CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
New Delhi

PRINCIPAL BENCH – COURT NO.4

Customs Appeal No.50780 Of 2021

[Arising out of Order-in-Original No. 10/2021/MKS/Pr.Commr./ICD-Imp/TKD dated 25.03.2021 passed by the Commissioner of Customs, (Import), ICD, Tughlakabad, New Delhi]

Svam Toyal Packaging Industries Pvt. Ltd. : Appellant
A-3/62, Janakpuri, New Delhi-110058

Vs

Principal Commissioner of Customs (Import), ICD, Tughlakabad New Delhi : Respondent

APPEARANCE:
Ms. Priyanka Goel, Shri S. C. Jain and Shri Abhishek, Advocates for the Appellant
Shri S. K. Rahman, Authorized Representative for the Respondent

CORAM :
HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

FINAL ORDER No. 50341/2025

Date of Hearing:25.10.2024

Date of Decision:21.02.2025

HEMAMBIKA R. PRIYA

The present appeal has been filed by M/s Svam Toyal Packaging Industries Private Limited[1] to assail the Order-in-Original No. 10/2021/MKS/Pr.Commr./ICD-Imp/TKD dated 25.03.2021 wherein the Commissioner has confirmed the demand of Rs. 21,43,27,904/- along with interest and imposed penalty of Rs. 50,00,000/- has been demanded under Section 112 (a) (ii) of the Customs Act, 1962.

2. The brief facts of the case are that the appellant was engaged in the manufacture and export of Alu Foils used for the packaging

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1 **the appellant**

pharmaceutical products. The appellant obtained 8 Advance Authorisations ("AAs") from the DGFT, to import duty free certain inputs / raw materials including Aluminium Foil 50 MIC +- 10% ("impugned goods"), on the condition that the appellant fulfilled the export obligation of exporting "Alu/ Alu Foil (PVC 60 MIC/ OPA 25 MIC/ALU 50 MIC) +-10%" (export product).Using the said AAs, the appellant imported the impugned goods vide 45 Bills of Entry under the Notification No. 18/2015.The appellant imported the goods by classifying them under CTH 7607 19 91 of Customs Tariff. However, the department alleged that the appellant had wrongly classified the impugned goods under CTH7607 19 91 in order to match with the CTH provided in the Advance Authorizations. The department alleged that the imported goods were classifiable under CTH 7607 11 90 and not under CTH 7607 19 91 as the imported goods were classifiable under CTH 7607 11 90they were not eligible for the benefit under the Advance Authorisations. Consequently, the benefit of Notification No. 18/2015-Cus had been correctly availed by the appellant. Accordingly, the differential duty was demanded from the appellant vide the Show Cause Notice dated 28.09.2020. The impugned order confirmed the differential customs duty of Rs. 21,43,27,904/- along with interest and penalty of Rs. 50,00,000/- was imposed u/s 112(a)(ii) of the Customs Act, 1962.Aggrieved by the said order, the appellant has filed the present appeal.

3. Learned counsel for the appellant submitted that all the Advance Authorizations issued to the appellant, allowed duty free import of Aluminium Foil - 50 MIC +- 10%. There is no dispute regarding the fact that the goods imported by the appellant were Aluminium Foil 50

MIC+ 10% only. The only dispute relating to the Customs classification of the impugned goods. He contended that appellant has classified the same under CTH 7607 19 91, whereas the department sought to classify the same under CTH 7607 11 90. Consequently, as the AAs allowed duty free import of goods falling under CTH 7607 19 91, and the goods imported by the appellant fell under CTH7607 11 90, the benefit of theAdvance Authorization scheme was not available for these imports.

3.1. Learned counsel further submitted that the issue is no more res integra and has been decided in favour of the assessee in earlier several judicial precedents. It has been held in these cases that the customs tariff classification of the imported material is not at all relevant for the purpose of allowing exemption from customs duty where such imported materials were covered for import in the advance authorizations issued to the assessee. In this regard, ld. counsel relied upon the decision of the Tribunal in PSL Ltd. vs. Commissioner of Customs[2], wherein the Tribunal while hearing a batch of appeals, inter alia, had held that the classification of the imported materials was not at all relevant for the purpose of allowing exemption from customs duty against advance authorizations where such imported materials were covered for import in the AA issued to the appellants therein. Appeals by the Department against the said order in this case have been dismissed by the Supreme Court which have been reported as follows: -

- **Commissioner vs. Ratnamani Metals & Tubes Ltd[3]**

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2 2015 (328) E.L.T. 177 (T)
3 2016 (331) E.L.T. A45 (S.C.)

- **Commissioner vs. Man Industries India Ltd[4]**

Ld. Counsel submitted that the Hon'ble Supreme Court had also dismissed the Review Petition filed by the Department, which has been reported as **Commissioner vs. Ratnamani Metals & Tubes Ltd.[5]**He also relied on the decision of the Tribunal in **Condor Footwear (I) Ltd. vs. Commissioner of Customs[6]**wherein this Tribunal had held that the appellants were holders of Advance Authorization and it was not disputed that the description in the SION norms covers the goods imported by the appellants. Further, the Tribunal specifically observed that the SION Norms do not prescribe any heading against the description of the goods. The Tribunal held that on a perusal of the exemption notification issued for availing exemption under Advance Authorization Scheme i.e. Notification No. 93/2004-Cus. (similar to Notification No. 18/2015) also, it is clear that there is no mention of sub-heading or heading against the goods permitted for import under the Advance Authorization. In view of these judgements, the ld. counsel submitted that benefit of the advance authorization scheme (Notification No. 18/2015-Cus) should not be denied to the appellant on account of proposed change in customs tariff classification of the imported impugned goods.

3.2. Ld. Counsel stated that the DGFT office is the nodal authority for granting the Advance Authorization to the exporters and issues the same based on either the SION, Adhoc norms or self-declaration basis, and monitors the completion of export obligation by issuance of Export

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4 2016 (331) E.L.T. A90 (S.C.)

5 2016 (331) E.L.T. A89 (S.C.)

6 2019 (367) E.L.T. 653 (T)

Obligation Discharge Certificate ("EODC").In this regard, the DGFT vide Policy Circular No. 22 (RE-2008)/2004-2009 dated 18.07.2008 has clarified that classification of inputs provided in the Advance Authorization is only indicative and can be revised / corrected in the Advance Authorization, if the same is objected by the Customs authorities at the time of import. Thus, even in terms of this DGFT clarification, it is clear that classification indicated in the Advance Authorization is only indicative and as long the description of the goods matches with the item actually imported irrespective of the classification, the benefit of the advance authorization scheme should be extended to the importer concerned.

3.3 Ld. Counsel further submitted that Notification No. 18/2015-Cus exempts all materials required for the manufacture of the final goods when imported into India, from the whole of the duty of customs leviable thereon, subject to the conditions mentioned therein. The Advance Authorization Scheme read with Notification No. 18/2015 is available to "materials" imported against a valid Advance Authorization. On perusal of the definition of the term "materials", provided under Explanation (V) to Notification No. 18/2015, it is evident that the same is not based on the classification under the Customs Tariff Act and allows import of materials i.e. raw materials, components, intermediaries, etc. which are required for the manufacture of the resultant product. Therefore, the appellant has correctly availed the benefit of Notification No. 18/2015-Cus, and the same cannot be withdrawn merely on account of change in classification of the imported inputs. Alternatively, once the EODC has been issued no demand can sustain. Ld. Counsel placed reliance on the

judicial pronouncements wherein it was held that where export obligation had been fulfilled and EODC had been issued by the DGFT office, the Customs Authorities cannot deny the benefit of the notification to the imported materials:

- **Aditya Birla Nuvo Ltd. vs. Commissioner of Customs[7]**
- **Hindustan Lever Limited vs. Commissioner of Customs[8]**

Ld. Counsel further contended that out of eight Advance Authorizations, EODC has already been issued by the DGFT office in respect of seven Advance Authorizations. Further, for the remaining one Advance Authorization, the appellant had completed the export obligation and was in the process of obtaining the EODC. In view of the above judicial precedents, once EODC has been issued to the appellant, no demand can be raised by the customs authority in this regard. Advance Authorization No. 0510412322 dated 01.11.2019 and the Advance Authorization No. 0510413806 dated 06.03.2020 had been specifically amended to conclude CTH 76071190 specify that the said Advance Authorization allowed duty free import of impugned goods, Therefore, he submitted that once the DGFT office had amended the said Advance Authorizations, it cannot be said that the appellant had misclassified the goods to claim duty benefit under Notification No. 18/2015-Cus.Additionally, he submitted that once the Advance Authorization has been amended, the same will have retrospective effect. Theld. Counsel relied on the following judgements:-

- **Bhilwara Spinners Limited vs. UOI[9]**

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7 2010 (249) E.E.T. 273 (Tri. - Bang.)
8 2012 (281) E.L.T. 241 (Tri. - Mumbai)

- **Reliance Infrastructure Ltd. vs. Commissioner of Customs**[10]
- **Marmo Classic vs. Commissioner of Customs**[11]

Accordingly, demand of INR 8,18,72,464/- for imports, under Advance Authorization No. 0510412322 dated 01.11.2019 (INR 4,38,17,030/-) and for Advance Authorization No. 0510413806 dated 06.03.2020 (INR 3,80,55,434/-) is not sustainable.

3.5. Ld. Counsel also stated that the crucial difference between the competing entries, that is CTI 7607 1190 and 7607 1991 is that the former includes those goods which are rolled but not further worked upon and the latter covers those which are rolled but have also been further worked upon. In the instant case, the impugned goods go through a series of processes before importation that include, but are not limited to slitting, annealing and packaging. Since, the said goods are indeed worked upon, they are appropriately classifiable under CTI 7607 1991. The proposal of the department to re-classify them under CTI 7607 1190 is erroneous. Theld. Counsel prayed that the impugned order be set aside in entirety.

4. Learned Authorized Representative reiterated the findings in the impugned order and submitted that the supplier of the imported goods has neither mentioned that the goods supplied by them are "Plain, Aluminium foil" nor mentioned anywhere that the goods are covered by CTH 76061991. However, the description of goods as mentioned in the Flow Chart, COO Certificate, Bills of Landing, the imported goods were Aluminium Foil "Not backed-Roll, but not further worked" and as such appeared to be classifiable under CTH 76071190.The supplier's

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9 2011 (267) E.L.T. 49 (Bom.)
10 2017 (357) E.L.T. 865 (T)
11 2013 (290) E.L.T. 439 (T)

information given on the invoice and other documents also indicate that the applicable CTH is 7607 1190. The technical information about the goods of the same grade .e., 8021 O at various websites, including that of the main supplier and the classification of the same grade i.e. 8021 O is under CTH 7607 1190 in China. Between the two competing viz. CTH 76071190 and 76071991, the difference was whether the imported goods is further worked upon or not. The adjudicating authority had held that no process beyond annealing and slitting is carried on the imported goods by the appellant. Though annealing is a vital process after rolling to brighten the foil, remove the oil/ grease from the foil to make the surface soft, but it does not mean that only after annealing process, the foil takes the character of plain aluminium foil. HSN Explanatory notes given under 76 07 11 states that if annealing and sitting is done, it is still called „not worked upon“. Ld. AR further submitted that after the issue has been pointed out by Audit, the appellant began mentioning the description of the imported goods as given in the supplier's invoices. He also contended that the appellant thereafter avoided attaching the copy of country of origin certificate as supporting document with the subsequent Bills of Entry. However, Bills of lading attached with those Bills of Entry mention the same description and CTH as 7607 11 instead of 7607 19. The specifications of imported goods, as mentioned in the invoice attached with the subsequent Bills of entry, also has reference to 8021 O Alloy Temper HSN 7607 1190 from China.

4.1. Ld. AR contended the impugned goods have gone through the process of slitting annealing & packing, that by carrying out the set processes, the impugned goods were sterilised for use in

pharmaceutical packing and the adjudicating authority found that no process beyond annealing and slitting was being carried on the imported goods by them.

4.2 Ld. AR stated that the appellant was not eligible for benefit of exemption from Custom's Duty and Anti-Dumping Duty under Notification No. 18/2015-Cus dated 01.04.2015 against the Advance Authorizations. As per Condition no. 3 of the said Notification, the goods imported by the importer should correspond to the description and other specifications mentioned in the Authorization. In the present case, Ld. AR contended that the actual description of the imported goods and the classification was different from one mentioned in the Authorisation. The demand of duty covers Bills of Entry filed from 01.09.2018 to 14.09.2020 which is well within the period of 02 years limitation u/s 28 (1) of Customs Act, 1962. Non fulfilment of aforesaid condition has led to violation of the conditions of Notification read with policy provisions and therefore rendering goods so imported liable to confiscation under section 111 (o) of the Customs Act, 1962.Consequently, such acts of omission and commission by the appellant had rendered the imported goods liable to confiscation & penalty under section 112 (a) (ii) of the Customs Act, 1962. In support of his submission, ld. AR relied upon the following judgements:-

- **Commissioner of Customs (Import), Mumbai vs. Dilip Kumar & Company**[12]
- **Commissioner of Central Excise, New Delhi vs. Hari Chand Shri Gopal**[13]
- **Novopan India Limited s. Collector of Central Excise and Customs, Hyderabad**[14]

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12 2018 (361) ELT 577 (S.C.)
13 2010 (260) ELT 3 (S.C.)

- **Vikrant Overseas vs. Union of India[15]**
- **Vikrant Overseas vs. Union of India[16]**
- **Union of India vs. Haldia Bulk Terminal Private Limited[17]**
- **Union of India vs. Haldia Bulk Terminal Private Limited[18]**

5. We have heard the Ld. Counsel for the appellant, Ld. AR for the Department, and have perused the records.

6. The issue before is for decision is whether the goods imported by the appellant under AAs are permitted for duty free import under Advance Authorization Scheme. The admitted facts of the case are as follows:-

i) 8 AAs were issued for import of Aluminium Foil 50 Mic+/- 10% -

ii) Appellant is a regular importer of inputs Alu Foil and exported Alu/Alu Foil.

iii) EODC[19] issued for 7 AAs by the DGFT

iv) In respect of 2 AAs- classification of input was amended to include the classification as per Customs Tariff

7. It has been contended by Revenue that the imported goods are not classifiable under CTH 7607119 as they were „not worked upon" and the said goods had merely under gone annealing and shifting. Consequently, the impugned order has held that impugned goods were classifiable under CTH 76071190. Learned Counsel has submitted before us that this issue is no more res-integra as the court has held that customs tariff classification of imported materials is not relevant for allowing exemption from customs duty if the same are covered by the AAs issued to the assessee.

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14 1994 (73) ELT 769 (S.C.)
15 2000 (123) ELT 486 (P & H)
16 2002 (145) ELT A57 (S.C.)
17 2017 (350) ELT 210 (Cal.)
18 2017 (350) ELT A50 (S.C.)
19 Export Obligation Discharge Certificate

8. It is not disputed that the importer was issued Advance Authorizations for import of raw material viz. Aluminium Foil to Mic +/- 10% for export of Alu/Alu Foil (PVC 60 MIC/OPA 25), the final goods have been exported by the appellant and the competent authority i.e. DGFT has also issued the EODCs in this regard. It has to be appreciated that the DGFT functioning under the aegis of the Ministry of Commerce and Industry is responsible for formulating and implementing the Foreign Trade Policy for promoting India"s exports. The Advance Authorization Scheme is one such scheme under which the appellant has imported the raw material subsequent by exported the final products. We note that the Hon"ble Supreme Court in Zuari Industries Limited vs. Commissioner of Central Excise and Customs[20] held as follows:-

> "Firstly, on the facts we find that the assessee had given to the sponsoring Ministry its entire project report. In that report they had indicated that for the expansion of the fertilizer project they needed an extra item of capital goods, namely, 6 MW captive power plant. In their application, the assessee had made it clear that the fertilizer project was dependent on continuous flow of electricity, which could be provided by such captive power plant. Therefore, it was not open to the Revenue to reject the assessee's case for nil rate of duty on the said item, particularly when the certificate says so. In the judgment of this Court in Tullow India Operations Ltd. this Court held that essentiality certificate must be treated as a proof of fulfilment of the eligibility conditions by the importer for obtaining the benefit of the exemption notification. We may add that, the essentiality certificate is also a proof that an item like captive power plant in a given case could be treated as a capital goods for the fertilizer project. It would depend upon the facts of each case. If a project is

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20 2007 AIR SCW 7313

> to be installed in an area where there is shortage of electricity supply and if the project needs continuous flow of electricity and if that project is approved by the sponsoring Ministry saying that such supply is needed then the Revenue cannot go behind such certificate and deny the benefit of exemption from payment of duty or deny nil rate of duty."

Similarly, in Titan Medical Systems Private Limited vs. Collector of Customs, New Delhi[21], the Hon"ble Apex Court held as follows:-

> "12. As regards the contention that the appellants were not entitled to the benefit of the exemption notification as they had misrepresented to the licensing authority, it was fairly admitted that there was no requirement for issuance of a licence that an applicant set out the quantity or value of the indigenous components which would be used in the manufacture. Undoubtedly, while applying for a licence, the appellants set out the components they would use and their value. However, the value was only an estimate. It is not the respondents' case that the components were not used. The only case is that the value which had been indicated in the application was very large whereas what was actually spent was a paltry amount. To be, noted that the licensing authority has taken no steps to cancel the licence. The licensing authority has not claimed that there was any misrepresentation. Once an advance licence was issued and not questioned by the licensing authority, the Customs Authorities cannot refuse exemption on an allegation that there was misrepresentation. If there was any misrepresentation, it was for the licensing authority to take steps in that behalf."

Further, the authority and jurisdiction of customs authorities to delve into issues of classification was considered by Allahabad High Court in

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21 2003 (151) ELT 254 (S.C.)

PTC Industries Limited vs. Union of India & Others[22] pertinently observed:-

> "16. The scheme of the Customs Act, 1962 and the Foreign Trade (Development and Regulation) Act, 1992, provide that whereas the officers on the check-post or port and the point of entry and exit, have powers to prevent or detect the illegal exports of goods, and also confiscate the goods attempted to be improperly exported, which includes dutiable or prohibited goods, they do not have powers to question the classification of goods. If a dispute arises as to classification of the goods entitled for the DEPB, the powers for adjudication for penalty or confiscation, in the event of contravention of the provisions of the Foreign Trade (Development and Regulation) Act, 1992, or any Rules or order made thereunder, is with DGFT. Section 12 of the Act provides that powers to impose penalty or confiscation under section 11 of the Act does not prevent the imposition of any other punishment, under any other law for the time being in force. If a person is liable under any other law, which may include the Customs Act, 1962 for levy of penalty or confiscation, the same may be in addition to penalty or confiscation provided under section 11 of the Foreign Trade (Development and Regulation) Act, 1992 and is also in addition to the suspension or cancellation of the licence under the Act."

9. In this context, the Ld. Counsel relied on Tribunal"s Decision in the case of PSL Limited vs. Commissioner of Customs, Kandla[23]**.** The relevant paragraphs of the Tribunal"s order is reproduced hereinafter:-

> "**6.3 The next issue for consideration is whether once the licensing authority certified that export obligation has been fulfilled whether such certification is final and binding on the Customs authorities?** This issue came before this Tribunal in the case of *Navjyothi International* v. *Commissioner of Customs, Chennai*, cited supra. In that case the Revenue sought to deny the benefit of Customs duty exemption under Notification No. 30/97-Cus., dated 1-4-1997 and 51/2000-Cus., dated 27-4-2000 under DEEC scheme wherein the importer had undertaken imports under

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22 2009 AHC : 71256-DB
23 [2015 (328) ELT 177 (Tri-Ahmd.)]

seven quantity based advance licences issued by the DGFT and had fulfilled the export obligation. This Tribunal in that case held as follows :

"With regard to licence conditions, the licensing authority has certified full discharge of export obligation by the appellants. The adjudicating authority under the Foreign Trade (D&R) Act has found no violation of licence conditions on their part and its order has been accepted by the Revenue. Hence the Revenue cannot be seen to be critical of that order, nor can the DR be heard to argue against it. It goes without saying that the case law cited by ld. SDR cannot improve the Revenue's case or plight. The Revenue's allegation was that the appellants had violated conditions (vii) and (viii) of Notification 30/97 and similar conditions of Notification 51/2000. But, in this regard, the DGFT's order has taken the wind out of the Revenue's sails. In the result, the charge of breach of conditions of the Customs Notifications does not survive."

An identical view was held by this Tribunal in the case of *Bharath Steel Corporation* v. *Commissioner of Customs, Chennai*, and *Ashok Enterprises* v. *Commissioner of Customs, Chennai*, cited supra. A similar issue came up for consideration before this Tribunal in the case of *Kukar Sons (Indo-French) Exports Ltd.* v. *Commissioner of Customs, Jaipur*. In that case the Revenue alleged violation of conditions of Notification No. 204/92-Cus. by the appellants as they failed to realise the sale proceeds of exported goods. The DGFT, which is the competent authority in the matter of advance licences, had already redeemed the bank guarantee and legal undertaking furnished by the appellants after considering the fulfilment of export obligation by the assessee. This Tribunal held as follows :

"Once a bank guarantee and legal undertaking has been redeemed by the competent authority and no action is being taken by the competent authority, therefore, we find this finding is not sustainable in view of the decision of the Hon'ble Supreme Court in the case of *Titan Medical Systems Pvt. Ltd.* (supra). The Hon'ble Supreme Court held that once an advance licence was issued and not questioned by the licensing authority, the Custom authorities cannot refuse exemption on an allegation that there was any misrepresentation. If there was any misrepresentation, it was for the licensing authority to take steps in that behalf."

10. The *ratio decidendi* laid down in the above judgments applies to the facts of the present case. In the instant case also, the licensing authority viz. DGFT has accepted the fulfilment of export obligation and issued 7 Export Obligation Discharge Certificates to the appellant. The 8th was pending at the time of hearing. These EODCs discharge the appellants from any further export obligation. That being the

position, the Customs authorities cannot deny the benefit of Customs duty exemption under the notifications governing the Advance Licensing Scheme. The customs authorities, if had been of the opinion that the appellant had violated any of the terms and conditions of the licences, the matter should have been referred to the licensing authority for appropriate action rather than demanding duty in the inputs/raw materials.

11. In view of the above, we set aside the impugned order and allow the appeal.

(Order pronounced in the open Court on 21.02.2025)

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

G.Y.