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

REGIONAL BENCH – COURT NO. 01

CUSTOMS APPEAL NO. 12572 of 2018

[Arising out of OIA-MUN-CUSTM-000-APP-098-100-18-19 dated 26/06/2018 passed by Commissioner of CUSTOMS-AHMEDABAD]

D D MARKETING **.....Appellant**
25, Sarvopali Mall, Opp Utsav Party Plot,
Bhuyangdev Cross Road, Ghatlodia,
AHMEDABAD
GUJARAT

Vs.

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. 12573 of 2018

[Arising out of OIA-MUN-CUSTM-000-APP-098-100-18-19 dated 26/06/2018 passed by Commissioner of CUSTOMS-AHMEDABAD]

Dhirubhai Patel **.....Appellant**
C-6, Karnavati Apartment,
Jodhpur Gam Road, Satellite,
Ahmedabad, Gujarat

Vs.

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

AND

CUSTOMS APPEAL NO. 12574 of 2018

[Arising out of OIA-MUN-CUSTM-000-APP-098-100-18-19 dated 26/06/2018 passed by Commissioner of CUSTOMS-AHMEDABAD]

Jaimin Pandya **.....Appellant**
412, 4th Floor, Anand Mangal-ii,
B/h Omkar House, Off Cg Road, Navrangpura
Ahmedabad, Gujarat

Vs.

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

APPEARANCE:
Shri Rohan Thakkar, Chartered Accountant for the Appellant
Shri Himanshu P. Shrimali, Superintendent (Authorized Representative) for the Respondent

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

FINAL ORDER NO. 11142-11144/2024

DATE OF HEARING: 01.04.2024
DATE OF DECISION: 04.06.2024

RAJU

This appeal has been filed by D D Marketing against change of classification of goods imported by the appellant and demand of anti-dumping duty, imposition of penalty under Section 114A of the Customs Act, 114AA of the Customs Act and Section 112A of the Customs Act. Appeal has also been filed against confiscation and imposition of redemption fine under Section 125 of the Customs Act. Appeal has also been filed by Shri Jaimin Pandya Partner of the firm under Section 114AA of the Customs Act, Section 112 of the Customs Act and 114AA of the Customs Act, 1962.

2. Learned Counsel for the appellant pointed out that they had imported goods described in the bill of entry as 'Pre-Sensitized Positive Offset Aluminum plates (plate thickness 0.28 mm, plate coating UV-CTCP:PINK, size 441 x 501 mm)'.

2.1 Learned counsel pointed out that anti-dumping duty is imposed by two notifications namely 51//2012-Customs (ADD) and 25/2014- Customs (ADD) dated 09.06.2014. Notification no. 25/2014-Customs (ADD) imposes anti-dumping duty on goods namely "Pre-Sensitized Positive Offset Aluminum plates". Notification no. 51/2012-Customs (ADD) imposes anti-dumping duty on goods namely "Digital offset Printing Plates". Learned Counsel pointed out that the goods imported by them are covered by Notification 25/2014-Customs (ADD) whereas revenue is of the opinion that the goods are Digital offset Printing Plates and therefore classifiable under heading 8442.5020 and therefore covered by Notification no. 51/2012-Customs (ADD).

2.2 Learned Counsel pointed out that samples were drawn before delivery of goods in presence of Chartered Engineer. The Chartered Engineer as well as Metalab – a laboratory from which samples have been tested before delivery of goods –clearly indicates that goods are Pre-Sensitized Positive Offset Aluminum Plates. The said report of the Chartered Engineer has been rejected in the impugned order because the said Chartered Engineer is not empanelled with Customs authorities at Mudra. He argued that the test results obtained from the laboratory named Metalab, which is a Government of India a credited metallurgical testing laboratory. He pointed out that the test results were taken before removal of goods and samples have been obtained in presence of Customs officer. However, till date no testing of the said goods have been done by the Customs Department at Mudra. He argued that in this background the report of the Chartered Engineer, even though not empanelled, has to be relied. He further pointed out that the laboratory which has done the testing of goods is already recognized by Government of India. He argued that without going into this aspect the adjudicating authority and the first appellant authority has simply stated that the plates are 'Digital offset Printing Plates' and are not 'Pre-Sensitized offset printing plates'.

2.3 Learned counsel further argued that the adjudicating authority has erred in arriving at the conclusion that the product imported by them are Digital plates and also imposing penalty under Section 114A of the Customs Act. He argued that Section 114A of the Customs Act can be invoked only if the Act is done by reason of collusion or any willful mis-statement or suppression of facts. He argued that in the instant case there was no suppression or willful mis-statement of facts or collusion on the part of the appellant. He argued that the fact that the goods are of Chinese origin was disclosed by the second appellant namely Dhirubhai Patel voluntarily although the information contained in the certificate of origin issued by Dubai chamber of commerce. He also pointed out that they were ready to pay anti-dumping duty as per notification no. 25/2014-Customs dated 09.06.2014. He argued that they had given the entire information about the origin of goods and were ready to pay the anti-dumping duty. He argued that the purpose of investigation is to identify the true fact relating to the product that has been imported. He argued that all the facts were voluntarily communicated by the second appellant to the officers before the start of investigation itself. He argued that in this background imposition of penalties under Section 114A, 112 and 114AA is without any justification.

3. Learned AR relied on the impugned order.

4. We have considered rival submissions. We find that the appellant D D Marketing had imported goods described as "Pre-Sensitized Positive offset Aluminum Plates" and classified the same under CTH 84425010 vide bill of entry dated 02.12.2015. The said goods attracts anti-dumping duty vide Notification no. 51/2012-Customs (ADD) dated 03.12.2012. The country of origin was declared as Taiwan. The country of origin certificate submitted by importer was verified for the website as per the link mentioned in the origin certificate for online verification and on verification, it was found that the country of origin certificate bearing the said number was issued by Dubai authorities. A summon was issued to the customs broker dated 23.12.2015 to present himself on 22.12.2015. The custom broker informed that he had received the documents from the importer through M/s. Om Trans Logistics through E-mail and thereafter the checklist for bill of entry was generated. Thereafter, summon were also issued to Shri Jaimin Pandya of M/s. OMSL International and thereafter to Shri Dhirubhai Patel of D D Marketing the second noticee. In his statement Shri Dhirubhai Patel admitted that the actual country of origin of goods is China. He informed that Jitendra Patel

the proprietor of D D Marketing is his brother. He further clarified the goods mentioned in the invoice was Pre-Sensitized Positive Offset Aluminum plates of various sizes and he is also stated that the declared country of origin in bill of entry was Taiwan, however, the actual country of origin is China. He further clarified that earlier in the month of August he had imported the said consignment at ICD, Khodiyar, Ahmedabad and filed bill of entry no. 242078 dated 31.08.2015 in the name of Shrusti Corporation, Ahmedabad. At the time of assessment of goods at ICD, Khodiyar Ahmedabad the custom informed that the goods attracts anti-dumping duty and same was accepted by the importer vide letter dated 01.09.2015 and they agreed to pay the anti-dumping duty as per customs notification applicable. The customs demanded anti-dumping duty in terms of Notification no. 51/2012-Customs (ADD) dated 03.12.2012 but the appellants were of the opinion that the goods attracted anti-dumping duty in terms of Notification no.25/2014-Customs (ADD) dated 09.06.2014. Their suggestion was not accepted by Ahmedabad Customs and therefore they re-exported the goods to the shipper from Dubai. Later in the month of October 2015, they decided to import the same consignment from Dubai from the same supplier. However, this time they change the country of origin of goods from China to Taiwan. They also arranged the CO certificate from Dubai chamber of commerce stating that country of origin of goods is Taiwan. He admitted that he had done all this manipulation to avoid anti-dumping duty in terms of Notification no. 51/2012-Customs (ADD) dated 03.12.2012. The said goods attracts ADD vide Notification no.25/2014-Customs (ADD) dated 09.06.2014 and he was ready to pay the duty as per said notification. He pointed out that the plates are used in offset printing machines and final print is paper print.

4.1 It is noticed that offset printing plates are classified in two categories namely Analogue plates and Digital plates. In the case of analogue plates images are transferred from the computer to the plate through graphic art film. In the case of Digital plates print images are transferred on to the plate directly from the computer system using a plate setter. Analogue plates use metal halide lamps while Digital plates use various laser for creating image on them. The imaging time for Digital plates are much lower than though that required for analogue plates. In the case of analogue plates images are first transferred from the computer to the graphic art film and thereafter the image is transferred from graphic art film to plate. The development process includes some manual work.

4.2 The heading 8442 reads as under:-

8442	*MACHINERY, APPARATUS AND EQUIPMENT (OTHER THAN THE MACHINE TOOLDS OF HEADING 8456 TO 8465) FOR PREPARING OR MAKING PLATES, PRINTING COMPONENT; PLATES CULINDERS AND OTHER PRINTING COMPONENETS; PLATES, CYLINDERS AND LITHOGRAPHIC STONES, PREPARED FOR PRINTING PURPOSES (FOR EXAMPLE, PLANE, GRAINED OR POLISHED)*
84425010	*PLATES AND CYLINDERS*
84425020	*LITHOGRAPHIC.PLATES*

Lithography plate is a Aluminum plate with coated surface of light sensitive material which is hardened (or exposed) by light passing through the clear arrears of the film negative. The areas that are hardened by the exposure become the image area. The polymer in the non-image area (dark area of the negative film) is removed from the plate processing. When developed, the image area of the plate is ink receptive and the non-image area of the plate is water receptive. The plate manufacturing starts with base aluminum whose surface is grained to become water receptive. There are several methods for graining of surface of Aluminum. The grained plate is then anodized to harden the surface for better life. The thicker the anidioc layer the longer the plate life. The PS plates serve as an image carrier on an offset printing machine, and is the final link in the lithographic offset printing process. In simple words the image on the plate for Digital offset printing plates is form by a computer whereas the image on the other plates is formed through a negative.

4.3 Sr. no. 10 of Notification no.51/2012-Customs (ADD) dated 03.12.2012 reads as under:-

Sr. No	Sub heading of Tariff item	Desp. Of Goods	Country of Origin	Country of Export	Producer	Exporter	Specification	amount	Currency	Unit
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
	8442.5020	Digital Offset Printing Plates	China PR	China PR	Any Combination other than mentioned in Sr. No. 1 to 12		CtCP*	4.87	US$	Sqm

Sr. No. 1-3 of Notification No. 25/2014-Customs (ADD) reads as under:-

S. No.	Chapter	Description of Goods	Specification	Country of Origin	Country of Exports	Producer	Exporter	Duty Amount	Unit	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
1.	37, 76 or 84	PreSensitized Positive Offset Aluminum Plates	Thickness ranging from 0.15 mm to 0.40 mm with a variation of 0.03 mm on either side	People's Republic of China	People's Republic of China	Any	Any	0.22	Per Kg	USD
2.	37, 76 or 84	PreSensitized Positive Offset Aluminum Plates	Thickness ranging from 0.15 mm to 0.40 mm with a variation of 0.03 mm on either side	People's Republic of China	Any other than People's Republic of China	Any	Any	0.22	Per Kg	USD
3.	37, 76 or 84	PreSensitized Positive Offset Aluminum Plates	Thickness ranging from 0.15 mm to 0.40 mm with a variation of 0.03 mm on either side	Any other than People's Republic of China	People's Republic of China	Any	Any	0.22	Per Kg	USD

4.4 From the above discussion it is apparent that there are two issues involved (i) if the country of origin was mis-declared as Taiwan when the goods were imported from China and (ii) if the goods are Pre-Sensitized Positive Offset Aluminum Plates or Digital offset Printing plates.

There is no doubt that at the time of filing bill of entry the country of origin was declared as Taiwan however, after the investigation started the appellant themselves came forward and declared that the country of origin is China. Thus, the charge of mis-declaring country of origin is established. The conduct of the appellant was without doubt with the intention to evade the anti-dumping duty as has also been admitted by the second appellant.

4.5 Admittedly, the goods were described as Pre-Sensitized Positive Offset Aluminum Plates in the import documents. The Onus of establishing that the said goods are mis-declared was on revenue. If the goods are indeed Pre-Sensitized Positive Offset Aluminum Plates then they would be covered by the anti-dumping duty Notification no. 25/2014 and if the same are Digital offset printing plates then they would be covered under Notification no.51/2012. But if the both the cases anti-dumping duty is leviable however at different ways.

4.6 It is notice that the impugned order relies on para 23.1 of the order in origin in respect of classification of the goods. Para 23.1 of the order-in-origin reads as follows:-

> *"23.1 (a) With the frame work of aforesaid four questions set out for determination, while dealing with the first and foremost question it is noticed that the goods under import are Pre-Sensitized Aluminum offset Plates (UV-CtCP). The CtCP Plates are digital Offset Printing Plates, used in the printing industry for transferring data as an image (dot patterns or text) onto paper or on non-absorbent substrates like tin sheets or poly films etc. In the printing process using digital plates, the digital workflow enables direct transfer of image from a computer to the plate" (CtP) using lasers unlike the analogue workflow that requires an intermediary film to transfer the image. Digital plates, are made from high-purity litho-grade Aluminum coils coated with a chemical coating. Digital, plates may be either. Positive (non exposed area forms image) or negative (exposed area forms image) working plates.*
>
> *(b) Digital plates are broadly classified into three categories namely; Thermal, Violet and CTCP/UV-CtP (Computer-to-Conventional Plate"), based on their application. Digital plates that are exposed using infra-red energy are called Thermal plates. Digital plates that are exposed using visible and near-visible light energy (violet lasers) are called violet plates. Certain Digital plates that are exposed using ultra violet rays for exposure, known as CTCP/UV-CtcP.*
>
> *(c) Offset printing plates are classified into two broad categories namely Analogue Plates and Digital Plates. In the case of analogue plates, images are transferred from a computer to the plate through Graphic Art Film. In the case of digital plates, print contents are transferred onto the plates directly from the computer system using a plate setter. Analogue plates use metal halide lamps while digital plates including CtCP plates use various laser beams for creating images on them. The imaging time for digital plates including CtCP plates are much lower than that required for analogue plates. In the case of analogue plates, image was first transferred from the computer to a graphic art film and secondly, the image was transferred from the graphic art film to the plate. The development process included a number of manual work steps including ensuring perfect contact between plate and film using the 'printing down frame*

> *while exposing the plate to UV light. It was noted that these manual steps were not required while developing CtCP or UV-CTP using UV plate setter. Thus, from the above discussion, it is evident that the goods are Lithographic plates.*
>
> *(d) The Lithographic plate is an Aluminum plate with a coated surface of light sensitive material, which is hardened (or exposed) by light passing through the clear arrears of a film negative. The areas that are hardened by the exposure become the image area. The polymer in non-image areas (dark areas of the negative film) is removed during the plate processing. When developed, the image area of the plate is oleophilic (ink receptive) and the non-image area of the plate is hydrophilic (water receptive). Plate manufacturing starts with base Aluminum whose surface is grained to become water receptive. There are several methods for graining the surface of the Aluminum. The grained plate is then anodized to harden the surface for better life. The thicker the anidioc layer the longer the plate life. Thus, from the above discussion, it is evident that the goods are Lithographic plates and are appropriately & correctly classifiable under CTH 84425020."*

A perusal of the aforesaid para, which in turn has been relied by Commissioner (Appeals) in it's order, does not suggest as to why the goods are classifiable as Digital Offset printing plates. The entire discussion in para 23.1 (C and D) is for classification of goods as lithographic plates under heading 8442 5020. It is noticed that heading 8442 5020 is covered in Notification no. 51/2012. However, it is seen that the heading 8442 5020 also covers all lithographic plates.

> *"The process of printing from a plane surface (such as a smooth stone or metal plate) on which the image to be printed is ink-receptive and the blank area ink-repellent"*
>
> *"The process of producing patterns on semiconductor crystals for use as integrated circuits"*
>
> *"The art or process of making a drawing, design, or writing on a special kind of stone"*

4.7 It is apparent that lithography plates are plain plates which are capable of transferring images from its surface as a printing material. The distinction made out in the two anti-dumping Notification is dependent on the ability to make the images on the plate by Digital means and otherwise. Both the digital and Pre-Sensitized plates are lithographic plates. Thus, the classification of both the plates remains the same. In these circumstances merely coming to the conclusion that Digital plates are classifiable under heading 8442.5020 is not sufficient or hold that the goods are digital offset printing plates because even Pre-Sensitized Offset Plates are also classifiable under the same sub heading 8442.5020. In these circumstances, we find that the revenue has failed to establish that the goods are in the nature of digital offset printing plates as nothing in para 23.1 of the order in original, relied by the Commissioner (Appeals) in his order, talks about any digital means of creating image. In these circumstances, the appellant should be entitled to the benefit of notification no. 25/2014-Customs (ADD) dated 09.06.2014. The anti-dumping duty demanded and the penalties levied may therefore be revised accordingly, the goods are liable to confiscation as the country of origin was mis-declared and therefore confiscation and imposition of redemption fine is upheld the demand of duty and penalty may be revised by allowing benefit of Notification no. 25/2014.

5. The appellant have contested that no penalty can be imposed, if there is difference of opinion about classification of products. In the instant case we find that there was a clear mis-declaration of country of origin with intents to evade payment of duty and therefore penalty under Section 114A is leviable. Moreover, the present case is not of mere dispute of classification but a clear mis-declaration of country of origin with intention to evade payment of duty and therefore the goods are liable to confiscation under Section 111(m) as the country of origin was mis-declared.

In view of the above, the penalty under Section 114A is clearly leviable. The appellants have stated that the appellant had himself come forward to convey all facts to the department that the goods are of Chinese origin therefore penalty under Section 114AA of the Customs Act should not be leviable. We find that the appellant had not voluntarily come forward but came to declare the correct position only after the investigation started. Thus, penalty under Section 114AA is also leviable. However, considered the facts that the appellants are entitled to benefit of Notification no. 25/2014-Customs (ADD) dated 09.06.2014 the duty and the quantum of penalty may be revised accordingly. Consequently, the penalties imposed on Shri Dhirubhai Patel was also be revised.

6. Appeal is therefore allowed by way of remand to the original adjudicating authority with above directions.

(Order pronounced in the open Court on 04.06.2024)

RAMESH NAIR
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Dharmi