

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

REGIONAL BENCH-COURT NO. 3

Customs Appeal No. 11779 of 2019- DB

(Arising out of OIA-AHD-CUSTOM-000-APP-34-19-20 dated 28/05/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)

Olam Agro India Ltd

.....Appellant

(presently Known As Olam Enterprises India Private Limited) Ix/102,
Varikoli Po, Puthencruz,
Ernakulam, Kerala

VERSUS

C.C.-Ahmedabad

.....Respondent

Custom House,
Near All India Radio Navrangpura,
Ahmedabad, Gujarat

APPEARANCE:

Shri M Balagopal, Advocate for the Appellant

Shri Sanjay Kumar, Superintendent (AR) for the Respondent

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

Final Order No. 10328/2024

DATE OF HEARING: 06.10.2023

DATE OF DECISION: 05.02.2024

RAMESH NAIR

The brief facts of the present case are that the appellant have imported Cumin seed for re-exportation availing benefit under Notification No. 158/95-Cus dated 14.11.1995 wherein the condition was that the goods were to be re-exported within six months. The appellant submitted a request to the department to change the benefit of Notification from 158/95 to 94/96-Cus as they could not re-export the goods within six months as stipulated in the Notification No. 158/95-Cus which was rejected by the adjudicating authority vide order F No. VIII/48-90/ICD/Olam/2015 dated 02.04.2016. The appellant had filed an appeal against the said rejection letter before commissioner (Appeals). The learned Commissioner (Appeals) vide Order-in-Original No. AHD-CUSTOM-000-APP-101-16-17 dated 07.03.2017 remanded the case to the original authority for passing the order after considering all the documents and evidence and following the principle of natural of justice. Against the said

order-in-appeal dated 07.03.2017, the appellant filed an appeal before the CESTAT Ahmedabad. The same was dismissed, holding that the Commissioner is right in remanding the matter to the Adjudicating Authority. The Adjudicating authority passed the de-novo order whereby the request for changing of Notification No. 158/1995-Cus dated 14.11.1995 to Notification No. 94/1996-CUS dated 16.12.1996, in the bill of entry dated 29.01.2014 was rejected. Being aggrieved by the order-in-original dated 30.06.2018, the appellant preferred an appeal before the Commissioner (Appeals) who vide the impugned order rejected the appeal of the appellant only on the reliance of the Hon'ble Supreme Court judgment in the case of Commissioner of Customs Calcutta Vs. Indian Rayon & Industries Ltd. 2008 (229) ELT 3 (SC), therefore, the present appeal filed by the appellant.

2. Shri M Balagopal, Learned Counsel appearing on behalf of the appellant submits that the fact of the present case is different from the fact in the case of Indian Rayon Industries Ltd decided by the Hon'ble Apex Court. Therefore, the sole reliance of the Commissioner (Appeals) on the judgment of Indian Rayon Industries Ltd (supra) is incorrect. Consequently, the order is also illegal and improper.

2.1 He submits that since, the appellant could not comply the condition of Notification No. 158/95-CUS they have claimed alternate exemption Notification by filing application under Section 149. He submits that at the time of filing bill of entry the alternate Notification No. 94/2006-Cus was very much available. Therefore, claiming a beneficial notification cannot be denied. He placed reliance on the following Judgments:-

- Birla NGK Insulators Pvt. Ltd. Vs. Commr. of CUS. Ahmedabad- 2009 (240) ELT 380 (Tri.-Ahmd.)

- Birla NGK Insulators Pvt. Ltd. Vs. Commissioner of Cus., Ahmedabad-2014 (309) ELT 501 (Tri.-Ahmd.)
- Commissioner of Customs (AIR), Chennai Vs. Srinar Electronics (P) Ltd.- 2010 (253) ELT 96 (Tri.-Chennai)
- IE Impex Pvt. Ltd. Vs. Commissioner of Customs(port), Kolkata-2008(224) ELT 71 (Tri.-Kolkata)
- LINZII Vs. Commissioner of Cus. Tuticorin-2007 (213) ELT 212 (Tri.-Chennai)
- Shri Balaji Apparels Vs. Commissioner of Customs, Chennai-2006(200) ELT 95 (Tri.- Chennai)
- Share Medical Care Vs. Union of India- 2007 (209) ELT 321 (SC)
- Commissioner of Cus., Calcutta Vs. Indian Rayon & Industries Ltd.-2008 (229) ELT 3 (SC)
- Shasun Chemicals and Drugs Ltd. Vs. Commr. Of Customs, Chennai-2010 (261) ELT 923 (Tri.-Chennai)

3. Shri Sanjay Kumar 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 records we find that the appellant's request which was rejected is claiming the alternate exemption Notification No. 94/2006 as against the Notification No. 158/95-CUS which was claimed at the time of filing the Bill of entry. In our considered view, the change of Notification in the bill of entry is permissible in terms of Section 149 of Customs Act, 1962. Therefore, in principle, the appellant is eligible for change of notification, for the reason in the present case that the appellant could not comply with the condition of re-export of goods within six months in terms of Notification 158/1995-CUS. The only criteria to be seen that whether at the time of import the alternate exemption notification was legally available to the appellant. In the facts of

the present case, there is no dispute about eligibility of the Notification 94/2006-Cus in respect of the import made by the appellant as the goods were meant for re-export.

4.1 We find that both the lower authorities have denied the change of the notification only on relying upon the Hon'ble Supreme Court judgment in the case of Indian Rayon & Industries Ltd. (supra). Now we examine the facts of the case in Indian Rayon & Industries Ltd. (Supra). Ongoing through the said judgment, we find that Hon'ble Supreme Court concluded the matter as under:-

"9. Counsel for the parties have been heard.

10. Section 20 of the Customs Act, 1962, which deals with re-importation of the goods, provides:-

"20. Re-importation of goods. – If goods were imported into India after exportation therefrom, such goods shall be liable to duty and be subjected to all the conditions and restrictions, if any, to which goods of the like kind and value are liable or subject, on the importation thereof."

11. By Notification No. 158/95-Cus. dated 14th November, 1995, goods manufactured in India and reimported in India for repairs or for reconditioning are exempted from whole of the duty of customs leviable on them as well as additional duty subject to the condition, inter alia, that the goods are re-exported within six months of the date of re-importation or any extended period as may be allowed and a bond is executed at the time of importation to export within the said period and, in the event of failure to do so, pay an amount equal to the difference between the duty levied at the time of re-import and the duty leviable on such goods at the time of importation. The assessee executed a bond with the President of India, complying with the aforesaid condition of notification and undertook to pay, on demand in the event of its failure to comply with any of the conditions of notification, an amount equal to the difference between the duty levied and leviable on such goods. In respect of each of the Bills of Entry, separate bonds were executed indicating Bill of Entry No., description of goods, country of origin, CIF Value, the assessable value and the bond value.

12. The Revenue contends that the assessee could not avail the benefit under Notification No.94/96Cus and that it could not change its option. According to the assessee, the assessee could change its option even at a later stage and it could avail of the benefit under Notification No.94/96-Cus which was in force at that time.

13. We do not find any substance in this submission advanced on behalf of the assessee. The only notification which was available to the assessee at the time of import which granted the assessee the right to import duty free goods was Notification No. 158/95-Cus. Having availed of the benefit of notification, the assessee has necessarily to comply with the conditions of the notification. It goes without saying that the assessee cannot

approve and disapprove. In Tractors and Farm Equipment Ltd. v. Collector of Customs, Madras, [1998 (9) SCC 665], it was pointed out by this Court that once the assessee's case was that what it had imported do not constitute internal combustion piston engines but only certain components, the importer cannot turn around and say that what was imported constitutes piston engines. Of course, there is no estoppel against the law but having sought for and taken the benefit of the notification to import goods without payment of duty, it is not open to the assessee to contend that the conditions in the said notification need not be fulfilled, be it on the ground that the benefit under another notification is available to him or otherwise.

14. In any event, Notification No. 94/96-Cus. is, on its own terms, not applicable to the facts of the present case. The assessee has claimed the benefit under clause 1(e) of Notification No. 94/96-Cus. The description of the goods claimed in Serial No. 1(e) under Notification No. 94/96-Cus., which reads as under:

Sl. No.	Description of goods	Amount of duty
(1)	(2)	(3)
1.	Goods exported (a). XXX (b). XXX (c). XXX (d). XXX (e). under duty exemption scheme (DEEC) or export Promotion Capital Goods Scheme (EPCG)	XXXXX XXXXX XXXXX XXXXX XXXXX Amount of excise duty leviable at the time and place of importation of goods and subject to the following conditions Applicable for such Goods (I) DEEC book has not been finally closed and export in question is delogged from DEEC book. (II) (II)In case of EPCG scheme the period of full export performance has not expired and necessary endorsements regarding reimport have been made. (III) (III)The importer had intimated the details of the consignment re-imported to the Assistant Commissioner of Central Excise in charge of the factory where the goods were

2.	XXX	XXX
3.	XXX	XXX

refers to the goods exported under DEEC or Export Promotion Capital Goods (EPCG) Scheme and not under DEPB Scheme. In the present case, out of the three Bills of Entry covering goods which had to be reexported, only one of them was for goods earlier exported under DEEC scheme while the other two were under DEPB scheme. The adjudicating authority had, in respect of goods initially imported under DEEC Scheme, given the benefit of the Notification No. 94/96-Cus, while rejecting the claim in respect of the goods exported under a DEPB Scheme. This is in accordance with the language of Notification No. 94/96-Cus. The difference between DEEC and DEPB Schemes can be seen from the following :-

DEEC Scheme

Under this scheme the importer is issued an Advance Licence to procure the raw material for a manufacturer of the export product. The goods which are cleared under Advance Licence are meant for use in the manufacture of export product or replenishment of the raw materials already used. The clearance is allowed duty free. The details of items allowed for import against a specific export product are published by the Ministry of Commerce in their Input Output Norms which are part of the Exim Policy.

DEPB Scheme

Under this scheme the exporters are issued DEPB scrips which allows them the specific amount to be utilized for payment of Customs duty. The amount for which DEPB scrip is issued depends upon the rate for a particular export product. The Ministry of Commerce notifies DEPB credit rates for export of an item. The DEPB scrip is freely transferable and can be used to debit the payment of duty at the time of clearance of goods except capital goods and goods mentioned in negative list.”

15. *An attempt was made on behalf of the assessee to refer to Sl. No.1(d) of the said notification which refers to goods exported under bond without payment of excise duty. It is only Sl. No. 1(e) which deals with benefit under the EXIM Policy but, at the same time, confines to DEEC and EPCG Scheme and not to the DEPB Scheme. Sl. Nos. 1(a), (b), (c) and (d), all deal with export of goods in the normal course, where duty becomes payable under the provisions of Central Excise Act, 1944 or the Customs Act, 1962, as the case may be, and to the Customs or Excise duties leviable on goods so exported. They do not deal with imports or exports under the EXIM Policy which fall in Sl. No. 1(e).*
16. *Rule 13 of the Central Excise Rules, 1944, which was in force at the time of initial export of goods in question (February 1998), provides as under:*

“RULE 13- Export in bond of goods on which duty has not been paid

- (1)The Central Government may, from time to time, by notification in the Official Gazette*
- (a)permit export of specified excisable goods in bond without payment of duty, in the like manner, as the goods regarding, which the rebate is granted under sub-*

rule (1) of rule 12 from a factory of manufacture or warehouse or any other premises as may be approved by the Commissioner of Central Excise;

(b) specify materials, removal of which without payment of duty from the place of manufacture or storage for use in the manufacture in bond of export goods, may be permitted by the Commissioner of Central Excise;

(c) allow removal of excisable material without payment of duty for the manufacture of export goods, as may be specified, to be exported in execution of one or more export orders; or for replenishment of duty paid materials used in the manufacture of such export goods already exported for the execution of such orders, or both;

subject to such safeguards, conditions and limitations as regards the class or description of goods, class or description of materials used for manufacture thereof, destination, mode of transport and other allied matters as may be specified in the notification which the exporter undertakes to abide by entering into a bond in the proper form with such surety or sufficient security, and under such conditions as the Commissioner approves.

(2) The Central Government may, from time to time, by notification in the Official Gazette, permit export of specified excisable goods in bond, without payment of duty from a factory of manufacture or warehouse, to Nepal or Bhutan, subject to such conditions or limitations as regards the class of goods, destination, mode of transport and other matters as may be specified therein.

Explanation I.- In this rule, the expression "manufacture" includes the process of blending of any goods or making alterations or any other operation thereon.

Explanation II.- In this rule, the term 'materials' shall include raw materials, consumables, components, semifinished goods, assemblies, subassemblies, intermediate goods, accessories, parts and packaging materials used in the manufacture of export goods but does not include capital goods used in the factory in or in relation to manufacture of export goods."

17. Rule 14 provides for entering into General Bond, for permission to export goods from India under the prescribed conditions and Rule 14A provides for penalty for failure to furnish proof of export within the prescribed period. Sl. No. 1 (d) of Notification No. 94/96-Cus. covers these instances where goods are manufactured in India and exported without payment of duty in accordance with the procedure set out in Rule 13, as indicated above. Sl. No. 1(d) has, therefore, no relevance to exports made under Export Import Policy Schemes.

18. Since the two consignments vide Bills of Entry Nos. 930 dated 12th August, 1998 and 2440 dated 29th May, 1998 under DEPB Scheme do not get the benefit of Notification No.94/96-Cus., the order of the Tribunal deserves to be set aside and the order of the Commissioner of Customs restored. Ordered accordingly. Appeal is allowed with costs."

4.2 From the above observation of the Hon'ble Supreme Court, it can be seen that the claim of the appellant to the extent the benefit of notification 94/1996-CUS was declined for the reason that the bill of entries involved in that case were dated 12.08.1998 and 28.05.1998 whereas in the present

cases the bills of entry are dated 29.01.2014. During the relevant period of filing the bill of entry in the present case, the Notification No. 94/1996-Cus was very much available to the appellant in terms of amendment Notification No. 135/99-Cus dated 27.12.1999 whereby an entry as Sr. No. 2A was inserted. Whereas in the case of Indian Rayon, the date of bill of entries being 12.08.1998 and 29.05.1998 i.e. prior to the amendment in the Notification dated 27.12.1999. The facts are totally different, hence the reliance on the judgment in the case of India Rayon Industries (Supra) by both the lower authorities is misplaced.

4.3 We further find that the issue whether subsequent to import, appellant can claim alternate exemption notification is settled by the Hon'ble Apex Court in the case of Share Medical Care (Supra), wherein it was held that the beneficial notification can be claimed at a later stage also, if otherwise the same is eligible at the time of import of goods. Therefore, on both the count, the appellant are eligible for alternate exemption Notification No. 94/1996-Cus dated 16.12.1996.

5. Accordingly, the impugned order is not legal and proper, hence the same is set aside. The appeal is allowed.

(Pronounced in the open court on 05.02.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)