

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

Appeal No. C/11519-11521,11704-11706/2016-DB

[Arising out of OIO-KDL-COMMR-PVRR-03-2016-17 dated 17.05.2016 passed by the
Commissioner of CUSTOMS-KANDLA]

M/s K L J Organics Ltd Appellant
K L J Plasticizers Ltd
K L J Polymers and Chemicals Ltd
C.C.-Kandla

Vs

C.C.-Kandla Respondent
Klj Plasticizers Ltd
Klj Polymers & Chemicals Ltd
Klj Organics Ltd

Represented by:

For Appellant: Shri Pramod Kumar Rai (Advocate)
For Respondent: Shri Sameer Chitkara (AR)

CORAM:

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

Date of Hearing: 28.11.2018
Date of decision: 25.03.2019

Final Order No. A/ 10569-10574 /2019

Per: Ramesh Nair

The present appeals have been filed by M/s KLJ Organics Ltd, KLJ Plasticizers Ltd. and KLJ Polymers & Chemicals Ltd. as well as by the revenue against Order-in-Original No. KDL/COMMR/PVRR/03/2016-17 dated 17.05.2016 passed by Commissioner of Customs, Kandla. The brief facts of the case are that the above named assessee concerns had imported duty free material against advance licence for manufacture of goods for export or deemed export. They were also clearing their goods in domestic market. They were issued show cause notice dt. 19.06.2015 that after fulfilling of export obligation under various Advance Authorisations they were left with certain quantity of duty free imported material/ inputs which they utilized in the manufacture of finished goods

cleared to DTA. The show cause notice relied upon statements of employees/ directors of the Assessee concerns. It was alleged that the materials imported duty free but which were in excess of the actual requirement were not exempted from payment of duty and were required to suffer custom duty. The said material was not required to be used for manufacture of goods for DTA without paying duty thereon. The assessee appellants filed reply to said SCN stating that the goods were permitted to be imported as per SION (Standard Input Output Norms) and were issued in the production of finished goods. During manufacture of export quality goods some off quality goods and waste was also produced which was cleared in DTA. That after fulfilment of export obligation even if goods produced from such imported material is cleared into DTA, then also no duty can be demanded as the clearance has been made on payment of central excise duty. They also submitted that the quantum of inputs for use in manufacture of export goods is different from goods cleared into DTA. The adjudicating authority vide impugned order confirmed the demands against the assessee appellants along with penalty and imposed redemption fine in lieu of confiscation of the imported goods as the same were not physically available. Aggrieved, they are in appeal before us. The revenue is also aggrieved with the impugned order to the extent it does not impose penalty against each of three assesses under Section 112 (a) of customs Act, 1962 and also to re-determined the redemption fine.

2. Shri Pramod Kumar Rai, Ld. Advocate appearing for the assessee appellants submits that the demand is absolutely erroneous. He submits that the ratio of inputs is given in SION. The revenue has demanded duty on the ground of actual consumption of raw material in export product ignoring the raw material contained in wastage and off grade

production which are inevitable while producing export quality products. He submits that the revenue's contention of demand is that the duty free entitlement of appellant assessee is lower of SION Norms or actual consumption in export products. The material contained in off grade production and wastage should also be treated as consumption which has not been done. They have fulfilled the export obligation in terms of Notification No. 96/2009-Cus as specified under which the goods under Advance Authorisations were imported. After fulfilling the Export Obligation the balance manufactured product which were primarily off grade and waste was sold in DTA on payment of excise duty as allowed in Para 4.1.5 of the Foreign Trade Policy 2009 - 14. There is no allegation of diversion of raw material in DTA and entire material was used in manufacture of finished goods. The SION Norms are fixed and the Advance Authorisation scheme is SION based. The are average norms which permits import of goods irrespective of actual use of goods. The Applicable export obligation based upon SION is shown in Advance Authorisation itself. The licence holder is not required to export the entire finished goods if his efficiency is better than SION. The only condition is that the imported raw material should be used by the importer himself and he is not allowed trading in remaining raw material. He submits that no duty can be demanded under Notification no. 96/2009-Cus dated 11.09.2009 as duty liability would arise only if any condition of the notification is violated. That if the contention of the show cause notice and the impugned order is sustained it would mean that each and every advance authorisation would be subject to material audit and the SION Norms would have no meaning. The export yield is different from domestic yield and the yield for domestic manufacture cannot be applied to export yield. During production of export goods

inevitably smaller quantity of goods which does not meet the export specification are also manufactured and are sold as off grade which is nothing but wastage. He submits that in their excise returns they do not differentiate between export product and other grades and all are clubbed and shown as manufactured products. The actual yield of their export product is around SION Norms.

3. Shri Sameer Chitkara, Ld. Additional Commissioner (AR) appearing for the revenue reiterates the findings of the adjudicating authority and submits that since the actual use of material in export products was less hence the remaining material used in goods cleared into DTA is liable for customs duty.

4. We have gone through the facts of the case. The revenue is demanding customs duty on the ground that since the actual use of inputs is less than shown in SION norms therefore the surplus material has been used in manufacture of domestic goods and hence the customs duty on such surplus material is to be paid by them. We find that it is not in dispute that the appellant assessee had procured the goods under Advance authorisations as per SION Norms. The imported material was used/ consumed in manufacture of export goods and the export obligations against the Advance authorisations stands fulfilled. The SION Norms has been promulgated in order to ward off the disputes pertaining to consumption of inputs. Once the norms are fixed, it is imperative for the assessee to follow such norms. If the assessee is not able to produce the goods as per the said norms and fails to fulfil the export obligation, he is liable to pay the customs duty covered by the advance authorisations. In this case the imported goods were used in manufacture of export goods and export obligation stands fulfilled. During manufacture of export goods the off - grade goods were also

manufactured and the same were cleared into domestic tariff area and those goods were considered as waste. The Appellant has contended that the clearances were shown in excise returns as consolidated for both categories and therefore the yield shown in excise cannot be benchmark to fix the input output ratio for export goods. We are of the view that once the SION Norms are fixed and the manufacturer has manufactured goods under the said norms and the export obligation stands fulfilled the revenue cannot demand duty on the ground that the actual consumption was less than SION. If such practice is adopted, it will lead to SION becoming redundant and it will open Pandora box of disputes. The SION Norms has been fixed after taking into consideration all the relevant factors and the overlooking of the same is not permissible. The whole purpose of fixing the SION norms is to avoid physical check of actual consumption of inputs in the manufacture of final products. For that very reason there is no mechanism provided for check or audit of actual consumption of imported goods if the same is covered under the SION norms. If the contention of the revenue is accepted then in each and every case there should be assessment of actual use of imported raw material covered in the SION norms, it is obvious that it is impossible that actual consumption will be exactly equal to the SION norms and dispute will arise in each and every case, which is not the intention of the Government and therefore there is no mechanism provided under any law therefore. Once the export quantity and quantity of imported goods is as per the SION, then the export obligation stands fulfilled, hence no further question can be raised by the revenue. It is also coupled with the fact that in case of export product, the manufacturer takes all the safeguards for maintaining quality of the product as per the buyers' specification which may be

better quality than the DTA clearances. Thus the DTA yield cannot be equated with the export goods yield. We find that in terms of Para 4.1.5 the condition to be followed in case of Advance Authorisation is that the goods are imported subject to actual user condition. The same cannot be transferred and once the export obligation is fulfilled the manufacturer has the option to dispose of the manufactured product out of the duty free inputs. The said Para reads as under:

*"4.1.5. (a) advance Authorization and/or materials thereunder will be with actual user condition. It will not be transferable even after completion of export obligation. However, authorization holder will have option to dispose of product manufactured out of duty free inputs once export obligation is completed. In case where cenvat credit facility on inputs have been availed for the exported goods, even after completion of export obligation, the goods imported against advance authorization shall be utilized in the manufacture of dutiable goods whether within the same factory or outside (by a supporting manufacturer), for which the authorization holder shall produce a certificate from either the jurisdictional central excise Superintendent or CA, at the opinion of exported, at the time of filing application for EODC to RA concern
(b) Further the manufacturing waste/ scrap, as allowed, can be disposed of with the payment of applicable duty even before fulfilment of export obligation."*

Relying upon the Para 4.1.5 of the FTP, the tribunal in case of Areva T & D India Ltd. 209 (242) ELT 442 (TRI) has held that after fulfilment of export obligation the DEEC holder is free to utilize imported duty free material in the manufacture and clearance of final product. In case of Jay Engineering Works 2003 (162) ELT 680 (TRI), the Tribunal held that in case once export obligation stands fulfilled the imported material can be used for manufacture of goods cleared in domestic market. The Tribunal has given same views in case of Standard Industries Ltd. 2001 (136) ELT 124 (TRI).

5. In view of above judgments, we are of the view that once the importation of goods was permitted in terms of SION Norms and the export obligation stands fulfilled, the appellant were entitled to use the remaining goods in manufacture of goods which were cleared into DTA.

We also find that the appellant have not suppressed any fact and the utilisation of the imported material and manufacture of finished goods stands recorded in their records as well as shown in monthly returns. In such view we also find that the demands raised against the appellant are also hit by limitation of time. Our views are based upon the Apex Court judgment in case of Uniworth Textiles Ltd. 2013 (288) ELT 161 (SC), Aban Lloyd Chiles Offshore Ltd. 2006 (200) ELT 370 (SC), HMM Ltd. 1995 (76) ELT 497 (SC) and Continental Foundation Jt. Venture 2007 (216) ELT 177 (SC).

6. In view of above findings, we allow the appeals filed by the assessee appellant with consequential reliefs, if any. The Appeals filed by the revenue are dismissed for the above reasons.

(Pronounced in the open court on 25.03.2019)

(Raju)
Member (Technical)

(Ramesh Nair)
Member (Judicial)

Seema