

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH - COURT NO. II**

Customs Appeal No. 51768 of 2021 (SM)

(Arising out of Order-in-Appeal No. CC(A)CUS/D-I/Export/NCH/120/2021-22 dated 02.08.2021 passed by the Commissioner of Customs (Appeals), New Delhi.)

M/s Cipra Enterprises

Block 18 Jankalyan, Ajwa Road,
Near Navjeevan Post Office Vadodara,
Gujarat-390019

Appellant

VERSUS

**Commissioner of Customs- (Export),
New Delhi**

New Customs House, Near IGI Airport,
New Delhi-110037

Respondent

APPEARANCE:

Shri Vaibhav Singh, Advocate for the Appellant
Shri Mahesh Bhardwaj, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO. 50021 / 2023

Date of Hearing: 25.07.2022

Date of Decision: 10.01.2023

ANIL CHOUDHARY:

The appellant Cipra Enterprise is in appeal, against the order of confiscation of the goods and penalty imposed under Section 114(iii) and redemption fine of Rs. 4 lakhs.

2. The brief facts are as follows:

2.1 The Appellant filed Shipping Bill No. 6044624 dated 22.10.2020 for export of 'Blood Glucose Test Strips' and 'Freestyle Sensor' under MEIS scheme. On examination of the goods by the

officers of ACC Export Shed the goods, Blood Glucose Test Strips were found to be of made in Japan and the Freestyle Sensor was made in UK. It appeared that the Appellant had mis-declared the 'Country of Origin' in the export document so as to claim the export incentives under MEIS. The classification of Blood Glucose Test Strips was mis-declared as CTH 30069100 instead of the correct CTH 38220090. On further investigation, it was established that the Appellant had deliberately mis-declared the country of origin of the goods as 'India' so as to claim the export incentives and thereby contravened the provisions of Section 50 of the Customs Act, 1962. Thus, the goods became liable for confiscation under Section 113(i) of the Act *ibid* and the packing materials under Section 118(b) of the Act. For the such acts of omission and commission, the Appellant became liable for penal action under Section 114(iii) & 114AA of the Act *ibid*.

2.2 The Appellant vide letter dated 30.10.2020 accepted their mistake and requested for waiver of SCN and personal hearing and submitted that they are ready to pay fine and penalty so that the shipment can be exported to the buyer. They further requested to amend the shipping bill and permission for export, without benefit of MEIS.

2.3 In the Order-in-Original, the Adjudicating Authority held that the Appellant had deliberately mentioned the country of origin of the goods as 'India' in the export documents and thus the Appellant had made false declaration to Customs with an intention to claim export incentives under MEIS, which was not admissible to them.

Accordingly, the Adjudicating Authority vide Order-in-Original (i) disallowed the MEIS benefit amounting to Rs. 76,444/- claimed by the Appellant on the goods; (ii) ordered confiscation of the goods having FOB value Rs. 25,50,422/- under Section 113(i) of the Customs Act, 1962 and also the packing material under Section 118(b) of the Act, with an option to redeem the goods on payment of fine of Rs. 4,00,000/-; (iii) Imposed penalty of Rs. 50,000/- upon the Appellant under Section 114(iii) and penalty of Rs. 50,000/- under Section 114AA of the Act *ibid*; and (iv) allowed export of goods subject to payment of fine and penalties as imposed, after amendment in the shipping bill.

3. Being aggrieved the appellant preferred appeal before the learned Commissioner (Appeals) *inter alia* on the grounds that he had purchased the goods from Jan Max Pharmaceuticals, Vadodara and he was not aware as to the foreign origin of the goods. Further, he was wrongly advised by CHA to claim the MEIS (Merchandise Exports of India Scheme) benefits and they without having much idea of the same, had claimed the benefit relying on the advice of the CHA. It was only on the 100% examination of the goods that they also came to know that the goods are of foreign origin and not of Indian origin. It was also urged that the goods were not of prohibited nature and there was no intentional violation of the provisions of export policy. It was also urged that in view of the venial breach or low gravity of the offence, the redemption fine imposed is disproportionate as the total amount of benefit under the MEIS was Rs. 76,580/- only. The appellant has also relied on the following Rulings:-

(i) DCL Polytors Ltd. V. CC Mumbai [2002 (150) ELT1037 (Tri. Mumbai)]

(ii) Shankar Trading Co. V. CC(Appeals), Trichy [1999 (106) ELT 456 (Tri.)]

(iii) CC, New Delhi V. Rydertrac Exports [1999 (111) ELT 394 (Tri).]

(iv) Hindustan Steel Ltd. V. State of Orissa [1972 (83) ITR 26 (SC)]

(v) Akbar Badruddin Jiwani V. Collector of Customs [1990 (47) ELT 161 (SC)]

(vi) Hindustan Steel Ltd. V. State of Orissa [1978 (2) J159 (SC)]

4. The learned Commissioner (Appeals) observed that it is not in dispute that the goods are not of Indian origin and hence, the appellant was not entitled to claim the benefit of MEIS. Thus, the goods were found to be mis-declared as the appellant had declared the goods to be of the Indian origin. Learned Commissioner also pleased to set aside the penalty under Section 114AA of the Act but confirmed the penalty under Section 114(iii) of the Act as well as the redemption fine of Rs. 4 lakhs. Being aggrieved, the appellant is before this Tribunal. Learned Counsel for the appellant *inter alia* reiterates the grounds which had been raised before the Commissioner (Appeals). He further urges that the redemption fine and penalty are disproportionate and on the higher side and the same may be substantially reduced for the end of justice.

5. Learned AR for revenue relies on the impugned order.

6. Having considered the rival contentions, it is evident that the appellant made a wrong claim of export benefit under MEIS, being mis-advised by the CHA. However, it was the responsibility of the appellant to understand the eligibility and the conditions before making a claim for the export benefits. However, in the facts and circumstances, that the goods were not prohibited goods, I find that

the fine and penalty are on the higher side. Accordingly, the impugned order is modified as follows:

- (i) Redemption fine is reduced from Rs. 4 lakhs to Rs. 1 lakh.
- (ii) Penalty under Section 114(iii) is reduced from Rs. 50,000/- to Rs. 25,000/-.

7. With the aforementioned modification in the impugned order, the appeal is allowed in part.

(order pronounced in the open Court on 10.01.2023)

Anil Choudhary
Member(Judicial)

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