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

REGIONAL BENCH- COURT NO. 3

CUSTOM APPEAL NO. 10393 of 2024-DB

(Arising out of Order in Appeal KDL-CUSTM-000-APP-195-23-24 Dated 28/03/2024 passed by Commissioner of Customs (Appeals), Ahmedabad)

ASPEN INTERNATIONAL PVT. LTD. ....**Appellant**
304, Shapath-I, Opp. Rajpath Club,
S.G. Highway, Bodakdev,
Ahmedabad-380015

VERSUS

Commissioner of CUSTOMS - Kandla Customs ....**Respondent**
Custom House,
Near Balaji Temple,
Kandla-370210

APPEARANCE:
Shri Hardik Modh, Advocate appeared for the Appellant
Shri Sanjay Kumar, Superintendent (AR)appeared for the Respondent

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

FINAL ORDER NO. 12777/2024

DATE OF HEARING:15.10.2024
DATE OF DECISION: 22.11.2024

RAMESH NAIR

The appellant filed the present appeal against Order-In-Appeal No. KDL-CUSTM-000-APP-195-23-24 dated 28.03.2024 (herein after referred to the 'impugned order') passed by the Learned Commissioner (Appeals), Ahmedabad whereby, while confirming Order-In-Original No.KDL/ADC/RHM/22/2021-22 dated 24.03.2022 passed by the Additional Commissioner of Customs, Kandla, the Ld. Commissioner of Customs (Appeals), Ahmedabad upheld the demand of anti-dumping duty of Rs.10,64,859/- on the alleged premise that M/s OCI (Shanghai) International Trading Ltd. is the shipper/ exporter as per the invoice and packing list and therefore, the benefit of Notification No.21/2016- CUS (ADD) dated 31.05.2016 is not to be provided to the appellant. However, the Ld. Commissioner of Customs (Appeals), Ahmedabad has remanded the matter to the adjudicating authority for fresh examination to the extent of invocation of extended period of limitation under Section 28 (4) of the Customs Act, 1962 and consequent imposition of penalty under Section 114 A of the Act. The issue involved is whether the appellant is liable for the benefit under Sr. No.4

of the Notification No.21/2016- CUS (ADD) dated 31.05.2016 wherein, ADD at the rate of 122.14 USD per M.T. is to be levied where the producer is Shandong Liaocheng Luxi Sixth Chemical Fertilizer Co. Ltd. and the exporter is Luxi Chemical (Hong Kong) Co. Ltd, Hong Kong. It is the case of the department that the ADD at the rate of 279.78 USD per M.T. is to be levied as per Sr. No. 7 of the Notification No.21/2016- CUS (ADD) dated 31.05.2016.

2. Shri Hardik Modh, Learned Counsel appearing on behalf of the appellant submits that the goods in question were exported from China by M/s. Lu Xi Chemical (Hong Kong). He submits that M/s. Shandong Liaocheng Luxi Sixth Chemical Fertilizer Co. was the manufacturer & M/s. Lu Xi Chemical (Hong Kong) Co. Ltd. was the exporter and the appellant was the importer in the entire transaction and therefore, the appellant has rightly claimed the benefit under Sr.4 of Notification No.21/2016-Cus (add) supra. It is his submission that M/s. OCI is only the beneficiary of goods as per the commercial invoice for the purpose of remittance. It is admitted fact that the Bill of Lading No. ZY03LXHG dated 16.09.2016 clearly mentioned the name of M/s. Lu Xi Chemical (Hong Kong) Co. Ltd. as the shipper and the name of appellant as the notified party which clearly established the fact that M/s. Lu Xi Chemical (Hong Kong) Co. Ltd. was the exporter and the appellant was the importer. Accordingly, the appellant was eligible for the benefit of Notification No.21/2016-Cus (ADD) supra. He placed reliance on the following judgments:-

- Mudit Enterprises Pvt. Ltd. v Commissioner of Customs, Mundra reported in 2024 (3) TMI 872 - CESTAT AHMEDABAD;
- P.P. Products Ltd. v Commissioner of Customs, Chennai reported in 2019 (367) E.L.T. 707 (Mad.)

2.1 He submits that it is the document namely bill of lading which decides the title of the goods, therefore, when the bill of Lading shown the name of exporter as M/s. Lu Xi Chemical (Hong Kong) Co. Ltd. then there is no reason to hold that the exporter is not M/s. Lu Xi Chemical (Hong Kong) Ltd. but the M/s.OCI. He placed reliance on the following judgments:-

- MMTC v. STO AIR 1999 SC 121;
- British India Steam Navigation Co. Ltd. Versus Shanmughavilas Cashew Industries 1990 (48) E.L.T. 481 (S.C.);

- J.V. Gokal & Co. (Private) Ltd. v. Assistant Collector of Sales-Tax (Inspection);
- Commissioner of Customs (Port), Kolkata Vs. Rudra VyaparchemPvt. Ltd.

2.2 Without prejudice, he also submits that all the information regarding the invoicing by OCI and name of Lu Xi appearing on the Bill of Lading was before the custom authority while filing the bill of entry. Therefore, there is absolutely no suppression of fact on the part of the appellant. Hence, extended period could not have been invoked. Hence, the demand is also not sustainable on the ground of time bar. He placed reliance on the following judgments:-

- Graphite India Ltd. Vs. CC, reported in 2015 (325) E.L.T. 777 (Tri. - Kolkata);
- Orbit Fabrics Ltd. Vs. CCE, reported in 2009 (248) E.L.T. 359 (Tri. - Ahmd.), [Affirmed in 2011 (264) E.L.T. 53 (Guj.)];
- Simplex Infrastructures Ltd. Vs. Commissioner of Service Tax, Kolkata 2016-TIOL-779-HC-KOL-ST
- Delhi International Airport Ltd. Vs. Commissioner of CGST-2019(24) GSTL 403 (T).
- Anand NishiKawa Co. Ltd. vs. CCE, Meerut [2005 (188) E.L.T. 149(SC)]

3. Shri Sanjay Kumar, Learned Superintendent (AR) appearing on behalf of the revenue, reiterates findings of the impugned order.

4. We have carefully considered the submissions made by both the sides and perused the records. We find that though, the appellant have made out a very strong prima facie case on merit in their favour but in our considered view the appeal can be disposed of on the ground of limitation itself. We find that dispute relates bill of entry No.7216037 filed on 24.10.2016, bill of entry No.7250924 filed on 27.10.2016 whereas bill of entry No.8389062 was filed on 31.01.2017, however the show cause notice was issued on 20.10.2021. We find that the dispute which was raised by the department is on the basis of the information available on import invoice, bill of lading which are vital documents for the purpose of processing the bill of entry and assessment thereof. In the bill of entry itself the name of OCI is mentioned. In the bill of lading name of Lu Xi is clearly mentioned. Therefore, for purpose of making

the present case all the information were gathered only from those documents which were very much available at the time of filing of bill of entry. Therefore, there is absolutely no suppression of the fact on the part of the appellant. Accordingly, the ingredients to invoke extended period in terms of Section 28 (4) are not available in the facts of the present case. For the bill of entry dated 24.10.2016, 27.10.2016 and 31.01.2017, the show cause notice was issued on 20.10.2021 that is much after the normal period of limitation.

5. Therefore, in our considered view the demand is clearly time barred. Hence, we set aside the demand only on the ground of time bar, as a result, the appeal is allowed.

(Pronounced in the open court on 22.11.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Bharvi