CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT AHMEDABAD

REGIONAL BENCH – COURT NO. 01

CUSTOM Appeal No. 10024 of 2022

[Arising Out Of OIA-MUN-CUSTM-000-APP-154-21-22 Dated-16/09/2021 Passed By Commissioner of CUSTOMS-MUNDRA]

M R SCIENTIFIC SUPPLIERS **.....Appellant**
49 GALI NO 4 ASHOL VIHAR PHASE-III PALAM VIHAR ROAD
GURGAON, HARYANA

VERSUS

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

APPEARANCE:
Shri. Vikas Mehta, Consultant for the Appellant
Shri. Sanjay Kumar, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (TECHNICAL), MR. RAJU
HON'BLE MEMBER (JUDICIAL), MR. SOMESH ARORA

FINAL ORDER NO.A / 10399 /2024

DATE OF HEARING:08.02.2024
DATE OF DECISION: 14.02.2024

SOMESH ARORA

M/s M.R. Scientific Suppliers, 49, Gali No.4, Ashok Vihar, Phase-III, Palam Vihar Road, Gurgaon-122 001 (hereinafter referred to as the appellant) had filed appeals against OIO No. MCH/DC/CKP/541/2019-20 dated 10.01.2020 issued by the Deputy Commissioner of Customs, Mundra Customs House, Mundra (hereinafter referred to as the adjudicating authority).

2. Facts of the case in brief are that the appellant had filed Bills of Entry No.6040711 dated 07.07.2014 for clearance of imported goods declared as 'Alkalised Cocoa Powder. The goods were shipped from Malaysia and the importer had filed Bill of Entry availing concessional rate of Customs Duty benefit on the basis of Country of Origin Certificate prescribed under Notification No.46/2011-Cus dated 01.06.2011, as amended. The goods were cleared on the basis of self assessed Bill of Entry filed by the appellant. Benefit of Notification No.46/2011-Cus and 53/201 -Cus is available provided the goods are of Malaysian origin in accordance with the provisions of Customs Tariff (Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of the Republic of India and Malaysia) Rules, 2011. As per aforesaid rules, in case goods are not wholly obtained or produced goods from Malaysia, the qualifying value content of the goods should not be less than 35% of the FOB value. Verification of qualifying value content was taken up for investigation by Directorate of Revenue Intelligence, New Delhi and it was noticed that (as per the department) the goods were derived from Cocoa beans of Ghana origin and the regional value addition would be of 3-7% against the minimum qualifying value addition of 35% of the FOB value. On taking up the matter with High Commission of Malaysia in Delhi it was informed that the 'Ministry of International Trade and Industry (MITI), Malaysia' had completed verification visit to both the factories i.e of M/s JB Cocoa and Guan Chong Cocoa, to verify the information regarding raw material used in the production of cocoa powder for export to India. Based on the verification visit and internal investigation of both factories, MITI stated that the raw material used in the production of finished goods has fulfilled the 35% Regional Value Content (RVC) under ASEAN Indian Free Trade Agreement (AIFTA), however they showed their inability to provide the cost structure due to data privacy.

3. Department in the absence of cost data sought to reject the certificate of origin by issuing show cause notice which was confirmed by both the lower authorities by confirming the duty, interest and imposing penalty. Aggrieved by the impugned order of Commissioner (Appeals), appellant has filed the present appeal.

4. The learned Advocate submits by placing reliance on the matter of SYMPHONE INTERNATIONAL vs. C.C-Mundra vide Final Order No. A/10194/2024 as well as Final Order No. A/12060/2023 of M/s. SHIRAZEE TRADERS Vs. C.C-Mundra to plead that once relevant Certificate is issued and even stands verified by Malaysian authorities, the benefit of exemption notification could not be denied, simply because the DRI could not get the cost data of the concerned company and that there is nothing to show on record as held by lower authority that verification carried out by DRI had revealed that Cocoa Beans in the instant case were of Ghana origin. Same was based on presumption and assumption .

5. Learned AR on the other hand relied upon the order of the lower authority to justify the department's stand.

6. Considered. We find that in the instant case, the certificate was duly got verified through the Government to Government process and Malaysian authorities have not doubted the issuance of genuine certificate of origin nor its contents. However, the department in the absence of cost data has placed the whole burden of proof on the appellants, despite documentary evidence coming to the fore by way of certificate of origin and getting verified by the Malaysian authority. It is clear the cost data of Malaysian manufacturer having been provided or having been denied is a matter between Government to Government (G to G) and cannot be held against the appellants. In case the agreement between Malaysian Government and

Indian Government had some provision for providing cost data of the supplier company then such condition could have been taken up with the Malaysian Government and if needed the preferential duty agreement got cancelled for breach of treaty provision. Failure of Indian authorities to get more detailed verification or underlying cost data from the Malaysian Government authorities cannot be held against the appellant, who discharged the burden to claim benefit by providing the relevant prescribed document under the agreement and the Customs notification. On production of such evidence, it was for the department to discharge the onus as shifted upon it.

7. We, therefore, find merits in the appeal and allow the same accordingly, with consequential relief.

(Pronounced in the open Court on 14.02.2024)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)

Prachi