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

REGIONAL BENCH – COURT NO. 01

CUSTOM Appeal No. 10688 of 2022

[Arising Out Of OIA-MUN-CUSTM-000-APP-424-22-23 Dated- 17/06/2022 Passed By Commissioner of CUSTOMS-AHMEDABAD]

MUDIT ENTERPRISES PVT LTD **.....Appellant**
Unit No P2/4020 Plaza Block B Scs 20 Manoharlal
Khurana Marg Bara Hindu Rao, Delhi
Delhi

VERSUS

COMMISSIONER OF CUSTOMS-MUNDRA **.....Respondent**
Office Of The Principal Commissionerate Of Customs, Port
User Buld. Custom House Mundra, Mundra, Kutch
Gujarat-370421

WITH

- **CUSTOMS APPEAL NO. 10765 OF 2022 (C.C.,MUNDRA VS. MUDIT ENTERPRISES PVT LTD)**
- **CUSTOMS APPEAL NO. 10766 OF 2022 (C.C.,MUNDRA VS. ANR INTERNATIONAL PVT LTD)**
- **CUSTOMS APPEAL NO. 10781 OF 2022 (ANR INTERNATIONAL PVT LTD VS. C.C.,MUNDRA)**

[Arising Out Of OIA-MUN-CUSTM-000-APP-424-22-23 Dated- 17/06/2022 Passed By Commissioner of CUSTOMS-AHMEDABAD]

[Arising Out Of OIA-MUN-CUSTM-000-APP-425-22-23 Dated- 17/06/2022 Passed By Commissioner of CUSTOMS-AHMEDABAD]

APPEARANCE:
Ms. Reena Rawat, Advocate for the Appellant
Shri. Anand Kumar, Superintendent (AR) for the Respondent

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

FINAL ORDER NO.A / 10614-10617 /2024

DATE OF HEARING:27.02.2024
DATE OF DECISION:18.03.2024

SOMESH ARORA

The appellant filed Bill of Entry No. 3527502 dated 12.04.2021 with Custom House, Mundra for clearance of imported goods, namely, 130 MT of PVC Resin SG 5 (Suspension Grade) falling under Chapter sub-heading 3904 10 20 of the First Schedule to Customs Tariff Act, 1975. That along with bill of entry, the appellant produced the following documents received from the overseas supplier.

i. Commercial invoice No. LTME 2021-01 dated 02.03.2021 issued by M/s. Inner Mongolia Lanta Sodium Industry Co. Ltd.
ii. Packing list dated 02.03.2021 issued by the aforesaid supplier.
iii. Certificate of origin dated 02.03.2021 issued by China Council for the Promotion of International Trade (China Chamber of International Commerce).
iv. Bill of lading dated 09.03.2021.

The aforesaid invoice, packing list and certificate of origin contained a declaration that the goods were manufactured by M / s CNSG Jilantai Salt Chlori-Alkali Chemical Co. Ltd. The officers who examined the goods found that the bags containing the goods were imprinted with the name M / s CNSG Jilantai Chlori-Alkali Chemical Co. Ltd." Pursuant to this, it appeared that the goods were liable to anti-dumping duty @ USD 147.96 PMT in terms of Sl. No. 2 of Notification No. 32/2 -Customs (ADD) dated 10.08.2019 instead of Sl. No. 1 of the said notification prescribed anti-dumping duty @ USD 61.14 PMT, as claimed by the appellant.

2. On the above basis, it was proposed to reject the claim of appellant to pay lower anti-dumping duty but it was also proposed to adjudicate the case on the charge of mis declaration as the goods were not manufactured by M/s CNSG Jilantai Salt Chlori-Alkali Chemical Co. Ltd., as per the declaration made by the supplier in all the documents issued by him.

3. The appellant it is stated was incurring heavy demurrage, detention and ancillary charges and hence, they prayed for earliest possible release by waiving the requirement of show cause notice and personal hearing.

4. That Ld. Additional Commissioner passed the following order:

> *(i) I order to re-assess the impugned goods imported vide Bill of Entry No. 3527502 dated 12.04.2021 under Section 17(5) of the Customs Act, 1962 with levy & payment of ADD @ USD 147.96 PT at Sr. No. 2 of the Notification No. 32/2019-Customs (ADD) dated 10.08.2019. Accordingly, I order to recover the differential duty from the importer before clearance of goods.*
>
> *(ii) I confiscate the impugned goods covered vide Bill of Entry No. 3527502 dated 12.04.2021 having assessable value of Rs. 1,18,56,585/- under Section 111 (m) of the Customs Act, 1962. However, I give an option to the importer to redeem the same on payment of redemption fine equal to the differential duty as mentioned in (i) above in lieu of confiscation under Section 125 of Customs Act, 1962.*
>
> *(iii) I impose a penalty of 10% of the differential duty as mentioned in (i) above on M/s. Mudit Enterprises Private Limited... under Section 112 (a) of Customs Act, 1962."*

Being aggrieved with the order passed by Learned Additional Commissioner, the appellants preferred an appeal before Commissioner (Appeals), who maintained the order in substance. Aggrieved, appellants have filed the present appeal.

5. During hearing the appellants submitted that the authorities have erred in confirming anti-dumping duty at a higher rate without holding anywhere that goods were not produced by M/s. Xinjiang Shengxiong Chlor-Alkali Co. Ltd. It has also nowhere been held that the declarations made by

the supplier on invoice, packing list, certificate of analysis as well as a categorical certificate dated 03.04.2021 given by the supplier that M/S. Xinjiang Shengxiong Chlor-Alkali Co. Ltd. was their manufacturing unit, suffered from any factual inaccuracy or were false so to arrive at a conclusion that goods were produced by any other producer. Consequently, it was submitted that the impugned order demanding anti-dumping duty @ 147.96 MT on the ground that goods were not produced by M/s. Xinjiang Shengxiong Chlor-Alkali Co. Ltd. (and by ignoring the documentary evidences tendered by the appellant at the time of filing bill of entry) is baseless and hence, the order is liable to be set aside.

6. The learned AR reiterates the finding of the lower authorities and relies upon the same to seek upholding of the impugned order.

7. Considered. We find that the department's case in the present instance is based upon the fact that anti dumping duty which was imposed vide Notification No. 32/2019-Cus (ADD) dated 10.08.2019 being manufacturer specific in relation to seven producers mentioned at Column No. 6 and Serial No.1 of the notification. The duty was applicable on lower rates to specified manufactures. During examination, it was found by the department that the cargo was contained in bags which had M/s. Xinjiang Zhongtai Chemical Co. Ltd (XZCCL) mentioned on them which was one of the seven producers mentioned in Column No. 6 of the notification. Department was thus of the view that serial no of the notification was incorrectly mentioned to claim manufacture by unit i.e. M/s. Xinjiang Shengxiong Chlor-Alkali Co. Ltd. (XSCCL). By reference Serial No. 1 and 2 are being reproduced below:-

DUTY TABLE

S. No.	Heading	Description	Country of Origin	Country of Export	Producer	Amount	Unit	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1.	3904	Homopolymer of vinyl chloride monomer (suspension grade)	People's Republic of China	People's Republic of China	i. M/s. Tianjin LG Bohai Chemical Co., Ltd. ii. M/s. Tianneng Chemical Co., Ltd. iii. M/s. Tianjin Dagu Chemical Co., Ltd. iv. M/s. Xinjiang Shengxiong Chlor-Alkali Co., Ltd v. M/s. Chiping Xinfa PVC Co., Ltd. vi. M/s. CNSG Jilantai Salt Chlori - Alkali Chemical Co., Ltd. vii. M/s. Yibin Haifeng Herui Co., Ltd.	61.14	MT	US Dollar
2.	3904	Homopolymer of vinyl chloride monomer (suspension grade)	People's Republic of China	People's Republic of China	Any other producer except i. to vii mentioned above in column no. (6)	147.96	MT	US Dollar

The department on the basis of bags found during examination was thus of the view, the duty @USD 147.96 US$ PMT should have been discharged instead of 61.14 as claimed by the appellant. It is seen that, the appellant's claim of manufacture by the unit claim by them is based on invoice of the supplier, packing list, certificate of analysis as well as categorical certificate dated 03.04.2021 given by their supplier that goods were produced by them only and not by any other producer. The certificate of analysis enclosed by the appellant indicates various parameter like Viscosity Number, number of impurity particle, appearance density, residual after sieve, number of grain, volatile matter and moisture content, residual chlore thylene content, thermo stability, plasticizer absorbency value of 100g PVC etc, which are normally available with manufactures. Further, it is found that company has also declared the same by way of certificate which is at as follows:

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XINJIANG ZHONGTAI CHEMICAL CO., LTD

YANGCHENGHU ROAD NO.39 ECONOMIC AND TECHNOLOGICAL DEVELOPMENT DISTRICT
URUMQI, XINJIANG, CHINA

DATE : 03 APR 2021

TO WHOMSOEVER IT MAY CONCERN

WE AT XINJIANG ZHONGTAI CHEMICAL CO., LTD STATE THAT XINJIANG SHENGXIONG CHLOR-ALKALI CO., LTD IS OUR MANUFACTURING UNIT FOR PVC RESIN SG5 AND PART OF OUR GROUP OF COMPANIES.

AND WE XINJIANG ZHONGTAI CHEMICAL CO., LTD IS THE EXPORTING COMPANY FOR ALL THE PVC RESIN SG5 TO WORLDWIDE.

PLEASE NOTE THAT THE TRIANGULAR LOGO ALONG WITH THE WORD ZHONGTAI CHEMICAL IS OUR BRAND AND TRADEMARK, AND NOT A MANUFACTURING COMPANY NAME.

This information is true and correct and is for the information of the relevant parties.

FOR AND ON BEHALF OF
XINJIANG ZHONGTAI CHEMICAL CO.,LTD

Stamp of both the companies at the bottom and notarize it then

AUTHORIZED SIGNATURE(S)

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7.2 Again, a certificate of origin by China Council for the promotion of international trade has also been produced in respect of the impugned goods by the appellant. In view of such overwhelming evidence there remains no doubt about the manufacturer of the goods being M/s. Xinjiang Shengxiong Chlor-Alkali Co. Ltd. (XSCCL).

7.3 The invoices and packing list, as well as Bill of Lading clearly indicate that the manufacture is M/s. Xinjiang Shengxiong Chlor-Alkali Co. Ltd. The certificate at page 41 also indicates that manufacturing is by M/s. Xinjiang Shengxiong Chlor-Alkali Co. Ltd. Company, a group company of M/s. Xinjiang Zhongtai Chemical Co. Ltd. It is thus clear from the evidence that the Alkali Company (XSCCL) was actually the manufacturer and M/s. Zhonglai Chemical Co. Ltd.(XZCCL) had only exported goods clearly mentioning that Alkali Company was the manufacturer and also that their company was exporter. Even the certificate of origin of Chinese authority mentions that exporter was M/s. Zhonglai Chemical Co. Ltd., and the name of manufacturer was M/s. Xinjiang Shengxiong Chlor-Alkali Co. Ltd and this has remained an unrebutted piece of evidence by an independent authority. Further learned advocate has provided para 33 of the final findings of Notification of Anti Dumping Authorities, which at para 33(g) mentions Alkali Co., as producer and Chemical Co., as exporter.

8. In view of the foregoing and on the basis of facts and evidence on record, we hold that Order-In-Appeal is not maintainable and the Bill of Entry was correctly filed in so far as claim of ADD at lower rate was concerned.

9. In view of the foregoing, party appeals are allowed with consequential relief. Departmental appeals are dismissed.

(Pronounced in the open Court on 18.03.2024)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)

Prachi