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

REGIONAL BENCH- COURT NO.3

Customs Appeal No. 11071 of 2016
(Arising out of OIA-KDL-CUSTM-000-APP-088-15-16 dated 04.02.2016 passed by Commissioner of Customs, Kandla)

M/s Asian Paints Limited **.....Appellant**
6a, Shantinagar, Vakola, Santacruz (East),
Mumbai-Maharashtra

Commissioner of Customs - Kandla **.....Respondent**
Custom House, Near Balaji Temple,
Kandla-Gujarat

VERSUS

APPEARANCE:
Shri Junid Shekh, Employee of the Company
Shri A. Kumar, Authorised Representative appeared for the Respondent

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

FINAL ORDER NO. 10575 /2024

DATE OF HEARING: 08.03.2024
DATE OF DECISION:08.03.2024

SOMESH ARORA

In the present case the dispute relates to excess quantity received of liquid bulk cargo as against ordered quantity of 282.898 MT, the quantity received when measured by independent agency of SBS India was found in excess by 7.088 MT which was 2.5% in excess with quantity ordered by the appellant.

2. Learned authorized representative appearing for the party indicates that at the Kandla Port, there was a public notice which indicated tolerance upto 1%, but there are various case law of this Tribunal which have allowed tolerance limit upto 3% also. Therefore, 2.5% is within the tolerance limit. He indicates that the duty and redemption fine has already paid by them. He fairly indicates that in the latest correspondence which it had it transpires that excess quantity was wrongly shipped by their exporter and same was found at Kandla Port. Therefore, the tolerance limit which is allowed due to the nature of the

goods may or may not come into play in view of the fact that excess quantity was admittedly shipped by the exporter.

3. Considered.

4. This court finds that the learned representative for the party has very fairly brought out all the facts including the post clearance fact before us and has admirably conceded that duty is not been contested. Since there was no malafide intention on the part or on the part of exporter, the penalty is not imposable. This court appreciates the fact that the duty has not been contested. This court therefore agrees with the proposition of authorized representative that in the facts and circumstances of the matter, no penalty should be imposed. Penalty is therefore done away with. Appeal partly allowed in above extent.

(Dictated & Pronounced in the open court)

(SOMESH ARORA)
MEMBER (JUDICIAL)

Neha