IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

APPEAL NOS: C/393, 394 & 395/2009

[Arising out of Order-in-Original No: 194/2008/CAC/CC(I)/SR/Gr.I dated 31st December 2008 passed by the Commissioner of Customs (Import), Mumbai – I .]

Ashoka Buildcon Limited
Rajesh Tiloda
Pradeep Raisoni … ***Appellants***

versus

Commissioner of Customs (Import)
Mumbai ***…Respondent***

Appearance:

Shri J H Motwani, Advocate for appellants

Shri C Singh, Assistant Commissioner (AR) for respondent

CORAM:

Hon'ble Shri C J Mathew, Member (Technical)
Hon'ble Dr. Suvendu Kumar Pati, Member (Judicial)

Date of hearing:	**19/07/2018**
Date of decision:	**21/08/2018**

ORDER NO: A/87118-87120/2018

Per: C J Mathew

Appellant M/s Ashoka Buildcon Limited, imported 'bitumen' which is claimed to be natural and declared to be classifiable under

2714 90 of the First Schedule to the Customs Tariff Act, 1975 with duty of 10% which was allowed provisionally pending receipt of test report of Deputy Chief Chemist. Though the Deputy Chief Chemist had ascertained the goods to be 'natural bitumen', less-charge demand dated 17th July 2000 was issued for recovery of duty of ₹ 39,35,661/- on bills of entry no. 163/02.08.1999 and 172/02.08.1999 on the ground that 'petroleum bitumen' classifiable under 2713.20 of the First Schedule to the Customs Tariff Act, 1975 was liable to basic customs duty of 30%. Following further investigation, a detailed show cause notice was issued to them, as addendum, enclosing the test report of Central Revenue Control Laboratory, New Delhi which opined *vide* letter dated 23rd January 2001 that the goods are 'petroleum bitumen'. Furthermore, the letter of M/s Geochem Pvt Ltd dated 13th October 1999 addressed to M/s Bitucorp Trading Pvt Ltd opining that natural bitumen is found only in Trinidad and that none of the countries in the Middle East mined or exported 'natural bitumen' which was distinguishable from 'petroleum bitumen' by ash content and insoluble matter. Furthermore, appellant was also put on notice that the Commercial Director of National Iranian Oil Refining Company had certified that the bitumen production and export from Iran was governed by the said entity and that they had been exporting only 'petroleum bitumen' and not 'natural bitumen'.

2. Learned Counsel for appellant submits that the impugned order

no. 194/2008/CAC/CC(I)/SR/Gr.I dated 31st December 2008 has confirmed the differential duty of ₹ 19,67,830.50, confiscated the same under section 111 of the Customs Act, 1962 while granting the option to redeem them on payment of fine of ₹ 40 lakhs besides imposing penalty of ₹ 10 lakhs on the Director, Shri Pradeep Raisoni and ₹ 4 lakhs on the Technical Officer, Shri Rajesh Tiloda.

3. According to the Learned Counsel, the adjudicating authority has discarded both the report of the Deputy Chief Chemist and the Central Revenue Control Laboratory, the former for not having been in conformity with the latter and the latter for lack of credibility following the cross-examination of the author of that report. Learned Counsel further submits that the reliance placed on the peremptory assertions in the correspondence of M/s Geochem Laboratories Pvt Ltd with the third party, as well as the certificate obtained through covert means, is improper considering that the import documents clearly indicate that the goods have been sourced from Iran and no other evidence of non-production of 'natural bitumen' in Iran had been brought forth while they themselves had furnished names of various suppliers as obtained from the internet.

4. Learned Authorised Representative contends that none of the documents submitted along with the bill of entry qualify the imported 'bitumen' as natural and that the Technical Officer of the appellant

has also given a statement to the effect that they agree with the findings in the investigation.

5. We do not find any flaw in the findings of the adjudicating authority that the two test reports namely, that of the Deputy Chief Chemist and of the Central Revenue Control Laboratory being in conflict with each other, will not suffice for deciding upon the classification. However, the primacy accorded to certain reports of M/s Geochem Laboratories Pvt Ltd as well as that of the National Iranian Oil Refining Company which are neither authenticated nor certified for expertise is improper. We ourselves are aware that asphaltite (natural bitumen) is available in many countries and, that too, in conjunction with existence of other hydrocarbons. Undoubtedly Pitch Lake in the Republic of Trinidad and Tobago with contents of over 10 million tonnes is the largest single source. At the same time, ‘bitumen’ occurs naturally in Canada, Venezuela, Russia, Indonesia and a number of other locations including the Kermanshah province of Iran. There is reference to ‘bitumen’ in the ante-diluvean Epic of Gilgamesh set in the Sumerian Civilization of the second millennium BC. It is therefore, strange that a chemical laboratory arrogating to itself the expertise of denying Iran as a source of natural bitumen has been accorded such credence in the adjudication order and with no support to substantiate the contents thereof.

6. From the above, it would appear that the demand for differential duty and the penal provisions stand on foundations that are shaky, or do not exist, and, therefore, without the sustenance that law accords.

7. Therefore, we set aside the impugned order and allow the appeals.

(Pronounced in Court on 21/08/2018)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

(C J Mathew)
Member (Technical)

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