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

REGIONAL BENCH-COURT NO. 3

Customs Appeal No. 10830 of 2021 –SMC

(Arising out of OIO-MUN-CUSTM-000-COM-02-20-21 dated 27/08/2020 passed by Commissioner of Central Excise, Customs and Service Tax-MUNDRA)

SHRI NITIN VIRKAR **........Appellant**
Ruchi Soya Industries Ltd.,
601, Part B-2, Metro Tower,
6th Floor, Vijay Nagar, A.B.Road
Indore, Madhya Pradesh

VERSUS

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

APPEARANCE:
Shri Dhaval K Shah, Advocate for the Appellant
Shri Girish Nair, Assistant Commissioner(AR) for the Respondent

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

Final Order No. 12782/2024

DATE OF HEARING: 19.08.2024
DATE OF DECISION: 22.11.2024

RAMESH NAIR

The issue involved in the present case is that the Company M/s. Ruchi Soya Industries Ltd was the manufacturer of Soyabean Oil by the process of Soya Bean extraction. The allegation was made that the company has taken an inadmissible export incentive under VKGUY as amended on 31.12.2012 by misclassifying the product under chapter heading 1208, whereas the said product should be classified under 2304, if the classification is under 1208, then 5% incentive on FOB, but if the classification as proposed by the Revenue, the incentive would be 2%.

1.1 On 20.10.2015 Investigation was conducted at the factory premises of the company. On 18.12.015 the statement of the Appellant was recorded. It was deposed that the Appellant was looking after all the works of the Company pertaining to DGFT and took care of all the work related to export incentives and duty drawback against the goods exported by the company. The Appellant could not respond to the query about the difference between edible grade and non-edible grade and the production of the goods in question. It was stated that he was not looking after the technical aspect, but rather, he was looking after the commercial matters.

1.2 In view of the above investigation, a show cause notice was issued to M/s. Ruchi soya and Shri Nitin Virkar, the present appellant. The adjudicating authority while adjudicating this show cause notice held that the company M/s Ruchi Soya Industries has wrongly secured VKGUY duty paid credit scheme by willful suppression, misstatement & misdeclaration. Consequently, deferential demand of customs duty interest and penalties were confirmed. A penalty of Rs. 5,00,000/- each was also imposed upon the appellant under Section 112(a) and Section 114AA of Customs Act, 1962, therefore, the present appeal filed by the appellant.

2. Shri Dhaval K Shah, Learned Counsel appearing on behalf of the appellant at the outset submits that the entire case is based on that the appellant have mis-declared the export goods and obtained the VKGUY license. However, the DGFT so far has not cancelled the said license. Moreover, the department had also filed the appeal before this Tribunal referring to a board circular No. 334/1/2012-TRE dated 01.06.2012 that show cause notice can only be decided after the DGFT cancel the license. Therefore, in the present case since DGFT has not taken any action for cancellation of the license, the penalty on the appellant is not sustainable. He placed reliance on the following judgment:-

- Richardson Hindustan Limited Vs. UOI 1988 (37) ELT 496 (Bom.)
- Titan Medical Systems Pvt. Ltd Vs. CC, New Delhi 2003 (151) ELT 254 (S.C.)
- CC, Bombay Vs. Sneha Sales Corporation 2000 (121) ELT 577 (S.C.)
- Supreme Casting Ltd Vs. Jt. DIR General of Foreign Trade, Ludhiana 2016 (342) ELT 176 (P & H)
- CC Vs. Rajnarayan Jwalaprasad 2014 (306) ELT 592 (GUJ.)
- Bindu S. Mehta Vs. CC, Rajkot 2000 (121) ELT 281 (Tri.)
- Lakshmi Packaging (P) Ltd Vs. CCE & CUS, Coimbatore 1998 (98) ELT 91 (Trib.)
- Patanjali Foods Limited (Formerly Known as Ruchi Soya Industries Limited) Vs. UOI Special Civil Application No. 11739 of 2023

- The commissioner of Customs Vs, Patanjali Foods Limited (Formerly Ruchi Soya Industries Limited) Tax Appeal No. 32 of 2019
- State of Punjab Vs. Bhatinda District Co-Op. Milk P. Union Ltd- 2007 (217) ELT 325 (SC)
- Commissioner of Central Excise, Chandigarh Vs. Hari Construction (P) Ltd- 2009 (242) ELT 12 (P&H)

3. Shri Girish Nair, Learned Assistant Commissioner (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order. He submits that the appellant was responsible for obtaining the VKGUY license by mis declaring the description of the goods. Therefore, he was rightly imposed with the penalty under Section 112(a) and Section 114AA of Customs Act, 1962. He placed reliance on the following judgments:-

- Munjal Showa Ltd v/s Commissioner of Customs & Central Excise reported at 2022-TIOL-82-SC-CUS
- Nanz Med Science Pharma Pvt Ltd v/s Commissioner of Customs (Appeals) reported at (2023) 11 Centax 355 (S.C.)
- Sushil Sharma v/s CESTAT reported at 2016 (334) E.L.T. 19 (P & H)
- Sushil Sharma reported at 2016 (334) E.L.T. A71 (S.C.)

4. I have carefully considered submission made by both the sides and perused the records. I find that in the impugned order the main case is against the company M/s Ruchi Soya Industries Ltd. that they have mis-declared the export goods for the purpose of obtaining the VKGUY license. Thereby, evaded the differential custom duty of 3 % of VKGUY license. I find that appellant as per their belief declared the description of goods to the DGFT, the DGFT was free to arrive at a correct classification and could have objected description declared by the appellant. However, the DGFT also issued the license accepting the description declared by the appellant. In this case there is no mala fide intention, particularly on the part of the present appellant because the issue of classification of goods is a matter of interpretation and the same could have been detected and disputed while issuing the VKGUY license by DGFT.

4.1 Moreover, in the present case, so far the license has not been cancelled by the DGFT. On this ground alone the penal provision cannot be invoked against the appellant.

4.2 The judgments relied upon by the Revenue are on different facts and issue are not similar to the case in hand, therefore, those judgments are not applicable in the facts of the present case.

5. Accordingly, in my considered view, the appellant is not liable for penalty either under Section 112(a) or under 114AA. Therefore, the penalties are set aside. Appeal is allowed.

(Pronounced in the open court on 22.11.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

Raksha