

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

REGIONAL BENCH- COURT NO.3

Customs Appeal No.10595 of 2014

(Arising out of OIA No. 457/2013/CUS/COMMR-A/JMR dated 25.11.2013 passed by Commissioner of CUSTOMS-JAMNAGAR)

NIRMA LTD

SURVEY NO. 480, VILLAGE: KALATALAV
BHAVNAGAR-GUJARAT-364001

.....Appellant

VERSUS

C.C.-JAMNAGAR

SHARDA HOUSE, BEDI BANDARROAD,
OP. PANCHAVATI, JAMNAGAR-GUJARAT

.....Respondent

APPEARANCE:

Shri P.P.Jadeja, Consultant appeared for the Appellant
Shri Sanjay Kumar, Superintendent (AR) for the Respondent

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

Final Order No. A/ 10319 /2023

DATE OF HEARING: 20.02.2023
DATE OF DECISION:20.02.2023

RAJU

This appeal has been filed by Nirma Ltd. against denial for the benefit of Notification No. 46/2011-Cus dated 01.06.2011.

2. Learned Consultant appearing on behalf of the appellant pointed out that they had purchased coal on high seas sale basis from the consignment originally purchased by Anik Industries Limited. He pointed out that total consignment consisted of 51,397,979 MT out of which the appellant had purchased 15,697,979 MT of steam coal (non coking coal). The entire consignment of 51,397,979 arrived by MV Intrepid. The appellant produced the certificate of origin. He pointed out that the entire consignment of 51,397,979 MT arrived by the Ship MV Intrepid which departed on October 04, 2011 from Jamvi in Indonesia. He pointed out that certificate of origin does not mention the invoice number by which the appellant had procured the said coal on high sea sales basis. Learned consultant pointed out that the entire benefit has been

denied because column-10 of the certificate of origin relating to number and date of invoices is left blank. Learned consultant pointed out that it was apparently an inadvertent mistake on the part of the issuing authority. He pointed out that on account of this inadvertent error the benefit of Notification No. 46/2011-Cus dated 01.06.2011 cannot be denied when all other details mentioned in the certificate of origin which match with consignment. He pointed out that the column number 8 of the said certificate of origin clearly mentions that the consignment was wholly obtained in the country of origin i.e. Indonesia. He pointed out that all the conditions of the Notification No. 46/2011-Cus dated 01.06.2011 are satisfied. He further pointed out that the requirements of the Customs Tariff [Determination of Origin of Goods under the preferential trade agreement between the Government of Member States of the Association of the South East Asian Nations (ASEAN) and the Republic of India 2009] Rules, 2009 are satisfied. He particularly pointed out that Rule 3, 4 and Rule 8 are relevant for this purpose.

3. learned Authorized Representative relies on the impugned order. He pointed out that the conditions of the Notification have to be strictly followed. He pointed out that the Performa for the invoice attached of the aforesaid Rules clearly requires mention of invoice number in the Certificate of Origin. He further relies on the decision of Hon'ble Apex Court in the case of **Mahaan Dairies 2004 (166) ELT 23 (SC)** to assert that conditions of the Notification have to be strictly followed.

4. I have considered the rival submissions. I find that it is not in dispute that the consignment was imported by MV Intrepid which sailed on 04.11.2011 from Indonesia carrying 51,397,979 MT of steal coal (non-coking). It is also not in dispute that the consignment imported by the appellant is part of the same cargo. The appellant have sought to rely on the country of origin certificate which contains these details

originating and eligible for preferential tariff treatment if they conform to the origin requirements under any one of the following:-

- (a) products which are wholly obtained or produced in the exporting party as
- (b) products not wholly produced or obtained in the exporting party provided that the said products are eligible under rule 5 or 6."

"Rule 4. Wholly produced or obtained products - For the purpose of clause (a) of rule 3, the following shall be considered as wholly produced or obtained in a party:-

- (a)
- (b)
- (c)
- (d)
- (e) minerals and other naturally occurring substances, not included in clauses (a) to (d), extracted or taken from the party's soil, water, seabed or beneath the seabed;**
- (f)
- (g)
- (h)
- (i)
- (j)

It is seen that the certificate produced by the appellant in column number 8 clearly mentions that the goods were wholly obtained thereby implying that the condition 3(a) of the aforesaid rules stands satisfied.

5.1 Rule 8 of the aforesaid rules reads as under:

"8. Direct Consignment. - The following shall be considered as consigned directly from the exporting party to the importing party, -

- (a) if the products are transported passing through the territory of any other AIFTA parties;
- (b) if the products are transported without passing through the territory of any non- AIFTA parties;
- (c) if the products whose transport involves transit through one or more intermediate non- parties with or without transshipment or temporary storage in such non-parties provided that –

- (i) the transit entry is justified for geographical reason or by consideration related exclusively to transport requirements;
- (ii) the products have not entered into trade or consumption there; and
- (iii) the products have not undergone any operation there other than unloading and reloading or any operation required to keep them in good condition."

5.2 It is also not in dispute that the consignment has been received directly from Indonesia to Indian Port to Bhavnagar and therefore, the condition of Rule 8 of the aforesaid Rules also stands satisfied.

6. Now the only issue remains is if the defect of non mention of invoice number in the Certificate of Origin can be enough to reject the certificate of origin and debar the appellant from benefit of Notification No. 46/2011-Cus dated 01.06.2011.

7. Learned Authorized Representative has relied on the decision of Mahaan Dairies (supra) wherein the following has been observed.

“8. It is settled law that in order to claim benefit of a Notification a party must strictly comply with the terms of the Notification. If on wordings of the Notification the benefit is not available then by stretching the words of the Notification or by adding words to the Notification benefit cannot be conferred. The Tribunal has based its decision on a decision delivered by it in Rukmani Pakkwell Traders v. CCE, Trichy [1999 (109) ELT 2041 We have already overruled the decision in that case. In this case also we hold the decision of the Tribunal is unsustainable. It is accordingly set aside.”

It is seen that there is no direct requirement in the Rules or in Notification that invoice number has to be mentioned in certificate of origin. The Performa attached to the Rules contains in column 10 space for the invoice number and date. I find from the facts of the case that all other details i.e. the name of name of the ship, the date of sailing, entry of cargo and origin etc are in consonance with the claim made by the appellant. In this background, I find that mere non-mention of the invoice number in the certificate of Origin is not sufficient reason to deny the benefit of Notification No. 46/2011-Cus dated 01.06.2011. The purpose of the Notification is to grant exemption under the preferential Trade Agreement with Asian Countries and from the certificate of country of origin produced by the appellant. It is sufficiently established that the goods have indeed originated in Indonesia and were wholly obtained in Indonesia. In this background, I do not find any merit in the impugned order, the same is set aside. Appeal is allowed.

(Dictated & Pronounced in the open court)

(RAJU)
MEMBER (TECHNICAL)