IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.2

Customs Appeal No. 76592 of 2024

(Arising out of Order-In-Appeal No. KOL/CUS(CCP)/KS/897/2023 dated 22.11.2023 passed by Commissioner of Customs (Appeals), Kolkata)

M/s. Evergrowing Iron & Finvest Pvt. Ltd.
(Shop No. 11, Upper Ground Floor, Milestone Building, Near Check Post, Siliguri, Dist. Jalpaiguri, West Bengal)

Appellant

VERSUS

Commr. of Customs (Preventive), Kolkata
(15/1, Strand Road, Kolkata-700001)

Respondent

APPEARANCE :
Shri H. K. Pandey, Advocate for the Appellant
Shri Tariq Sulaiman, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. R. MURALIDHAR , MEMBER (JUDICIAL)

FINAL ORDER NO.75960/2025

Date of Hearing : 17.04.2025
Date of Decision : 17.04.2025

[ORDER] PER R. MURALIDHAR

The appellants have imported one consignment of Galvanized Corrugated Sheet from Nepal. This import was done through Panitanki, LCS. While filing the Bill of Entry No. 2121327 dated 23/08/2022, instead of mentioning the country of origin as "Nepal", by mistake, the country was mentioned as "Northern Mariana Island". Since the duty exemption was available only in respect of goods imported from Nepal, the appellant paid import duty of Rs.3,69,619/-. Subsequently, the appellant vide their letter dated 24/8/2022, requested that amendment may be carried out to Bill of Entry No. 2121327 dated 23/8/2022 towards the country of consignment to "Nepal" in place of "Northern Mariana Island". They also sought refund of excess Customs Duty paid to the extent of Rs. 3,69,619/-. Vide OIO No. 28/DC/CUS/NXB/2022-23 dated 29/12/2022, the Adjudicating Authority after getting the veracity of claim verified by the departmental officials, sanctioned the refund of

Rs. 3,13,236/- towards the excess payment of Customs Duty. Being aggrieved, the Department filed an appeal before the Commissioner (Appeals). The Commissioner (Appeals) took the view that the appellant has not challenged assessment of Bill of Entry before the Commissioner (Appeals). Hence, they could not have filed their refund application directly. Therefore, holding that the Adjudicating Authority is in error in granting the refund, he set aside the OIO and allowed the appeal filed by the Revenue. Being aggrieved, the appellant is before the Tribunal.

2. The Learned Advocate appearing on behalf of the appellant submits that purely by mistake, the appellant while specifying the country of consignment, instead of mentioning the same as "Nepal", mentioned the same as "Northern Mariana Island". This resulted in the appellant paying excess Customs Duty. The appellant by way of Invoice and Certificate of Origin could effectively prove that the goods were of Nepal origin only. The appellants filed a letter on 24th August 2022 with the Deputy Commissioner of Customs clearly stating that they were requesting for amendment of Bill of Entry No. 2121327 dated 23/8/2022 and also seeking consequential relief of the excess duty paid by them. The Adjudicating Authority has got all the facts verified by the concerned departmental officials and only after being satisfied about the country of origin, the Adjudicating Authority has sanctioned the refund of Rs.3,13,236/-. The very fact that the appellant has sought for amendment shows that they have taken up the matter with the authorities even as they had filed the refund claim. Therefore, he submits that the Commissioner (Appeals) is in error in taking the stand that the appellant should have preferred an appeal against the Bill of Entry. In view of the above submissions, he prays that the appeal may be allowed.

3. The Learned AR appearing on behalf of the Revenue reiterates the findings of the Commissioner (Appeals). He submits that the Bill of Entry was not provisionally assessed but it was a case of final assessment. Therefore, the appellant was required to file an appeal against this Assessment Order and then only approach the authorities

for the refund claim. Therefore, he justifies the rejection of their refund claim as held by the Commissioner (Appeals).

4. Heard both sides and perused the Appeal Papers.

5. I find that there is no dispute about the fact that the goods are of Nepali origin only. I have gone through the Invoice and the Certificate of Origin which is reproduced below:-

STEEL Aarti

INVOICE

Annexure- A-5

35

EXPORTER AARTI STRIPS (P) LTD. TANKI SINWARI,WARD NO-1,V.D.C BIRATNAGAR,DIST-MORANG,NEPAL PH: +977-21-421261/62/64/67 FAX: +977-21-421260 PAN NO: 500189382	INVOICE NO & DATE : EXP- 346 22/08/22 PACKING NO & DATE : EXP- 346 22/08/22 URN ORDER NO : STL542726 19/08/22 CONT. NO. : OTHER REFRENCE OF BUYER
CONSIGNEE BR.CODE 001 EVERGROWING IRON & FINVEST (P) LTD. 3RD MILE,NH-31 SEVOKE ROAD,SALUGARA SILIGURI (WB)INDIA IE CODE NO. : 0501060839 DT.08/02/02 GST NO.19AAACE1287C1ZW Dt.22-06-17	BUYER (IF OTHER THEN CONSIGNEE) Country Of Origin : NEPAL Country Of Final Destination : INDIA Transporter : AUM TARA LOGISTICS
Truck No. : BR06GA-5268 Place Of Loading : BIRATNAGAR,NEPAL Final Destination : SILIGURI,(WB)	Terms Of Delivery : (C.I.F.KAKARBITTA-PANITANKI BORDER) PAYMENT THROUGH BANK DRAFT

IMPP.NO.36097(B) DT.16/04/2079 & 35769(B) DT.15/04/2079 & 48962(B) DT.26/04/2078

DESCRIPTION OF GOODS	THICKNESS	QUANTITY	RATE(IRS)	AMOUNT(IRS)
GALVALUME CORRUGATED SHEET	0.200MM	2.828	80421.33	227431.52
GALVALUME CORRUGATED SHEET	0.250MM	2.344	77925.32	182656.95
GALVALUME CORRUGATED SHEET	0.300MM	14.698	75678.91	1112328.62
GALVALUME CORRUGATED SHEET	0.350MM	4.926	73182.91	360499.01
		24.796	Total(IRS)	1882916.10
	BASIC PRICE (EX. FACTORY ROUND OFF TO NEAREST RS.)			1882916
	INSURANCE CHARGES 0.07%			1318
	NEPAL CHAMBER OF COMMERCE FEE 0.09%			1695
	FREIGHT & MISC. EXP.			12397
	CENTRAL EXCISE HEADING 7210.6100			
	CUSTOM TARIFF 7210.6100			

Rs.Eighteen Lac Ninety Eight Thousand Three Hundred Twenty Six Only 1898326

(C.I.F.KAKARBITTA-PANITANKI BORDER)

DECLARATION :WE DECLARE THAT THIS INVOICE SHOWS THE ACTUAL GOODS DESCRIBED, THAT ALL PARTICULARS ARE TRUE AND CORRECT .

FOR AARTI STRIPS (P) LTD.

SIGNATURE & DATE

354 E6
24/08/22

Annexure- A-5

34

CERTIFICATE OF ORIGIN
FOR EXPORTS FREE OF CUSTOMS DUTIES
UNDER THE TREATY OF TRADE BETWEEN
THE GOVERNMENT OF NEPAL AND
THE GOVERNMENT OF INDIA

217063

Reference No. F&Q

1. Articles consigned from (Exporter's business name, address) Aarti Strips (P) Ltd. Tankisinwari-1
2. Articles consigned to (Consignee's name, address) Evergrowing Iron & Finvest (P) Ltd. Siliguri
3. Means of transport and route By Road via Panitanki
4. Item Number (HS Tariff Line) H.C. 7210.6100
5. Marks and number of package 11 PKG
6. Description of Articles Galvalume Corrugated Sheet
7. Gross weight or other quantity N.W. 24.796 M.T. Basic Value-1882916/-
8. Number and date of Invoice together with value EXP. 346 DT. 22/08/22 CIF. Value- 1898326/-
9. FOB value of the articles manufactured in Nepal: IRS. 80421.33, 77925.32, 75678.91, 73182.91 PMT.

10 (i) Whether articles are manufactured in Nepal under Para 1(a) of the Protocol to Article V of the Treaty of Trade (Yes / No):

(ii) If articles are manufactured in Nepal under Para 1 (b)(i) &(ii) of the Protocol to Article V of the Treaty of Trade:

(A) CIF value of materials, parts or produce originating from Non Contracting Parties (i.e. other than Nepal & India) at the point of entry in Nepal :-

(B) Value of materials, parts or produce of undetermined origin :- Nil

11. Percentage of the sum of the value of col. 10 (ii) (A) & (B) to the value of col. 9 :

12. Declaration by the exporter.

The undersigned hereby declares that the details furnished above are correct, that the articles are produced in Nepal and that they comply with the Rules of Origin specified in the Treaty of Trade between the Government of Nepal and the Government of India.

Aarti ... Ltd. Biratnagar Nepal

COPY

(Place & Date. Signature of authorised signatory).

13. Certification

It is certified that the articles herein referred to are eligible for preferential treatment as per provisions of the Treaty of Trade between the Government of Nepal and the Government of India. It is further certified that:

(1) The articles have been manufactured in Nepal at a factory situated at Tankisinwari-1 (name of the place/district) by M/s Aarti Strips (P) Ltd. (name of the company).

(2) The articles involve manufacturing activity in Nepal and that the manufacturing activity satisfies the criteria given in the Protocol to Article V of the Treaty of Trade

(3) The articles in question are not products of third country origin*.

22 AUG 2022

Shantiram Adhikari
Officer
Chamber of Industries Morang
Tinpaini, Biratnagar-2, Nepal

For the Government of Nepal

(Place and Date, Signature & Stamp of FNCCI/FNCCI member)

14. For Official Use of Indian Customs

The consignment has been examined and allowed to be imported into India as it complies with the provisions as stipulated under Article V of the Treaty of Trade between the Government of Nepal and the Government of India

6. Since the goods were cleared from the land customs area and Indo Nepal Boarder, it is quite obvious that the goods could not have been of "Northern Mariana Island" origin. The mistake is too obvious to be missed by the customs officials assessing the Bill of Entry.

7. I have gone through the letter dated 24/8/2022 filed by the appellant which is reproduced below:-

Annexure-A-1 12

CIN :U29199DL1982PLC014157

GSTIN:19AAACE1287C1ZW

EVERGROWING IRON& FINVEST PVT. LIMITED

SHOP NO:11,UPPER GROUND FLOOR,MILE STONE BUILDING, NEAR CHECK POST, NH31- 3RD MILE,
SEVOKE ROAD,P.O-SALUGARA-SILIGURI, PIN-734008- DISTT.-JALPAIGURI (W.B), EMAIL:evergrow999@gmail.com.

Date: - 24 August 2022

To,

The Deputy Commissioner Of Customs

Naxalbari Custom Division

Panitanki Disst. Darjeeling

Sub: Amendment of B/E No. 2121327 DTD. 23.08.2022 and grant refund of BCD & SWS requesting registration.

Respected Madam

This is for your kind information that on 23.08.2022 while filling B/E No. 2121327 the country of Consignment mentioned as Northern Mariana Island; Accordingly the bill was assessed and a duty of Rs.7,11,330/- was charged (BCD @ 15% and SWS @10% on BCD, IGST @18%)

Madam, We are a regular importer of goods following under chapter-72 from M/s Aarti Strips Pvt. Ltd. Nepal, as per Indo-Nepal treaty of trade import goods by paying IGST at the appropriate rate by availing the notification no. 104/2010 Cus. Dt. 01.10.2010, our firm is the top taxpayer from your port.

You are therefore requested to kindly look into the matter and amend the country of consignment as "NEPAL" in place of "Northern Mariana Island" in the B/E No.2121327 Dt. 23.08.2022 and allow us a Refund of excess amount of Rs 3,69,619/- paid on duty. (Rs. 711330-341711)

Any fee requires for amendment may kindly be intimated so that the same will be deposited to Govt. account.

Your early action in this matter will be highly appreciated.

Thanking you,

Yours Faithfully,

For :-Evergrowing Iron & Finvet Pvt Ltd.

Evergrowing Iron & Finvest (P) Limited

Authorised Signatory

Authorized Signatory

REGD. OFFICE:53, JORBAG, LODHI ROAD, NEW DELHI - 110003

8. From the above letter, it is seen that the appellant is seeking amendment to Bill of Entry no. 2121327 dated 23/8/2022. They have also sought the refund of excess amount paid by them. In case, the Adjudicating Authority was of the opinion that the refund claim cannot be entertained based on this letter, the appellant should have been directed to file an appeal before the concerned authority. The very fact that the appellant has sought amendment vide this letter, shows that the appellant carries a bonafide that he is following the correct procedure. If the procedure followed was not correct, it was for the Revenue to point out the error/defect to guide the appellant to file an appeal, which was not done in this case.

9. The Adjudicating Authority has entertained the amendment cum refund request and after proper verification has sanctioned the refund claim.

10. In view of the above observations, I do not find any merits in the impugned order passed by the Commissioner (Appeals). I set aside the same and restore the OIO.

11. The appellant would be eligible for consequential relief, if any, as per law.

(Operative part of the order was pronounced in the open court.)

Sd/-

(R. Muralidhar)
Member (Judicial)

Pooja