

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD**

REGIONAL BENCH - COURT No. I

Customs Appeal No.50346 of 2015

(Arising out of Order-in-Appeal No.GZB-EXCUS-000-APPL-69-73-2014-15
dated 14/10/2014 passed by Commissioner (Appeals) Customs, Central
Excise & Service Tax, Ghaziabad)

M/s Hind Agro Industries Ltd., **.....Appellant-I**

(A-1, Okhala Industries Area, Phase-1, New Delhi)
VERSUS

**Commissioner of Customs, Central Excise &
CGST, Ghaziabad** **....Respondent**

(CGO Complex-I, Kamla Nehru Nagar, Ghaziabad-201002)

WITH

- I. Customs Appeal No.50347 of 2015 (Dr. Naseem Qureshi, President/Chairman)**
- II. Customs Appeal No.50348 of 2015 (Shri Anil Vanjani)**
- III. Customs Appeal No.50349 of 2015 (Mr. Mazhar Yaseen)**
- IV. Customs Appeal No.50350 of 2015 (Mr. Kaleem Khan)**

(Arising out of Order-in-Appeal No.GZB-EXCUS-000-APPL-69-73-2014-15
dated 14/10/2014 passed by Commissioner (Appeals) Customs, Central
Excise & Service Tax, Ghaziabad)

APPEARANCE:

Shri Atul Gupta, Advocate for the Appellants
Shri Manish Raj, Authorised Representative for the Respondent

**CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)**

FINAL ORDER NOS.70728-70732/2024

DATE OF HEARING : 05 November, 2024
DATE OF DECISION : 05 November, 2024

SANJIV SRIVASTAVA:

These appeals are directed against Order-in-Appeal
No.GZB-EXCUS-000-APPL-69-73-2014-15 dated 14/10/2014
passed by Commissioner (Appeals) Customs, Central Excise &

Service Tax, Ghaziabad. By the impugned order, Commissioner (Appeals) modified the Order-in-Original No.01/ADC/CUS/GZB/2014-15 dated 29.04.2014 to the extent of dropping the amount of Rs.3,26,651/-.

1.2 Original Authority has vide her order dated 01.07.2014 held as follows:-

"Order

I hold that Buffalo/Sheep frozen Meat valued at Rs. 65,33,020/- (Rs. Sixty Five lakhs, thirty three thousand and twenty only), exported in contravention of the provisions of the ITC (HS) read with Export (Quality Control and Inspection) Act, 1963 (22 of 1993); the Export of Raw Meat (Chilled /Frozen) (Quality Control and Inspection) Rules, 1992, and Order issued vide S. O. 203 dated 15.1.1993, liable for confiscation in terms of the provisions of Section 113 (d) of the Customs Act, 1962 read with Section 11 of the Customs Act, 1962 and read with Section 11 of FTDR, 1992 and Rules 11 and 14 of the Foreign Trade (Regulation) Rules, 1993. But since, the said goods are not physically available for confiscation, I therefore do not pass any orders thereto except adjudging their liability to confiscation in law,

2. I confirm the demand of customs duty equivalent to the VKGUY credit amounting to Rs. 3,26,651/- (Rs. Three lakhs, Twenty Six thousand, Six hundred and Fifty one only) issued by DGFT to HAIL for the exports made by them as detailed in the SCN to be recovered from HAIL, under provisions of Section 28(1) of the Customs Act 1962;

3. I confirm the demand of interest at appropriate rates to be recovered from HAIL on the amount of customs duty demanded as mentioned at (2) above in terms of the provisions of Section 28AB of the Custom Act, 1962,

4. *I impose penalty of Rs. 65,33,020/- (Rupees Sixty Five Lakhs Thirty Three Thousand and Twenty only) under the provisions of Sections 114 and also impose penalty of Rs. 3,30,000/- (Rupees Three Lakhs Thirty Thousand only) under the provisions of Section 114 AA of the Customs Act, 1962, upon M/s HAIL for their various acts of omission and commission carried out by them, which resulted in fraudulent export of illegal and prohibited goods*

5. *I impose penalty of Rs. 65,33,020/- (Rupees Sixty Five Lakhs Thirty Three Thousand and Twenty only) under the provisions of Sections 114 and also impose penalty of Rs. 3,30,000/- (Rupees Three Lakhs Thirty Thousand only) under Section 114 AA of the Customs Act, 1962 upon Dr. Naseem Qureshi, President of HAIL for his various acts of omission and commission carried out as afore stated, resulting in contravention and violation of legal provisions as discussed in forgoing paras*

6. *I impose penalty of Rs. 65,33,020/- (Rupees Sixty Five Lakhs Thirty Three Thousand and Twenty only) under the provisions of Sections 114 and also impose penalty of Rs. 3,30,000/- (Rupees Three Lakhs Thirty Thousand only) under Section 114 AA of the Customs Act, 1962 upon Mr. Anil Vanjani, CEO in HAIL for his various acts of omission and commission carried out as afore stated resulting in contravention and violation of legal provisions as discussed in forgoing paras*

7. *I impose a penalty of Rs. 65,33,020/- (Rupees Sixty Five Lakhs Thirty Three Thousand and Twenty only) under the provisions of Sections 114 and also impose penalty of Rs. 3,30,000/- (Rupees Three Lakhs Thirty Thousand only) under Section 114AA of the Customs Act, 1962 upon Shri Mazhar, Supervisor in HAIL Aligarh, for his various acts of omission and commission carried out as afore stated*

resulting in contravention and violation of legal provisions as discussed in forgoing paras.

8. I impose a penalty of Rs. 65,33,020/- (Rupees Sixty Five Lakhs Thirty Three Thousand and Twenty only) under the provisions of Sections 114 and also impose penalty of Rs. 3,30,000/- (Rupees Three Lakhs Thirty Thousand only) under Section 114 AA of the Customs Act, 1962 upon Shri Kaleem Khan, Marketing in-charge of HAIL/HIL, for his various acts of omission and commission carried out as afore stated resulting in contravention and violation of legal provisions as discussed in forgoing paras."

2.1 Appellant-I is engaged in the export of Frozen Sheep/Buffalo Meat. Acting on intelligence that appellant was exporting the said good without obtaining proper Veterinary Health Certificate. The doctors designated by the UP Government were signing blank Veterinary Health Certificate without any inspection of the export goods or Post Mortem reports of the animals slaughtered as required under the Export of Raw Meat (Chilled/Frozen) (Quality Control and Inspection) Rules, 1992.

2.2 Various premises of the appellant-I and associated persons were searched and statements were recorded persons including the veterinary doctors who were issued the said Veterinary Health Certificate.

2.3 After completion of inquiry/investigation, show cause notice dated 27.09.2013 was issued to the appellants asking them to show cause as to why-

"103.2 M/s Hind Agro Industries Ltd., having its Registered Office located at A-1, Okhla, Phase 1, New Delhi are directed to show cause to the Additional Commissioner of Customs & Central Excise, Ghaziabad having his office at C.G.O. Complex-II, Kamla Nehru Nagar, Ghaziabad-201002 as to why,-

(1) the Custom duty equivalent to VKGUY credit amounting to Rs.3,26,651/- (Rupees Three Lakh Twenty Six Thousand Six Hundred Fifty One only) issued by DOFT to HAIL against exports made by them, through ICD Loni, as detailed in Annexure 'B' to the SCN should not be demanded from HAIL, by treating them as 'deemed importer, under provisions of Section 28(1) of the Customs Act, 1962 read with Notification No. 41/2005-Customs, 9.05.2005 and provisions and conditions on the VKOUY license as the case may be, and the legal undertaking dated 15.06.2011 submitted by HAIL. Further, why the proviso to Section 28(1) for extended period for five years should not be invoked for recovery of the wrongly availed VKGUY credit;

(2) the interest at appropriate rates should not be demanded from them on the amount of customs duty demanded from them as per (1) above in terms of the provisions of the Section 28AB of the Custom Act, 1962;-

(3) The penalty should not be imposed upon them in terms of provision of Sections 114 & 114 AA of the Customs Act, 1962;

103.3 Dr. Naseem Qureshi, President Chairman in HAIL is directed to show cause to the Additional Commissioner of Customs & Central Excise, Ghaziabad, within 30 days of receipt of SCN as to why penalty should not be imposed upon him under the provisions of Sections 114 & 114 AA of the Customs Act, 1962 for his various acts of omission and commission, as aforesaid, which resulted in contravention of provisions of various statutes of the Government as explained in the SCN.

103.4 Mr. Anil Vanjani, CEO in HIL and HAIL is directed to show cause to the Additional Commissioner of Customs &

Central Excise, Ghaziabad, within 30 days of receipt of SCN as to why penalty should not be imposed upon him under the provisions of Section 114 & 114 AA of the Customs Act, 1962 for his various acts of omission and commission, as aforesaid, which resulted in contravention of provisions of various statutes of the Government

103.5 Md. Nisar Ahmed, Export Executive, in HIL is directed to show cause to the Additional Commissioner of Customs & Central Excise, Ghaziabad, within 30 days of receipt of SCN as to why penalty should not be imposed upon him under the provisions of Section 114 & 114 AA of the Customs Act, 1962 for his various acts of omission and commission, as aforesaid, which resulted in contravention of provisions of various statutes of the Government.

103.6 Shri Mazhar, Supervisor, employed in HAIL at Aligarh is directed to show cause to the Additional Commissioner of Customs & Central Excise, Ghaziabad, within 30 days of receipt of SCN as to why penalty should not be imposed upon him under the provisions of Section 114 and 114 AA of the Customs Act, 1962 for his various acts of omission and commission, as aforesaid, which resulted in the contravention of provisions of various statutes of the Government.

103.7 Shri Kaleem Khan, Head Marketing, HAIL and HIL, is directed to show cause to the Additional Commissioner of Customs & Central Excise, Ghaziabad, within 30 days of receipt of SCN as to why penalty should not be imposed upon him under the provisions of Section 114 and 114 AA of the Customs Act, 1962 for his various acts of omission and commission, as aforesaid, which resulted in the contravention of provisions of various statutes of the Government.”

2.4 This show cause notice was adjudicated as per the Order-in-Original referred in para-1 above.

2.5 Aggrieved appellants have filed appeals before the First Appellate Authority, by the impugned order the said appeals have been disposed off.

2.6 Aggrieved appellants have filed these appeals.

3.1 We have heard Shri Atul Gupta learned Counsel for the appellants and Shri Manish Raj learned Authorized Representative for the revenue.

4.1 We have considered the impugned orders along with the submissions made in appeal and during the course of argument.

4.2 The short issue for consideration in the present appeals is vis-à-vis the penalties imposed upon the appellants under Section 114 and 114AA of the Customs Act, identical penalties under the said sections has been imposed on each of the appellants. For imposing penalties on the appellants, authorities below have held that appellant 1 had exported the Frozen Sheep/Buffalo Meat without obtaining valid Veterinary Health Certificates. Other appellants were the functionaries responsible for undertaking various activities in the unit of appellant. During the investigation it was found that certain doctors notified by the UP Government have given certain blank signed certificates to the appellants or associated unit and these certificates were used further by appellant-I for exporting the goods. On the basis of export of meat appellants also obtained VKGUY scrips which have been further traded by the appellants to be used for claiming the benefit against imported goods. Demand confirmed by the original authority against the said scrips has been set aside by the First Appellate Authority.

4.3 Interestingly, in the entire proceedings the doctor whose statements have been recorded and who have admitted to issue such certificates without proper inspection, have not been made party too, nothing have been brought on record to show that, on the basis of investigation any proceedings were initiated by the concern authorities in UP Government for declaring such

certificates improper. No findings have been recorded to this effect even in these proceedings, those doctors who have allegedly been issued the said certificates, also have not been indicted and penalties imposed under Section 114AA. Section 114AA of the Act is read as follows:-

"If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods."

4.4 From the said section it is evident that any person who is responsible for signing, using etc. of any document which is produced for transaction of any business with custom and found to be false or incorrect in material particulars is liable for penalties. If the revenue authorities were of the view that these certificates were improperly signed by the concerned doctors, then these Doctors should have been proceeding against under this section.

4.5 We also find that nothing has been said in the impugned orders of the lower authorities to this effect that these certificates have been questioned by the concern authorities and declared to be fraudulent issued. In a similar case of CCE, Noida Vs M/s M.K. Overseas (P) Ltd. Final Order No.70658 of 2024 dated 09.10.2024, we have observed as follows:-

"4.2 We find that in respect of the Veterinary Doctor's certificate certifying the quality of exported sheep and buffalo meat, we find that the certificates were issued by the duly notified Veterinary Doctors who were authorized to do so. The Commissioner has given specific findings to this effect in the impugned order. Said findings are reproduced below:-

"(f) On the basis of foregoing it is evident that all the VHC in respect of Derabassi Plant were issued by Designated Dr. Rajkumar of the Department of

Animal Husbandry, State of Punjab. There is no evidence that the VHC were issued by any person other than Designated Authority Once VHC, have been issued by the designated authority of the State Government, the condition as per ITC (HS) regarding VHC stands fulfilled The certificates issued by the Designated Authority cannot be treated as invalid. M/s MKO in their reply has submitted copy of the letter dated 21.03.2006 of the Additional Secretary to Government of Punjab, Animal Husbandry, Fisheries and Dairy Development Department, Punjab to the Director, Animal Husbandry, Punjab, Chandigarh on the subject of issuance of Veterinary Health Certificate(VHC) to meat plant in the state. In the said letter it has been conveyed that keeping in view acute shortage of Veterinary Officers in the state Government cannot depute whole time veterinary officers with these meat plants for carrying out ante mortem and post mortem inspections instead the private veterinarians employed at these plants are authorized to carry out these inspections. The local Veterinary officer or any other Veterinary officer specifically designated in this behalf by the Director Animal Husbandry would supervise and monitor the working of the private vets. He has been allowed to draw random meat samples of the consignments meant for export purposes and send the same to Regional Disease Diagnostic Laboratory Jalandhar. A VHC is required to be issued by the Designated Veterinary authority after satisfying himself with ante mortem and post mortem reports of private vets and labs reports of RDDDL, Jalandhar. It is a case where the VHC have been issued by the designated authority for issuance under a statute. On the basis of procedural violations if any, it cannot be concluded that the provisions of ITC(HS) have been contravened leading to violation of section 11 of the Customs Act, 1962. Once the certificate(VHC) has been issued by the designated veterinary officer and the genuineness of the same has been accepted I have no reasons for challenging VHC issued by the Designated Veterinary authority. Thus, I refrain from conclusion that provisions of ITC(HS) have been violated in respect of Derabassi Plant. The note 3 of the Chapter 2 of the ITC(HS) /Export Policy also provides that laboratories duly recognized by APEDA, as well as in-house laboratories attached under the

abattoirs cum meat processing plant registered with APEDA and Agency approved labs, may also be used to conduct the necessary tests for confirmation of quality under the supervision of the designated veterinary authority of the state. On the basis of these tests and inspections carried out by veterinarians duly registered under the Indian Veterinary Council Act, 1984, employed by the exporting unit and supervised by the designated veterinary authority of the state, Veterinary Health Certificate are required to be issued by the designated authorities of the state. Accordingly, VHC have been issued by designated authority of the state Dr Rajkumar and I find no ground or justification to challenge the same. Moreover the issue relating to procurement of raw material etc. in form of dressed carcasses by APEDA approved Derabassi plant has also been settled with the issuance of Notification No.82(RE2010)2009-14 dated 31.10.2011 by DGFT. In terms of the said notification the Note 6 of the ITC (HS) has been substituted as under:-

"Note 6 Export of meat and meat products will be allowed subject to the exporter furnishing a declaration, attached with copies of valid APEDA Plant Registration Certificate(s) to the customs at the time of exports that the above items have been obtained/sourced from an APEDA registered integrated abattoir or from APEDA registered meat processing plant which sources raw material exclusively from APEDA registered integrated abattoir/abattoir."

The erstwhile note 6 under ITC (HS) before the aforesaid notification read as under:-

"Note 6 Export of meat and meat products will be allowed subject to the exporter furnishing a certificate to the customs at the time of export that the above items have been obtained/sourced from an abattoir/meat processing plant registered with Agricultural and Processed Foods Products Export Development Authority (APEDA)."

In the said notification effect of the notification has been explained as under:-

"Effect of this notification:

(i) All the amendments/changes made in chapter 2 between August 2009 and September 2011 have

been incorporated in this notification to make it comprehensive.

(ii) Exporters would now be required to certify both (a) that items have been obtained /sourced from an APEDA registered integrated abattoir or from APEDA registered meat processing plant and (b) that the raw material have been sourced exclusively from APEDA registered integrated abattoir/abattoir.

(iii) Designated Veterinary Authority of the State are now authorized to issue the certificate on the basis of the inspections carried out by veterinarians duly registered under the Veterinary Council Act, 1984 employed by the exporting unit in relevant laboratories."

4.3 *It is settled principle that certificates issued in any proceedings would be valid until the same is declared to be void by the Competent Authority in this regard. Customs officers are not designated authority to determine and give a finding that the certificate is fraudulent, this is exactly what the Commissioner observed in the impugned order. The following decisions are supporting the same:-*

- *Titan Medical Systems Pvt. Ltd. vs. Collector of Customs, New Delhi, 2003 (151) E.L.T. 254 (S.C.).*

"13. *As regards the contention that the appellants were not entitled to the benefit of the exemption notification as they had misrepresented to the licensing authority, it was fairly admitted that there was no requirement, for issuance of a licence, that an applicant set out the quantity or value of the indigenous components which would be used in the manufacture. Undoubtedly, while applying for a licence, the appellants set out the components they would use and their value. However, the value was only an estimate. It is not the respondents' case that the components were not used. The only case is that the value which had been indicated in the application was very large whereas what was actually spent was a paltry amount. To be noted that the licensing authority having taken no steps to cancel the licence. The licensing authority have not claimed that there was any misrepresentation. Once an advance licence was issued and not*

questioned by the licensing authority, the Customs authorities cannot refuse exemption on an allegation that there was misrepresentation. If there was any misrepresentation, it was for the licensing authority to take steps in that behalf."

- *Vadilal Chemicals Ltd. Vs. State of Andhra Pradesh, 2005 (192) E.L.T. 33 (S.C.).*

"22.*Furthermore, under the incentive scheme in question, there was only one method of verifying the eligibility for the various incentives granted including sales tax exemption. The procedure was for the matter to be scrutinized and recommended by the State Level Committee and District Level Committee and the certification by the Department of Industries & Commerce by issuing an Eligibility Certificate. There was no other method prescribed under the scheme for determining an industrial unit's eligibility for the benefits granted. The Department of Industries & Commerce having exercised its mind, and having granted the final eligibility certificate (which was valid at all material times), the Commercial Taxes Department could not go beyond the same. More so when the Commissioner, Sales Tax had accepted the Eligibility Certificate issued to the appellant and had separately notified the appellants eligibility for exemption under the 1993 G.O. In these circumstances the DCCT certainly could not assume that the exemption was wrongly granted nor did he have the jurisdiction under Section 20 of the State Act to go behind the eligibility certificate and embark upon a fresh enquiry with regard to the appellant's eligibility for the grant of the benefits. The counter affidavit filed by the respondents-sales tax authorities is telling. It is said that the Sales Tax Department had decided to cancel the eligibility certificates for sales tax incentives. As we have said the eligibility certificates were issued by the Department of Industries and Commerce and could not be cancelled by the Sales Tax Authorities. [See in this connection : Apollo Tyres v. CIT, Kochi, (2002) 9 SCC 1)."*

- *Zuari Industrial Ltd. Vs. CCE & Customs, 2007 (210) E.L.T. 648 (S.C.).*

"9. Firstly, on the facts we find that the assessee had given to the Sponsoring Ministry its entire Project Report. In that report they had indicated that for the expansion of the fertilizer project they needed an extra item of capital goods, namely, 6MW Captive Power Plant. In their application, the assessee had made it clear that the fertilizer project was dependant on continuous flow of electricity, which could be provided by such Captive Power Plant. Therefore, it was not open to the Revenue to reject the assessee's case for nil rate of duty on the said item, particularly when the certificate says so. In the judgment of this Court in the case of Tullow India Operations Ltd. (supra), this Court held that essentiality certificate must be treated as a proof of fulfilment of the eligibility conditions by the importer for obtaining the benefit of the exemption notification. We may add that, the essentiality certificate is also a proof that an item like Captive Power Plant in a given case could be treated as a capital goods for the fertilizer project. It would depend upon the facts of each case. If a project is to be installed in an area where there is shortage of electricity supply and if the project needs continuous flow of electricity and if that project is approved by the Sponsoring Ministry saying that such supply is needed then the Revenue cannot go behind such certificate and deny the benefit of exemption from payment of duty or deny nil rate of duty. To the said effect is the judgment of the Calcutta High Court in the case of Asiatic Oxygen Ltd. (supra) in which it was held that the object behind the specific Heading 98.01 in Customs Tariff Act, 1975 was to promote

industrialization and, therefore, the heading was required to be interpreted liberally. It was further held that, once an essentiality certificate was issued by the Sponsoring authority, it was mandatory for the Revenue to register the contract."

4.4 *In view of the above, we do not find any merits in this appeal as not even a single instance have brought on record whereby the exported goods were returned back from the designated country importing that for the reason that it was sub-standard or not upto the mark. We do not find any merits in the appeal."*

4.6 In the present case there is no dispute that the doctors issuing the said certificates were duly appointed by the UP Government and the certificate have been issued under their seal and signature. These certificates have not been declared to be improper, there being so the goods could have not been said to be exported contrary to any provisions imposed. Further we find that as per **"Exporters Guide on Raw Meat (Chilled/ Frozen) Certification, December 2003/ Issue 1"** issued by Export Inspection Council of India, (Ministry of Commerce & Industry) 3 Floor, NDYMCA Cultural Center Building, 1-Jai Singh Road, New Delhi-110001, following has been stated:

1. Introduction

1.1 *Raw Meat (Chilled / Frozen) is covered under compulsory inspection & certification prior to export by Ministry of Commerce and Industry, Government of India, vide Order / Notification No. SO: 203 & SO: 204 dated 15 January, 1993. To implement the certification, Export Inspection Agency (EIAs) have been authorised to ensure compliance of the processing plants to requirements as per the notification SO: 205, dated 25 January 1993. EIC has developed a scheme which envisages a systems approach.*

1.3 *These guidelines have been brought out to apprise the exporters about the system of approval and surveillance and the procedure to be followed by exporters for export.*

1.4 The benefits of certification under this scheme to exports would be that once the units have been approved by EIC/EIAs, exporters would be free to issue the quality certificate at their level with periodic surveillance by EIC/EIAs. Based on the quality certificate issued by exporters, EIAs would be issuing the health certificates. Further, once the Raw Meat (Chilled/Frozen) certification system is in place, EIC would negotiate Equivalence/ Mutual Recognition Agreements with various importing Governments so that the certification is acceptable by them and exports of meat products into these countries is facilitated.

5.2 Surveillance by EIC/EIAs

A three-tier surveillance system will be followed to check compliance of laid down requirements by the approved unit, which will comprise routine monitoring, supervisory visits by EIAs food scheme heads and corporate audits by EIC.

5.3 Issuance of certificate of inspection

The approved units shall issue Certificate of Inspection for every export consignment. Blank Certificates books may be obtained from the concerned Export Inspection Agency at a cost of Rs.20/- per set of certificate form. EIA's will issue blank certificate forms (format attached at Annexure-III) to the approved units.

5.4 . Validity of certificate of inspection

The certificate of inspection will be valid for a period of five days in respect of chilled meat and ninety days for frozen meat and twenty one days for vacuum pack chilled meat from the date of passing of the consignment. If more than one consignment approved on different days is presented in one application, the validity of the certificate shall be reckoned for the earliest day of approval.

5.5 Revalidation of certificate of inspection

If the consignment is not shipped within the period of validity of the inspection certificate, the exporter will be

permitted to reissue certification for the consignment, remitting a fee @ 0.05 % of FOB or Rs. 1000 whichever is maximum in EIA account. In such cases, the validity will be extended for a further period of three days for chilled meat and thirty days for frozen meat.

8 . Appeal

Any exporter aggrieved by the refusal of the Export Inspection Agency to issue the veterinary health certificate of inspection, may, within 10 days of the receipt of the communication of such refusal prefer an appeal which will be referred by the Agency to an appellate panel set up for the purpose. The quorum of panel will be three . The appeal will be disposed of within fifteen days from its receipt. The decision of the panel in such appeal will be final.

4.7 Section 113(d) of the Customs Act, 1962 reads as follows:-

"113. Confiscation of goods attempted to be improperly exported, etc.

- The following export goods shall be liable to confiscation:-

(a)

(b)

(c)

(d)any goods attempted to be exported or brought within the limits of any customs area for the purpose of being exported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;"

4.8 From the plain reading of the said section it is evident that the said section is applicable in respect of the goods which have been brought into the Customs Area for exportation or being attempted to be exported, contrary to the provisions imposed, the said Section would not have been said to be applicable in cases where the goods were duly exported after following the said procedure. Attempt to export could not be the same as the goods being actually exported. Interestingly, for violation of Section 113(d) penalties under Section 114 have been imposed

equivalent to the value of goods. Section 114 of the Customs Act reads as follows:-

"114. Penalty for attempt to export goods improperly, etc.

- Any person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 113, or abets the doing or omission of such an act, shall be liable,-

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty [not exceeding three times the value of the goods as declared by the exporter or the value as determined under this Act] [Substituted by Act 32 of 2003, Section 117, for " not exceeding the value of the goods or five thousand rupees" (w.e.f. 14.5.2003). Earlier, these words were substituted by Act 14 of 2001, Section 108 (w.e.f. 11.5.2001).], whichever is the greater;

(ii) in the case of dutiable goods, other than prohibited goods, to a penalty [not exceeding the duty sought to be evaded or five thousand rupees] [Substituted by Act 14 of 2001, Section 107, for certain words (w.e.f. 11.5.2001).], whichever is the greater;

(iii) in the case of any other goods, to a penalty not exceeding the value of the goods, as declared by the exporter or the value as determined under this Act, whichever is the greater."

4.9 If it was the case that the goods exported were prohibited goods as per Section 2 (33) as they were prohibited goods as per Section 11 of Foreign Trade Development and Regulation Act, 1992, Adjudicating Authority should have imposed penalties equivalent to three times of the value of the goods. In such cases where the prohibited goods due to public policies impacting the health of people, penalties imposed should have not be restricted to the value of goods. However, adjudicating authority limited to impose penalties equivalent to the value of the goods that make us believe that the penalties have been

imposed under Section 114 (iii) which is in respect of goods which are liable for confiscation for reasons other than prohibition. That being so Section 113(d) would not have been applicable in the present case. However, we have earlier observed that the goods were duly exported on the basis of due certificates duly notified by the veterinary doctors which have not been questioned till date by any authorities, we do not find any merits in the order holding these goods liable for confiscation under Section 113 (d). No other Section has been invoked either in the show cause notice or in Order-in-Original for holding goods liable for confiscation. Accordingly, the impugned order to this extent also needs to be set aside and the penalties imposed under Section 114 is also set aside.

4.10 Penalty equivalent to the value of scrips obtained against the export of such meat has been imposed under Section 114 AA. First appellate authority has set aside this demand. As there is nothing available on record to suggest that certificates were fraudulently obtained or have been used in manner contrary to the normal manner of transaction of business, penalties imposed under Section 114AA of Customs Act is not justifiable. The fact that the Adjudicating authority and also the Appellate Authority have restricted the penalties to the value of scrip whereas the penalties imposable under this Section could have been five times of the value of the goods, itself shows the confidence they had for invoking this section for imposing penalties on the appellants. Further if these certificates were signed by the notified Veterinary Doctors were signed by them in the manner contrary to prescribed manner they should have been held liable for penalty under this section also. They have not been made party to the entire proceedings.

4.11 Interestingly, same penalties have been imposed on all the appellants in respective of their roles in entire work, everybody have been held equally liable for penalty starting from the Managing Director, CEO of Company to the Supervisor and marketing in-charge without even assigning specific roles, how could such imposition of equal penalties be justified.

4.12 We also observe that Hon'ble Delhi High Court has in case of FNS AGRO FOODS LTD. & ORS [2016 (337) E.L.T. 31 (Del.)] in respect of similar show cause notice issued by the Noida Commissionerate has observed as follows:

Submissions on behalf of the Respondent

"SCN by the Customs Commissionerate at Noida

22. After waiting for more than a year and half, the Commissioner of Customs, Central Excise and Customs, Noida issued the impugned SCN dated 28th March, 2014 asking Petitioner No. 1 and its directors (Petitioner Nos. 2 to 5) to show cause why

(i) Frozen boneless buffalo meat valued at Rs. 28,69,97,814 exported through ICD, Dadri during the year 2008 to 2011 in contravention of provisions of the ITC (HS) read with Export (Quality Control and Inspection) Act, 1963 the 1992 Rules and Order issued vide S.O. 203 dated 15th January, 1993 should not be held liable for confiscation in terms of the provisions of Section 113(d) read with Section 11 of the Act and Section 11 of FTDR Act and Rules 11 and 14 of FTR Rules;

(ii) Since the goods are not available for confiscation, appropriate fine should not be imposed in lieu of confiscation in terms of the provisions of Section 125 of the Act;

(iii) Customs duty equivalent to VKGUY/DEPB credit amounting to Rs. 1,14,70,689 already sold in open market by Petitioner No. 1 as detailed in RUD-12 should not be demanded from it by treating them as 'deemed importer' under provisions of Section 28 of the Act read with Notification No. 41/2005-Customs, 9-5-2005 and provisions and conditions on the VKGUY/DEPS licence as the case may be.

(iv) Further why the proviso to Section 28(1)/28(4) for extended period of five years should not be invoked for recovery of the wrongly availed VKGUY/DEPB credit.

(v) *interest at appropriate rates should not be demanded from them on the amount of customs duty demanded from them as per (1) above in terms of the provisions of the Section 28AB of the Act.*

(vi) *Penalty should not be imposed upon them in terms of Sections 114 and 114AA of the Act for various acts of omissions and commissions by them as aforesaid, relating to fraudulent exporting of prohibited goods.*

(vii) *Penalty should not imposed upon Mr. M. Salim Khatri, Mr. Fazlu Rehman Khatri, Mr. Abdul Nasir Khatri and Mr. Naushad Khatri, all the Directors of Petitioner No. 1 under Sections 114 and 114AA of the Act for various acts of omissions and commissions by them as aforesaid, relating to fraudulent exporting of prohibited goods.*

23. *The Petitioners replied to the said SCN on 17th April, 2014 requesting for copies of the relied upon documents ('RUDs') without which a proper reply could not furnished to the SCN. After waiting for the said RUDs, the Petitioners filed W.P. (Civil) No. 6114 of 2014 seeking quashing of the SCN.*

The present writ petitions

24. *By an order dated 12th September, 2014 notice was issued to the Respondents in W.P. (Civil) No. 6114 of 2014 and the Court noted inter alia the submissions of learned counsel for the Petitioner, that in respect of the very same issue, two draft notices had been prepared. One had been sent to the Bombay Collector and the other to the Commissioner of Customs, Noida. While till then the Collector of Customs at Bombay had not issued any SCN in view of the earlier decision of the Dy. DGFT, the Commissioner of Customs, Noida had issued the impugned SCN. Counter affidavit and rejoinder-affidavit have been filed by the Respondents and Petitioners respectively in Writ Petition (Civil) No. 6114 of 2014.*

25. *During the pendency of W.P. (Civil) No. 6114 of 2014, the Collector of Customs (NS-II), Navi Mumbai, Maharashtra*

issued the second impugned SCN dated 19th February, 2015, which too was challenged by the Petitioners in the second W.P. (Civil) No. 10709 of 2005. While directing notice to issue in the said petition on 20th November, 2015, the Court directed it to be heard along with W.P. (Civil) No. 6114 of 2014.

26. This Court has heard the submissions of Mr. Vakul Vardhan Gautam, learned counsel for the Petitioners and Mr. Satish Kumar, learned Senior standing counsel for the Respondents.

Submissions on behalf of the Petitioner

27. The principal submission of Mr. Gautam is that in respect of the very same issue which forms the subject matter of the impugned SCNs, the Dy. DGFT passed a detailed adjudication order exonerating the Petitioners from any violation of the FTDR Act or the FTR Rules. Therefore, on the same set of allegations no further SCN could have been issued by Respondent No. 1, i.e., the Commissioner of Customs (Preventive), Delhi. Mr. Gautam pointed out that the alleged violation of the Act as mentioned in the SCN is consequent upon the purported violation of the FTDR Act, of which the Petitioners had been exonerated by the DGFT after a detailed enquiry. Therefore, the very exercise of issuing the impugned SCNs stood vitiated.

28. Mr. Gautam placed reliance on the decision of the Supreme Court in Titan Medical System Pvt. Ltd. v. Collector of Customs, New Delhi - 2003 (151) E.L.T. 254 (S.C.). He also referred to the Circular No. 15/97-Cus. issued by the Department of Revenue, Ministry of Finance, Government of India dated 3rd June, 1997 which had clarified that as regards DEPB Scheme the role of the Customs authorities is confined to verification of correctness of exporter's declaration regarding description, quality and F.O.B. value of the export product and that the question of violation of the requirements of the Handbook of Procedure in terms of the Export and Import Policy should be examined by the

DGFT. He referred to Section 9 of the FTDR Act which questioned the DGFT powers regarding issue, suspension and cancellation of licence. He also referred to the FTDR Rules which specifically empower the DGFT to suspend the operation of licence or cancel licence.

Submissions on behalf of the Respondent

29. Mr. Satish Kumar, learned Senior standing counsel for the Revenue on the other hand sought to defend the impugned SCN by referring the paragraphs thereunder which alleged violation of the Act by the Petitioners. He submitted that the Petitioners should respond to the SCN and participate in the adjudication proceedings and thereafter pursue their remedies in accordance with law.

30. According to Mr. Satish Kumar, the Petitioners had contravened Rule 5 of the 1992 Rules since they failed to obtain a valid veterinary health certificate from the designated veterinary of the State Animal Husbandry Department, Government of Haryana. He submitted that the Petitioners had contravened Section 50 of the Act since they had made incorrect declarations before the Customs authority at the time of filing of shipping bill by submitting invalid veterinary health certificates. It is further submitted that by violating the provision of ITC (HS) classification of Import and Export Items, Schedule II thereby contravening the provisions of Section 11 of FTDR Act, Petitioner No. 1 had rendered the goods exported by them prohibited under Section 11 of the Act. Thus the goods had become liable for confiscation under Section 113(d) of the Act. Reliance was placed on the decision of the Supreme Court in *Chengalvaraya Naidu v. Jagannath*, AIR 1994 SC 853. According to the Respondents, the entire DEPB credit and VKGUY benefit availed by the Petitioners during the past five years were payable by them along with interest and penalty under Sections 114 and 114A of the Act.

Analysis and Reasons

31. The Court has carefully perused the impugned SCNs dated 28th March, 2014 issued by the Customs Commissioner, Noida and 19th February, 2015 issued by the Customs Commissioner at Nhava Sheva, Mumbai. One is virtually a carbon copy of the other. Further, the SCNs refer to the violation of ITC (HS) inasmuch as certificate has not produced to the designated authority of a State. Reference is specifically made to FTDR Act and FTDR Rules as regards violations. It may be recalled that the SCN issued by the Dy. DGFT had also alleged violation of the FTDR Act, the FTR Rules, the Customs Act and the schemes of Government of India including the DEPB and VKGUY. The broad sub-headings of the impugned SCNs read as under :

- (A) Provisions under ITC for export of meat and meat products
- (B) Provisions of the Export of Raw Meat (Chilled/Frozen) (Quality Control and Inspection), Rules, 1992
- (C) Directorate of Animal Husbandry of all State Governments recognized as agencies for the inspection of Raw Meat (Chilled/Frozen)
- (D) Government of India Order issued by S.O. 203, dated 15th January, 1993
- (E) Specification in Schedule VII of the Government of India Order issued by S.O. 203, dated 15th January, 1993
- (F) Prevention of Cruelty to Animals Act, 1960 (59 of 1960) and Prevention of Cruelty to Animals (Slaughter House) Rules, 2001.
- (G) Provision under Customs Act
- (H) DEPB and VKGUY Schemes
- (I) Foreign Trade (Development and Regulation) Act, 1992

32. In part VI of the SCNs the discussion turns to export of prohibited goods. This is nothing but a repetition of the same allegations which were been examined in detail by the

Dy. DGFT. Then follows the discussion on 'Wrong Availment of Export Incentives' which again sets out the same allegation of violation by the Petitioners of the FTDR Act and the requirement of submitting certificates. The further discussion is on the other violations of the provisions of Export (Quality Control and Inspection) Act, 1963. The SCNs refers to the statement during the investigation. This is the very same material which was sent by the Customs Authorities to the DGFT on the basis of which SCN was issued by the Dy. DGFT on 10th April, 2012 and which resulted in the order dated 24th September, 2012 of the DY DGFT whereby the charges against the Petitioners were dropped.

33. As observed by the Supreme Court in Titan Medical System Pvt. Ltd. v. Collector of Customs, New Delhi (supra) if the licence issuing authority, which in this case is the DGFT, has not questioned the veracity of the transactions undertaken under the licence, the Customs authorities cannot refuse exemption on an allegation that there was any misrepresentation. It was held that if there was any misrepresentation it was the licensing authority which had to take steps to cancel the licence.

34. The impugned SCNs do not refer to alleged violations of the Act that are not consequential upon the alleged violations of the FTDR Act or FTR Rules. As already noticed, this aspect has already been examined thoroughly by the Dy. DGFT while passing the order dated 24th September, 2012. In fact, as can be seen from the body of the order, the Dy. DGFT during the course of those proceedings consulted the Customs authorities and sought their clarifications on various aspects which have been referred to hereinbefore.

35. Mr. Satish Kumar was unable to point out any portion of the impugned SCNs which is any different from the SCN and the consequent adjudication order passed by the Dy. DGFT. In the circumstances, the impugned SCNs issued to

the Petitioners, more than one and half years after the Dy. DGFT exonerated them of the very same allegations, is nothing but a harassment of the Petitioners and an abuse of the process of law.

36. The Court accordingly quashes the SCN dated 28th March, 2014 issued by the Commissioner, Central Excise, Noida and the SCN dated 19th February, 2015 issued by Commissioner of Customs (Export), Navi Mumbai, Maharashtra and all the proceedings consequent thereto."

Nothing has been placed on record to show that for the alleged violation of the provisions of Foreign Trade Development and Regulation Act, 1992 the matter in this case was ever referred by the concerned authorities to DGFT for their consideration and decision.

4.13 In view of the above discussions, we do not find any merits in the penalties imposed under Section 114 or 114AA of the Act and set aside the same.

5.1 Appeals are allowed.

(Dictated and pronounced in open court)

(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)