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

REGIONAL BENCH-COURT NO. 3

Customs Appeal No. 10296 of 2021- DB

(Arising out of OIA-MUN-CUSTM-000-APP-167-168-20-21 dated 26/02/2021 passed by Commissioner of CUSTOMS-AHMEDABAD)

KIRAN KOTAK AND CO ....**Appellant**
A-21 1st Floor Sitaram Building
Above Peekay Wines Near Crawford Market
Mumbai, Maharashtra

VERSUS

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

<u>WITH</u>

(i) Customs Appeal No. 10297 of 2021- DB (KIRAN KOTAK AND CO)
(ii) Customs Appeal No. 10620 of 2021- DB (NOVOTECH FOOD INGREDIENTS)
(iii) Customs Appeal No. 10621 of 2021- DB (PRANAV FOODS INDUSTRY)
(iv) Customs Appeal No. 10800 of 2021- DB (ASHA RAM AND SONS P LIMITED)
(v) Customs Appeal No. 10837 of 2021- DB (JSV INGREDIENT)
(vi) Customs Appeal No. 10942 of 2021- DB (JSV INGREDIENT)
(vii) Customs Appeal No. 10943 of 2021- DB (JSV INGREDIENT)
(viii) Customs Appeal No. 10969 of 2021- DB (KRISHNA PRODUCTS)
(ix) Customs Appeal No. 10970 of 2021- DB (KRISHNA PRODUCTS)
(x) Customs Appeal No. 10971 of 2021- DB (KRISHNA PRODUCTS)

[(Arising out of OIA-MUN-CUSTM-000-APP-167-168-20-21 dated 26/02/2021 passed by Commissioner of CUSTOMS-AHMEDABAD), (Arising out of OIA-MUN-CUSTM-000-APP-170-20-21 dated 26/02/2021 passed by Commissioner of CUSTOMS-AHMEDABAD-I(Appeal)), (Arising out of OIA-MUN-CUSTM-000-COM-07-20-21 dated 18/06/2021 passed by Commissioner of CUSTOMS-MUNDRA), (Arising out of OIA-MUN-CUSTM-000-APP-052-21-22 dated 15/06/2021 passed by Commissioner of CUSTOMS-AHMEDABAD), (Arising out of OIA-MUN-CUSTM-000-APP-73-74-21-22 dated 30/06/2021 passed by Commissioner of CUSTOMS-AHMEDABAD), (Arising out of OIA-MUN-CUSTM-000-APP-61-21-22 dated 25/06/2021 passed by Commissioner of CUSTOMS-AHMEDABAD)]

<u>APPEARANCE:</u>
Shri J C Patel, Shri Anil Gidwani, Ms. Meetika Baghal Advocates for the Appellant
Shri Satyapal Singh Vikal, Assistant Commissioner (AR) , Shir P Ganesan, Superintendent (AR) Shri Anoop Kumar Mudvel, Superintendent (AR), Shri Rajesh K Agarwal, Superintendent (AR) for the Respondent

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

Final Order No. 10745-10755/2024

DATE OF HEARING: 30.11.2023
DATE OF DECISION: 01.04.2024

RAMESH NAIR

These appeals are filed against the following respective Orders passed by Ld. Adjudicating Authority. Since issues involved in these appeals are common, hence taken up together for disposal.

Appeal No.	Name of Appellant	OIA /OIO
C/10296/2021	Kiran Kotak & Co.	MUM-CUSTM-000-APP-167 to 168-20-21 dtd. 20.06.2021
C/10297/2021	Kiran Kotak & Co.	MUM-CUSTM-000-APP-167 to 168-20-21 dtd. 20.06.2021
C/10620/2021	Novotech Food Ingredients	MUN-CUSTM-000-APP-170-20-21 dtd. 26.02.2021
C/10621/2021	Pranav Food Industry	MUN-CUSTM-000-APP-169-20-11 dtd. 26.02.2021
C/10800/2021	M/s Asha Ram and Sons Pvt. Ltd.	MUN-CUSTM-000-COM-07-21-22 dtd. 18.06.2021
C/10837/2021	JSV Ingredient	OIA-MUN-CUSTM-000-APP-052-21-22 dtd. 15.06.2021
C/10942/2021	JSV Ingredient	OIA-MUN-CUSTM-000-APP-052-21-22 dtd. 15.06.2021
C/10943/2021	JSV Ingredient	OIA-MUN-CUSTM-000-APP-73-74-21-22 dtd. 30.06.2021
C/10969/2021	Krishna Products	OIA-MUN-CUSTM-000-APP-61-21-22 dtd. 25.06.2021
C/10970/2021	Krishna Products	OIA-MUN-CUSTM-000-APP-61-21-22 dtd. 25.06.2021
C/10971/2021	Krishna Products	OIA-MUN-CUSTM-000-APP-61-21-22 dtd. 25.06.2021

1.1 Brief facts are that appellants had filed bills of entries for clearances of imported goods declared as 'Natural Cocoa Powder. The goods were shipped from Malaysia and the importers had filed bill of entry availing concessional rate of Customs duty benefit on the basis of county of Origin Certificate prescribed under Notification No. 46/2011-Cus dtd. 01.06.2011, as amended. The goods were cleared on basis of self assessment of Bills of Entry filed by the appellants. Benefit of Notification No. 46/2011-Cus and 53/2011-Cus is available provided that 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 Government of Republic of Indian and Malaysia) Rules, 2011. As per the aforesaid rules, in case of goods 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 of DRI, New Delhi and it was noticed that the goods were diverted from Cocoa beams of Ghana Origin and the regional value addition would be 3-7% against the minimum qualifying value addition of 35% of the FOB value. Based on the investigation conducted by the DRI, the show cause notices were issued to the Appellants proposing therein to deny the benefit of the Exemption Notification on the disputed goods and demanding custom duty. In adjudication, vide respective impugned orders demands were confirmed and penalties were imposed on the appellants. Being aggrieved, the appellants are before this Tribunal.

2. Shri J.C. Patel, Shri Anil Gidwani & Ms. Meetika Baghal Learned Advocates appearing on behalf of the appellants submits that when exemption is available to goods of the origin of a particular country on the basis of certificate of origin issued by the certifying authority of that county, certificate has to be accepted by the Indian Customs and if the Indian Customs doubts the veracity of said certificate of origin the Indian Customs has to follow the procedure laid down in the Rules of Origin which provide for the procedure to be followed for rejection of said Certificate. He placed reliance on the following decisions:-

- Suguna Foods Ltd. Vs. Commissioner of Customs (SEA-Import) Chennai -2019(370)ELT 742 (Tri. Chennai).

- Alfakrina Exports Vs. CCE 2023(9)TMI 86
- M J Gold P. Ltd. Vs. Principal Commissioner of Customs 2022(10)TMI 292
- CC Vs. Riddhi Siddhi Bullions Ltd. -2017(9)TMI 398-CESTAT
- R.S. Industries (Rolling Mills) Ltd. Vs. CCE -2018(359)ELT 698

2.1 He argued that appellants had duly submitted to Indian Customs, Certificate of Origin in respect of the imported goods , which were issued by the certifying authority in Malaysia in accordance with the Rules of Origin issued under Notification No. 189/2009-Cus (NT) dated 31.12.2009 and therefore the appellant had duly complied with the requirement of the Notification No. 46/2011-CUS dated 01.06.2011.

2.2 He further submits that in the present matter no verification had been requested and carried out by Indian Customs under Clauses 16 and 17 of "Operational Certification Procedures" in Annexure –III to Notification 189/2009-Cus (NT) in respect of the Certificate of Origin pertaining to the Appellant's imports. Therefore, the validity of the said certification cannot be questioned by Indian Customs and the benefit of exemption cannot be denied to the Appellants on the basis that the said certificate were not valid.

3. Shri Satyapal Singh Vikal, Assistant Commissioner (AR), Shir P Ganesan ,Shri Anoop Kumar Mudvel & Shri Rajesh K Agarwal, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the findings of the impugned orders.

4. We have heard both the sides and perused the records. We find that the said Notification No. 46/2011-Cus provided exemption subject to condition that the importer proves to the satisfaction of the Deputy/Assistant Commissioner of Customs that the goods in respect of the which exemption is claimed are of the origin of the countries as mentioned in Appendix I, in accordance with provisions of the AIFTA Rules, published vide Notification No. 189/2009-Cus (N.T.) dated 31.12.2009. Further, Rule 3 of the AIFTA Rules provides the Origin Criteria. It provides that the directly consigned product shall be deemed to be originating and eligible for

preferential tariff treatment if (a) the same are wholly obtained or produced in the export party as specified in Rule 4; or (b) the same are not wholly produced or obtained in the exporting party, provided that the said products are eligible under rule 5 or 6. We also find that Rule 4 of AIFTA Rules provides criterion of the goods which shall be considered as "Wholly Obtained". The Rule 5 of the said Rules provides criterion for determining the goods " not wholly obtained or produced" but shall be deemed to be originating. The Rule 5(1) ibid provides that a product shall be deemed to be originating , if (i) the AIFTA content is not lees than 35% of the FOB value and (ii) the non-originating material have undergone at least a change in tariff sub-heading level i.e. at six digit of the Harmonized System, provided that the final process of the manufacture is performed with the territory of the exporting party.

4.1 We find that in the present disputed matter appellant has claimed the goods to be originating in Malaysia as provided under Rule 5 of the AIFTA Rule i.e. not wholly obtained or produced. In respect of all the subject consignments, the appellants produced certificate of origin in Form A-1 issued by the Ministry of Internal Trade and Industry (MITI) of Government of Malaysia showing the Regional Value content of the subject goods as more than 35% +CTSH . However case of the department is that intelligence gathered by the DRI officers suggested that the said RVC was misstated as the overseas suppliers and goods also not origin of Malaysia.

4.2 We also noticed that in the disputed matter the Revenue without getting confirmation from the Malaysia Government about their doubt of authenticity of the country of origin certificate and activity of respective suppliers of the goods proceeded to deny the benefit in respect of COOs issued by Suppliers to the appellants is not genuine and consequently denied Exemption Notification No. 46/2011, dated 1-6-2011 and consequential demand was confirmed. We find that as per the documents submitted by the appellants it prima facie appears that there is no doubt on the authenticity of the country of origin certificate issued and import of the goods by Appellants on the basis of said COOs.

4.3 However, to clear any doubt it is the burden on the department to get the verification from the Malaysia Government regarding authenticity of

Certificate of origin which has not been discharged by the department in the present matter. Without checking the authenticity of certificate of origins, the certificate of origins cannot ne discarded and on that basis benefit cannot be denied. Therefore, in the interest of justice we give one chance to the department to get the verification from concerned authorities about the genuineness of the certificate of origin issued by supplier of Malaysia to importers, thereafter to pass a fresh order.

5. Accordingly the impugned orders are set aside. Appeals are allowed by way of remand to adjudicating authority for passing fresh orders preferably within a period of six months from the date of this order.

(Pronounced in the open court on 01.04.2024)

RAMESH NAIR
MEMBER (JUDICIAL)

RAJU
MEMBER (TECHNICAL)

Raksha