

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CUSAP No.5 of 2019 (O&M)

Date of decision: 24.05.2023

Commissioner of Customs, Ludhiana

.....Appellant

Versus

M/s Jindal Drugs Ltd.

.....Respondent

**CORAM:HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA**

Present: Mr. T.K. Joshi, Senior Standing Counsel
with Mr. Ram Pal Kohli, Advocate,
for the appellant.

Mr. Amar Partap Singh, Advocate,
for the respondent.

Ritu Bahri, J.

The instant appeal, under Section 130 of the Customs Act, 1962, has been filed against the final order dated 16.03.2018 (Annexure A-3) passed by the Customs, Excise & Service Tax Appellate Tribunal, Chandigarh (for short 'The Tribunal) in Appeal No.C/55802 of 2014, whereby appeal filed by the present respondent-assessee (M/s Jindal Drugs Ltd.) against the order demanding customs duty and imposing penalty and redemption of fine, has been allowed.

Brief facts of the case are that the respondent-company is engaged in manufacturing of excisable goods i.e. Coco Butter and its factory is situated in the State of Jammu & Kashmir. The Joint Director, DGFT had issued advance authorization dated 24.01.2007 for duty free clearance of Cocoa Paste. Total one lakh MTs of Cocoa Butter was required to be exported. Against the said advance authorization, the respondent imported

100 MT of Cocoa Paste vide two bills of entry duty free in terms of notification dated 10.09.2004. Due to an accident beyond the control of appellant, 50 MT Cocoa Paste imported against one bill of entry dated 26.04.2007 was lost due to melting in transit, as a result of which, some leaked cartons were unusable. The said quantity was reduced in the balance of imported Cocoa Paste stock record. The loss of Cocoa Paste was explained by surveyor. During the course of audit, the respondent-company had intimated to the department that 50 MT of Cocoa Paste imported had been damaged in transit and the quantity lost stood written off and reduced from the material import record. The respondent purchased lost quantity of Coco Butter from the open market and exported the same for fulfillment of export obligation. While exporting locally procured Coco Butter, no benefit of rebate or duty draw back was claimed by the appellant. The said advance license was redeemed in terms of Para 4.26 of the HBP and the redemption letter dated 24.06.2011 along with no bond certificate was issued to the respondent. Pursuant to that the respondent requested the Deputy Commissioner of Customs, Ludhiana to cancel the bond. A show cause notice was issued to the respondent to explain, as to why bond No.41 dated 23.04.2007 furnished by them, should not be enforced for violating condition 5 thereof and duty should not be demanded along with interest and the quantity of one lakh kgs. of Cocoa Paste should not be confiscated and penalty is to be imposed on the ground that 50 MT of Coca Paste imported against bill of entry dated 26.04.2007 was lost. It was alleged in the show cause notice that 100 MT of Coco Butter paste (50 MT of each against the bill of entry dated 26.04.2007 and bill of entry dated 09.05.2007) were shown as lost without providing any basis for the same. As the imported goods were not used for manufacturing of the goods, which were to be

exported, therefore, duty was sought to be demanded. By way of impugned order, the demand of duty was confirmed on the ground that imported goods were not used in the manufacture of goods exported. Therefore, the respondent was liable to pay duty on the imported goods along with interest and it was ordered for confiscation of the Cocoa Paste imported by the appellant and redemption fine of Rs.75,00,000/- was imposed. Apart from this, penalty of Rs.25,00,000/- was also imposed. On appeal against the said order, the Commissioner (Appeals) reduced the redemption fine to Rs.35,00,000/-, but rest of the adjudication order was confirmed. The said order was challenged by the respondent before the Tribunal.

Before the Tribunal, learned counsel for the respondent had referred to the decisions given in *Titan Industries Limited vs. Additional Commissioner of Customs, Chennai*, 2003 (158) ELT 437 (Mad.), *Titan Medical Systems Pvt. Limited vs. CC, New Delhi*, 2003 (151) ELT 254, *Autolite (India) Limited vs. Union of India*, 2003 (157) ELT 13 (Bom.) and *FNS Agro Food Limited vs. CC (Prev.), Delhi*, 2016 (337) ELT 31.

The Tribunal, after hearing learned counsel for the parties and going through the appeal, held that 50 MT of Coco Butter was lost during transit from the port to the factory and this information was given to the department. But, the lost quantity had been replaced by the respondent by purchasing the Cocoa Paste from the local market to fulfill its export obligation. The respondent-assessee did not claim any rebate or draw back in respect of the locally procured Coco Butter. The advance authorization has been discharged by DGFT (licensing authority) as export obligation has been fulfilled by the respondent. Since the export obligation was fulfilled, it was not open for the Revenue to initiate proceedings against the respondent-assessee on the ground that it had not fulfilled the condition of the advance

authorization. Finally, the Tribunal has observed that once the export obligation has been discharged, the Customs Authorities could not initiate proceedings against the respondent. It was further held that the assessee had not violated any of the conditions of notification dated 10.09.2004. As per this notification, the assessee could not transfer or sell the imported goods. Since the assessee-respondent had discharged its export obligation and had redeemed its bond executed with the licensing authorities i.e. DGFT, the appeal was allowed and the impugned order was set aside.

Learned counsel for the appellant-Revenue has not been able to cite any judgment on the proposition that once the export obligation has been discharged and the assessee has redeemed its bond executed with the licensing authority i.e. DGFT, the Customs Authorities can initiate proceedings against such assessee. Moreover, it is not the case of the Revenue that there is violation of any of the conditions of notification No.93/2004-Cus dated 10.09.2004.

After going through the impugned order, no illegality, much less perversity has been found therein warranting interference by this Court. The impugned order has been passed after appreciating the evidence in the right perspective. No substantial question of law arises for consideration.

Resultantly, finding no merits, present appeal is dismissed.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

24.05.2023
ajp

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No