

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

REGIONAL BENCH- COURT NO.3

Customs Appeal No.10165 of 2022

(Arising out of OIA-KDL-CUSTM-000-APP-40-21-22 dated 30/11/2021 passed by Commissioner of CUSTOMS-AHMEDABAD)

RIDAVA PETROCHEMICALS PVT LTD

.....Appellant

Shop No 4 Shriniketan Colony Jalna Road Cts No 13163 Opp Patidar Bhavan Aurangabad
Aurangabad, Maharashtra

VERSUS

C.C.-KANDLA

.....Respondent

Custom House,
Near Balaji Temple, Kandla, Gujarat

APPEARANCE:

Shri Vikas Mehta, Consultant for the Appellant
Shri Rajesh Agarwal, Superintendent (AR) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
 HON'BLE MEMBER (TECHNICAL), MR. RAJU
 Final Order No. A/ 10470 /2023**

DATE OF HEARING: 20.12.2022
DATE OF DECISION: 17.03.2023

RAMESH NAIR

Brief facts of this case are that the appellant had imported one consignment of 1900 MT of de-natured ethyl for re-exports and filed warehouse bill of entry No. 9846933 dated 07.12.2020. The Bill of Entry was assessed and goods permitted to be deposited in bonded warehouse. Further the appellant filed Shipping Bill No. 7490594 dated 28.12.2020 and 7603281 dated 31.12.2020 for export of part quantity of 194.59 MT out of the imported goods that were lying in the bonded warehouse. Denatured Ethyl Alcohol (Ethanol) is classifiable under the Chapter Heading 22072000 of the Customs Tariff and attracts duties leviable to that tariff heading for Ethyl Alcohol and other spirits, denatured, of any strength. As per revenue, import as well as re-export of the goods in para 2.46 of a Foreign Trade Policy, 2015-2020 read with Notification No. 6/2015-2020 dated 24.05.2019 and Trade Notice No. 27/2019-20 dated 29.07.2019 (restricting import thereof) and Notification No. 29/2015-2020 dated 28.08.2018 (restricting export thereof) restricted for import and export. After detail investigation, show cause notice was issued to the appellant. The Adjudicating Authority *vide* Order-in-Original dated 02.05.2021 ordered as under:

- (i) Reject the CTH 22072000 declared in the Bill of Entry and Shipping Bill and order to re-classify the same under CTH 22071000
- (ii) Drop the proposal to confiscate the goods under Section 111(d) of the Customs Act. However confiscated the imported goods i.e 1900MTs. declared as Denatured Ethyl Alcohol under Section 111(m), gave an option to pay fine of Rs. 77,00,000/- in lieu of confiscation under Section 125 of the Customs Act, 1962
- (iii) Imposed a penalty of Rs. 1,46,00,000/- on the appellant under Section 112 of the Customs Act, 1962.
- (iv) Imposed a penalty of Rs. 1,50,00,000/- on appellant under Section 114AA
- (v) Imposed a penalty of Rs. 4,00,00/- under Section 117 of the Customs Act, 1962.
- (vi) Confiscation the export goods i.e 194.59 MT. declared as "Denatured Ethyl Alcohol" under the provision of Section 113(i) of the Customs Act, 1962. However give option to redeem the same on payment of fine a Rs. 8,00,000/-
- (vii) Imposed penalty of Rs. 8,00,000/- under Section 114 of the Customs Act, 1962.

02. Being aggrieved with the above order Appellant preferred appeal before the Commissioner of Customs and Central Excise (Appeals), Ahmedabad, who *vide* impugned OIA No. KDL-CUSTM-000-APP-40-21-22 dated 30.11.2021 upheld the charges of mis-declaration of goods, however he reduced the redemption fine on imported goods from 77.0 Lakhs to Rs. 20.0 Lakhs; reduced redemption fine imposed on goods entered for export from 8 lakhs to 2 lakhs and also reduced the penalty imposed under section 112 from 1.46 crore to of Rs. 15 Lakhs; reduced penalty amount from 8 lakhs to Rs. 1 Lakhs imposed under Section 114 and reduce the imposed penalty of Rs. 4 lakh to 1 lakhs imposed under Section 117 of the Customs Act, 1962. Aggrieved by the same, the Appellant has filed the present appeal before this tribunal.

03. Learned Consultant Shri Vikas Mehta appearing on behalf of the appellant argued the matter at length and submits that the entire case of the department is based upon the alleged non-denaturation of imported ethyl alcohol by using IS specified denaturants. However, on the request

made by Shri Bikram Singh, authorized signatory of Appellant, the Consultant Technical (Ex Joint Industrial Advisor, Department of Chemicals and Petrochemicals), Ministry of Chemicals and Petrochemicals, Government of India, New Delhi have clarified that Indian Standards are applicable for the products being manufactured in Indian territory and also for the products manufactured abroad and the same imported in India for Indian consumption. In the admitted position where the goods under consideration were never meant for consumption in India, the requirement of IS specified denaturant which is made the basis for building the case of mis-declaration against the appellant is rendered baseless. In any case goods have been denatured with Bitrex (a globally used denaturant) as duly confirmed by the Chemical Examiner of Customs Laboratory and hence, it is established that the goods were indeed denatured ethyl alcohol. With the requirement of denaturation with IS specified denaturant not applicable. There is no basis for alleging or holding mis-declaration and consequent confiscation of goods. Imposition of redemption fine and penalty is completely unjustified and hence impugned order is liable to be quashed and set aside.

3.1 He also submits that the requirement of denaturation is laid down in Circular No. 02/2006 dated 10.01.2006. The circular is issued with reference to Section 24 of Customs Act, 1962 read with 'Denaturing of Spirit Rules, 1972' issued by the Ministry of Finance. As per the said circular, it is the importer who is required to make a request for denaturation. Once such a request is made, Para 1 envisaging clearance of denatured ethyl alcohol, para 6 laying down the necessity of maintaining uniformity of denaturing agents and para 7 stipulating BIS standards IS 4117-1973 may be adhered to for denaturation of imported ethyl alcohol, will come into play. In this case the goods were never meant for consumption in India and hence, the appellant was not required to make a request for denaturation in the first place.

3.2 He also submits that neither the rules nor Circular could have compelled the Appellant to make such a request nor the charges of mis-declaration can be hurled against them for not making such a request given in the warehousing bill of entry that goods are meant for export. The scheme of denaturation is applicable to goods meant for home consumption and the importer cannot be penalized for non-participation in such a scheme when goods are not meant for consumption in India. Even otherwise, non-making of such a request cannot automatically attract the charges of mis-declaration

given the fact that no clearance was sought. Hence, the case of department is not supported by law of denaturation. Therefore, on this ground also, the finding of mis-declaration is not sustainable in the eyes of law.

3.3 He argued that Board vide Circular No. 2/ 2006 dated 10.01.2006 has duly acknowledged that HSN notes corresponding to heading 27.07 only states that spirits are mixed with substances to render them unfit for drinking. The goods having been found mixed with Bitrex/Denatonium Benzoate and not held for drinking have complied with the requirement of HSN as well as Board's circular. Hence, the impugned order holding the goods liable to confiscation under Section 111(m) and 113(i) of Customs Act, 1962 despite complying with the HSN note as well as Board's Circular supra is contrary to law as well as binding Circular and deserve to be quashed and set aside on this ground also

3.4 He further submits that requirement to make the goods compliant with IS 4117(2008) standards that is laid down in Board's Circular No. 2/2006 dated 10.01.2006 is applicable to goods meant for clearance into India and not to any such goods which are meant for re-export and use outside India.

3.5 He also submits that appellant is not liable to penalty under Section 114AA of Customs Act, 1962 on the charges of mis-match in the date of bill of lading inasmuch as the date mentioned in the bill of lading presented by appellant along with bill of entry is also reported by the master/ agent in the Import General Manifest filed in the EDI system of department. The lower authorities have erred in failing to appreciate that the warehousing bill of entry filed by appellant was assessed by the proper officer only after tallying the date appearing in the EDI system fed by the master/agent and the date appearing on the bill of lading present along with bill of entry filed by the appellant. Moreover, it is clearly mentioned on the bill of lading that the shipment of 1900 MT. was loaded on board the vessel as part of one original lot of 38,386.137 MT. as Galveston Tx, USA on 27.10.2020. The same is also corroborated by the authorized representative of appellant in his statement recorded by the officer in the course of inquiry. In the absence of any contra-evidence –documentary or oral gathered from master or shipping agent or any other source pointing to incorrectness of above date, the allegation and finding that date of loading mentioned in the bill of lading is incorrect is devoid of any legal justification.

3.6 He also submits that reliance placed on 'Commercial Certificate of Quality' No. LABORATORY JOB NO.DP 20-11252.004 dated 29.10.2020 where goods were mentioned as 'Undenatured Ethyl Alcohol' is misplaced inasmuch as the said invoice was issued prior to denaturation at the Galveston anchorage. After arrival into India, the Chemical Examiner of Custom House Laboratory at Kandla has certified that goods have been denatured with Bitrex/Denatonium Benzoate.

04. Shri Rajesh Agarwal, learned Superintendent (AR) appearing for the Revenue reiterates the finding in the impugned order.

05. After hearing both sides and on perusal of the record, we find that Appellant had filed warehousing Bill of entry for depositing imported goods namely 1900MT of Denatured Ethyl Alcohol and had declared on the Bill of entry that goods were imported for export. The Bills of entry was assessed and clearance was duly permitted by the revenue and subsequently appellant filed shipping bill for re-export of the part consignment of 194.59MTs. The case of the revenue in the present matter is that subject goods found to be Ethyl Alcohol in terms of test report dated 20.01.2021 and further clarification issued by the CRCL, Kandla. The adjudicating authority held that the Appellant has mis-declared the description of goods which rendered the goods liable to confiscation. It is also alleged that the goods in question are not in conformity with IS 4117(2008) standard and hence, the same cannot be treated as Denatured Ethyl Alcohol as declared and classified by the Appellant.

5.1 We also noticed that in the present matter by relying the test report given by CRCL, Kandla revenue argued that sample of goods are not considered as denatured Alcohol as per the Indian Standard, Alcohol Denaturants =Specification IS 4117 (2008). Therefore the impugned goods are Ethyl Alcohol and not denatured ethyl alcohol. In this context we noticed that Board issued circular 02/2006 dated 10.01.2006 wherein the requirement of IS 4117-1973(2008) related to alcohol denaturants is made. The relevant portion of said Circular is reproduced below:

"I am directed to refer to the issue regarding denaturation of imported ethyl alcohol in terms of Section 24 of the Customs Act, 1962 read with 'Denaturing of Spirit Rules, 1972' issued by

Ministry of Finance. Under these provisions, imported consignments of ethyl alcohol meant for industrial use are first denatured by adding specified chemicals and after testing thereof for denaturation, allowed clearance as denatured ethyl alcohol.

2. Un-denatured ethyl alcohol of strength 80% or higher is classifiable under sub-heading 2207.10 whereas denatured ethyl alcohol is classifiable under sub-heading 2207.20. Denatured ethyl alcohol attracts concessional rate of customs duty @ 10% basic under Notification No. 21/2002-Cus., dated 1-3-2002 (Sl. No. 50) as against 150% basic on un-denatured ethyl alcohol. Ethyl alcohol is imported in un-denatured form, whether for use as such (e.g. potable type) or for industrial use. In case of latter use, ethyl alcohol requires to be denatured before clearance. For denaturing, of ethyl alcohol, it is treated with certain chemical agents such as, wood naphtha, methanol, acetone, pyridine, aromatic hydrocarbons (benzene etc.) and coloring matter (HSN notes for Heading 2207 refer).

3. The Board has been apprised of divergence in practice regarding choice of denaturants at different ports. At some ports, Public Notices have been issued by Commissioner of Customs stating that the importers must use only the denaturants specified under BIS Standard (IS 4117-1973) in order to avail of benefit of concessional rate of duty under Notification No. 21/2002-Cus., dated 1-3-2002 (Sl. No. 50). On the other hand, some ports are allowing use of denaturants specified by the respective State Excise Department and many such denaturants do not find mention in the list of denaturants approved by BIS.

4. The contention of many importers who insist on following State Excise standards for denaturation is that it is the State Excise which has final say in the matter relating to alcohol and in case of any mismatch between the procedures prescribed by the Central Govt. and the State Govt., those prescribed by the State Govt. should prevail.

5. The matter has been examined in the Board. In the HSN notes corresponding to Heading 22.07, no methodology is described for undertaking denaturation of spirits. It only states that, "spirits are mixed with substances to render them unfit for drinking but not to prevent their use for industrial purposes." Further the notes mention some of the denaturants commonly used for this purpose such as, wood naphtha, methanol, acetone, pyridine, aromatic hydrocarbons (benzene etc.) and coloring matter.

6. *To bring about uniformity in application of denaturing agents and adoption of appropriate standard for denaturing of ethyl alcohol, BIS standards IS 4117-1973 are being prescribed as denaturants for the purpose of denaturing of ethyl alcohol. BIS standard specifies several different types of denaturants. Therefore importers would have choice in use of denaturants based on end use.*

7. *I am directed to inform you that the Board has decided that BIS standards IS 4117-1973 may be adhered to for denaturation of imported consignment of ethyl alcohol in order to bring about uniformity in denaturing process at all Customs formations and avoid any misuse-----"*

5.2 We agree with the argument of Learned Counsel that the aforesaid Circular is not applicable to the disputed goods under consideration because the above circular issued with regard to denaturation of ethyl alcohol that is to be allowed clearance for industrial use in India and not with regards the goods imported and bonded for re-export. There is no allegation against the appellant that the disputed goods was imported for industrial use in India. Since such goods are not meant for any use in India, the same are not required to be allowed clearances in India. Hence the charges of mis-declaration of goods against the appellant by citing the non-compliance with IS 4117-1973 (2008) is completely misconceived and cannot be sustained.

5.3 We also find that para 5 of above circular makes it clear that the circular has been issued keeping in view HSN notes corresponding to heading 22.07. According to this, the sole requirement of HSN is denaturation of ethyl alcohol by mixing of spirits with substances to render them unfit for drinking. It is on records that the Chemical Examiner of Customs, Laboratory vide letter dated 02.03.2021 has also confirmed that goods imported by Appellant for re-export is mixed (denatured) with substance called Bitrex/Denatured Benzoate. Further there is no allegation against the Appellant that goods are fit for drinking. Hence, under the undisputed facts and circumstances where goods have been permitted to be deposited in bonded warehouse for re-export from the said warehouse and shipping bills have also been filed for export, allegation of mis-declaration of goods cannot be sustainable against the Appellant. Accordingly, we set aside the allegation of mis-declaration.

5.4 We also find that DGFT, New Delhi vide its clarification as discussed above clearly held that the provisions under Para 2.46(I)(a) of FTP, 2015-20 is not applicable in appellant's case. In such circumstance charges against the appellant that they have imported the goods in gross violation of restriction imposed under the FTP is not sustainable. Further there is no restriction imposed under the FTP on import and export of subject goods. Further, it is clear that confiscation under Section of the Act is permissible only when the goods have been imported in contrary to the prohibition under the Act or any other law for the time being in force which is not the case in the case of present import by the appellant. Further we find that Learned Commissioner (Appeals) in impugned order itself observed that impugned goods were imported for re-export only and lower adjudicating authority has not proved any mala fide intention behind the alleged mis-declaration of impugned goods.

5.5 As regard the confiscation of goods on the non-compliant of IS 4117 (2008), we are of the view that as per the Board Circular No.2/2006 dated 10.01.2006 this requirement is applicable to goods meant for clearance into India and not to any such goods which are meant for re-export and use outside India, the goods which are admittedly meant for re-export. First of all, there is no violation of compliant of IS 4117 (2008) even if it is required in view of the goods being re-exported. There is no case of confiscation of goods under Section 111(m) of the Customs Act, 1962 accordingly, the penalty under Section 112 and 114 of the Customs Act, 1962 are not sustainable.

5.6 As regard the penalty under Section 114AA of the Customs Act, 1962 on the charge of mismatch in the date of bill of lading in as much as the date mentioned in the bill of lading presented by appellant along with bill of entry was also reported by the master/agent in the Import General Manifest filed in the EDI system. This fact is not under dispute, the warehouse bill of entry filed by the appellant was assessed by the proper officer only after tallying the date appearing in the EDI system fed by the master/agent and the date appearing on the bill of entry present along with bill of entry filed by the appellant. We also find that it is clearly mentioned in the bill of lading that the shipment of 1900 MT. was loaded on board of vessel as part of one original lot of 38,386.137 MT. as Galveston Tx, USA on 27.10.2020. This has been corroborated by the statement of various representative recorded by the officers in the course of inquiry therefore, in absence of contrary

evidence, the allegation that the date of lading mentioned in the bill of lading is incorrect and not justified.

5.7 We also find force in the appellant's submission as reliance placed on 'Commercial Certificate of Quality' No. LABORATORY JOB NO.DP 20-11252.004 dated 29.10.2020 when the goods were mentioned as 'Undenatured Ethyl Alcohol' is misplaced in as much as the said invoice was issued prior to denaturation at the Galveston anchorage. After arrival into India, the Chemical Examiner of Custom House laboratory at Kandla has certified that goods have been denatured with Bitrex/Denatonium Benzoate. On this basis, the conclusion of the authorities below that the bill of lading is incorrect and false in respect of description of goods as well as imposing penalty on the appellant under Section 117 of the Customs Act, 1962. We find that firstly as per the discussion made herein above, on the facts of the case there is no mis-declaration on the part of the appellant therefore, only for inability to produce manufacturer's invoice that too due to supplier's unwillingness to share the same, by itself does not construe any offence that may attract penalty under Section 117 of the Customs Act, 1962. If the supplier is not willing to share the manufacturer's invoice, it is beyond control of the appellant for which no penalty under Section 117 can be imposed.

06. In view of the above observation, we hold that the order of confiscation and subsequent penalties is bad in law as well in fact. Accordingly, the confiscation and redemption fine are set aside, consequentially we also set aside the penalties imposed on appellants.

07. Accordingly, the appeal is allowed with consequential relief, if any, in accordance with law.

(Pronounced in the open court on 17.03.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)