Customs, Excise & Service Tax Appellate Tribunal

West Zonal Bench at Ahmedabad

REGIONAL BENCH-COURT NO. 3

CUSTOMS APPEAL NO. 10758 of 2023- DB

(Arising out of Order in Original JMN-CUSTM-PRV-COM-003-23-24 dated 18.08.2023 passed by Commissioner of Customs (Preventive)-Jamnagar)

M/s K L International **........Appellant**
A-256, Old No. 55, Flat No. A-4 3F
Chhaterpur Enclave-I New Delhi-110074

VERSUS

Commissioner of Customs-Customs(P) Jamnagar **......Respondent**
Seema Shukla Bhawan, Jamnagar-Rajkot Highway
Near Victoria Bridge, Jamnagar, Gujarat-361001

<u>WITH</u>

i. **CUSTOMS APPEAL NO. 10759 of 2023- DB (SHRI JATIN ARORA)**
ii. **CUSTOMS APPEAL NO. 10760 of 2023- DB (MOHAMMAD SHAHZEB AZAD)**
iii. **CUSTOMS APPEAL NO. 10761 of 2023- DB (PANKAJ TIWARI)**
iv. **CUSTOMS APPEAL NO. 10762 of 2023- DB (SHRI PREM)**
v. **CUSTOMS APPEAL NO. 10763 of 2023- DB (VIJAY S YADAV)**
vi. **CUSTOMS APPEAL NO. 10764 of 2023- DB (RAJVEER SINGH)**
vii. **CUSTOMS APPEAL NO. 10765 of 2023- DB (SHAILENDRA DHANANJAY SINGH)**
viii. **CUSTOMS APPEAL NO. 10766 of 2023- DB (PARSHOTAM PRAJAPATI)**

<u>APPEARANCE:</u>
Shri Uday M. Joshi, Advocate appeared for the Appellant
Shri Girish Nair, Assistant Commissioner (AR) appeared for the Respondent

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

Final Order No. <u>12943-12951/2024</u>

DATE OF HEARING: 05.07.2024
DATE OF DECISION: 02.12.2024

<u>RAMESH NAIR</u>

These appeals are filed against the Order-In-Original No. JAM-CUSTM-PRV-COM-003-23-24 dtd. 18.08.2023 passed by Commissioner of Customs (Preventive), Jamnagar.

1.1 Briefly, the facts of the present case are that the appellant were issued show cause notice dtd. 04.11.2022 for Imports of 'Dry Dates' seized at Pipavav Port and JNPT by officers of Customs. Pursuant to an enquiry made on the basis of intelligence with DRI Jamnagar to the effect that goods being imported by M/s K.L. International, and IEC holder, are of Pakistani Origin required to be classified under CTH 98060000 but classified under CTH 08041030 and thus evade Customs Duty and therefore the goods were liable for confiscation and penalty. The said show cause notice was adjudicated vide impugned order by the Ld. Commissioner and duty demand for goods seized was confirmed along with interest, fines and penalties under the Customs Act. Aggrieved, the appellants have filed these Appeals before this Tribunal.

2. Shri Uday M. Joshi, learned Advocates appeared for the appellants and submits that Notification No. 5/2019- Cus has been issued under Section 8A(1) of the Customs Act by invoking Emergency Power of Central Government to increase Import Duties, resorted by creating new CTH 98060000, which resulted in allegation and changing the classification of the impugned goods from Tariff Item No. 08041030 as claimed to CTH 98060000 as per description of goods therein *"All goods originating in or exported from the Islamic Republic of Pakistan".* No evidence is brought out on record to question the country of Origin Certificate, relied and declared on BE, issued by the appropriate authority of UAE, except that allegations are based on presumption and assumption of the said goods 'originating in" as per new CTH proposed as there is no BL or any other material brought on record e.g. Sea-container tracking details etc. including the transportation to Pipavav or JNCH port of the subject consignment as 'export from ' as per the other opinion in the proposed CTH. He placed reliance on the following judgments.

(i) Northern Plastics Ltd. -1998 (101) ELT 549 (SC)

(ii)Densons Pultretaknik – 2003(155)ELT 211(SC)

(iii)OIL Corportation -2004(175)ELT 626 (Tri. Kolkata)

2.1 He also submits that there is no doubt that COO certificate issued by UAE Authorities, which is the evidence of goods being of UAE Origin. There is no reliable material evidence in present matter to bring out that the origin of UAE, as certified is doubtful, as no specific allegation on certifications is brought out or relied in SCN.

2.2 He further submits that SCN alludes to certain digital evidence, said to be retrieved from Mobile Phone of N3 of Shri Parshotam, specifically the allegation and the message extracted. This message could be a normal communication and is not brought out to be related specifically to the present import, thus is not direct evidence.

2.3 He also argued that similarly, the manuscript document alleged to be hand written note of VS Yadav (N10), which refers to a bill which is not established to be a bill issued for clearances of 'Dry Dates' of any consignments or even related to importer to any extent in any manner. Therefore, these alleged evidences of revenue cannot be relied even to corroborate and conclude that COO, certificates produced in the instant case after obtaining them in normal course from UAE Authorities by a Manufacturer /Trader of 'Dry Dates' are false/forged/ fabricated except that such allegations are nothing but assumption and presumptions as arrived and thus not an evidence at all.

2.4 He also submits that revenue's reliance on certain insignificant quantities of jute bags in the entire consignment, in which inner polythene packings the 'Dry Dates' were found at Pipavav and Nhava Sheva, Imported by Appellant are alleged to be having markings of "Sargodha Jute Mills Pakistan'. These outer packing, jute bags are also reported as per evidence to be washed and reused jute bags. As per revenue the reading would indicate that such jute bags are exported from Pakistan. The said jute bags, which are the secondary outer packing are obtained by the exporter. A perusal of website of Sargodha Jute Mills Pakistan, also shows that they are exporters of the Jute bags and as per data available on their website their Jute Bags are also exported to Dubai and upon further scrutiny of website it can be seen that the 'Sargodha Jute Mills' is producing 52 tons of 'Sacking' per day, which in the said case in packing material used by supplier. Therefore, the jute bags which are secondary packing, having marking and FASSAI certificate on them, depicting the number allocated to Appellant and date of packing in UAE, details of exporter and importer of the 'DRY Dates'. Therefore, same cannot be said to be evidence to conclude or even allege the imported goods, in polyethene bags to be that of Pakistani Origin.

2.5 He further submits that RUD 26 relied upon by the department is a copy of Bill of Lading No. MLJEANSA045918 of Merchant Lines, showing shipper as A-1 Buraq Dates Factory UAE and receiver appellant showing place of receipts of pre-carrier and port of loading as Jebel Ali and port of discharge as Nhava Sheva. This does not have any signature of date of issue and is marked as non-negotiable. On the second page 5 container number have been mentioned with other data, however no such container number have been found at Nhava Sheva as per Panchanama's drawn for seizure of 'Dry Dates containers of Appellant.

2.6 He further submits that the RUD-27 is Panchanama drawn at Cyber Forensic Laboratory, DRI office Mumbai on 25.11.2021 to 26.11.2021 regarding data from mobile phone of N.3. The entire printout of the said extraction has been supplied. Whatever such extractions have been relied in the SCN have not relevant to the issues in this SCN. Further RUD-31 is alleged to be a contact number of alleged CHA based in Pakistan, however no further explanations have been sought from N.3 as to how having number of CHA based in Pakistan would be relevant except to establish his contact which may be prior to 16.02.2019, when the relevancy of Pakistani Origin and Shipped consignments to India were placed under 98060000, covering all such goods was introduced. It is on record that N3 was a CHA operating for a long time and a person holding CHA license and operating at Delhi, etc. even prior to 2019. There is no positive material obtained of a call/ contract or any form of conversation or interaction between the number of a person based in Pakistan who is said to be CHA, even according to uncorroborated alleged confession of N3. The RUD as served does not implicate Parshotam to have dealt with Pakistani 'Dry Dates' Exporter /CHAs or Shipping Lines or any other person especially after 16.02.2019 much less the present consignment of N1 now impugned in the instant case.

3. Shri Girish Nair , Learned Assistant Commissioner (AR) appearing on behalf of revenue reiterates the findings of impugned order.

4. Heard both sides and perused the records of the case. We find that the issue involved in the present appeals pertains to the import of 'Dry Dates" by appellant. The case of the department is that Appellants had filed Bills of Entry declaring the country of origin of the said goods as UAE, classified the said goods under CTH 08041030 where the Customs Duty rate is 20% adv. and self-assessed the Bills of Entry whereas correct county of origin of the said goods is Pakistan and therefore, the said goods are classified under CTH 98060000 for which Customs duty rate is 200% adv.. The officers of DRI and Customs carried out investigation in the matter which includes search at the premises of various person related to the above import transaction and collection of documentary evidences/ digital evidence. Statement of various persons were also recorded. The Ld. Commissioner while confirming the demand observed that during the course of examination of goods, the packing

material in which dry dates were packed was showing the name of "Sargodha Jute Mills Ltd. in Pakistan" on it. This concrete and tangible evidence is further corroborated by the deposition of Shri Souvik Sarkar in his statement dtd. 19.11.2021 admitting inter alia, that "in fact the goods have been brought from Pakistan via Dubai to evade the Customs Duty on it, and shri Rajeev Singh in his statement dtd. 19.11.2021 admitting, inter alia, that in fact the goods have been brought from Pakistan via Dubai to evade the Customs Duty on it. We find that in the present Shri Souvik Sarkar retracted his statement via filing affidavit, however the same was not considered by the Ld. Adjudicating authority on the ground that the appellant has not requested for any cross-examination of any witness including the independent panchas. However, it is not disputed that appellant has raised objection on the statements of said witness and said persons were not examined in the adjudication proceedings even after the objection of appellants.

5. In this background, in our considered view the appeals filed by Appellants needs to be disposed of by way of remand to the adjudicating authority to reconsider the issue afresh by following the principles of natural justice and adherence to the provisions of Section 138B of the Customs Act, 1962 on this point. All the issues are kept open. The order is therefore set aside and matter remanded to the Ld. Adjudicating authority to decide the issue a fresh.

(Pronounced in the open court on 02.12.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(C L MAHAR)
MEMBER (TECHNICAL)

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