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

REGIONAL BENCH- COURT NO.1

Customs Appeal No. 10618 of 2020

(Arising out of Order No. OIA-MUN-CUSTM-000-APP-62-20-21 dated 31.07.2020 passed by Commissioner of Customs (Appeals) Ahmedabad)

M/s Crozsell **...Appellant**
7/8. Mangal Kiran Complex, Behind
Welcome Hotel, Alkapuri, Vadodara
Gujarat-390005

VERSUS

C.C.-Mundra **...Respondent**
Office of the Principal Commissionerate of Customs,
Port User Build., Custom House Mundra, Kutch
Gujarat-370421

APPEARANCE:

Shri Dhaval Shah, Advocate appeared for the Appellant
Mrs. Sunita Menon, Superintendent (AR) appeared for the Respondent

CORAM: HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)

FINAL ORDER NO. 10691 /2025

DATE OF HEARING: 02.09.2025
DATE OF DECISION:02.09.2025

SOMESH ARORA:

In the instant case, the appellants, purchase technical grade urea through high sea sales which was imported by STC and which they were allowed to import through MMTC on high seas. The letter to that effect is placed as exhibit at page 99 which is dated 15.05.2013 issued by Government of India, Ministry of Chemicals & Fertilisers addressed to M/s MMTC Limited for permission of import of technical grade urea for Industrial use. M/s MMTC was at the relevant time the canalising agency. The body of the letter clearly mention that M/s Crozsell is allowed to bring in quantity of 30,000 MT subject to various conditions. However the same was not considered by the original adjudicating authority in detail which rejected the same on the ground that it was not issued by DGFT and also it was addressed to MMTC and not to the party in the instant case. The appellants in this case rely on the matter of Sunita Commercials P Ltd. & Ors vs CC Mundra reported at 2023 (1) TMI 814 CESTAT-Ahmedabad. He draws attention of this court to para 5.4, which is reproduced below to indicate as to how the licenses or permission are granted whenever the item is canalized.

> "5.4 Further, as per the regular practice accepted by customs for over several decades in case of imports which are

canalized through STEs, the STEs place the order on the foreign supplier and thereafter effect High Seas sale of the same to the Indian Buyers. This is evident from the judgments and Board Circular supra. As laid down in the following judgments, where the import is in accordance with a consistent past practice, the question of confiscation under Section 111(d) and imposition of penalty under Section 112 of the Customs Act 1962 does not arise:

- Gujarat State Export Corporation Ltd v UOI – 1984 (17) ELT 50
- Memon Associates v CC – 1988 (34) ELT 367
- Trident Agencies v CC – 1989 (45) ELT 116
- Varson Chemicals P. Ltd v CC – 1987 (27) ELT 55

The judgment in the case of Marico Industries Ltd v CC – 2007 (209) ELT 403 relied upon by the Commissioner (Appeals) has no application to the facts of the present case. In that case the importer had directly established the Letter of Credit on the foreign supplier as result of which the import could not even be said to be through STE. Further, the import in that case was against Advance Release Order which is issued for sourcing inputs indigenously instead of importing against Advance License. The provisions relating to procurement of inputs against Advance Release Order which applied in that case did not provide for import through STE."

2. Learned AR on the other hand, pleads that various submissions were considered by lower authorities and appeal was correctly decided against the party. It also points out that even as per the permission which is at exhibit at page 99, there are various other conditions prescribed in the letter and because of the same was rejected otherwise by the department, it never had occasion to look into the same.

3. This court has considered the rival submissions. It finds that the decision quoted by the learned Advocate covers the matter and the permission which has been granted by addressing to MMTC for allowing the appellants to import can be taken to be the proper license. However since the permission by the Ministry of Chemicals & Fertilizers is subject to various conditions which department has not considered as far as record of this case are concerned. Therefore, for the limited purposes the matter is remanded to the adjudicating authority with expectation that the matter being of small quantity and already delayed, the same shall be decided expeditiously. Appeal allowed by way of remand.

(Dictated & Pronounced in the open court)

(SOMESH ARORA)
MEMBER (JUDICIAL)

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