

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

REGIONAL BENCH-COURT NO. 3

CUSTOM Appeal No. 10558/2021-DB

(Arising out of OIA-MUN-CUSTOM-000-APP-171-20-21 dated 09.03.2021 passed by Commissioner of CUSTOMS-MUNDRA)

MESSRS GLOBAL EXIM

301, Neelkanth Corporate Park,
Vidyavihar, Mumbai – 400 086

.....Appellant

VERSUS

C.C.-MUNDRA

Office of the Principal Commissionerate of Customs,
Port User Buld. Custom House Mundra,
Kutch, Gujarat-370421

.....Respondent

APPEARANCE:

Shri Hardik Modh, Advocate for the Appellant

Shri A R Kanani, Superintendent (AR) for the Respondent

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

HON'BLE MEMBER (TECHNICAL), MR. RAJU

Final Order No. 10141/2024

DATE OF HEARING: 12.12.2023

DATE OF DECISION: 11.01.2024

RAMESH NAIR

Brief facts of the case are that M/s. Global Exim (appellant herein) imported Alkalised Cocoa Powder claiming FTA benefits on imports of Cocoa Powder (CTH 18050000) from Malaysia under Custom Notification No. 46/2011-Cus dated 01.06.2011 and Notification No. 53/2011-Cus dated 01.07.2011. The Bill of Entry was finally assessed and the goods were allowed to be cleared extending the benefit of the above notifications. The Appellant had produced, inter alia, certificate of origin provided by the supplier in Form A-1, which was accepted by the proper officer without demur.

1.1. On a purported review of the said Bill of Entry, it is claimed that investigation conducted revealed that based on certificate of origin issued for the said product, the goods were derived from Cocoa beans of Ghana origin and in such cases, based on the prevalent International price as well as information available on supplier website, it appeared that the regional value addition would only be in the region of 13-17% as against minimum qualifying value addition of 35%. Consequently, a Show Cause Notice dated -30.04.2019 came to be issued to the Appellant proposing demand of differential customs duty of Rs. 26,54,934/- attributable to the concessional rate of Custom duties based upon wrong availment of Country of Origin benefit by the importer under Notification No. 53/2011-Cus dated 01.07.2011 should not be demanded and recovered from them in terms of Section 28 (4) of the Customs

Act, 1962, along with applicable interest under Section 28AA of the Customs Act, 1962, by re-assessing the aforesaid BE after amendment under Section 149 of the Custom Act, 1962 and by denying concessional rate of Custom duty benefit based upon the country of origin of imported goods. The said SCN also proposed to demand penalty under Section 112(a) and 114A, 114AA of Customs Act, 1962.

1.2. The submissions made by the appellant were rejected vide Order-in-Original No. MCH/ADC/AK/89/2019-20 dated 07.01.2020 and confirmed the demand of duty with interest and further imposed penalty under section 114A of the Customs Act, 1962. The subsequent appeal filed by the appellant also came to be rejected by the Appellate Commissioner vide impugned OIA No. MUN-CUSTOM-000- APP-171-20-21 dated 09.03.2021. The appellant is therefore before this Hon'ble Appellate Tribunal contesting the said Order-in-Appeal on various grounds.

2. Shri Hardik Modh, learned Advocate appearing on behalf of the appellant submits that, the demand of Custom Duty with interest is beyond the limitation period as stipulated under proviso to Section 28(1)(a) under Customs Act, 1962. All the facts relevant for the purpose of assessment are known to the department and the proper officer allowed the exemption. The allegation that the appellant has deliberately mis-declared country of origin as Malaysia is ex-facie arbitrary, illegal and without any basis. Therefore, the extended period of limitation under proviso to Section 28 (4) is not invocable.

2.1. It is submitted that the country of origin criteria as specified under Rule 3 (b) of Customs Notification No. 189/2009 - Cus (NT) dated 31.12.2009 also cover products not wholly produced or obtained in the exporting party provided that the said products are eligible under Rule 5 or 6. For the purpose of clause (b) of Rule 3, a product shall be inter alia deemed to be originating if the AIFTA content is not less than 35% of the FOB value. It is submitted that the imported goods are Alkalised Cocoa powder satisfies the country of origin criteria and therefore are eligible for concessional duty under Notification No . 46 of 2011-Cus.

2.2. He submits that ground on which benefit of exemption under custom Notification No.46/2011-Cus dated 01.06.2011 and Notification No. 53/2011/ Cus dated 01.07.2011 is denied on the assumption that value of addition by the supplier was less than 35%. Admittedly, the appellant had produced the valid COO'S issued by the competent authority in terms of the notifications. Considering the submissions that, there is no powers with the customs

authority to reject COO given by the concerned contracting State issuing authority. Therefore, COO issued by the designated authority cannot be dishonored unless the same is cancelled by the same authority. It is not the case here.

2.3. He further submits that, before the process of retroactive check regards provided under Article 16. Firstly, the same was not fully complied with. Secondly, exporting country has not held COO invalid, in such circumstances also COO cannot be rejected. In support he placed reliance on the Judgments:

- M/s. BDB Exports Pvt. Ltd Vs. CC, Kolkata, 2016 (9) TMI 1087 - CESTAT Kolkata
- Commissioner of Customs, Hyderabad vs. Riddi Siddhil Bullions Ltd, 2017 (355) E.L.T. 585 (Tri. - Hyd.)
- R.S. Industries (Rolling Mills) Ltd. Vs. CCE, Jaipur, 2018 (359) E.L.T. 698 (Tri. - Del.)
- Bullion and Jewellers Association Vs. Union of India, 2016 (335) E.L.T. 639 (Del.)
- Romil Jewelry 125 Niraj Industrial Estate, Opp: Sun Pharma Off: Mahakali Caves Road, Andheri (E), Mumbai 400093 Vs Commissioner Of Customs Air Cargo Complex Sahar, Andheri (E), Mumbai - 400099 - 2023-TIOL-839-CESTAT

3. On the other hand Shri A R Kanani, Learned Superintendent (AR) appearing on behalf of the revenue reiterates the findings of the impugned order.

4. On careful consideration of the submission made by both the sides and perusal of record, we find that even though the appellant has made strong prima facie case on the merit but appeal can be disposed of on the threshold point of the time bar. We find that the certificate of origin was provided by the exporting Country i.e. Malaysia. For which the appellant have no control. It is Governmental Authority of exporting country who after consideration of various aspects of value addition issued country of origin certificate.

4.1. The facts behind issuance of country of origin neither the appellant are aware of the fact nor they are legally suppose to know the same. At the time of filing the Bill of Entry the appellant have to submit the documents including the country of origin certificate which the appellant have scrupulously complied. If there is doubt in the mind of customs they could have issued show cause notice within the normal period of limitation, as per proviso to

Section 28 (4) of Customs Act. However, in the present case the show cause notice was issued beyond the normal period of limitation.

5. Moreover, on the merit also there is no strict compliance of retroactive check and conclusion thereof was made by the Custom Authority. Therefore, no mala fide can be attributed to the appellant in the given facts of the present case. Therefore, we are of the considered view, that the demand is hit by the limitation. Accordingly on the ground of limitation alone the impugned order is set aside. Appeal is allowed.

(Pronounced in the open court on 11.01.2024)

RAMESH NAIR
MEMBER (JUDICIAL)

RAJU
MEMBER (TECHNICAL)

Arpita