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

REGIONAL BENCH-COURT NO. 3

Customs Appeal No. 10230 of 2021- DB

(Arising out of OIO-MUN-CUSTM-000-COM-14-20-21 dated 30/12/2020 passed by Commissioner of CUSTOMS-MUNDRA)

RATNAMANI METALS AND TUBES LTD ....**Appellant**
17 Rajmugat Society Naranpura Cross Road
Ankur Road Naranpura
Ahmedabad, Gujarat

VERSUS

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

WITH

(i) Customs Appeal No. 10229 of 2021- DB (RAJESH SHAH)
(ii) Customs Appeal No. 10231 of 2021- DB (ACERIONX INDIA PVT LTD)
(iii) Customs Appeal No. 10232 of 2021- DB (PRAKASH M SANGHAVI)

APPEARANCE:
Shri Manish Jain, Shri T Vishwanathan & Ms Shruti Khanna Advocates for the Appellant
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. 10741-10744/2024

DATE OF HEARING: 30.11.2023
DATE OF DECISION: 01.04.2024

RAMESH NAIR

These appeals are directed against Order-in-Original No. MUN-CUSTM-000-COM-14-20-21 dated 30.12.2020 passed by the Principal Commissioner of Customs, Customs House, Mundra, Kutch.

1.1 Brief facts are that intelligence received from DRI indicated that the Appellant and other parties were importing CR SS Flat products viz. Coil/Sheet/ Strip from M/s Bharu Stainless Steel, SDN BHD, Malaysia by availing concessional rare of duty under Notification No. 46/2011-Cus dated

01.06.2011, as amended and Notification 53/2011-Cus. dated 01.07.2011, read with Notification No. 189/2009-Cus (N.T.) dated 31.12.2009 by misrepresenting the Regional value content (RVC) to be above 35%, whereas the actual RVC was much less than 35%. The intelligence indicated that M/s Bharu Stainless steel did not have integrated stainless steel factory and have only facility to manufacture Cold Rolling Stainless Steel product with annealing and pickling lines, sendzimir, skin-pass and finishing lines during the material time and mainly used hot-rolled coils supplied by other factories belonging to the group in Non-AIFTA countries. Therefore it appears that the raw material i.e. HR SS Flat products imported from Non-AIFTA countries, which constitutes the major part of value of goods imported from M/s Bharu and therefore, the total value addition by way of conversion of HR SS Flat products to CR SS Flat Products by the processes of annealing, pickling, skin-pass and finishing in the factory of M/s Bahru would not be more than 10% of the total value of its finished goods and therefore, cannot qualify the minimum requirement of 35% value addition as per the Notification No. 189/2009-Cus (N.T.) dated 31.12.2009. In view of the above misrepresentation by M/s Bahru for obtaining the COO on the basis of which the benefit were availed by the Appellant and others appeared to be misuse of the FTA resulting in evasion of custom duty. During the investigation appellant was asked to provide the documents related to Cold Rolled Stainless Steel Coil/Sheet imported from M/s Bahru. Statements of various persons were recorded by the department. Based on the investigation conducted by the DRI, the show cause notice dated 21.10.2019 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, Ld. Commissioner vide impugned order confirmed the customs duty demand and imposed the penalties. Being aggrieved the appellants are before this Tribunal.

2. Shri T. Vishwanathan, Shri Manish Jain & Ms, Shruti Khanna, Ld. Advocates appearing on behalf of the appellants submits that exemption has been correctly availed in terms of the Notification in question and the related Country of Origin Rules. According to Rule 5 of the Country of Origin Rules, the only conditions to be fulfilled are (a) change in the tariff sub-heading of non-originating material at the six digit level and (b) the

achievement of the requisite value addition of 35% or more. Both conditions have been satisfied in the instant case. It is stated so in the Country of Origin issued by the Government Authorities at the exporting country, Malaysia. He placed reliance on the decision of Suguna Foods Ltd. Vs. Commissioner of Customs (SEA-Import) Chennai -2019(370) ELT 742 (Tri. Chennai).

2.1 He argued that valid Country of Origin Certificate is sufficient to evidence the regional value addition content in the imported goods. The fact of the matter is that the COO has not been canceled by the issuing authority in the country of export. In this circumstance, the department cannot disregard the valid COO issued by the authority and still contends that the percentage of value addition achieved by the exporter is incorrect. He placed reliance on following judgments:-

- Romil Jewelry Vs. Commissioner of Customs, Air Cargo, Mumbai - 2023 (9) TMI 462
- Minakshi Exports Vs. Commissioner of Customs, Jodhpur – 2018(359)ELT 689
- RS Industries (Rolling Mills) Ltd. Vs. Commissioner of Central Excise, Jaipur –I-2017 (11)TMI 1256
- Commissioner of Customs, Hyderabad Vs. Riddhi Sidhhi Bullions Ltd. -2017(355)ELT 585(Tri. Hyd.)
- Zuari Industries Ltd. Vs. CCE & Cus. 2007(210)ELT 648 (SC)
- Yellamma Dasappa Vs. Commissioner of Customs, Bangalore - 2000(120)ELT 67

2.2 He also submits that the evidence/data relied upon by the DRI does not conclusively lead to the conclusion that the requisite value addition has not been achieved.

2.3 He further submits that the entire demand is barred by limitation. The entire demand is beyond the normal period of limitation. The allegation that the exporter has mis-represented the country of export can hardly be a ground to invoke extended period of limitation in the present case. The importer has no role or say in the application made by the exporter in the exporting country before issuing authority. The fact is that exporter here is one of the supplier to the appellant. In identical circumstance, the commissioner of Customs, ICD, Tughlakabad, New Delhi vide Order No. 19/2019/MKS/Pr. Commr./ Import/ICD/TKD dtd. 09.09.2019 and Commissioner of Customs, Jodhpur vide Order No. 08/2020 –COMMR dtd. 31.07.2010 have dropped the proceedings similarly situated importers.

3. Shri R.K. Agarwal, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

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 are mentioned in Appendix I, in accordance with provisions of the AIFTA Rules, published vide Notification No. 189/2009-Cus(N.T.) dtd. 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 Rules i.e. not wholly obtained or produced. In respect of all the subject consignments, the appellant 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 supplier M/s. Bahru did not have integrated stainless steel factory and had only facility to manufacture CR SS products with annealing and pickling lines, sendzimir, skin-pass and finishing line during the material time and mainly used hot-rolled coils supplied by other factories belonging to the group from Non-AIFTA countries.

4.2 We also noticed that in the disputed matter a team of DRI, MZU, Mumbai visited the unit of M/s Bahru Stainless, Malaysia to examine the value addition and also to ascertain the originating criterion for CR SS Flat products exported, in terms of paragraph 17 of Annexure –III of the Rule of Origin and Paragraph 10 of Annexure –III of the India Malaysia Preferential Trade Agreement Rules, 2009. During the verification visit, M/s Bahru refused to share any documents required for verification. Accordingly CBIC vide letter dtd. 27.02.2018 concurred with the outcome of the verification visit and accordingly denied the preferential benefits in respect of all the COOs issued by M/s Bahru. However, the Revenue without getting confirmation from the Malaysia Government about their doubt of authenticity of the country of origin certificate and activity of M/s Bahru proceed to deny the benefit in respect of COOs issued by M/s Bharu 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 appellant it appears that there is no doubt on the authenticity of the country of origin certificate issued and import of the goods by Appellant 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. 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 M/s Bahru and their manufacturing activity, thereafter to pass a fresh order.

5. Accordingly the impugned order is set aside. Appeals are allowed by way of remand to adjudicating authority for passing a fresh order 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