origin all mentioned the name of vessel MV. Jindal Varad. Learned Counsel has argued that Notification No. 189/2009-Custom(NT) dated 31.12.2009 clearly provides that, if the goods are originally from the country listed in Annexure-II to notification 46/2011 then that country will be the country of origin and the benefit of concessional rate of duty would be available. He argued that the rule 8 of the custom tariff [Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of

India] Rules, 2009 notified by notification 189/2009–Custom(NT) dated 31.12.2009 prescribed that the benefit would be available even when the goods transit through non member nations with or without transtatement and temporary storage, if the same have not undergone any operation in any such non party nations, other than unloading and reloading. Learned Counsel had argued that in the present case the goods have always been on the vessel and the vessel went from Indonesia Tanjung Pemancingan Anchorage to Jabel Ali and thereafter came to India. He has argued that the certificate of the origin clearly shows that goods were consigned for India from Indonesia by the vessel MV. Jindal Varad. It was the argument of Learned Counsel that as long as the goods are of Indonesian origin the department cannot use technicalities to deny the benefit of exemption notification. It is noticed that the original adjudicating authority has observed as follows while rejecting the benefit.

> "*7.3 In the instant case the importer submitted AIFTA Certificate No. 0002455/BJM/2013 dt. 22.07.2013. It covered 70000 MT Steam Coal of Indonesian Origin consigned from PT Yastra Energy Indonesia to Farlin Energy and Commodities FZE, Dubai, UAE. Column 10 the AIFTA Certificate No. 0002455/BJM/2013 dt. 22.07.2013 bears Number and date of Invoice as 012/INV/PT-YE/VII/2013 dt. 21.07.2013. however the subject imports are covered under invoice no. FECFCUST/13-1029 dt. 11.08.2013 which is for 50000 MT of steam Coal. On careful perusal of AIFTA Certificate No. 0002455/BJM/2013 dt. 22.07.2013 it is noticed that third party invoicing at Sr. No. 13 has not been mentioned. Further, name and address of the Indian importer has not been mentioned at Box No. 02.*"

5. From the above observation it is noticed that the original adjudicating authority has pointed out that the invoice no. and date mentioned in the country of origin certificate does not match with the invoice number and date of the invoice presented by the importer. The certificate covers a quantity of 70,000 MTs. of steam coal of Indonesian origin consigned for from PT Yastra – Energy Indonesia to Farlin Energy & Commodities Dubai UAE. The number and date of invoice on the certificate produced by the

Appellant as shown as (1) 0002455/BJM/2013 dt. 22.07.2013 whereas, the imports are covered under invoice no. FECFCUST/13-1029 dt. 11.08.2013. The argument of the Appellant before Commissioner (Appeal) was that, these deficiencies do not imply that the goods are not of Indonesian origin. The Commissioner (Appeal) has not examined any of this ground and has simply rejected the appeal by observing as follows:

> "*5. I have gone through the grounds of appeal, personal hearing and relevant documents accompanying the subject appeals. I find that the appellant has not produced the Country of Origin Certificate required as per Notification No.46/2011 dated 01.06.2011.*
>
> *6. I have examined the condition of Notification No.46/2011 dated 01.06.2011 and find that the adjudicating authority passed orders in accordance with the condition of Notification."*

6. We find that, the said order of Commissioner (Appeal) is not a speaking order. He has not examined the reasons given by the Appellant in its appeal before Commissioner (Appeal). The impugned order is therefore set aside and the matter remanded to the Commissioner (Appeal) to gives specific findings on all the points raised by the Appellant before the Commissioner (Appeal).

7. Appeals are allowed by way of remand.

(Pronounced in the open court on 01.12.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Prachi