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

REGIONAL BENCH- COURT NO.1

Customs Appeal No.10667 of 2022

(Arising out of MUN-CUSTM-000-APP-453-22-23 dated 08/07/2022 passed by Commissioner of Customs (Appeals) Ahmedabad)

M/s. Vinayak Trading **.........Appellant**
208, Agarwal City Square
Manglam Place,
Sector 3, Rohini, Delhi-110008.

VERSUS

Commissioner of CUSTOMS-MUNDRA **.........Respondent**
Office of the Principal Commissinerate of Customs,
Port User Bild, Custom House Mundra, Mundra, Kutch
Gujarat-37042

WITH
Customs Appeal No.10668 of 2022

(Arising out of MUN-CUSTM-000-APP-453-22-23 dated 08/07/2022 passed by Commissioner of Customs (Appeals) Ahmedabad)

M/s. Vinayak Trading **.........Appellant**
208, Agarwal City Square
Manglam Place,
Sector 3, Rohini, Delhi-110008.

VERSUS

Commissioner of CUSTOMS-MUNDRA **.........Respondent**
Office of the Principal Commissinerate of Customs,
Port User Bild, Custom House Mundra, Mundra, Kutch
Gujarat-37042

AND
Customs Appeal No.10832 of 2022

(Arising out of MUN-CUSTM-000-APP-453-22-23 dated 08/07/2022 passed by Commissioner of Customs (Appeals) Ahmedabad)

Commissioner of CUSTOMS-MUNDRA **.........Appellant**
Office of the Principal Commissinerate of Customs,
Port User Bild, Custom House Mundra, Mundra, Kutch
Gujarat-37042

VERSUS

M/s. Vinayak Trading **.........Respondent**
208, Agarwal City Square
Manglam Place,
Sector 3, Rohini, Delhi-110008.

APPEARANCE:
Shri. Kamaljeet Singh, Advocate for the appellant
Shri Girish Nair, Assistant Commissioner (AR) for the Respondent

CORAM: HON'BLE MEMBER (TECHNICAL), MR. RAJU
HON'BLE MEMBER (JUDICIAL), MR. SOMESH ARORA

Final Order No. 11793-11795 /2024

DATE OF HEARING: 05.08.2024
DATE OF DECISION: 27.08.2024

SOMESH ARORA

In the present matters, we are concerned with Notification No. 32/2019-Cus. (ADD) which has imposed the Anti-Dumping duty at variable rates on different class of manufacturer, with those producers which are at Serial No 1 entitled to lower Anti Dumping Duty, while others being subjected to higher rate of duty. The claim of the appellant is that the goods in the present instance were manufactured by M/s. Xinjian Shengxiong Chlor-Alkali Ltd. (hereinafter called "Alkali Company") which as per the appellant is the manufacture of the goods. However, department is of the view that the exporter claimed that is M/s. Xingzian Zhongtai Chemical Company Ltd. (hereinafter called "Chemical Company") is the manufacturer and therefore, required to be subjected to the higher rate of Anti Dumping Duty as per the same notification i.e. Notification No. 32/2019-Cus. (ADD). The basis of the department's claim is that there is name of "Chemical Company" mentioned on the sacks which have been found on examination of the import of consignments. The appellant have contested this claim on the basis that "Chemical Company" was merely the exporter on record and even numbers of documents exist indicating that they were not manufacturer and therefore, the lower rate of Anti Duping Duty was correctly sought by them. Consequently, the demand of differential duty has been incorrectly and improperly made from them.

2. The Learned AR on the other hand relies upon the name mentioned on the sacks imported which indicate the name of Chemical Company though not as manufacturer or exporter specifically. He also relies upon and reiterates the findings of the lower authorities to establish that such name mentioned is conclusive of manufacture by the "Chemical company".

3. We have considered the submissions made by both the sides. Particularly, the evidence being relied upon by the appellant which are placed at page 28 to 239 of the paper book. We find that the commercial invoice issued for the consignment clearly mentions manufacturer name as that of Alkali Company. Even packing list has the name of Alkali Co. Ltd as the manufacturer. We also find that the certificate of origin issued by China Council for the Promotion of International Trade, which in competent agency, also indicates the name of the Alkali Company as the manufacturer of the impugned goods and origin of the goods being that of China. Similarly, transporting companies i.e. transport shipping (China Corporation Ltd.) also mentions Alkali Company as the manufacturer. Same is the case with transit insurance issued in this regard and which is available at page 32 of the paper book. Appellants also enclosed the Certificate of analysis of the concerned consignment issued on March 26, 2021 which is also an internal document of Alkali Co. Ltd. Further, the Bill of Entry No. 3570118 dated 15.04.2024 also indicates that "Chemical Company" as an exporter on behalf of "Alkali Company Ltd".

3.1 We have also found that at Serial No. 1 of the relevant notification, against lower rate of USD 61.14 PMT the name of Alkali Company Ltd. has been mentioned, whereas all other Companies and other producers from China as Per Sr. No. 2 have been subjected to USD 147.96 ADD PMT. The same is as per the recommendation made by Directorate of Anti-Dumping, which was the investigating agency in the matter and which recommended such differential duty. We also find that the "Chemical Company" has issued a Certificate which states that the Alkali Company is their manufacturing unit for PVC resin SG-5 and is part of their group of Companies and "Chemical Company" is the World Wide Exporter of PVC resin SG-5 and M/s. Zhongtai Chemical is a brand/trade name and not the manufacturing Company's name. The Certificate is stated to be produced by the appellants even before Commissioner (Appeals) but has not been commented upon.

3.2 We find that the Certificate produced before us is unsigned so we are not inclined to attach any evidentiary value to such a certificate which is at Page 110 of the paper book. However, we find that in view of overwhelming documentary evidence which is otherwise available, Department has not been able to establish that the "Chemical Company" was the manufacturer. Department cannot on the basis of Company's name appearing on the sacks, consider that all other documents are falsified, even when investigation has not brought on record anything to this effect. There is no testimonial incriminating evidence on record to indicate that there was breach of law committed by the "Chemical Company" while importing such goods to India. The clearance was got done by waiving show cause notice but by paying duty under protest for the sake of early clearance. Therefore, all the documentary evidence produced by the appellant remains uncontroverted and cannot be ousted by mere mention of name on sacks, which do not even indicate that "Chemical Company' was manufacturer.

3.3 We also find that, the Commissioner (Appeals) in his findings has done away with confiscation of goods and imposing of fine under Section 125, and penalty under Section 112 (of the Customs Act, 1962), on the cogent basis that the Bill of Entry was filed on the basis of documents received. Therefore, on the basis of available documents, the goods have been held, to be non-offending goods. However, despite the same document, differential duty has been demanded, which is incorrect approach in law, as the credence to the documentary evidence cannot be ignored for duty only, when found worthy of consideration for holding goods as non-offending.

Further, we find in similar situation, Order-In-Appeal No. S/49-59/CUS/MUN/2021-22 dated 03.02.2023 in respect of the same party, matter was remanded and Vide Order No. GEN/ADJ/ADC/631/2023-ADJN dated 04.10.2023, the Additional Commissioner dealing with the demand proceeding has allowed the benefit to the similar impugned product at concessional rate by holding "Alkali Company" as the manufacturer by noting that "Chemical Company" was related and allowed the benefit to the appellants by treating "Alkali Company" as the producer.

4. In view of the foregoing, since documentary evidence in any case gets precedence over assumption/suspicion emanating from the packing specially till it is controverted, we are inclined to accept the above documentary evidence including certificate of origin as adequate evidence to accept that "Alkali Company" were the producers in the present instance and in the fact of the matter brought on record.

5. Accordingly, the party's appeals are allowed and department's appeal is rejected with consequential relief.

(Pronounced in the open court on 27.08.2024)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)

Prachi