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

REGIONAL BENCH – COURT NO. 01

CUSTOM Appeal No. 10025 of 2022

[Arising Out Of OIA-MUN-CUSTM-000-APP-155-21-22 Dated-16/09/2021 Passed By Commissioner of CUSTOMS-MUNDRA]

KIARA INGREDIENTS INC **.....Appellant**
4th Floor L-352 L Block Mahipalpur Extension Mahipalpur
New Delhi, New Delhi

VERSUS

C.C.-MUNDRA **.....Respondent**
Office of the Principal Commissionerate of Custom
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 / 10400 /2024

DATE OF HEARING:08.02.2024
DATE OF DECISION:14.02.2024

SOMESH ARORA

M/s Kaira Ingredients Inc., 4th floor, L-352, L-Block, Mahipalpur Extension, Mahipalpur, New Delhi-110 037 (hereinafter referred to as the appellant) had filed appeals against OIO No. MCH/ADC/AK/89/2019-20 dated 07.01.2020 issued by the Additional Commissioner of Customs, Mundra Customs House, Mundra (hereinafter referred to as the adjudicating authority). Same was decided by Commissioner (Appeals) vide order dated 16.09.2021. Aggrieved by this order, appellant has filed the present appeal.

2. Facts of the case in brief are that the appellant had filed Bills of Entry for clearance of imported goods declared as 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 53/2011-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 (as per the department) that 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. Accordingly a show cause notice was issued to the appellant seeking to deny the benefit of Exemption Notification and imposing penalty under Section 112 and 114A and 114AA by rejecting the concessional certificate. The same were imposed and upheld by the lower authorities by rejecting the certificate of origin as cost structure was stated to be not provided by M/s JB Cocoa and M/s Guan Chong Cocoa, the other supplier. This despite the concerned agency i.e. MITTI of Malaysia verifying the genuineness of the certificate through internal investigation. The country of origin as Malaysia was therefore considered as wrongly mentioned. Since to the department DRI investigation revealed that value addition as of 35% was not in Malaysia and also because cost structure on the basis of data privacy was not provided. In the impugned order, the Learned Commissioner (Appeals) has held that it is incumbent upon the appellant to provide cost data to prove that value addition as claimed by them, in the country of origin certificate provided by them. Based on such findings, the appeal was rejected by Commissioner (Appeals). Aggrieved by the order, the appellant has filed the present appeal.

4. The Learned Advocate in this regard, places reliance on the order of SYMPHONY INTERNATIONAL vs. C.C-Mundra vide Final Order No. A/10194/2024 dated 23.01.2024. It was the stated position that the only investigation which was got conducted in the matter pertained to verification through Malaysian authority which confirmed the genuineness of certificate. He also distinguished the decisions relied upon by the Commissioner (Appeals) and pleaded that rejection of certificate was improper.

5. Learned AR on the other hand seeks to justify the order on the basis of findings of the learned Commissioner (Appeals)

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 same getting verified from Malaysian authorities. It is clear the cost data of Malaysian manufacturer having been provided or having been denied is a matter between Government to Government and cannot be held against the appellants, as no one will part its cost data to any buyer as same is generally considered confidential. 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 or action could have been taken under the preferential duty agreement by Indian Government. 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 their burden to claim benefit by producing the relevant prescribed document under the agreement and the Customs notification. On production of such evidence, it was for the department to discharge the burden as shifted on it.

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

(Pronounced in the open Court on 14.02.2024)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)

Prachi