

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

WEST ZONAL BENCH, MUMBAI

Customs Appeal No. 87733 of 2019

(Arising out of Order-in-Appeal No. 162 (CAC)/2019(JNCH)/Appeal-I dated 19.07.2019 passed by the Commissioner of Customs (Appeals), Mumbai-II.)

M/s Siba International
T-222, 2nd Floor, Gali No.-3,
Nawab Road, Sadar Bazar,
Delhi – 110 006

.....Appellant

VERSUS

Commissioner of Customs, Nhava Sheva-II
JNPT, Customs House,
Nhava Sheva, Raigad,
Maharashtra – 400 707

.....Respondent

APPERANCE:

Shri N.D. George, Advocate for the Appellant
Shri D.S. Maan, Dy. Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. A/85949 / 2022

Date of Hearing: 28.07.2022

Date of Decision: 14.10.2022

Confirmation of penalty by the Commissioner of Customs (Appeals), Mumbai-II at the reduced rate of Rs.15,00,000/- from Rs.20,00,000/- under Section 114 of the Customs Act for improper export of buffalo meat is assailed by the Appellant-Exporter in this appeal.

2. Facts of the case, in a nutshell, is that Appellant-Exporter Siba International was engaged in export of processed buffalo meat after procuring the same from M/s. Al-Azlan Frozen Foods, Moradabad (UP) an approved processing plant for export of boneless buffalo meat as a prescribed condition under Chapter 2 of Schedule 2 of the ITC (HS) Classification of Export and Import items requires the exporter to produce certificate from the designated veterinary authority as well as from the quality control and inspection authority, besides the facts that a declaration is required to be furnished with copies of authorised APEDA certificate to the effect that meat and meat products were sourced exclusively from APEDA registered meat processing plant M/s. Al-Azlan Frozen Foods was authorised by APEDA from 27.09.2012 to 31.03.2013 to process such meat for export and Appellant exported about 14862.737 MT of buffalo meat during that period. Departmental enquiry was conducted upon credible information. It revealed that processing capacity of M/s. Al-Azlan Frozen Foods, authorised by APEDA, was limited to 62 MT of meat per day and having regard to the period that covered total 185 days, it could at best have processed 11472 MT of buffalo meat against which 14862.737 MT was exported and drawback was received by the Appellant. It was, therefore, put to show-cause notice for exporting 3392.737 MT of meat in excess of its production capacity and to refund the drawback received alongwith interest and penalty under Section 114 for improper exportation of buffalo meat. Order-in-Original confirmed the demand but in the Order-in-Appeal, learned Commissioner (Appeals) had dropped the demand for return

of drawback on the ground that no provision exist in the Customs Act for such recovery but confirmed the penalty under Section 114 of the Customs Act by reducing it from Rs.20,00,000/- to Rs.15,00,000/-, with appropriation of the said amount which was deposited by the Appellant during investigation.

3. I have heard submissions from both the sides and perused the case record, written note of submissions, relevant provisions as well as relied upon case laws. At the outset, there is a requirement of reproduction of Chapter 2 of Schedule 2 of ITC (HS) classification of export and import items containing relevant restrictions. They are:-

"i On production of a certificate from the designated veterinary authority of the state from which the meat or offals emanate, to the effect that the meat or offals are from buffaloes not used for breeding and milching purpose;

ii Quality control and inspection under Note 3 and 4 respectively as well as conditions stipulated at Chapter Note 6 and 8 are required to be fulfilled."

Further, Note 6 of the said Chapter 2 of Export Policy reads:-

"Note-6 export of meat and meat products will be allowed subject to the exporter furnishing a declaration, attached with the copies of valid APEDA Plan Registration Certificates(s) to the customs at the time of export that the above items have been obtained / sourced from an APEDA registered integrated abattoir or from APEDA registered meat processing plant which sources raw materials exclusively from APEDA registered integrated abattoir / abattoir. The stipulation that raw material for export of meat and meat products must be sourced exclusively from APEDA registered abattoir / integrated abattoir will come into effect on 15.06.2012."

4. There is no dispute concerning compliance of the conditions (i) & (ii) but the Respondent-Department is of the opinion that since Note 6 contains a direction that export of meat and meat products must be sourced exclusively from APEDA approved plants and this M/s. Al-Azlan Frozen Foods could not produce more than 62 MT of frozen buffalo meat per day, there is improper export done by the Appellant. On perusal of the show-cause notice, the Order-in-Original and the Order-in-Appeal it would clearly indicate that they have referred to 'buffalo meat' and 'processed frozen buffalo meat' interchangeably at different places but consistently stated that M/s. Al-Azlan Frozen Food's production capacity of buffalo meat per day is 62 MT. However, going by the APEDA certificate of registration granted to M/s. Al-Azlan Frozen Foods, copy of which is annexed to appeal memo at page 23, the production capacity of this food processing unit M/s. Al-Azlan Frozen Foods was 62 MT of "frozen meat" per day and 40 MT of "chilled meat" per day and if both are taken together it would be consistent to the pleading of the Appellant reiterated in para 27 of the Order-in-Original. It reads:-

"27. Shri George N. D., Advocate vide letter dated 02.03.2015 filed defence reply on behalf of Notice M/s Siba International, wherein, they denied all the allegation made in SCN and inter-alia stated they were permitted to Process Chilled Meat 40 MT and Frozen Meat 62 MT therefore, the total quantity of meat processed could have been only 11470 MT is not correct as the said Calculation is on the basis of Frozen Meat. The Chilled, Meat has not been

considered. That being so the total Quantity available for export on the basis APEDA authorization was 18870 MT and the total Quantity exported is 14862.737 MT. Hence, there cannot be any Unlawful Processing or Export. Further, all the Exports were accompanied by Veterinary Health Certificate issued by the Government of India. There is no Mis declaration and / or any wilful Suppression. Therefore, there is no Unlawful Exports as alleged.

(Underlined to emphasise)

However, on scrutiny of the shipping bills and respective invoices, it is crystal clear that description of the goods in each shipping bills as mentioned in Table-A, was declared as "Frozen Boneless Buffalo Meat". Also, Shri Anees Ahmad common partner in both the firms M/s Al-Azlan Frozen Foods vide his statements had admitted that the quantity of 3392.737 MT buffalo meat was unlawfully exported, and they paid the amount of drawback availed on the impugned quantity of exported buffalo meat. Thus, I find that goods under export covered under shipping bills included in the subject Show-Cause Notice were 'Frozen Boneless Buffalo Meat'. Therefore, submission made by the noticee that the Chilled meat was not considered appears an afterthought and cannot be accepted at this juncture."

(Underlined to emphasise)

However, the ground of rejection of the said submissions, that could be inferred from the sub paragraph of para 27 is that in the shipping bills, goods were described as frozen boneless buffalo meat as per Table A perhaps annexed to the show-cause notice and reproduced in the Order-in-Original but not filed in the appeal memo. On the contrary, show-cause notice did not propose for any action concerning mis-declaration in the shipping bills or propose any penalty, for which discussion on the same is outside the purview of this appeal, besides the fact that not a single shipping bill is annexed to the show-cause notice to substantiate that description of goods

exported was different. Since nowhere during adjudication, the Appellant had ever averred that it had exported only frozen meat and as Note 6 has not kept the category of export of meats to frozen one only, there is no basis in the claim made by the Department. This being facts on record and having regard to the fact that Respondent-Department had not taken into consideration the entire production capacity of M/s. Al-Azlan Frozen Foods and confined it to 62 MT meat to presume such mis-declaration though it is only in respect of frozen buffalo meat only, imposition of penalty on the basis of mathematical variation is unsustainable in law and facts. Hence the order.

ORDER

6. The appeal is allowed and the order passed by the Commissioner of Customs (Appeals), Mumbai-II vide Order-in-Appeal No. 162 (CAC)/2019(JNCH)/Appeal-I dated 19.07.2019 to the extent of confirmation of penalty at a reduced rate of Rs.15,00,000/- is hereby set aside with consequential relief to the Appellant.

(Order pronounced in the open court on 14.10.2022)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

Prasad