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

REGIONAL BENCH- COURT NO.1

Customs Appeal No. 10767 of 2022-DB

[Arising out of Order-in-Original/Appeal No MUN-CUSTM-000-APP-426-22-23 dated 21.06.2022 passed by Commissioner of CUSTOMS-AHMEDABAD]

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

VERSUS

CASTOR GIRNAR INDUSTRIES PVT LTD ....**Respondent**
Opp Rajdhani Weigh Bridge Rajkot Road Dolatpara
Junagadh, Gujarat-382001

WITH

Customs Appeal No. 10909 of 2022-DB

[Arising out of Order-in-Original/Appeal No MUN-CUSTM-000-APP-426-22-23 dated 21.06.2022 passed by Commissioner of CUSTOMS-AHMEDABAD]

CASTOR GIRNAR INDUSTRIES PVT LTD ....**Appellant**
Opp Rajdhani Weigh Bridge Rajkot Road Dolatpara
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VERSUS

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

APPEARANCE:
Shri. Vikas Mehta, Consultant for the appellant
Shri Rajesh Nathan, Assistant Commissioner (AR) for the Respondent

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

Final Order No. 12530-12531/2024

DATE OF HEARING: 04.09.2024
DATE OF DECISION: 24.10.2024

RAJU

These appeals have been filed by assesse against the demand of anti dumping duty.

1.1. The facts of the case are that the appellant had imported PVC Resin SG 5 from China. The said goods are subject to anti dumping duty in terms of Notification No. 32/2019- Custom (ADD). The anti dumping duty on the said goods in terms of said notification is leviable at different rates for goods received from different manufacturers. The appellant had declared that the goods are manufactured by "CNSG Jilantai Salt Chlori-Alkali Chemical Co. Ltd" The revenue claim that the goods are manufactured by "CNSG Jilantai Chlori-Alkali Chemical Co. Ltd " . The claim of revenue is based on the fact that the name of "CNSG Jilantai Chlori-Alkali Chemical Co. Ltd " was found printed on the bags in which material was packed.

2. Learned Counsel argued that identical matter in respect of goods imported from M/s. Xinjian Shengxiong Chlor-Alkali Ltd. and bags printed with the name of M/s. Xingzian Zhongtai Chemical Company Ltd was examined by Tribunal in the case of M/s. Vinayak Trading vide Order No. 11793-11795/2024 dated 27.08.2024 .

2.1. He pointed out that the facts are same in the instant case as all the documents suggest that goods are manufactured by "CNSG Jilantai Salt Chlori-Alkali Chemical Co. Ltd" and therefore, he pleaded that the appeal should be allowed.

3. Learned AR relies on the impugned order.

4. We find that the exemption from anti dumping duty has been provided vide Notification No. 32/2019- Custom (ADD) dated 10th August, 2019 Sr. No. 1 and 2 of the table annexed to the said notification reads as follows :-

Duty Table

S. No.	Heading	Description	Country of Origin	Country of Export	Producer	Amount	Unit	Currency
(1	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1.	3904	Homopolymer of vinyl chloride monomer (suspension grade)	People's Republic of China	People's Republic of China	i. M/s Tianjin LG Bohai Chemical Co., Ltd ii. M/s Tianneng Chemical Co., Ltd iii. M/s Tianjin Dagu Chemical Co., Ltd iv. M/s Xinjiang Shengxiong Chlor-Alkali Co., Ltd v. M/s Chiping Xinfa PVC Co., Ltd. vi. M/s CNSG Jilantai Salt Chlori- Alkali Chemical Co. Ltd. vii. M/s Yibin Haifeng Herui Co., Ltd.	61.14	MT	US Dollar
2.	3904	Homopolymer of vinyl chloride monomer (suspension grade)	People's Republic of China	People's Republic of China	Any other producer except i to vii mentioned above in column no. (6)	147.96	MT	US Dollar

In the instant case the appellant have claimed to have imported the goods from "CNSG Jilantai Salt Chlori-Alkali Chemical Co. Ltd" whereas the bags in which Goods were found to bear the name "CNSG Jilantai Chlori-Alkali Chemical Co. Ltd ". The only difference between the two names is word 'salt' does not appear in the name printed on the bags. On that ground the benefit of Sr No. 1 of the notification was denied.

5. The name of the supplier appears at Sr No. VI of column 6 of the said table against the Sr No. 1. In the case of M/s. Vinayak Trading (supra) the case pertains to import made from the manufacture namely M/s. Xinjian Shengxiong Chlor-Alkali Ltd. appearing at Sr No. IV of column 6 against the Sr. No. 1 of the notification.

Other facts of the case are identical. The appellants have produced the documents like invoice, packing list and certificate of origin to the effect that the goods are manufactured by "CNSG Jilantai Salt Chlori-Alkali Chemical Co. Ltd". In identical circumstances benefit was allowed by Tribunal vide Order No. 11793-11795/2024 dated 27.08.2024 to M/s. Vinayak Trading by observing as follows:-

> *"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".*
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> *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.*
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> *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.*
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> *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."

6. Since, the facts are identical in the instant case for the name of supplier relying on the aforesaid decision in case of M/s. Vinayak Trading. The impugned orders are set aside and appeals are allowed.

(Pronounced in the open court on 24.10.2024)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)

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