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

REGIONAL BENCH- COURT NO. 3

Customs Appeal No. 10840 of 2021
(Arising out of OIA-JAM-CUSTM-000-APP-036-037-21-22 Dated- 29/07/2021 passed by Commissioner of CUSTOMS-JAMNAGAR (PREV))

NEELKANTH PULP AND PAPER BOARDS ....Appellant
Near Metoda GIDC Off Kalawad Road Village Amreli Padadhari
Rajkot,Gujarat

VERSUS

C.C.-JAMNAGAR (PREV) ...Respondent
Sharda House...Bedi Bandar Road,
Opp. Panchavati,
Jamnagar, Gujarat

WITH

Customs Appeal No. 10841 of 2021(HITESHBHAI DEVSHIBAHI GONDALIYA);
Customs Appeal No. 10842 of 2021(SURANI PAPER PVT LTD);
Customs Appeal No. 10843 of 2021(SHRI MEHUL RAVJIBHAI PATEL);

(Arising out of OIA-JAM-CUSTM-000-APP-036-037-21-22 Dated- 29/07/2021 passed by Commissioner of CUSTOMS-JAMNAGAR (PREV))
(Arising out of OIA-JMN-CUSTM-000-APP-31-32-21-22 Dated- 14/07/2021 passed by Commissioner of CUSTOMS-JAMNAGAR (PREV))
(Arising out of OIA-JMN-CUSTM-000-APP-31-32-21-22 Dated- 14/07/2021 passed by Commissioner of CUSTOMS-JAMNAGAR (PREV))

APPEARANCE:
Shri. P.D Rachchh, Advocate for the Appellant
Shri R.P Parekh, Superintendent (Authorized Representative) for the Respondent

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

Final Order No. A/ 10048 - 10051 /2022

DATE OF HEARING: 20.01.2022
DATE OF DECISION:27.01.2022

RAMESH NAIR

The issue involved in these 4 Appeals is whether freely importable Waste Paper of CTH 47079000, imported by Appellants are liable to confiscation or otherwise and whether consequential penalty on Appellants are imposable or otherwise.

2. Brief facts of these cases are that Appellants filed following 4 Bills of Entry for clearance of Waste Paper of CTH 47079000 for home consumption with all the relevant documents including Pre-shipment Inspection certificates and certificate of Chemical Analysis reports etc.

Sr No	Names of Importer	Bill of Entry No & Date	Qty in MT
1	M/s Surani Paper Pvt. Ltd,	**6233657 dt. 26-12-2019**	**50.00**
2	[Shri Mehul R. Patel, Director]	**6235812 dt. 26-12-2019**	**199.22**
3	M/s Neelkanth Pulp and Paper Boards	**6322935 dt.02-01-2020**	**23.46**
4	[Hitesh D. Gondaliya, Partner]	**6361604 dt.06-01-2020**	**125.90**

However, on examination by proper customs officers, goods were found having traces of plastic, cans of soft drinks, cloth pcs and others. Hence, the cases were transferred to DC, Customs,(SIIB), Bhavnagar vide letter dated 17-01-2020, for proper investigation as per Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016. Accordingly, imported goods were again examined on 30-01-2020 under Panchnama in presence of 2 Panchas and on opening containers, foul smell was coming out; that the cargo was found wet and containing mud and filth; that traces of plastic bottle of floor cleaner, Corrugated Box, Craft Paper, putrefied material, plastic waste, empty cans of soft drink and packaged water, thermocol plates, old cloths etc. was also found. Provisions of the Hazardous and Other Wastes (Management and Trans boundary Movement) Rules, 2016 also appeared applicable. Hence, the said imported goods were considered as "Municipal waste" and were seized under reasonable belief that they are liable to confiscation under section 111(d) of the Customs Act 1962. SCN dated 13-07-2020 and dated 22-07-2020 were issued to these Appellants, which were objected by the Appellants, but, Adjudicating Authority has held that the said imported goods are liable to confiscation u/s 111(d), 111(m) and 111(i) of Customs Act 1962 and ordered Re-export of goods imposing penalty on all Appellants. On first Appeals, the said O-I-O have been upheld by the ld Commissioner (Appeals), Ahmedabad vide the impugned O-I-A dated 14-07-2021 and 29-07-2021. Therefore, these 4 Appellants are before this Tribunal. Since these 4 Appeals are on identical facts and findings, they are taken up for disposal by this common order.

3. Shri P. D. Rachchh, Learned Advocate appearing on behalf of all the 4 Appellants, while reiterating all submissions made in Appeals and in reply to SCN, submits that there is no dispute that except traces major quantity is of paper waste only and the imported goods are not Municipal Waste or hazardous waste, which are prohibited, but, their submissions have not been correctly appreciated by Revenue authorities. He submits that Appellants are manufacturer of Craft Papers/Corrugated Craft Paper since 2011 and they are regularly procuring "Waste Paper" of CTH 47079000 indigenously and importing the same for use in their manufacture, which is freely importable under the Foreign Trade Policy 2015-20. He further submits that as per Part D of Schedule III of Rule 3(1)(23) read with Rule 12(5) and Rule 13(2) of Hazardous and Other Wastes (Management and Trans boundary Movement) Rules, 2016 the import of Paper Waste (Basel – B 3020) is also permitted to actual user authorized by the SPCB and subject to verification of documents in Schedule VIII of said Rules by Customs Authority. Appellants have required facilities, manpower, infrastructure and machineries for sorting such waste before use for manufacture, in terms of Rules framed by the Gujarat State Pollution Control Boards and they have been following all such Rules and conditions. He submits they are regularly importing "Waste

Paper", but, Appellants have not faced such situation in past and submits to set aside order of re-export and penalties and allow their all Appeals.

4. Shri Rajesh P. Parekh, Learned Superintendent (Authorized Representative), on behalf of Revenue, reiterated the findings of Adjudicating Authority and Commissioner Appeals and submits that the reliefs claimed by these Appellants are not tenable. He submits that decisions relied upon in their Appeals by Appellants are not applicable/ relevant in the facts of these Appeals. Accordingly, he submits that all these4 Appeals may be dismissed.

5. I have carefully considered the submissions made by both sides and perused the relevant records. The limited issue to be decided is whether goods in question are liable to confiscation and consequential penalty on Appellants are imposable or otherwise. I find that in the present case, the entire consignment of goods in question have been detained/seized on the basis that on visual inspection and in presence of 2 panchas on 30-01-2020, foul smell was coming out; that cargo was found wet and containing mud and filth; that traces of plastic bottle of floor cleaner, Corrugated Box, Craft Paper, putrefied material, plastic waste, empty cans of soft drink and packaged water, thermocol plates, old cloths are found in representative containers opened for examination. However, no actual quantification of such traces of plastics and other materials has been made in goods in question and there is no dispute that goods in question are predominantly waste paper imported by these Appellants. I find that CTH 47079000 also covers unsorted waste and scrap. I also find that "Municipal Waste" as defined in Chapter Note 4 of Chapter 38 of First Schedule to Customs Tariff Act, 1975 shows that **"municipal waste"** means waste of a kind collected from households, hotels, restaurants, hospitals, shops, offices, etc. road and sweepings, as well as construction and demolition waste. However, there is

no evidence on record that the goods in question are collected from households, hotels, restaurants, hospitals, shops, offices, roads, etc. Appellants have submitted all relevant required documents in support of their contentions that the goods in question are waste papers. I find that the Appellants have submitted pre-shipment inspection certificates issued by registered inspection agencies duly approved by the competent DGFT authorities and also certificate of Chemical Analysis reports etc. I find from the pre-shipment inspection certificates that the goods in question in consignment are (i) actually waste paper as per internationally acceptable parameters for such material (ii) there is no putrefiable organic matter in this consignment (iii) the approximate content of non-recyclable material is not more than 0.5%/1%. (iv) No municipal solid waste or medical waste or hazardous waste is part of this consignment. It is a settled law that such Technical opinion given in pre-shipment inspection certificates cannot be disregarded or brushed aside when such certificates are issued by approved certification agency by Directorate General of Foreign Trade authority, without having any other contrary independent evidence. I find that there is no whisper by Revenue against fact of waste papers pre-dominantly contained in whole consignment of goods in question. Having not disputed this factual position by Revenue, seizure/confiscation of consignment is not justified. It is also settled law that entire consignment cannot be seized/confiscated on unjustified assumptions and presumption and in absence of evidences. In the facts of this case, revenue has not adduced clinching evidences to justify seizure and confiscation of consignments imported by these Appellants. This being case of appreciation of facts, there is no need to go into the case laws relied upon by the Appellants. Authorities have not considered facts and have not given judicious findings on the facts in these cases. The goods in question are not "Municipal Waste" and hence provisions of Hazardous and Other Wastes (Management and Trans boundary Movement) Rules, 2016 are not applicable in absence of sufficient and clear evidences. Thus, I find that in facts of these cases, no cogent reasons with clear evidences are adduced on record by Revenue for discarding pre-shipment inspection certificate in toto. In absence of any inculpatory statements and there being no deliberate misdeclaration on the part of Appellants, confiscation of goods, and penalty are not sustainable, in the facts of these cases.

6. Without prejudice to my above finding, I also pertinently note that the appellants are admittedly engaged in the manufacture of craft paper and other paper products and the imported goods i.e. paper waste in question is meant for use as raw material in their production. On this fact also it cannot be alleged that appellant has not imported the paper waste and something else.

7. In view of the above, order for re-export of goods and imposition of penalty on all the Appellants deserves to be set aside and I do so. The goods in question are allowed to be cleared for home consumption, in accordance with the law.

8. The Appeals are allowed with consequential relief, if any, as per the law.

(Pronounced in the open court on 27.01.2022)

(RAMESH NAIR)
(MEMBER JUDICIAL)

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