

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

REGIONAL BENCH- COURT NO. 3

Customs Appeal No. 10328 of 2022- DB

(Arising out of OIO-MUN-CUSTOM-000-COM-09-21-22 dated 29.11.2021 passed by Commissioner of Customs-Ahmedabad)

M/s Jewel Utensils Industries

.....Appellant

Situated At Aji Gidc 2 Shed No K-1 241-1/2
Near Maruti Cargo Motors
Rajkot-Gujarat

VERSUS

C.C. - Mundra

.....Respondent

Office of The Principal Commissionerate of Customs,
Port User Buld. Custom House Mundra, Mundra
Kutch, Gujarat-370421

APPEARANCE:

Shri Manish Jain, Advocate for the Appellant

Shri Anand Kumar, Superintendent (Authorised Representative) for the
Respondent

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

FINAL ORDER NO. 11084 /2024

DATE OF HEARING: 01.04.2024

DATE OF DECISION: 16.05.2024

RAMESH NAIR

The appellant is a manufacturer and exporter of stainless-steel utensils. The appellant imported Cold-rolled Flat product of stainless steel of size ranging from 600 mm to 1250 mm width (*hereinafter referred to as "imported goods"*) by availing the exemption under Advance Authorization Scheme-Notification No. 18/2015-Cus dated 01.04.2015.

1.2 As per Notification no. 61/2015-Cus (ADD) dated 11.12.2015, the goods "Cold Rolled Flat products of Stainless Steel" of size ranging from 600 MM to 1250 MM, covered under CTH 7219 and originating in or exported from China attracts Anti-dumping duty at specified percentage of Landed Value (AV+BCD).

1.2 It is the case of the department that the impugned goods covered under CTH 7219 are originated and exported from People's Republic of China. Therefore, it appeared that Anti- Dumping Duty (ADD) as per the Notification No. 61/2015-Cus (ADD) dated 11.12.2015 is leviable on the same.

1.3 Further, the department has also alleged that the Appellants had self assessed Bills of Entry under Section 17(1) of the Customs Act, 1961, without imposing anti dumping duty. Thus, the appellants are liable to pay penalty under Section 117 of the Customs Act.

2. Shri Manish Jain, learned counsel appearing on behalf of the appellant submits that the adjudicating authority has not given any findings on any of the submissions made by the appellants thus, the impugned order is non-speaking order and is in violation of principles of natural justice thus, the same is liable to be set aside. He further submits that respective advance authorisation and the respective bonds were first registered in the custom system for the purpose of scrutiny. Only after due verification, the order for clearance of the subject goods for home consumption under Section 47 of Customs Act, 1962 was granted. It is submitted that Foreign Trade Policy para 4.14 and the exemption Notification 18/2015-Cus exempts Basic Customs Duty (BCD), Social Welfare Surcharge (SWS), Countervailing Duty on Subsidized Articles (CVD), Integrated Goods & Service Tax (IGST) and ADD. Consequently, ADD leviable on merit, is still exempted, along with all other leviable duties on the basis of Advance Authorization Scheme. He further submits that the Anti Dumping Duty is imposable on goods vide Section 9A of the Customs Tariff Act, 1975 and the importer himself has no statutory power to impose the same. The self-assessment made in a bill of entry is not absolute it is only tentative claim and is subject to caveats statutorily permitted to the proper

officer allowing clearance vide the Sections 17(2) to 17(5) in the Act. Without prejudice, he further submits that the export obligation in respect of the advance authorization has been fulfilled by the appellant. There is no allegation of non-fulfilment of the export obligation and the allegation of the non-levy of an exempted duty is not on grounds that duty was not exempted, but on the subtle grounds that the bond amount falls short to the extent of the ADD i.e. exempted. He also submitted copies of EODC. He submits that Section 149 of the Customs Act provides for amendment of bill of entry even after clearance of the imported goods based on documentary evidence which was not in existence at the time of clearance of the said imported goods. In this regard, he placed reliance on the case of General Motors India Pvt. Ltd. Vs CC (Import), Mumbai 2019 (4) TMI 1187-CESTAT Mumbai. He also submits that substantial benefit of the exemption notification cannot be denied merely because of some procedural lapse. He placed reliance on the following judgments:

- CC-Chennai vs Compagnie General Des Eaus, 2005 (192) ELT 201 (Tri Chennai)
- CCEX, Rajkot vs Ellora Times Pvt. Ltd. 2008 (228) ELT 381 (Tri. Amd)
- Packaging India Pvt. Ltd. 2013 (294) ELT (Tri. Del.)
- ABB India Ltd. Vs UOI 2020 (373) ELT 205 (Ker.)

It is his submission that mere clerical error cannot be the ground for violation of Section 17(1) of the Customs Act. Thus, the appellant is not liable to pay the penalty for the same. The reliance in this regard is placed on the case of CCE Rajkot vs Ellora Times P. Ltd. 2008 (228) ELT 381 (Tri. Amd.).

3. Shri Anand Kumar, learned Superintendent (Authorised Representative) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. On careful consideration of the submission made by both the sides and perused the records, we find that in the present case, the department has demanded the anti dumping duty of customs. However, admittedly the goods were cleared under advance authorisation scheme according to which all the duties are exempted by way of debiting in the advance license scheme. In the present case, the adjudicating authority has denied the exemption on the ground that export obligation has not been fulfilled. Now the learned counsel has produced the Export Obligation (EODC Certificate) which, prima facie, shows that export obligation under advance authorization scheme has been complied with accordingly the sole ground for denying the exemption by the adjudicating authority does not exist. However, the adjudicating authority has not seen the EODC during the adjudication. Therefore, the matter needs to be reconsidered in light of EODC submitted by the appellant. Accordingly, we set aside the impugned order and allow the appeal by way of remand to the adjudicating authority to pass a fresh order after taking into consideration that the export obligation has been fulfilled.

(Order pronounced in the open court on 16.05.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

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