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

REGIONAL BENCH-COURT NO. 3

Custom Appeal No. 11772 of 2015 - DB

(Arising out of OIA-KDL-CUSTM-000-APP-032-035-15-16 dated 24/07/2015 passed by Commissioner of Customs-KANDLA)

Amit Petrolubes P. Ltd ....**Appellant**
3rd Floor, Sai Commercial Building,
Govandi Station Road,
Deonar, Govandi (East)
Mumbai-400 088.

VERSUS

C.C.-Kandla ......**Respondent**
Custom House,
Near Balaji Temple,
Kandla- 370 210.

<u>With</u>

Custom Appeal No. 11773 of 2015 - DB

(Arising out of OIA-KDL-CUSTM-000-APP-032-035-15-16 dated 24/07/2015 passed by Commissioner of Customs-KANDLA)

Hemant Shah ....**Appellant**
Director, Amit Petrolubes P Ltd.,
3rd Floor, Sai Commercial Building,
Govandi Station Road, Deonar,
Govandi (east)
MUMBAI.

VERSUS

C.C.-Kandla ......**Respondent**
Custom House,
Near Balaji Temple,
Kandla- 370 210.

<u>APPEARANCE:</u>
Shri Vikas Mehta, Consultant for the Appellant
Shri Ajay Kumar Samota, Superintendent (AR) for the Respondent

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

Final Order No. <u>12761-12762/2023</u>

DATE OF HEARING: 22.11.2023
DATE OF DECISION: 15.12.2023

<u>RAMESH NAIR</u>

The following issues are involved in the present appeals:

i. Classification of Rubber Processing Oil (RPO) whether under CTH 27101990 as claimed by the appellant or under CTH 2707 99 00 as per final assessment ordered by the department.

ii. The dispute about country of origin whether the same is Singapore or UAE where the appellant has not claimed any preferential rate of duty.

iii. Enhancement of declared value twice, from USD 500 PMT(C &F Kandla) to USD 531.500 PMT(C & F Kandla) and therefore, further enhancement to USD 585 on the basis of the copy of invoice received from shipping agent.

1.1 The brief facts of the case are that the appellant filed Bill of Entry No. 7638694 dated 11.08.2012 with Custom House, Kandla for clearance of 198 MT Rubber Processing Oil for assessment on first check basis. The appellant has classified goods under CTH 27101990. The appellant presented Quality Certificate No. TOP 2012/COQ-148 dated 28.08.2012 received from overseas supplier M/s. The Oceanic Petroleum Source Pvt. Ltd, Singapore showing among other parameters, Aromatic content as 33.8% measured by adopting ASTM D 2140 method. Geo Chem laboratory vide report dated 06.10.2012 as per which reported the aromatic content of 35%. The claim of the appellant is that aromatic content was less than the non-aromatic content. The goods were assessed provisionally and clearance was permitted. The test report dated 26.09.2012 issued by custom laboratory, Kandla in respect of sample drawn by customs reported aromatic content as above 50% i.e. more than non-aromatic constituents. On the basis of this test report, balance quantity of 63.600 MT were placed under seizure on 19.09.2012. On the basis of the customs laboratory report classification declared by the appellant was rejected and has ordered for final assessment by classifying the goods under CTH 2707 99 00. Due to change of classification as per the department goods attract basic custom duty @ 10 % as against 5%. In the final assessment order the value of the goods which was enhanced from USD 500 PMT to USD 531.500 PMT and thereafter on the basis of one invoice obtained from the shipping agent the value was further enhanced to USD 585 FOB Kandla.

1.2 It was also alleged by the department that there is incorrect declaration of county origin in as much as in the invoice the country of origin was shown as UAE. Accordingly, the Adjudicating Authority passed the order in original dated 23.09.2013 whereby the following order was passed:-

i. Classification of goods is held under CTH1707 9900.
ii. The country of origin as UAE was rejected and the same was held to be Malaysia.
iii. The value of 198 MT of Rubber Processing Oil (RPO) declared in Bill of Entry No. 7638694 dated 11.08.2012 USD 500 PMT was rejected and redetermined the same USD 585 PMT. Ordered for confiscation of Rubber Processing Oil with the option for redemption on payment of fine of Rs. 5,00,000/-, ordered for payment of differential duty amounting

to Rs. 24,74,446/- and the same was ordered to be adjusted and appropriate from the amount of Rs. 1491186/- which was already paid by the appellant. Penalty of Rs. 24,74,446/- was imposed under Section 114A of the Customs Act ,1962. Penalty of Rs. 2,50,000 each was imposed on Shri Hemant Raghunath Shah under Section 112(a) and 114AA of the Customs Act, 1962 respectively. The penalty of Rs. 50,000/- was imposed on M/s. Reshikiran Roadlines, Gandhidham under Section 112(a) of Customs Act ,1962, and penalty of Rs. 50,000/- was imposed on Shri Dinesh Nauratmal Gupta under Section 112(a) of the Customs Act, 1962, as well as penalty of Rs. 50,000/- under Section 114A of Customs Act. Being aggrieved by the said Order-in-Original, Appellant have filed aappeal before Commissioner (Appeals) wherein learned Commissioner (Appeals) reduced redemption fine of Rs. 50,000/- and penalty of Shri Hemant Shah was reduced to Rs. 25,000/- each under Section 112(a) and Section 114AA. However, remaining portion against present appellants were upheld. Therefore, the present appeals filed by the appellants.

2. Shri Vikas Mehta, learned Consultant appearing on behalf of the appellant filed a synopsis dated 22.11.2023 which is taken on record, wherein he made detailed submission on facts and merit of the case. He also placed reliance on the following Judgments:-

- Sah Petroluems Ltd. V/s. Commr. Of Cus. (Import) JNCH, Nhava Shev - 2017(358) ELT 483 (Tribunal - Mumbai)
- Agrawal Industrial Corporation Ltd. v/s. Commissioner Of Customs, Manglore, 2020 (373) ELT 280 (Tri.- Bangalore)
- Surbit Impex Ltd.-2012(283) ELT 556 (Tri.- Mumbai)
- Mittal International -2018 (359) ELT 527 (Tri. -Del)
- Jay Kay Exports -2003 (161) ELT 443 (Tri. -Kol)

3. On the other hand Shri Ajay Kumar Samota, learned Superintendent (AR) appearing on behalf of the revenue reiterates the finding of the impugned order.

4. We have carefully considered submissions made by both the sides, and perused the rerecords. In the present appeal, issue to be decided by us in the appeal filed by M/s. Amit Petrolubes Pvt Ltd are as under :-

i. Classification of Rubber Processing Oil (RPO)
ii. Country of origin of said goods

iii. Enhancement of declared value twice.

4.1. As regards classification of Rubber Processing Oil (RPO), we find that was held by the revenue under CTH 27079900 treating the parameters of aromatic constituents is 50% i.e. more than non-aromatic constituents on the basis of test report dated 26.09.2012 issued by Customs laboratory.

4.2. The submission of the appellant is that test report of Customs laboratory, Kandla does not mention, the method adopted by customs laboratory for testing the sample. Therefore, the said test report cannot be qualified as evidence to decide the classification. We find that as against the above test report dated 26.09.2012. The Quality Certificate No. TOP 2012/COQ-148 dated 02.08.2012 provided by the supplier M/s. The Oceanic Petroleum Source Pvt Ltd., Singapore shows aromatic content as 35.8 measured by adopting ASTM D2140 method. Moreover, accredited laboratory namely Geo Chem also vide report dated 06.10.2012 reported aromatic content is 35% and since 50% shown by the custom laboratory test report which does not mention method of testing sample, preference has to be given to the Geo Chem test report dated 06.10.2012 coupled with Supplier's quality certificate according to which the aromatic content being 33.08% - 35% is less than the non-aromatic content. Therefore, in our considered view the Rubber Processing Oil (RPO) is correctly classified under CTH 27101990.

4.3. The issue regarding classification of Rubber Processing Oil (RPO) is claimed by the appellant is supported by this Tribunal decision, in the case of Sah Petroleum Ltd v/s. Commissioner of Custom(import) JNCH, Nhava Sheva,2017 (358)ELT 483 (Tri.- Mumbai). Considering the fact in the present case and taking support of the aforesaid Tribunal Judgment which was upheld by the Hon’ble Supreme Court, we hold that the appellant's imported goods Rubber Processing Oil (RPO) is correctly classified under CTH 27101990 and not under CTH 2707 9900 as proposed by the revenue.

4.4. As regard the issue of country of origin, we find that the appellant had placed order with Oceanic Petroleum Source Pvt. Ltd, Singapore, who had shipped the goods from Malasiya. The Country of origin was shown in the invoice as UAE. The same was held as Malasiya by the lower authority, by relying on statement of Shri Hemant Shah, Director of appellant. We find that, it is submitted that the appellant has not claimed any preferential rate of duty on the basis of declaration regarding country of origin.

4.5. We are of the view that, without going into the fact that, which is the correct county of origin, since the appellant has not claimed any concession on the basis of country of origin the issue is only of aromatic content and having no revenue implication. Therefore no consequential penalty is sustainable. The very identical issue has been considered by the Tribunal in Agrawal Industrial Corporation Ltd. v/s. Commissioner Of Customs, Manglore, 2020 (373) ELT 280 (Tri.- Bangalore), whereby the Hon'ble Tribunal has set aside the redemption fine and penalty imposed under Section 112(a) and 114AA of Customs Act, 1962 on the ground that the country of origin was mis-declared in the bill of entry by taking note of the fact that the importer had not claimed any preferential rate of duty on this basis.

4.6. Considering the said decision of the Tribunal and fact of the present case, we hold that no penalty is sustained on this ground.

4.7. As regards the 3rd issue i.e. enhancement of the value of the imported goods twice, we find that once the value was enhanced from USD 500 PMT to USD 515 PMT , which was accepted by the appellant. However, the value was further enhanced to USD 585 only on the basis of one invoice bearing No. TOP SPL /CP/34 dated 09.07.2012 produced by the shipping agent.

4.8. On this basis, the assessable value is determined by adding freight @20 % and insurance @ 1.125%. We find that the appellant tendered copy of Bill of Lading No. MYPKGINIXY517631 dated 12.07.2012 for the subject goods confirming that freight was pre-paid. Therefore, when the freight is pre-paid and inclusive in the price, there is no requirement to add element of freight @20% for USD 585.

4.9. It is also observed that about the aforesaid invoice produced by the shipping line, the appellant had no knowledge and it is not also known when such invoice was produced before custom authority at the port of export. Hence, we are of the view that, it cannot be said that the same represent true and correct transaction value. Moreover, it is admitted fact that, no evidence was placed on record to show any extra payment made by the appellant over and above declared value USD 500 PMT C & F Kandla. No Contemporaneous import at USD 585 FOB Kandla was cited. Therefore, we are of the view that, enhancement of the value from USD 531 to UD 585 is without any basis and the same is not sustainable.

4.10. We find that as regards, the issue of classification of Rubber Processing Oil, when the classification is determined on the basis of test report, the order for confiscation by alleging mis-declaration and imposing penalty are not warranted. This proposition is supported by the following judgments:-

- Surbit Impex Ltd.-2012(283) ELT 556 (Tri.- Mumbai)
- Mittal International -2018 (359) ELT 527 (Tri. -Del)
- Jay Kay Exports -2003 (161) ELT 443 (Tri. -Kol)

5. In view of our above observation the impugned order so far it is against the appellant is set aside and consequential penalty imposed on Shri Hemant Shah, Director is also set aside. Accordingly, the appeals are allowed with consequential relief in the above terms.

(Pronounced in the open court on 15.12.2023)

RAMESH NAIR
MEMBER (JUDICIAL)

RAJU
MEMBER (TECHNICAL)

Arpita