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

REGIONAL BENCH-COURT NO. 3

Customs Appeal No. 10158 of 2020- DB

(Arising out of OIO-AHM-CUSTM-000-COM-0010-19-20 dated 21/10/2019 passed by Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)

HINDALCO INDUSTRIES LTD ....Appellant
Villagr- Lakhigam, P.O. Dahej,
Taluka- Vagra,
Bharuch, Gujarat

VERSUS

Commissioner of Customs- AHMEDABAD ......Respondent
Custom House,
Near All India Radio Navrangpura,
Ahmedabad, Gujarat

APPEARANCE:
Shri Manish Jain, Advocate for the Appellant
Shri Himanshu P Shrimali, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. C L MAHAR

Final Order No.11740/2024

DATE OF HEARING/ DECISION: 08.08.2024

RAMESH NAIR

In this appeal the demand of Custom duty was raised on the ground that the appellant have cleared the imported goods under Release order issued against DEPB Scrips by the DGFT. The case of the department is that the DEPB Release Scrips against advice was issued fraudulently therefore, the import made on the basis of Release advice which is issued on the basis of fraudulent DEPB is liable for custom duty.

2. Shri Manish Jain, Learned Counsel appearing on behalf of the appellant at the outset submits that there is nothing on record that the DEPB Scrips or as the case may be Release advice has been cancelled by

the DGFT. Therefore since the DGFT has not held the release advice issued by it, the import made on the basis of said Release Advice is legal and correct and no custom duty can be demanded. He placed reliance on the following judgments:-

- Titan Medical System Pvt. Ltd. Vs. Collector of Customs, New Delhi-2002 (11) TMI 108 (S.C.)
- Jindal Stainless Ltd. Vs. Union of India & Ors.- 2023 (2) TMI 402-Delhi High Court
- Jeena & company Vs. Union of India -2024 (1) TMI 834 Madras High Court

3. Shri Himanshu P Shrimali, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order. On the query from the bench about the status of DEPB Scrips and/or release advice issued thereunder, whether the same is cancelled or otherwise. Learned AR submits that despite making correspondences no confirmation has been received that whether the said DEPB Scrips and/or Release Advice are cancelled or not.

4. We have carefully considered the submission made by both the sides and perused the records. We find that the entire argument of the Learned Counsel is that since the DEPB Scrips and/or Release Advice has not been cancelled by the DGFT the same stand valid and import thereunder cannot be questioned. In these circumstances, we find that the case of the department is that the DEPB Scrips was obtained fraudulently therefore any import made on that basis cannot be extended the benefit of duty free clearance under DEPB Scheme. However, despite the direction from this

Tribunal, the Revenue could not produce the status report of the DEPB license/release advice issued there under. Therefore, the matter needs to be remanded to the adjudicating authority for ascertaining status of DEPB License/release advice issued by DGFT and thereafter to pass a fresh order on all the issues.

5. Accordingly, we set aside the impugned order and remand the matter to the adjudicating authority for passing a fresh de-novo order, keeping in mind our above observation. Appeal is allowed by way of remand to the adjudicating authority.

(Operative portion pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(C.L.MAHAR)
MEMBER (TECHNICAL)

Raksha