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

REGIONAL BENCH- COURT NO.1

Customs Appeal No. 10073 of 2017

[Arising out of OIO-KDL-COMMR-PVRR-106-2016-17 passed by Principle Commissioner Customs, Excise and Service Tax-KANDLA]

M/s Dhanlaxmi Pigments Pvt. Ltd. ....Appellant
3019-21, Gidc Phase-iii,
Panoli-Bharuch-Gujarat.

VERSUS

C.C. Kandla ....Respondent
Custom House, Near Balaji Temple,
Kandala-Gujarat

WITH

Appeal Nos:

1. **Customs Appeal No. C/10074/2017 (A One Chemicals)**
2. **Customs Appeal No. C/10115/2017 (Dhamdod Seva Sahakari Mandali Ltd.)**
3. **Customs Appeal No. C/10141/2017 (Raviraj Chemicals)**
4. **Customs Appeal No. C/10142/2017 (Malani Enterprises)**
5. **Customs Appeal No. C/10143/2017 (Suyog Dye Chemie Pvt. Ltd.)**
6. **Customs Appeal No.C/10144/2017 (Mahendra Dyes & Chemicals)**
7. **Customs Appeal No. C/10145/2017 (Ravichem Industries)**
8. **Customs Appeal No. C/10146/2017 (Shri Inshwarbhai B Marathe)**
9. **Customs Appeal No. C/10147/2017 (Ronak Chemicals)**
10. **Customs Appeal No. C/10148/2017 (Laxmi Enterprises)**
11. **Customs Appeal No. C/10149/2017 (Shree Sulphamic Chemicals)**
12. **Customs Appeal No. C/10150/2017 (Shreyas Intermediates Ltd.)**
13. **Customs Appeal No. C/10152/2017 (Bagadia Colourchem Ltd.)**
14. **Customs Appeal No. C/10153/2017 (Mahalaxmi Dye Chem)**
15. **Customs Appeal No. C/10154/2017 (Narayan Organics Pvt. Ltd.)**
16. **Customs Appeal No. C/10155/2017 (Narayan Industries Ltd.)**
17. **Customs Appeal No. C/10156/2017 (Unity Organics Pvt. Ltd.)**
18. **Customs Appeal No. C/10157/2017 (Yash Chemex Inc)**
19. **Customs Appeal No. C/10158/2017 (Swastik Industries)**
20. **Customs Appeal No. C/10159/2017 (Saraswati Pigments Pvt. Ltd.)**
21. **Customs Appeal No. C/10160/2017 (Jay Chemical Industries Ltd.)**
22. **Customs Appeal No. C/10161/2017 (Shiv Dyestuff & Intermediates Industries)**
23. **Customs Appeal No. C/10162/2017 (Ramdev Chemical Industreis)**
24. **Customs Appeal No. C/10163/2017 (Harish Chemical Engineering Enterprises)**
25. **Customs Appeal No. C/10164/2017 (Chandan Chemcial)**
26. **Customs Appeal No. C/10165/2017 (Deep Chem)**
27. **Customs Appeal No. C/10166/2017 (Shree Ganesh Pigments Pvt. Ltd.)**
28. **Customs Appeal No. C/10167/2017 (Jahangirpura Group Co Operative Cotton Sale Society Ltd.)**
29. **Customs Appeal No. C/10168/2017 (Shri Kadod Seva Sahakari Mandali)**

30. Customs Appeal No. C/10169/2017 (Idar Taluka Sahakari Kharid Vechan Sangh Ltd.)
31. Customs Appeal No. C/10170/2017 (Ankleshwar Taluka Co. Op Purchase & Sales Union Ltd.)
32. Customs Appeal No. C/10171/2017 (Agriculture Business Centre)
33. Customs Appeal No. C/10172/2017 (The Himmatnagar Taluka Sahakari Kharid Vechan Sangh Ltd.)
34. Customs Appeal No. C/10173/2017 (Gothan Fruit & Vegetable Co Op Society)
35. Customs Appeal No. C/10174/2017 (The Malpur Taluka Co Op Purchase & Sale Union Ltd.)
36. Customs Appeal No. C/10175/2017 (Agriculture Business Center)
37. Customs Appeal No. C/10176/2017 (The Hathuran Group Sahakari Kapas Mandal)
38. Customs Appeal No. C/10177/2017 (Hadiyol Group Vividh Karyalay Seva Sahakari Mandal)
39. Customs Appeal No. C/10178/2017 (Jadar Vibhagiya Sahakari Purchase & Sale Union)
40. Customs Appeal No. C/10208/2017 (The Satambha Vibhagia Khedut Sahakari Purchase Sale Sangh Ltd.)
41. Customs Appeal No. C/10209/2017 (Shiv Shakti Agro Chemicals)
42. Customs Appeal No. C/10210/2017 (Mandavi Taluka Kheti Pak Rupante Vechan Karnari Sahakari Mandal)
43. Customs Appeal No. C/10211/2017 (Vansda Taluka Purchase & Sale Union)
44. Customs Appeal No. C/10212/2017 (Vav Grahak Sahakari Mandal)
45. Customs Appeal No. C/10213/2017 (Ramdev Grahak Sahakari Bhandar)
46. Customs Appeal No. C/10214/2017 (Sharad Agro Centre)
47. Customs Appeal No. C/10215/2017 (Sanand Taluka Sahakari Kharid Vechan Sangh Ltd.)
48. Customs Appeal No. C/10221/2017 (The Sendhiyar Group Co. Op. Cotton Board Association Ltd.)
49. Customs Appeal No. C/10222/2017 (Ishan Dyes & Chemicals Ltd.)
50. Customs Appeal No. C/10223/2017 (Industrial Solvents & Chemicals Pvt. Ltd.)
51. Customs Appeal No. C/10224/2017 (Narmada Krushi Seva Vikas Mandal)
52. Customs Appeal No. C/10225/2017 (Prashant Industries)
53. Customs Appeal No. C/10226/2017 (Shri Sarjil Khan Baluchi)
54. Customs Appeal No. C/10227/2017 (Sahada Taluka Sahakari Kharid Vikri Sangh Ltd.)
55. Customs Appeal No. C/10228/2017 (Chintan Agro Services)
56. Customs Appeal No. C/10229/2017 (Mazda Colours Ltd.)
57. Customs Appeal No. C/10230/2017 (Vapi Pigments Pvt. Ltd.)
58. Customs Appeal No. C/10231/2017 (Nirbhay Rasayan Pvt. Ltd.)
59. Customs Appeal No. C/10237/2017 (Jetpur Paavi Taluka Kharid Vechan Sangh Ltd.)
60. Customs Appeal No. C/10238/2017 (Krushi & Gramin Vikas Mandal)
61. Customs Appeal No. C/10239/2017 (Lona Industries Ltd.)
62. Customs Appeal No. C/10240/2017 (Shri Jignesh Amrutlal Parmar)
63. Customs Appeal No. C/10241/2017 (Laksh Venture Pvt. Ltd.)
64. Customs Appeal No. C/10242/2017 (Navin Chemicals)
65. Customs Appeal No. C/10245/2017 (Asahi Songwon Colors Ltd.)

66. **Customs Appeal No. C/10248/2017 (Meghmani Organics Ltd.)**
67. **Customs Appeal No. C/10265/2017 (Riverside Industries Ltd.)**
68. **Customs Appeal No. C/10274/2017 (Pooranmal Laxminarayan)**
69. **Customs Appeal No. C/10275/2017 (Vasundhara Kisan Seva Mandal)**
70. **Customs Appeal No. C/10276/2017 (Bhagvad Fertilizers)**
71. **Customs Appeal No. C/10277/2017 (Hemant Pravinbhai Jariwala)**
72. **Customs Appeal No. C/10302/2017 (Arbuda Transport)**
73. **Customs Appeal No. C/10303/2017 (S I Alam)**
74. **Customs Appeal No. C/10304/2017 (S C Patel)**
75. **Customs Appeal No. C/10305/2017 (Narmada Transport)**
76. **Customs Appeal No. C/10306/2017 (Sundaram Roadlines)**
77. **Customs Appeal No. C/10307/2017 (Jay Somnath Transport Co)**
78. **Customs Appeal No. C/10308/2017 (Satyam Roadways)**
79. **Customs Appeal No. C/10309/2017 (Naaz Coprporation)**
80. **Customs Appeal No. C/10310/2017 (Sanand Krushi Utpadan Sahkari Mandali Ltd.)**
81. **Customs Appeal No. C/10311/2017 (Shrih M Patel)**
82. **Customs Appeal No. C/10312/2017 (Shri Arunkumar Babulala Patel)**
83. **Customs Appeal No. C/10332/2017 (Jain Transport Service Gujarat)**
84. **Customs Appeal No. C/10333/2017 (Shri Dipal R Sheth)**
85. **Customs Appeal No. C/10344/2017 (Jalaram Krushi Seva Mandal)**
86. **Customs Appeal No. C/10345/2017 (Parswanath Krushi Vikas Seva Mandal)**
87. **Customs Appeal No. C/10346/2017 (V Parsuram And Co.)**
88. **Customs Appeal No. C/10347/2017 (Shree Janta Grahak Sahakari Bhandar Ltd.)**
89. **Customs Appeal No. C/10359/2017 (Rakesh Kumar Jain)**
90. **Customs Appeal No. C/10360/2017 (Raj Laxmi Fertilizer)**
91. **Customs Appeal No. C/10361/2017 (Hitesh Modi)**
92. **Customs Appeal No. C/10362/2017 (Dhaval Modi)**
93. **Customs Appeal No. C/10366/2017 (Hiren M Soni)**
94. **Customs Appeal No. C/10415/2017 (New Gupta & Co.)**
95. **Customs Appeal No. C/10416/2017 (Salimkhan M Pathan)**
96. **Customs Appeal No. C/10417/2017 (Bahiyal Group Seva Sahakari Mandali Ltd.)**
97. **Customs Appeal No. C/10619/2017 (Sardar krushi Mandal Trust)**
98. **Customs Appeal No. C/10620/2017 (Tamsa Anaj Utpadan Sahakari Mandali Ltd.)**
99. **Customs Appeal No. C/10621/2017 (Sardar krushi Mandal Trust)**
100. **Customs Appeal No. C/10725/2017 (Kukarwada Group Co Operative Multi Purpose Society Ltd.)**
101. **Customs Appeal No. C/10726/2017 (Deesa Taluka Purchase & Sales Union Ltd.)**
102. **Customs Appeal No. C/10727/2017 (Gujarat State Co. Operative Marketing Federation Ltd.)**
103. **Customs Appeal No. C/10728/2017 (Dhanera Taluka Purchase & Sales Union Ltd.)**
104. **Customs Appeal No. C/10729/2017 (Vijapur Taluka Purchase & Sales Union Ltd.)**
105. **Customs Appeal No. C/10730/2017 (Bhabhar Taluka Purchase & Sales Union Ltd.)**
106. **Customs Appeal No. C/10731/2017 (Gujarat State Co. Operative Marketing Federation Ltd.)**
107. **Customs Appeal No. C/10917/2017 (Phthalo Colours & Chemicals India Ltd.)**

108. Customs Appeal No. C/11024/2017 (Khadiya Nagrik Consumer Co. Operative Stores Ltd.)
109. Customs Appeal No. C/12095/2017 (Indian Potash Limited)
110. Customs Appeal No. C/12196/2016 (Gnfc Ltd.)

[Arising out of OIO-KDL-COMMR-PVRR-106-2016-17 passed by Principle Commissioner Customs, Excise and Service Tax-KANDLA]

APPEARANCE:

Present For the Appellant : Sh. S.R. Dixit, Sh. A. Nainawati (Advocate),
Sh. S. Suriyanarayanan (Advocate) ,
Sh. R. Subramanya (Advocate),
Sh. Deepak Kumar, Sh. N.K. Tiwari (Consultant) ,
Sh. P.P. Jadeja (Consultant)

Present For the Respondent : Sh. Sameer Chitkara (AR)

CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. RAJU, MEMBER (TECHNICAL)

Final Order No. A/ 11258-11368 /2019

DATE OF HEARING: 08.07.2019
DATE OF DECISION: 08.07.2019

RAMESH NAIR

The brief facts of the case are that M/s Indian Potash Ltd is engaged in import and trading of various fertilizer products including Urea (for industrial and agriculture use), falling under chapter 31 of the first schedule to Customs Tariff Act, 1975 and imported Urea are cleared to different co-operative society/consignee. The applicable duty structure for import of Urea during the period from 27.02.2010 to 21.05.2013 was as under:

Period	Basic Custom Duty (BCD)	CVD	Edu. Cess on CVD	Sec. & Hsec. Edu. Cess on CVD	Edu. Cess on BCD	Sec. & Hsec. Edu. Cess on BCD	Addl. Duty
27.02.2010 to 16.03.2012	5%	10%	2%	1%	2%	1%	4%
17.03.2012 to 21.05.2013	7.5%	12%	2%	1%	2%	1%	4%

2. The Central Excise duty on fertilizer was levied @ 1% ad-valorem w.e.f. 01.03.2011 in the Union Budget for 2011-12. Thereafter, vide the

Notification No. 1/2011-CE dated 31.03.2011, the central excise duty was imposed on all goods of chapter 31, other than those which are clearly not be used as fertilizers @ 1% when no cenvat credit on inputs or input services is availed. The same duty exemption has continued vide the Notification No. 12/2012-CE dated 17.03.2012. Accordingly, the CVD payable on imported Urea is 10 or 12% supra, if the Urea are clearly not to be used as fertilizers and if the Urea used as fertilizer, the CVD is exempted in excess of 1%. The case of the department is that M/s Indian Potash Ltd imported Urea by declaring agriculture grade, the said Urea was diverted to industrial user. Accordingly, the condition of use of Urea for agriculture purpose was not fulfilled. Consequently, the exemption Notification No. 12/12-CE is not admissible to the appellant M/s Indian Potash Ltd, accordingly, the demand of differential amount of CVD was raised. For issuance of SCN, detailed investigation was conducted by the department, wherein statements of appellant, buyers, transporters and various other persons who are related to transaction of this Urea were recorded and the same were used as evidence by the adjudicating authority.

3. Sh. S.R. Dixit, Sh. A. Nainawati, Sh. S. Suriyanarayanan Sh. R. Subramanya (Advocate), Sh. Deepak Kumar, Sh. N.K. Tiwari, Sh. P.P. Jadeja (Consultant) appeared on behalf of the appellants. Sh. R. Subramanya appearing for M/s Indian Potash Ltd argued on legal issue that there is no fault on the part of the appellant. The appellant have sold the goods to various distributors who were authorized buyers of Urea. In that process, if any goods have been diverted, the appellant is not responsible. He further submits that the notification does not prescribe any actual user condition. The Urea so imported was with intention for use in fertilizer and the supplies were also made to the authorized distributors, therefore there was no intention that the imported Urea shall be used for any other purpose.

4. Sh. S.R. Dixit Ld. Counsel appearing for some of the co-appellant at the outset submits that out of many parties involving in the case, one party Sh. Vijay Chandrakant Mulchandani, who was considered to be kingpin of entire case, moved to High Court. The High Court vide order dated 27-28/11/2017 remanded the matter to the adjudicating authority

on the ground that the cross examinations of witnesses were not permitted. He along with other advocates appearing for various parties have submitted that in other cases also, though the cross examination of various persons were asked for but the adjudicating authority has not granted the cross examination, therefore, order passed relying on said statements is illegal and incorrect. Sh. R. Subramanya further submits that in M/s Indian Potash Ltd case, the appellant moved petition before Hon'ble Gujarat High Court challenging order in original dated 30.09.2016 which is impugned order in the present case. The Hon'ble High Court has disposed of and not entertained particularly for the reason that order was appealable to this Tribunal and liberty was granted to file the appeal before Tribunal, therefore, this appeal.

5. Sh. Sameer Chitkara Ld. Additional Commissioner (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order. He also submits, if at all matters is remanded, the same may be done on the line of Hon'ble High Court order.

6. We have carefully considered the submission made by both the sides. We find that in case of one of the party Sh. Vijay Chandrakant Mulchandani, the matter was remanded to the adjudicating authority by Hon'ble Gujarat High Court vide order dated 27-28/11/2017 on the ground that the adjudicating authority has not granted the cross examination of the witnesses. In these circumstances, we are of the view that the issue of cross examination in the case of Vijay Chandrakant Mulchandani will have bearing on the overall case as the department has relied upon the statements in case of Vijay Chandrakant Mulchandani also. Moreover, in case of other parties, the Ld. Counsels raised issue that the cross examinations of the witnesses were not allowed by the adjudicating authority. Therefore, taking observation of the Hon'ble High Court in order dated 27-28/11/2017 and facts that the adjudicating authority has not granted the cross examinations of witnesses whose statements were relied upon in deciding the case, we are of the view that the cross examination of witnesses is primary requirement for fair adjudication as per the statutory provision of Section 9D of Central Excise Act and *pari-materia* provision in the Customs Act. In the case of Indian Potash Ltd, the Hon'ble High Court

vide order dated 06.12.2017 did not entertain the petition, however once on the issue of cross examination, the matter was remitted to the adjudicating authority which involves the same statements which were relied upon in other all cases, it is not just and proper to decide the case in piecemeal for the very simple reason that all the evidences including the various statements were relied upon for issuing the common SCN.

7. Therefore, in our view, the entire matter needs to be re-considered by the adjudicating authority after allowing the cross examination of various witnesses as requested by the appellant. Accordingly, we set aside the impugned order and remand the matter to the adjudicating authority for passing de-novo adjudication order after following the principles of natural justice.

(Operative portion of the order pronounced in the open court)

Ramesh Nair
Member (Technical)

(Raju)
Member (Technical)

Seema