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

REGIONAL BENCH-COURT NO. 3

CUSTOMS Appeal No. 10363 of 2022 - DB

(Arising out of OIO-KND-CUSTM-000-COM-01-2022-23 dated 04/04/2022 passed by Commissioner of CUSTOMS-KANDLA)

RISHI KIRAN LOGISTICS PVT LTD **........Appellant**
Plot No 8 Sector-8, Gandhidham Kutch
Kutch, Gujarat

VERSUS

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

APPEARANCE:
Shri Vikas Mehta, Consultant for the Appellant
Shri H P Shrimali, Superintendent (AR), for the Respondent

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

Final Order No. 10007/2024

DATE OF HEARING: 21.12.2023
DATE OF DECISION: 02.01.2024

RAMESH NAIR

This appeal is directed against Order-in-Original passed by Learned Commissioner, Customs, Kandla whereby the security deposit furnished by the Custom Broker, the appellant, has been forfeited and a penalty of Rs. 50,000/- was imposed. Therefore, the appellant filed the present appeal.

2. Shri Vikas Mehta, Learned Counsel appearing on behalf of the appellant at the outset submits that the entire case against the appellant was made out consequential to the charged made against M/s. Ridava Petrochemicals Pvt. Ltd. On the dispute of classification of imported goods. He submits that case of M/s. Ridava Petrochemicals Pvt. Ltd Vs. C.C. Kandla 2023 3 TMI 842 CESTAT Ahmedabad, has been decided by allowing their appeal. Therefore, when the entire foundation of the present case is the charge of mis-classification by the importer M/s. Ridava Petrochemicals Pvt. Ltd. and the said case has been quashed by this Tribunal by allowing their appeal, In the present case the order of forfeiture of security deposit and imposition of penalty, cannot be sustained.

3. Shri H P Shrimali, learned Superintendent (AR) appearing on behalf of the revenue reiterates the finding of the impugned order.

4. On careful consideration of the submission made by both the sides and perusal of record, we find that in the present case the appellant was imposed with the penalty of Rs. 50,000/- and also their deposit was forfeited only on the ground that the appellant was involved in connection with the offence committed by M/s. Ridava Petrochemicals Pvt. Ltd. The case of M/s. Ridava Petrochemicals Pvt. Ltd has been decided by this Tribunal in the favour of the importer, wherein following order was passed:

> *"05. After hearing both sides and on perusal of the record, we find that Appellant had filed warehousing Bill of entry for depositing imported goods namely 1900MT of Denatured Ethyl Alcohol and had declared on the Bill of entry that goods were imported for export. The Bills of entry was assessed and clearance was duly permitted by the revenue and subsequently appellant filed shipping bill for re-export of the part consignment of 194.59MTs. The* case *of the revenue in the present matter is that subject goods found to be Ethyl Alcohol in terms of test report dated 20.01.2021 and further clarification issued by the CRCL, Kandla. The adjudicating authority held that the Appellant has mis-declared the description of goods which rendered the goods liable to confiscation. It is also alleged that the goods in question are not in conformity with IS 4117(2008) standard and hence, the same cannot be treated as Denatured Ethyl Alcohol as declared and classified by the Appellant.*
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> *5.1 We also noticed that in the present matter by relying the test report given by CRCL, Kandla revenue argued that sample of goods are not considered as denatured Alcohol as per the Indian Standard, Alcohol Denaturants =Specification IS 4117 (2008). Therefore the impugned goods are Ethyl Alcohol and not denatured ethyl alcohol. In this context we noticed that Board issued circular 02/2006 dated 10.01.2006 wherein the requirement of IS 4117-1973(2008) related to alcohol denaturants is made. The relevant portion of said Circular is reproduced below:*
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>> *"I am directed to refer to the issue regarding denaturation of imported ethyl alcohol in terms of Section 24 of the Customs Act, 1962 read with 'Denaturing of Spirit Rules, 1972' issued by Ministry of Finance. Under these provisions, imported consignments of ethyl alcohol meant for industrial use are first denatured by adding specified chemicals and after testing thereof for denaturation, allowed clearance as denatured ethyl alcohol.*
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>> *2. Un-denatured ethyl alcohol of strength 80% or higher is classifiable under sub-heading 2207.10 whereas denatured ethyl alcohol is classifiable under sub-heading 2207.20.Denatured ethyl alcohol attracts concessional rate of customs duty @ 10% basic under Notification No. 21/2002-Cus., dated 1-3-2002 (Sl. No. 50) as against 150% basic on un-denatured ethyl alcohol.Ethyl alcohol is imported in un-denatured form, whether for use as such (e.g. potable type) or for industrial use. In* case *of latter use, ethyl alcohol requires to be denatured before clearance. For denaturing, of ethyl alcohol, it is treated with certain chemical agents such as, wood naphtha, methanol, acetone, pyridine, aromatic hydrocarbons (benzene etc.) and coloring matter (HSN notes for Heading 2207 refer).*
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>> *3. The Board has been apprised of divergence in practice regarding choice of denaturants at different ports. At some ports, Public Notices have been issued*

by Commissioner of Customs stating that the importers must use only the denaturants specified under BIS Standard (IS 4117-1973) in order to avail of benefit of concessional rate of duty under Notification No. 21/2002-Cus., dated 1-3-2002 (Sl. No. 50). On the other hand, some ports are allowing use of denaturants specified by the respective State Excise Department and many such denaturants do not find mention in the list of denaturants approved by BIS.

4. The contention of many importers who insist on following State Excise standards for denaturation is that it is the State Excise which has final say in the matter relating to alcohol and in case *of any mismatch between the procedures prescribed by the Central Govt. and the State Govt., those prescribed by the State Govt. should prevail.*

5. The matter has been examined in the Board. In the HSN notes corresponding to Heading 22.07, no methodology is described for undertaking denaturation of spirits. It only states that, "spirits are mixed with substances to render them unfit for drinking but not to prevent their use for industrial purposes." Further the notes mention some of the denaturants commonly used for this purpose such as, wood naphtha, methanol, acetone, pyridine, aromatic hydrocarbons (benzene etc.) and coloring matter.

6. To bring about uniformity in application of denaturing agents and adoption of appropriate standard for denaturing of ethyl alcohol, BIS standards IS 4117-1973 are being prescribed as denaturants for the purpose of denaturing of ethyl alcohol. BIS standard specifies several different types of denaturants. Therefore importers would have choice in use of denaturants based on end use.

7. I am directed to inform you that the Board has decided that BIS standards IS 4117-1973 may be adhered to for denaturation of imported consignment of ethyl alcohol in order to bring about uniformity in denaturing process at all Customs formations and avoid any misuse---"

5.2 We agree with the argument of Learned Counsel that the aforesaid Circular is not applicable to the disputed goods under consideration because the above circular issued with regard to denaturation of ethyl alcohol that is to be allowed clearance for industrial use in India and not with regards the goods imported and bonded for re-export. There is no allegation against the appellant that the disputed goods was imported for industrial use in India. Since such goods are not meant for any use in India, the same are not required to be allowed clearances in India. Hence the charges of mis-declaration of goods against the appellant by citing the non-compliance with IS 4117-1973 (2008) is completely misconceived and cannot be sustained.

5.3 We also find that para 5 of above circular makes it clear that the circular has been issued keeping in view HSN notes corresponding to heading 22.07. According to this, the sole requirement of HSN is denaturation of ethyl alcohol by mixing of spirits with substances to render them unfit for drinking. It is on records that the Chemical Examiner of Customs, Laboratory vide letter dated 02.03.2021 has also confirmed that goods imported by Appellant for re-export is mixed (denatured) with substance called Bitrex/Denatured Benzoate. Further there is no allegation against the Appellant that goods are fit for drinking. Hence, under the undisputed facts and circumstances where goods have been permitted to be deposited in bonded warehouse for re-export from the said warehouse and shipping bills have also been filed for export, allegation of mis-declaration of goods cannot be sustainable against the Appellant. Accordingly, we set aside the allegation of mis-declaration.

5.4 We also find that DGFT, New Delhi vide its clarification as discussed above clearly held that the provisions under Para 2.46(I)(a) of FTP, 2015-20 is not applicable in appellant's case*. In such circumstance charges against the appellant that they have imported the goods in gross violation of restriction imposed under the FTP is not sustainable. Further there is no restriction imposed under the FTP on import and export of subject goods. Further, it is clear that confiscation under Section of the Act is permissible only when the goods have been imported in contrary to the prohibition under the Act or any other law for the time being in force which is not the* case *in the* case *of present import by the appellant. Further we find that Learned Commissioner (Appeals) in impugned order itself observed that impugned goods were imported for re-export only and lower adjudicating authority has not proved any mala fide intention behind the alleged mis-declaration of impugned goods.*

5.5 As regard the confiscation of goods on the non-compliant of IS 4117 (2008), we are of the view that as per the Board Circular No.2/2006 dated 10.01.2006 this requirement is applicable to goods meant for clearance into India and not to any such goods which are meant for re-export and use outside India, the goods which are admittedly meant for re-export. First of all, there is no violation of compliant of IS 4117 (2008) even if it is required in view of the goods being re-exported. There is no case *of confiscation of goods under Section 111(m) of the Customs Act, 1962 accordingly, the penalty under Section 112 and 114 of the Customs Act, 1962 are not sustainable.*

5.6 As regard the penalty under Section 114AA of the Customs Act, 1962 on the charge of mismatch in the date of bill of lading in as much as the date mentioned in the bill of lading presented by appellant along with bill of entry was also reported by the master/agent in the Import General Manifest filed in the EDI system. This fact is not under dispute, the warehouse bill of entry filed by the appellant was assessed by the proper officer only after tallying the date appearing in the EDI system fed by the master/agent and the date appearing on the bill of entry present along with bill of entry filed by the appellant. We also find that it is clearly mentioned in the bill of lading that the shipment of 1900 MT. was loaded on board of vessel as part of one original lot of 38,386.137 MT. as Galveston Tx, USA on 27.10.2020. This has been corroborated by the statement of various representative recorded by the officers in the course of inquiry therefore, in absence of contrary evidence, the allegation that the date of lading mentioned in the bill of lading is incorrect and not justified.

5.7 We also find force in the appellant's submission as reliance placed on 'Commercial Certificate of Quality' No. LABORATORY JOB NO.DP 20-11252.004 dated 29.10.2020 when the goods were mentioned as 'Undenatured Ethyl Alcohol' is misplaced in as much as the said invoice was issued prior to denaturation at the Galveston anchorage. After arrival into India, the Chemical Examiner of Custom House laboratory at Kandla has certified that goods have been denatured with Bitrex/Denatonium Benzoate. On this basis, the conclusion of the authorities below that the bill of lading is incorrect and false in respect of description of goods as well as imposing penalty on the appellant under Section 117 of the Customs Act, 1962. We find that firstly as per the discussion made herein above, on the facts of the case *there is no mis-declaration on the part of the appellant therefore, only for inability to produce manufacturer's invoice that too due to supplier's unwillingness to share the same, by itself does not construe any offence that may attract penalty under Section 117 of the Customs Act, 1962. If the supplier is not willing to share the manufacturer's invoice, it is beyond control of the appellant for which no penalty under Section 117 can be imposed.*

06. In view of the above observation, we hold that the order of confiscation and subsequent penalties is bad in law as well in fact. Accordingly, the confiscation and redemption fine are set aside, consequentially we also set aside the penalties imposed on appellants.

> *07. Accordingly, the appeal is allowed with consequential relief, if any, in accordance with law."*

From the above decision, it can be seen that the entire foundation of the present is the case of alleged mis-classification by M/s. Ridava Petrochemicals Pvt. Ltd in respect of the imported goods which was handled by present Custom Broker.

5. Since, the case of M/s. Ridava Petrochemicals Pvt. Ltd has been quashed by allowing the appeal, the entire foundation itself got demolished. Therefore, no consequential punishment can be given to the present appellant.

6. Therefore, we set aside the impugned order and allow the appeal.

(Pronounced in the open court on 02.01.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Raksha