

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/TAX APPEAL NO. 804 of 2023

=====

PR COMMISSIONER OF CUSTOMS
Versus
SANSTAR BIO POLYMERS LTD.

=====

Appearance:
MS HETVI H SANCHETI(5618) for the Appellant(s) No. 1

=====

CORAM:**HONOURABLE MR. JUSTICE BHARGAV D. KARIA**
and
HONOURABLE MR. JUSTICE NIRZAR S. DESAI

Date : 21/10/2026
ORDER

(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)

1. Heard learned Senior Standing Counsel
Ms. Hetvi Sancheti for the appellant.

2. This Appeal is filed under section 130
of the Customs Act, 1962 [for short
'the Act'] arising out of a common
Judgement and Order dated 07.12.2022
passed by the Customs, Excise and
Service Tax Appellate Tribunal, West
Zonal Bench, Ahmedabad [for short 'the

CESTAT'] in Custom Appeals No. 11219 and 11220 of 2018 proposing the following substantial questions of law:

"1. Whether in the facts and circumstances of the case and law, the Hon'ble Tribunal was right in the eyes of law, in setting aside the confiscation of Liquid Glucose under section 113(i) of the Customs Act, 1962, demand and order for recovery of customs duty forgone on inputs allowed to be imported along with appropriate interest, and penalty imposed under section 114(iii) of the Customs Act, 1962 upon the Respondent, even when the DFIA Authorizations were obtained by willful mis-statement and suppression of facts regarding inputs and correctly applicable SION entry?

2. Whether in the facts and circumstances of the case and law, the Hon'ble Tribunal was correct in the eyes of law, in holding that the exporters were eligible to claim benefit on import of any of the inputs under either of the entries - E22 and E76 as the export item essentially remained the same under both the entries?

3. Whether in the facts and circumstances of the case and law, the Hon'ble Tribunal was correct in the eyes of law, in holding that Starch (powder form) was the 'immediate parent material' and thus E22 was the correctly applicable SION entry, when Starch (powder form) was not a material appearing in the complete manufacturing process of Liquid Glucose?

4. Whether in the facts and circumstances of the case and law, the Hon'ble Tribunal was correct in the eyes of law, in holding that deletion of SION Entry 22 by DGFT necessarily shows that the exporters were eligible to claim inputs under either entries prior to such deletion?

5. Whether in the facts and circumstances of the case and law, the Hon'ble Tribunal was correct in the eyes of law, in holding that section 28AAA of the Customs Act, 1962 could not have been pressed into service by the customs authorities, when the DRI investigation pertained to willful mis-statement in the Shipping Bills presented under the Customs Act, 1962 that was used to obtain DFIA Authorization instruments from DGFT by transferee exporters?

3. Brief facts of the case are as under:

3.1 The respondent-Company was engaged in the manufacture of Starch, Modified Starch, Liquid Glucose, and allied corn-derived products, exported "*Liquid Glucose Concentrate (Food Grade)*" during the period February 2015 to July 2016. While exporting the subject goods, the Company claimed export benefits under the Duty Free Import Authorisation ("DFIA") Scheme by declaring import item as 'Maize (Corn) Starch' under Standard Input Output Norms ("SION") Entry E22 of the product group "Food Products" notified by the DGFT.

3.2 Based on the export shipping bills, the Regional Authority, DGFT, Ahmedabad, issued 07 DFIA Authorisations to the Company. These Authorisations were

subsequently transferred to various third parties who utilized it for duty-free imports. The said licenses remain valid and subsisting, having not been cancelled or suspended by the DGFT.

3.3 The Directorate of Revenue Intelligence ("DRI") conducted an investigation, including a Panchnama dated 02.09.2016 at the factory premises, and recorded statements of the General Manager (Plant) and Director under Section 108 of the Customs Act, 1962. The investigation revealed that:

- The manufacturing process was continuous wherein raw Maize was processed into Starch Slurry. A portion of the slurry was diverted directly to produce Liquid Glucose, while the remainder was dried into powdered Maize/Corn Starch.

- Powdered Maize/Corn Starch was never used as an input at any stage in the manufacture of Liquid Glucose.
- Central Excise (ER-1) returns showed no captive consumption of Maize/Corn Starch. Further, the product Description sheet did not reflect the use of Citric Acid or Ascorbic Acid—both co-inputs mandated under SION E22.
- The Revenue asserted that the appropriate input was raw "Maize" under SION Entry E76, rather than "Starch" under SION Entry E22.

3.4 On 30.12.2016, a Show Cause Notice was issued proposing recovery of customs duty foregone amounting to Rs. 4,09,01,859/- under Section 28AAA of the Customs Act, 1962, along with confiscation under Section 113(i) and

penalties under Section 114(iii) of the Act.

3.5 By Order-in-Original dated 31.01.2018, the Adjudicating Authority confirmed the duty demand, ordered confiscation, and imposed equivalent penalties on the Company, along with a personal penalty of Rs. 10,00,000/- on the Director.

3.6 Being aggrieved by the Order-in-Original, the assessee preferred an appeal before the CESTAT being Customs Appeal No. 11219 of 2014. The CESTAT, also disposed of the appeal in favour of the assessee along with Customs Appeal No. 11220 of 2018 filed by the Director of the assessee by observing as under:

"5.1 The main issue involved related to correctness or otherwise of classification of 'Maize (corn) Starch' declared by the appellant to customs for claiming export benefit under DFIA scheme. It can be seen from show cause notice and the impugned order that there is no dispute to the fact that the export item namely "liquid glucose concentrate (food grade)" was manufactured from using "starch slurry" which is essentially a "starch" albeit in slurry form. 'Starch' is a necessary input for manufacture of liquid glucose is evident even from the technical material relied upon by learned AR appearing for the Revenue and from the extract of book titled "Glucose Syrups", Technology and Applications of Peter Hull published by Wiley-Blackwell relied upon by the appellant. However, the case of the revenue is that since 'Starch' is manufactured out of "Maize" which is the base input, correct SION for the export item-liquid glucose is 'Maize' specified under SION Entry E76 and not 'Starch' specified under SION Entry E22 and that appellant has mis-classified

its product in order to claim undue benefit of DFIA Scheme. It is therefore necessary to peruse both the conflicting SION entries as reproduced in para 16 & 21 of show cause notice. On plain perusal of the competing entries, it is quite clear that export item Glucose in liquid form is a common export item specified under both the entries. It can be seen that E22 specifies glucose in both form, liquid (concentrate) form and powder form whereas E76 covers only liquid glucose. There is no dispute to the classification of export item in the present case. The dispute relates to import item-Input. One of the specified import items under E22 is "Starch" whereas "Maize" is the specified Import item under SION E76. Since undisputedly 'Starch slurry' is used as immediate input by the appellant in manufacturing of its export item-liquid glucose concentrate, it cannot be said that starch was not appellant's input for export item. Further 'Starch' is in turn manufactured from 'Malze' is also an undisputed fact and equally qualify to be the input for the aforesaid export

Item under E76. It can be seen that subsequent to the exports by the appellant, SION Entry E22 was deleted by DGFT upon recommendation of internal committee on the premise that E22 was being mis-used by the exporters. This goes on to show that earlier exporters were eligible to claim any of the inputs under the respective entries as export item-liquid glucose essentially remained the same under both the entries. The case of the department is that since 'starch' is more commercially viable input for Imports, appellant has purposely classified its product under E22. The said ground is of no consequence. It is settled law that when a claim of an applicant under a beneficial scheme or exemption notification, qualifies under two conflicting entries, for having opted for one which is more beneficial to him would not amount to mis-declaration. Reliance in this behalf is placed on the following judgements:

- Share Medical Care V. UOI - 2007 (209) ELT 321 (SC)

- CCE, Bhopal V. Minwool Rock Fibres Ltd - 2012 (278) ELT 581 (SC)

5.2 Further it can be seen that definition of raw material under the Foreign Trade Policy, 2015-2020, para 9.44 which includes inputs in a manufactured state as also the definition of 'material' under exemption notification no. 98/2009-cus and 19/2015-cus includes intermediate required for manufacture of resultant products. It is significant that DGFT who issued licenses has also after due verification granted the licence have accepted the said position. The only conclusion is 'Starch' a specified import item declared by the appellant as 'Maize (Corn) Starch' is correctly classifiable under SION E22 even when 'Maize' is the base input used in manufacture of liquid glucose and is a specified input under SION E76. It can be seen that maize may be the original material used at the beginning of the manufacturing process but the input for manufacturing of liquid glucose concentrate was that one which was

used directly for manufacturing export product. For export and also for exemption for goods manufactured in India a concept of immediate parentage is well recognized and accordingly the immediate parent material was relevant to decide which input was used for manufacture of the exported goods. In the present case, the immediate parent material was starch slurry i.e. 'starch' and 'not maize' and therefore case of the department that SION E76 was the correct norm cannot be sustained. Since the immediate parent material for manufacturing the exported goods was starch falling under SION E22, it is clear that the 'Starch' was the correctly applicable SION. Reliance in this behalf is placed on the following decisions:

Commissioner of Customs, Bombay V. Jayana Packaging Pvt Ltd 2000 (122) ELT 150,

Collector of Customs, Bombay V. Vijay Flexible Containers Pvt Ltd 1996 (87) ELT 744,

Dhruvco Printers Pvt Ltd - 1996
(85) ELT 62,

Considering the ratio of the above decisions of Tribunal, denying the benefit under DFIA on the ground that 'Starch' is not the original input and that 'Maize' is the original input which alone is eligible for the benefit of DFIA is bereft of any legal basis."

4. With regard to the jurisdiction of the Customs Department to demand duty from the appellant by invoking section 28AAA of the Act, the CESTAT, while referring to the licenses issued under the DFIA Scheme, relied upon the decision of the Co-ordinate Bench in case of **Axiom Cordages Ltd vs. Commissioner of Customs, Nhava Sheva-II** reported in 2020 (9) TMI478-CESTAT and held as under:

"5.4 In the decision of Tribunal in the case of Axiom Cordages Ltd supra following the aforesaid judgement of

the Hon'ble Supreme Court it has been held that provisions contained under section 28AAA of the Act for recovery of duties are applicable only in the eventuality where an instrument issued to a person has been obtained by him by means of 'collusion'; or 'wilful mis-statement' or 'suppression of facts' and that in absence of any material available on record to prove that competent licensing authority under the Foreign Trade Policy has initiated any proceedings against the appellant alleging acquisition of the license in fraudulent manner, section 28AAA cannot be invoked. It has been further held that the allegation with regard to benefit under the scheme wrongly availed by the appellant does not have an independent nexus to the Customs Act, 1962 as such scheme for export benefits are dealt with under the Foreign Trade Policy (2015-2020) and Foreign Trade (Development & Regulation) Act, 1992. Thus, the administration of such schemes squarely falls within the jurisdiction of the office of the DGFT and 'not the customs authorities. The division of exercise of authority between the DGFT and Customs authorities is well recognized judicially and should be respected to prevent abuse of due process of law.

5.5 It has been further held in the said decision of Axiom Cordages Ltd that when the assessment of shipping bills filed by the appellant has attained finality as department has not filed appeal against the same under section 128 of the Act; classification of goods cannot be questioned subsequently by the customs by way of issuance of show cause notice."

5. Learned Senior Standing Counsel Ms. Hetvi Sancheti for the appellant submitted that the Hon'ble Tribunal erred in relying on old precedents without considering Condition (iii) of Notification No. 19/2015-Cus, Condition (i) of Notification No. 98/2009-Cus, and Para 4.1.15 of FTP, which strictly require that duty-free imported inputs must match the materials actually used in the export product. It is submitted, at the outset, that the classification dispute in the present case does not turn merely on the "immediate

parent material doctrine developed in the context of generic, value-based DEEC norms. It was submitted that reliance placed on following decisions:

(i) Commissioner of Customs, Bombay v. Jayana Packaging Pvt. Ltd., 2000 (122) ELT 150;

(ii) Collector of Customs, Bombay v. Vijay Flexible Containers Ltd., 1996 (87) ELT 744; and

(iii) Dhruvco Printers Pvt. Ltd., 1996 (85) ELT 62

all of which pre-date the specific conditions now embodied in the exemption Notifications governing the DFIA Scheme.

5.1 It was submitted that the CESTAT's exclusive reliance on this line of authority, without reference to the

express conditions of Notification No. 98/2009-Customs and Notification No. 19/2015-Customs, is nothing but error of law going to the root of the Impugned Order.

5.2. It was submitted that Notification No. 19/2015-Customs dated 01.04.2015, condition (iii), which governs the exports made on or after 01.04.2015, expressly requires that where the resultant product requires inputs of the kind specified in paragraph 4.30 of the Foreign Trade Policy, the material permitted to be imported shall be "of the same quality, technical characteristics and specifications as the materials used in the said resultant product," and further requires the exporter to declare these particulars of materials used in the

Shipping Bill. An identical requirement, in near-identical language, is found in condition (i) of the earlier Notification No. 98/2009-Customs dated 11.09.2009, applicable to exports made prior to 01.04.2015. It was further submitted that Paragraph 4.1.15 of the Foreign Trade Policy 2009-2014 inserted by Notification No. 31(RE-2013)/2009-2014 dated 01.08.2013, and in force throughout the export period in question reinforces this requirement as (February 2015 to July 2016) follows:

"Wherever SION permits use of either (a) a generic input or (b) alternative inputs, unless the name of the specific input(s) (which has (have) been used in manufacturing the export product) gets indicated / endorsed in the relevant shipping bill and these inputs, so endorsed, match the description in the relevant bill of entry, the concerned Authorisation will not be

redeemed."

The "Effect of this Notification," as recorded by the DGFT itself, is stated to be: "Inputs actually used in manufacture of the export product should only be imported under the authorisation. Similarly inputs actually imported must be used in the export product. This has to be established in respect of every Advance Authorisation /DFIA."

5.3 It was therefore submitted that even accepting, for the sake of argument, the finding of the CESTAT that Starch Slurry and Starch are not chemically distinct, the exemption Notifications and paragraph 4.1.15 of the Foreign Trade Policy do not turn on chemical identity at large they require identity between (a) the material

actually used in manufacture, and (b) the material of the specific name, description, quality, technical characteristics and specifications declared in the Shipping Bill and sought to be imported as per the Panchnama dated 02.09.2016 and the statement of Shri Sambhav Chowdhary dated 19.09.2016 as under:

(a) Starch Slurry, and not powdered Maize/Corn Starch, was the material used in manufacture of Liquid Glucose;

(b) powdered Maize/Corn Starch is manufactured in a distinct plant (the 'Starch Plant'), through a distinct process of centrifuging and flash-drying, from Starch Slurry, which is used directly, without further processing, in the Liquid Glucose Plant; and

(c) is "not Shri Sambhav Chowdhary himself confirmed that reconstituting Starch powder into slurry economically/commercially viable"

establishing, in terms, that the two are not interchangeable, fungible, or the "same material" for the purposes of the Notification conditions.

5.4 It was submitted that powdered Maize/Corn Starch (CETH 11081200) the material declared in the Shipping Bills, sought to be imported free of duty, and in fact transferred to and imported by third-party transferees under the 07 DFIA Authorisations was, on the Respondent's own admitted facts, never the material "actually used" within the meaning of condition (iii) of Notification No. 19/2015-Customs, condition (i) of Notification No. 98/2009-Customs, and paragraph 4.1.15 of the Foreign Trade Policy. This is not a question of chemical nomenclature or "immediate parentage" at large, but a distinct and

independent condition of the exemption Notifications themselves, breach of which disentitles the Respondent to the benefit claimed regardless of how the SION E22/E76 classification dispute is ultimately resolved.

5.5 It was further submitted that SION E22 required, as co-inputs, Citric Acid and Ascorbic Acid neither of which was used by the Respondent, as admitted by Shri Sambhav Chowdhary in his statement dated 19.09.2016. The Impugned Order does not deal with this aspect at all, notwithstanding that it goes directly to whether the exported product qualified for the benefit claimed under SION E22 on its own terms.

5.6 It was submitted that as per the Panchnama and statement under Section 108 of the Customs Act, the Respondent actually used Starch Slurry and not Powdered Maize Starch (which is not commercially viable to reconstitute), thereby violating the statutory conditions of the exemption notifications irrespective of chemical identity.

5.7 It was further submitted that mandatory co-inputs under SION E22 (Citric Acid & Ascorbic Acid) were also admittedly not used by the Respondent.

5.8 Learned Senior Standing Counsel Ms. Sancheti submitted that Section 28AAA(1) explicitly empowers Customs to recover duty from the original holder where DFIA instruments obtained by mis-

statement/suppression are transferred and utilised by third parties.

5.9 It was submitted that reliance on *Titan Medical Systems* is misplaced as Section 28AAA was inserted in 2012 specifically to grant independent recovery powers to Customs under Section 28AAA(3) without requiring prior cancellation of DFIA by DGFT.

5.10 It was further submitted that the legal issue in case of *Axiom Cordages Ltd (supra)* regarding Section 28AAA is currently pending before the Hon'ble Supreme Court in Civil Appeal No. 1230 of 2023.

5.11 It was submitted that once willful mis-declaration of inputs in

Shipping Bills is established, confiscation under Section 113(i) and penalty under Section 114(iii) of the Customs Act, 1962, are legally sustainable.

5.12 It was therefore prayed that the impugned Order passed by the CESTAT be set aside and the present Appeal be allowed.

6. Considering the facts of the case as well as the findings of the CESTAT and the contentions raised on behalf of the appellant, the only short question which arises is as to whether the classification of 'maize starch' declared by the Customs for claiming export benefits under the DFIA Scheme is proper or not? There is no dispute about the fact that the export item viz. 'liquid glucose concentrate

(food grade)' is manufactured using 'starch slurry', which is essentially a starch in slurry form. That 'Starch' is a necessary input for the manufacture of liquid glucose is not in dispute as per the material placed on record before the CESTAT.

7. As liquid glucose is manufactured out of starch slurry which is the base input, hence, the correct SION entry for the export item 'liquid glucose' is starch as per Entry No. E22 and not SION Entry E76. Considering the Entry No.E22, it specifies glucose in both forms-liquid concentrate form and powder form; whereas Entry E76 covers only liquid glucose.

8. Therefore, the CESTAT has rightly concluded that the correct SION Entry is

E22 and since starch slurry is used as an immediate input by the assessee in manufacturing of the export item i.e. liquid concentrate, it cannot be said that starch was not an input for the export item.

9. Since the Entry E22 was deleted by the DGFT upon recommendation of the internal committee on the premise that E22 was being misused by the exporters, the CESTAT was justified in holding that when the maize is the base input used in manufacture of liquid glucose in terms of specified input under SION E76, which is the only the correct entry, was rightly not sustained, as immediate parent material for manufacture of export goods was starch falling under SION Entry E22 and denying the benefit under the DFIA

scheme on the ground that starch is not original input and that maize is the original input, which alone would be eligible for the benefit of DFIA, was rightly held to be not sustainable.

10. The Hon'ble Apex Court in case of Commissioner of Customs, **Nhava Sheva-II vs Bharat Rasayan Ltd reported in (2025) 29 Centrax 2 (S.C)**, while considering the issue of MEIS scrips, in relation to the controversy with regard to classification of goods which had earlier been examined and decided by DGFT to the effect that the goods Lambda-cyhalothrin Technical be classified under heading CTH 3808 91 99, and thereupon, it had issued merchandise MEIS scrip, the Hon'ble Apex Court did not interfere in such classification. Applying

the same ratio to the facts of the case, where the DFIA licenses were issued by the competent authority of DGFT are valid and subsisting and no further proceedings for cancellation or suspension of such licenses have been initiated by the DGFT, the appellant could not have invoked the provision of Section 28AAA of the Act inasmuch as the DGFT which is the proper authority to determine classification of goods under the DFIA claims, has not disputed and has accepted the classification of import item under SION Entry E22.

11. The CESTAT has, therefore, rightly come to the conclusion that the assessee has rightly classified its product under SION Entry E22. In such circumstances, the Revenue authorities were not justified in

invoking the provisions of Section 113(i) read with Section 114(iii) of the Act, in view of the findings of fact recorded by the CESTAT that there was no willful misstatement or suppression of facts for obtaining the DFIA authorizations regarding inputs which were classified under SION Entry E22 by the assessee.

12. In view of the findings of fact recorded by the CESTAT, the assessee was justified in claiming the benefit of import of inputs under Entry No.E22 and not E76, as the export item essentially remained the same under both the entries because the starch in powder form was the immediate parent material, and accordingly, the SION Entry E22 was correctly applicable when starch was used in a slurry form for the

export product manufactured by the assessee.

13. In view of the findings of fact recorded by the CESTAT, and in view of the dismissal of the Civil Appeal in case of Bharat Rasayan Ltd (supra) by the Hon'ble Apex Court, keeping the issue with regard to the power and jurisdiction of the Customs authorities open in the facts of the said case, we are of the opinion that no question of law, much less any substantial question of law, arises from the impugned order of the CESTAT.

The Appeal is accordingly dismissed.

(BHARGAV D. KARIA, J)

(NIRZAR S. DESAI, J)

JYOTI V. JANI