

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.3

Customs Appeal No. 10958 of 2021

(Arising out of OIA-KDL-CUSTM-000-APP-05-06-21-22 dated 06.08.2021 passed by Commissioner of Customs- Ahmadabad)

INDIAN FARMERS FERTILISER CO OPERATIVE LTD ...Appellant

IFFCO 1ST FLOOR IFFCO BHAVAN SHIVRANJANI CROSS ROAD SATELLITE
AHMEDABAD-AHMEDABAD-GUJARAT

VERSUS

C.C. KANDLA

CUSTOM HOUSE,
NEAR BALAJI TEMPLE,
KANDLA-GUJARAT

...Respondent

AND

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APPEARANCE:

Shri Manish Jain, Advocate appeared for the Appellant
Shri R. Nathan, Assistant Commissioner (Authorized Representative) for the Respondent

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

Final Order No. 10033-10034 /2024

DATE OF HEARING: 12.10.2023
DATE OF DECISION: 04.01.2024

RAJU

These appeals have been filed by Indian Farmer Fertilizer Co-Operative. One appeal pertains to issue of re-assessment of the bill of

entry. The second appeal relates to the refund that might arise as a consequence of re-assessment of bill of entry.

1.1 M/s. Indian Farmers Fertiliser Co-operative Ltd. (IFFCO), (hereinafter referred to as "the Appellant") is engaged in the import of "Di-Ammonium Phosphate" (hereinafter referred to as the "DAP").

1.2 The Appellant imported 47200 MT of DAP out of which 1800MT of DAP capsized while transferring from mothership to IFFCO jetty area. Final Assessment was done on the full quantity of 47200 MT and the customs duty was discharged by the Appellant on the full quantity without considering the fact that 1800MT DAP was capsized.

1.3 The issue pertains to the amendment in the quantity of DAP imported in the Bill of Entry and therefore the refund of excess duty paid on the 1800 MT DAP that capsized while transferring.

1.4 It is the case of the department that the refund claim is time-barred as 1 year has passed after the date of Final Assessment. On the issue of Re-assessment, the department denied the amendment on the grounds that as per Section 149, amendment is not allowable after the goods have been cleared for home consumption and the exception to the section in the shape of existence of the documentary evidence is also not applicable as the first documentary evidence was presented after the goods were cleared for home consumption.

2. Learned counsel for the appellant pointed out that reassessment was sought by them under Section 149 of the Customs Act. He argued that the conditions mentioned under Section 149 are satisfied in the present case and therefore, amendment in the quantity of bill of entry should have been allowed. He argues that documentary evidence was

in existence at the time of clearance of goods for home consumption. He further argued that vide letter dated 16.06.2018 the appellant had intimated the customs department about the loss of the goods prior to assessment of bill of entry. He relied on the decision of Tribunal in the case of M/s Lykis Ltd. 2020 VIL 62 CESTAT – AMD-CU wherein Tribunal has held that the time limit prescribed by the CBEC Circular in respect of Section 149 is not binding. He further argued that in the following decision, it has been held that amendment is permissible even after the goods are cleared for home consumption.

- Zuari Agro Chemical Ltd. v. Collector 1997 (89) E.L.T. 707 (Tribunal) Affirmed in 1996 (86) E.L.T. A78 (S.C.)
- Dimension Data India Private Ltd. v. Commissioner of Customs and Anr 2021 (376) [E.L.T.](#) 192
- Mohit Overseas Vs. CC-2016 (335) ELT 18 (Del.)
- Senka Carbon Pvt. Ltd. 2007 (216) ELT 397 (Tri-Chennai)
- Gabriel India Ltd. v. CC, 2014 (314) ELT 387 (T)
- Uflex Ltd. versus Commissioner of Customs, New Delhi 2013 (298) E.L.T. 476 (T)

He further argued that the goods included in the bill of entry to the extent of 1800 MT cannot be said to be cleared for home consumption as they were not available and never crossed the custom barrier. He argued that it is clear that these 1800 MT of goods never crossed the custom barrier. He further pointed out that the assessment was done provisionally on 08.06.2018.

3. Learned Authorized Representative relies on the impugned order.

4. The facts of the case are as follows:

The appellant filed bill of entry no. 6711677 dated 08.06.2018 for import of 47200 MT. The bill of entry was assessed provisionally on 08.06.2018 and the document was cleared for home consumption on

11.06.2018. Thereafter the goods were unloaded on barges for transfer from vessel M.V. Ocean Destiny which arrived in Kandla on 09.06.2018. The entire cargo was discharged by M/s Rishi Shipping the stevedoring contractor through barges. The discharge operation commenced on 11.06.2018 and was completed on 24.06.2018. The total quantity discharged were 47200 MT as per the draft survey report. The entire operation was completed with 28 barges. Out of 28 barges one barge namely GIRIJA-3 which was carrying material vide board note No. 16206 dated 13.06.2018 carrying 1800 MT SAP sunk in the sea on 13.06.2018. Therefore the total quantity received by the appellant was 45400 MT.

5. The appellant sought reassessment of the bill of entry under Section 149 of the Customs Act, 1962. Section 149 reads as follows:

"SECTION 149 Amendment of documents. Save as otherwise provided in sections 30 and 41, the proper officer may, in his discretion, authorise any document, after it has been presented in the custom house to be amended:

Provided that no amendment of a bill of entry or a shipping bill or bill of export shall be so authorised to be amended after the imported goods have been cleared for home consumption or deposited in a warehouse or the export goods have been exported, except on the basis of documentary evidence which was in existence at the time the goods were cleared, deposited or exported, as the case may be."

The request of the appellant for amendment under Section 149 was rejected on the following grounds by the Assistant Commissioner.

"2. In this connection, it is to apprise that the BE No-6711677 dated-08.06.2018 was initially assessed on provisionally 08.06.2018 and cleared for Home Consumption on 1.1.06.2018. The said BE was finally assessed on 21.06.2018 by Appraiser/Superintendent and on 04.07.2018 by Assistant Commissioner.

3. In the instant case, there is no documentary evidence which was in existence at the time of the impugned goods were cleared i.e 11.06.2018 and also the goods were reported destroyed on 13.06.2018 which was after the clearance of "Home Consumption".

Hence, section 149 of the Custom Act, 1962 is not applicable in the Instant case.”

The said order of the Assistant Commissioner has been upheld by the Commissioner (Appeals) on the ground that the goods were ordered to be cleared on 11.06.2018 and the goods were destroyed on 13.06.2018 and the police report was filed on 15.06.2018. The amendment has been sought on the strength of the police report dated 15.06.2018 which was not available before 11.06.2018 when the goods were cleared for home consumption.

5. Section 149 of the Customs Act permits amendment to the document filed before the proper officer however it is subject to the condition that no amendment of bill of entry or shipping bill or bill of export, ship authorization to be amended after the import of goods have been cleared for home consumption or deposited in warehouse or the export goods have been exported, except on the basis of documentary evidence which was in existence at the time the goods were cleared, deposited or exported as the case may be. In the instant case, the document was cleared for home consumption on 11.06.2018. The goods were infact unloaded from the ship by the stevedoring agent, therefore, it is clear that no document was available prior to 11.06.2018.

6. The appellants have relied on the decision in the case of Zuari Agro Chemical Ltd. 1997 (89) ELT 707 (T) Wherein the Tribunal has observed as follows:

“25. In this particular case, another fact which is of significance is the distinction between ‘removal’ and ‘clearance’. The goods can be removed for home consumption or otherwise after provisional assessment under bond but they can be said to be cleared for home consumption only after final assessment and orders of the proper officer in respect of such clearance. Therefore, while Collector (Appeals) is right in pointing out that the touch stone is clearance for home consumption, such clearance could not have been deemed to have been allowed

unless the goods had been finally assessed and out of charge order is given because it is this act of customs which puts the seal of finality and the goods thereafter go out of Customs Control - free to get mixed with the stream of commerce (or put to personal use) i.e. for home consumption.”

The said decision of the Tribunal has been approved by the Hon’ble Apex Court as reported in 1996 (86) ELT A78 (SC). It can be seen from the above that the clearance of goods can only be said to have happened on 21.06.2018 when the bills of entry was finally assessed. From that perspective the documents presented by the appellant namely the police report dated 15.06.2018 was indeed available prior to the clearance of the goods and was infact submitted prior to clearance of the goods i.e. on 19.06.2018. In these facts and circumstances, we hold that the amendment to the bill of entry should have been allowed in terms of section 149.

7. The appellant would therefore entitle to consequential relief. The appeals are allowed.

(Pronounced in the open court on 04.01.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Neha