CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD
REGIONAL BENCH - COURT NO. – I

Customs Appeal No. 30081 of 2024
(Arising out of **Order-in-Appeal** No.HYD-CUS-HYC-APP1-086-23-24 dated 09.11.2023 passed by Commissioner of Customs & Central Tax, Appeals-I, Hyderabad)

Principal Commissioner of Customs Hyderabad .. **APPELLANT**
Kendriya Shulk Bhavan,
L.B. Stadium Road,
Basheerbagh, Hyderabad,
Telangana – 500 004.

VERSUS

M/s Olectra Greentech Ltd., .. **RESPONDENT**
S-22, 3rd Floor,
Technocrats Industrial Estate,
Phase-1, Balanagar,
Hyderabad,
Telangana – 500 037.

APPEARANCE:
Shri Sandeep Kumar Payal, Authorised Representative for the Appellant.
Shri J.C. Patel, Advocate for the Respondent.

CORAM: HON'BLE Mr. SOMESH ARORA, MEMBER (JUDICIAL)
HON'BLE Mr. A.K. JYOTISHI, MEMBER (TECHNICAL)

FINAL ORDER No. A/30316/2024

Date of Hearing:14.06.2024
Date of Decision:14.06.2024

[ORDER PER: SOMESH ARORA]

In the instant case, the dispute is whether Lithium Ion Battery imported by the Respondent is covered by the description of import item "Automative Battery" so as to allow to them under Transferrable DFIA License purchased by the Respondent which was issued under SION C-969 against export of "Agriculture Tractor" and consequently entitled to duty exemption under Notification No. 25/2023-CUS dated 01.04.2023.

2. Learned Advocate points out that neither the item nor the issue is such that needs detailed deliberations at this point of time and including of Lithium Ion Battery for electrical vehicle which are in their favour and which has permitted such clearances under DFIA scheme as per the clarifications

issued by the DGFT, based on expert opinion from IIT etc. Therefore, he particularly seeks to rely upon Final Order No. A/12075/2023 Dated 20.09.2023 in the case of K S Enterprises Vs CCE. In which it was found out through various case law including of High Courts as well as Co-ordinate Benches of this Tribunal that to get cleared under DFIA Scheme only - broad categorisation is required based on the test of "capability of being used". And beyond this evidence was shown from expert opinion that can be used as other imported items then the same is entitled to exemption since exemption notification itself is an export notification and is therefore liable to be interpreted liberally. He particularly seeks to rely on para 2.6 to 3.5 of the above said order of K. S. Enterprises (cited supra) which has dealt with various case laws including of High Court and orders of various Benches of this Tribunal:

Para "2.6 He further emphasizes that exemption notification are required to be strictly construed and also in case of any ambiguity in language, the benefit must go to Revenue. He seeks support of matter reported in 2018 (361) ELT 577 (S.C) in C.C (Import) Mumbai Vs. Dilip Kumar & Company.

2.7 It is submitted that the issue is no longer res integra and the same are decided in favour of the appellants in identical cases by relying upon the following decisions of this Tribunal as well as Hon'ble High Courts. The appellant further relies upon the Technical Opinion dated 31.03.2023 opined by IIT, Kharagpur on EV Batteries.

(i) The Hon'ble Bombay High Court (Nagpur Bench) in its order and judgement dated 29.03.2019 in the case of Shah Nanji Nagsi Exports Pvt. Ltd., Vs. UOI reported in 2019 (367) ELT 335 (Bom) .

(ii) The Order & Judgement dated 07.11.2022 passed by the Hon'ble Tripura High Court concurring by the the Judgement and order passed by the Hon'ble Allahabad High Court in the case of Sachin Pandey Vs. UOI.

(iii) The Hon'ble Appellate Tribunal (Ahmedbad) reported 2022(381) ELT 810 (Tri-Ahd) in the case of Unibourne Food Ingredients LLP Vs. Commissioner of Customs, Mundra ,

(iv) Hon'ble Appellate Tribunal in the case of Pace Ventures Pvt. Ltd., Vs. Commissioner of Customs, Ahemdabad vide Final Order No. 1/11615/2019 dated 30.08.2019.

(v) Technical Opinion of IIT, Karagpur on EV battery dated 31.03.2023 has opined that EV Batteries (EV) are 'Automotive Batteries used in Buses/Cars are also capable of being used in Agricultural Tractors after suitable technical Modification.

2.8 It is submitted that the product description mentioned in the DFIA under Serial No.2 is 'Automotive Battery' is a specific term and therefore the provision of Para 4.12(i) has no application. Similarly it is submitted that against the relevant product description of 'Automotive Battery' a single quantity is mentioned in all the DFIA's in question. Therefore Para 4.12 (ii) of FTP is totally inapplicable in the present case.

2.9 It is submitted that Lithium Ion Cell are covered by the description of 'Automotive Battery'. The import documents viz., Invoice copy, Packing List 17 C/10601/2023-DB and Bill of Lading clearly mentions that Lithium ion cells are used as EV application battery. It is settled law that the term used 'Materials' required for manufacture of export products would also cover such entities which are not only directly used or usable as such in the manufacturing process but also which could be used with some processing" inter alia held by Hon'ble Supreme Court in the case of Commissioner of Customs Cal Vs. G.C.Jain 2011(269) ELT 307 (SC) .

2.10 Following the ratio of judgement of Hon'ble Supreme Court in the case of Commissioner of Customs , Kolkotta Vs. G.C. Jain and followed by this Tribunal in the case of Unibourne Food Ingredients LLP Vs. Commissioner of Customs , Mundra reported 2022(381) ELT 810 (Tri- Ahd) the term 'Materials' used in Notification No. 19 of 2015 are "raw material, components, intermediates, consumables, catalysts and parts which are required for manufacture of resultant product " are identically worded notification as referred in the Hon'ble Supreme Court judgement

2.11 It is submitted that the Technical Opinion dated 31.03.2023 of IIT, Kharagpur that EV batteries are typically made up of multiple rechargeable lithium-ion cells connected together to form battery pack. It is opined that Electric batteries (EV) are "Automotive Batteries' used in Buses/Cars etc are also capable of being used in Agricultural Tractors after suitable technical modification.

2.12 The technical opinion of IIT Kharagpur clearly supports the case of the appellant. This Tribunal in the case of VKC Nuts Pvt., Ltd., Vs. CC, Jamnagar vide Final Order No. A/11365/2020 dated 08.12.2020 has held that "Expert Technical Opiniongiven by technical qualified person from a reputed institute like IIT cannot be brushed aside unless such technical opinion is displaced by specific and cogent evidence. The respondents has not provided cogent evidence to show on the contrary in the instant case. The Hon.ble Gujarat High Court in the case of Inter-Continental (India) Vs. Union of India , reported in 2003(154) ELT 0037(Guj.) is squarely covered in the present case".

2.13 It is submitted that there is no actual user condition existing under DFIA Scheme as held by the Hon'ble Bombay High Court in the case of Shah Nanji Nagsi Exports Pvt. Ltd., Vs. UOI. The ratio of the said judgement has been followed by this Tribunal in the case of Unibourne Food Ingredients.

2.14 As regards the mismatch of ITC (HS) Numbers of goods under import and ITC (HS) Number mentioned in the DFIA, as held by this Hon'ble Appellate Tribunal in the case of Unibourne Food Ingredients LLP Vs. Commissioner of Customs , Mundra reported 2022(381) ELT 810 (Tri- Ahd) under Para 14 which is reproduced below:- "…….. That for claiming DFIA benefit, under Notification No. 19 of 2015, the appellant is only required to satisfy the description, value and quantity mentioned in the DFIA. The imported goods are covered within the description, value and quantity of the DFIA. Therefore the submission that the appellant has not satisfied with the conditions of Notification is not correct. There is no such condition either in the policy or in the procedure or in the Notification No. 19 of 2015 which stipulates that ITC (HS) No. is a criteria for claiming DFIA benefits as held by this Tribunal in the case of USMS Saffron Co. Inc. v. Commissioner of Customs, ACC, Mumbai vide Final Order No. A/3627/15/CB, dated 30-9-2015 [2016 (331) E.L.T. 155 (Tri. - Mum.)]." ….

2.15 It is further submitted that the Automotive Battery being not a sensitive item specified under Para 4.30 of FTP., it is not required to give a declaration of the technical specification, quality and characteristics of inputs used in the resultant product. The Central Board of Excise & Customs vide Circular No. 46 of 2007 and DGFT Policy Circular No./ 50 of 2008 has clarified the above position of law.

2.16 It is submitted that the vide DGFT Policy Circular No. 72 dated 24.03.2009, flexibility is granted to import alternative inputs either used in the export product or are capable of using in the export goods. The appellant relies upon the following judgements:- Commissioner of Customs (Export), Nhavasheva Vs. Sparkling Traders• Pvt. Ltd., - 2019 (368) ELT 962 (Tri-Mumbai). Final Order No. A/10255/2022 dated 17.03.2022 passed by the Hon'ble• Appellate Tribunal (Ahmedabad) in the case of Unibourne Food Ingredients LLP Vs. Commissioner of Customs, Mundra. Sachin Pandey Vs. UOI – 2020(371) ELT 34 (All.) .•

2.17 It is submitted that the Hon'ble High Court (Allahabad) in the case of Sachin Pandey Vs. UOI , under Para 16, it was inter alia held that " We see no reason to take a different view to take away the benefits otherwise available under DFIA Scheme under the Foreign Trade Policy, whether 2009-14 or 2015- 20, merely satisfy the petitioner. According to us the aforesaid judgements of the Punjab & Haryana High Court and Bombay High Court still hold the field, so far as permitting duty-free imports under DFIA are concerned. The contention of the petitioner that duty free import of any goods under DFIA cannot be permitted unless each of the above mentioned 'three essential conditions' are satisfied, clearly runes counter to the above judgements which are binding on authorities. Neither the officers of the respondents can be proceeded against the following such binding precedents nor can the exporters or importers be subjected to any onerous conditions, declarations, bond or undertaking contrary to these binding precedents, which if taken would be non est".

2.18 The Hon' High Court rejected the argument of the petitioner that duty free import of any goods under Transferable DFIA cannot be permitted unless each of the following 'three essential conditions' are satisfied:- (a) The technical specification/quality and characteristics of the imported goods are specifically declared in the shipping bills by the exporter; (b) The imported goods are actually used as inputs in manufacture of export product, and (c) The imported goods are not merely alternative inputs or goods capable of using the export product.

2.19 It is submitted vide its Order and Judgement dated 07.11.2022 , the Hon'ble Tripura High Court inter alia held that under custom notification no. 19 of 2015 that the importability of actually used input under Transferable DFIA , would only apply in those cases where the imported goods are used in the resultant product. In the present case, the inputs used are domestically procured for manufacturing resultant product which is exported. Therefore it is not necessary for a Transferee importer to import only those inputs which are actually used in exported goods.

2.20 There is no Actual user condition mentioned against any of the inputs mentioned in the aforementioned DFIA's. It is submitted that as per provision of Para 4.27 (iv) of FTP- 2015-2020 it is inter alia stipulated that no DFIA shall be issued for an input which is subjected to pre-import condition or where SION specifies AU condition.

2.21 As long as the imported goods are covered under the description, quantity and within the CIF value of the DFIA, there is no restriction to claim DFIA benefits under Notification No. 19 of 2015.

2.22 In view of the above and following the ratio of judgements which are identical to the present case, the imported goods 'EV Ion cells' and/or 'EV Batteries' are covered by the description of 'Automotive Battery' mentioned in the DFIA and are eligible from claiming Exemption from payment of Customs Duty under Notification No. 19 of 2015 and the decision of the lower authority to deny the benefits under the said notification is not correct and legal.

2.23 It is submitted that lower authorities may be directed to issue a certificate for the purpose of revalidation in terms of provision of Para 2.20 of Hand Book as held by this Hon'ble Tribunal in the case of Pushpanjali Floriculture Ltd., Vs. Commissioner of Customs, Nhavasheva – 2015 (327) ELT 0077 (Tri-Mum).

3. Considered contrarian submissions made by both the parties. At the heart of the issue is the controversy emanating from Lithium Ion Cells not having been specifically used in export goods under paras 4.12 (i) (ii) of Foreign Trade Policy. Party had exported automotive batteries classifiable under Tariff Heading 85071000, as against Lithium Ion Cells being classified under Tariff Heading 85076000, being the import item. The party has relied upon various judgments, some of which were considered and distinguished by the Commissioner below. The party has relied upon such decisions to plead that issue is no more res integra and has been decided in their

favour by Tribunal as well as various Hon'ble High Courts and they had also relied on technical opinion dated 31.03.2023 of an expert from IIT- Kharangpur that lithium batteries being imported by them were EV batteries, and therefore capable of being used in tractors. Also product literature form various websites was produced before Commissioner (Appeals) who simply rejected the same by one liner that there was a declaration by them on record that batteries imported is used in electronic products only.

3.1 The department on the other hand also seeks to deny benefit of DFIA Scheme to the appellants on the ground that custom Notification No. 19/2015 Customs dated 01.04.2015 dealing with the scheme does not permit benefit of Lithium Ion Cells against description of automotive batteries for use in tractors as a material permitted to be imported under Foreign Trade policy shall be of specific names description or quantity respectively as a material use in export of resultant product. Regarding the placement of reliance by Learned AR on the decision of Hon'ble Supreme Court in the matter of C.C Mumbai Vs. M/s.Dilip Kumar & Company as reported in 2018 (361) ELT 577 (S.C). We find that there is no ambiguity in the notification of which the benefit could be given to the department while interpreting the same. The department was initially of the view that Lithium Ion battery has not been shown to have been used in exported tractors and that party not having done so was disentitled from the benefit of exemption notification which are construable strictly. We find that generally exemption notification is to be construed strictly but exemption notification dealing with export benefit schemes are liable to be liberally construed. Further a notification at threshold while deciding applicability is required to be liberally construed, same after the applicability threshold is passed, is liable to be construed strictly as a matter of interpretation.

3.2 We find that the decision of M/s. Dilip Kumar & Company sought to be relied upon by the department can be pressed into use only when there is ambiguity in the language of the notification. In the instant case no such ambiguity has been brought on record by the department, which can be interpreted in their favour. Therefore, the reliance on M/s. Dilip Kumar & Company by the department is rather mis -placed. To the contrary after having discussed various case law cited by the appellant, Commissioner (Appeals) has denied benefit only on the ground and by playing on the words "used in electronics only" in B/E, despite appellants agitating through out with opinions and literature that impugned batteries were automotive and capable of use in E.V tractors. A substantive benefit in any case cannot be denied on such ground, specially when it is known that EV tractors use various chip based and lithium based sub assemblies of electronics. Leaned Advocate for the appellant emphasised that under DFR Scheme there is no prescription of actual user condition nor is one to one co-relation between the product exported and the product imported is required, and this is the uniqueness of the scheme. It was also pointed out by the learned Advocate and we agree with the proposition that impugned Customs Notification No. 19/2015 was under challenge and that the Hon'ble Allahabad High Court in Sachine Pandey case (cited supra) upheld non-correlation as one the feature of the DFIA Scheme.

3.3 We further find that in various decisions reported by either side that it is the possibility of use of product against the product exported which has been considered, as criteria for permitting import of product. In Commissioner of Customs (export), Nhavasheva V/s. Sparkling Traders Pvt Ltd. as reported in 2019 (368) ELT 961 (Tri.-Mum) ascorbic acid having multiple applications in pharmaceutical formulation food product etc, was allowed as “corrosion inhibitor”. The expert opinion was considered sufficient in this regard to allow the benefit of exemption Notification No. 40/2006-customs pertaining DFI Scheme. It was also pointed out in the course of the decision that importer need not to prove nexus between imported goods and input used in export product so long as imported product was capable of being used under description of license. Actual use in export product was also considered as relevant and it sufficed if capability of being used by the product imported existed. Further in Unibourne Food Ingredients LLP delivered vide Final Order No. A/10255/2022 decided on 17.03.022 this Bench while dealing with duty free benefits to vital Wheat Gluten flour under Custom Notification No. 19/2015, (which pertains to DFIA Scheme), considered non mention of Wheat Gluten in DFIA no bar when wheat flour description existed in the documents. The Bench held the appellant is only required to satisfy that the product description mentioned in DFIA, was capable of use and there stipulation in Notification 19/2015 that material should be actually used in export product did not exist. During course of its decision, the bench relied upon the decision of Commissioner of Customs Calcutta Vs. G.C Jain as reported in 2011 (269) ELT 307 (S.C) to hold that the term used as “material” required for manufacture of export products would encompass such items also which are not only directly used or but are usable as such in the manufacturing process of the industry.” In 2019 (367) ELT 335 (Bom.) in the matter of M/s. Shah Nanji Nagsi Exports Pvt Ltd Vs. U.O.I, also held that DFIA Scheme being export promotion Scheme, the permitted pop corn to be imported against exported product “Maize Starch Powder” and that import of Popcorn Maize was not excluded from scope of term Maize on the ground that popcorn was not used for manufacture of export product i.e Maize Starch Powder. The Hon’ble High Court of Bombay held that so long as export goods and import items correspond to description given in SION, it could not be held to be invalid by adding something else which is not in policy. The materials and technical opinion produced by the party in the instant case clearly show that lithium batteries can be used in e-agri tractors, and therefore are in the nature of automative batteries though may or may not be in the from of traditional batteries. This can also be stated in the light of decision in M/s. Shalimar Precision Enterprises Pvt as reported in 2022 (9) TMI 228 (CEATAT-Del.), wherein consignment of melamine imported by the appellants was allowed duty free import against description of Syntan the term “syntan” referred to synthetic agent. The findings which are relevant for the purpose of the present dispute and are therefore reproduced below:

> “21. The undisputed facts are that the appellant had imported Melamine declaring it Melamine and claiming the benefit of exemption under DFIA licence which permitted import of "Syntan". The short question which arises is whether the Melamine is a Syntan or otherwise. The Proper Officer had cleared the consignment for home consumption

accepting Melamine to be Syntan. Thereafter, DRI initiated investigations and felt that Melamine was not Syntan. During enquiries by DRI importers had pointed out to it the order of the Tribunal in Dimple Overseas Ltd. holding that Melamine was a Syntan. However, the Additional Director, DRI, felt that the order of the Tribunal was not correct and therefore proceed to issue the show cause notice. The show cause notice was based on an expert opinion by CLRI stating that Melamine cannot be used directly on leather as Syntan, but a condensate can be made with formaldehyde and thereafter the condensate can be used in tanning leather.

22. According to the literature provided by the learned Counsel for the appellant including a patent and extracts of chemical dictionaries, melamine can be used for tanning leather without making a condensate first. It is clear that Melamine and formaldehyde can be simultaneously used on the leather for tanning instead of making a condensate first. Since the expert opinion is contrary to the published literature the appellant sought cross-examination of the expert. The Adjudicating Authority issued letters but the expert did not appear. The Adjudicating Authority could have issued summons to him to force his appearance, but he did not do so. Instead, he chose to rely on the expert opinion, which was contrary to the other published scientific literature produced by the appellant and confirmed the demand. In our considered view, such an approach cannot be sustained. Learned Authorized Representative has argued that the expert opinion by Government Chemist cannot be brushed aside. We agree. However, if the expert opinion is contrary to some other technical literature and when the assessee seeks a crossexamination of the expert it must be provided before the expert's report can be relied upon. On cross-examination, perhaps, there would be better clarity as to how the expert held a view contrary to other technical literature. Therefore, we find the reliance on the expert opinion of CRCL not correct in this factual matrix.

23. We also find that prior to the issue of show cause notice there was an order of the Tribunal holding that Melamine qualifies as Syntan. The Additional Director of DRI and the adjudicating authority effectively said that the Tribunal was not correct. If it be their opinion, it was open for them to assail the order of the Tribunal before a higher judicial forum. Instead, the Additional Director DRI and the Assistant Commissioner have arrogated to themselves the role of a superior authority over the Tribunal and ignored the judicial precedent which is not only highly irregular, but is also in violation of judicial discipline.

24. Another ground in the show cause notice was that the original exporter from whom the appellant purchased the licence had not used Melamine in manufacture of exported products. As has already been recorded in the show cause notice itself DGFT had clarified that the imported material need not have been used and it is sufficient if it is capable of being used in the manufacture of final products. In our considered view, neither the Additional Director DRI who issued the show cause notice, nor the adjudicating authority who confirmed the demand or the Commissioner (Appeals) have a jurisdiction to modify the scope of the licence when it is clarified by the licensing authority DGFT itself. So long as

Melamine can be used as Syntan which appears to be true from the literature produce before us and also the decision of this Tribunal and Dimple Overseas Ltd. it qualifies as Syntan.

25. Even if it is presumed that for the sake of argument that all the technical literature is wrong and only the expert at CLRI is correct and Melamine cannot be used directly as Syntan, but it has first to be treated as formaldehyde to make a condensate with formaldehyde before being used, as held by the Supreme Court in G.C. Jain it would make no difference. It still qualifies as raw material and can be imported under the licence. Adjudicating Authority has sought to distinguish G.C. Jain on the ground that the chemical in that case was different. In our considered view drawing such a distinction is highly misplaced. The question is whether materials which are used in manufacture of final products after some processing and not directly qualify for imports under the licence or not and G.C. Jain answered in affirmative and this ratio applies in this case as well. 26. Another ground on which the demand was confirmed is that the HSN headings of Syntan and HSN heading of Melamine are different. We find from the standard input/output norms published by the DGFT and also from the licence that the HSN codes are not specified when allowing imports in the licence and only the materials are indicated. So long as the goods match the description, they can be imported. The customs officers cannot add conditions to licence and insist that the inputs have to fall under a particular HSN.

27. Learned Authorized Representative has placed reliance on the order of the Tribunal in the case of Balaji Action Buildwell. We find that before the Tribunal in that case was only the expert opinion of CLRI, Chennai which stated as follows "Melamine cannot be used, as such, in leather processing as Syntan". It does not appear from the order that any of the technical literature contrary to this opinion of CLRI were produced in that case by appellants before the Tribunal. It is not recorded that Melamine can be used directly, as such, on leather as a Syntan as has been the assertion of the appellant in this case from the very beginning itself.

28. We further find that in that the judgment of the Supreme Court in the case of G.C. Jain holding that the materials need not be used directly, but can be used after some processing and will still qualify for exemption under licence was not brought to the attention of the Tribunal. Thus, both on the substantial question of law, which was laid down by the Supreme Court in G.C. Jain and the technical literature were not placed before the Tribunal in that case. In this context that the Tribunal had passed the order.

29. The present case is distinguishable inasmuch technical literature has been provided by the appellant to assert that the expert opinion was not correct and cross-examination was sought, but it was not provided for the reason the expert did not show up despite notices by the Adjudicating Authority. In this case, the judgment of the Supreme Court in G.C. Jain has also been brought to our notice.

30. Further it has already been clarified that DGFT itself had clarified that the material need not have actually been used but so long as it is capable of being used in the manufacture of final products it clarifies under the licence.

31. To sum up, the lower authorities have confirmed the demand ignoring the order of this Tribunal in Dimple Overseas Ltd., ignoring all the technical literature which state that Melamine can be used directly for tanning leather, relying on the opinion of CLRI contrary to the published literature and without even allowing cross-examination of that expert, on the ground that Melamine was not used in the export products contrary to the DGFT's clarification that actual use does not matter and on the ground that the HSN codes of Syntan and Melamine were different although there is no stipulation of HSN in the licence and even contrary to the law laid down by Supreme Court in G.C. Jain that goods which are used even after same processing and not directly can be imported under the licence.

32. In view of all the above, the impugned order dated 18.06.2019 cannot be sustained and is set aside with consequential relief, if any, to the appellant. The appeal is, accordingly, allowed."

3.4 On the basis of aforesaid decisions as well as other cited by the appellants the following propositions have emerged in relation to DFIA scheme:

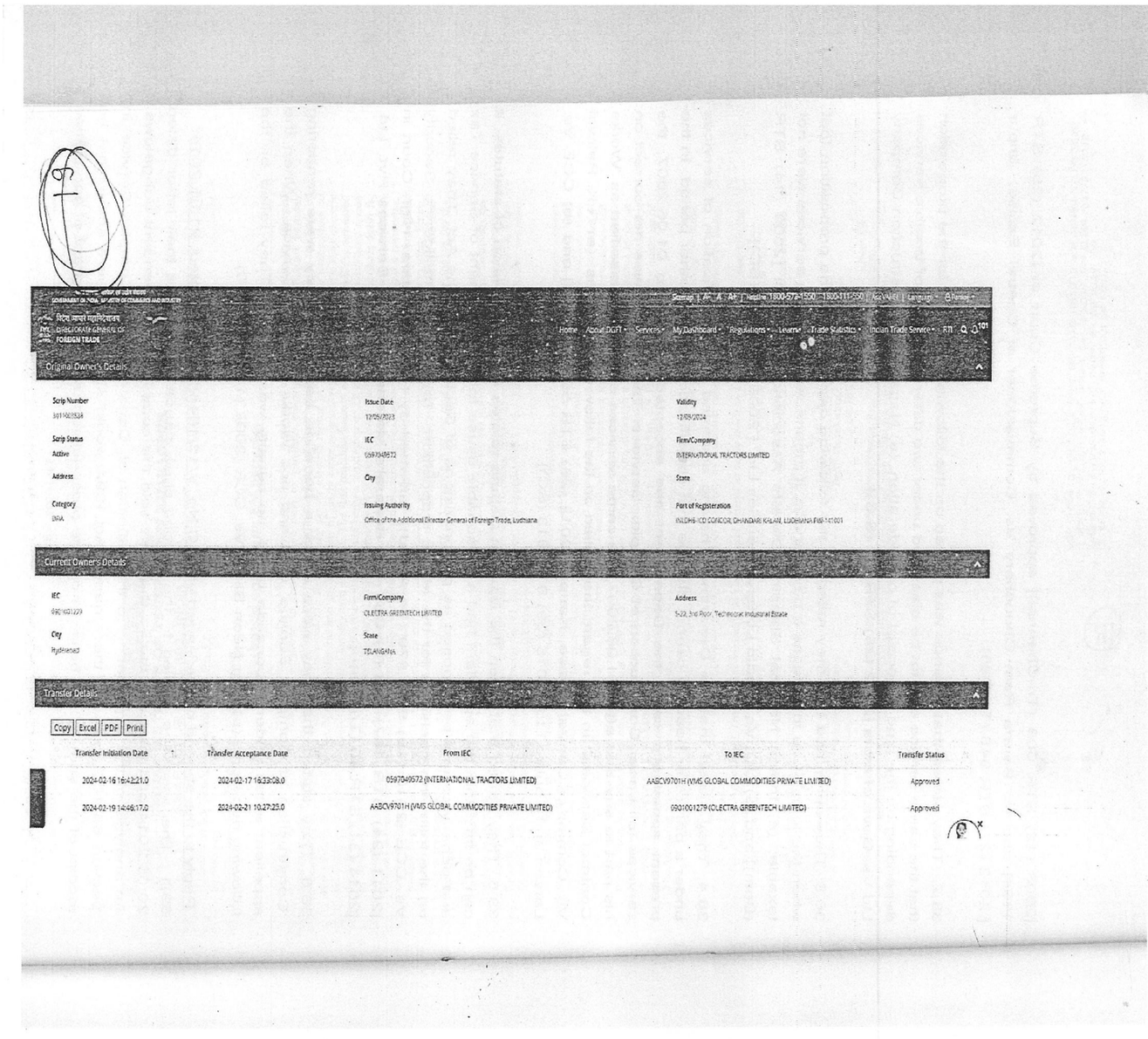
(1) That it is not the actual use but the possibility of use in a given technology that has to be seen while permitting the benefit under DFIA Scheme. While deciding the possibility of use, department can always look into some technical and other opinions to come to the conclusion that with advent of technology certain items have become capable of use in particular innovative technology even when it was not so earlier.

3.5 To the extent a particular material is capable of use even in any industry due to new patented or innovations in technology, the same shall be permitted to be imported against export of any specified material. It will be advisable to approach and decide the issue by the adjudicating authority keeping in mind that the DFIA Scheme unlike some other export scheme in the past which required some kind of a correlation in Tariff Heading does not require so as per various judicial pronouncements as well as by the application of the relevant notification. While the legislative purpose and intent of policy makers is not required to be looked into for interpreting any notification, it can be broadly analysed that if at any stage policy makers want to encourage innovation and advent of new technologies including usage of new materials, then such broad based imports within an industry and within same SION may be require to be encouraged, rather than persisting with old technologies and materials which can only restrict innovation. "

3. Learned AR on the other hand defends the grounds taken in the Departmental appeal and prays that impugned order be set aside.

4. Learned Advocate in rejoinder points out that imported consignment has now been registered with the DGFT office as well as the Lithium Battery is one type of automotive battery, the other being the conventional battery and the import of one against the other cannot be permitted as have been decided by the Adjudicating Authority.

5. Learned Advocate points out that now they have registered with the DGFT Authorities for the Transferrable DFIA License which is reproduced below:



GOVERNMENT OF INDIA, MINISTRY OF COMMERCE AND INDUSTRY

विदेश व्यापार महानिदेशालय
DIRECTORATE GENERAL OF FOREIGN TRADE

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Original Owner's Details

Scrip Number	Issue Date	Validity
3011603538	12/09/2023	12/09/2024
Scrip Status	**IEC**	**Firm/Company**
Active	0597049572	INTERNATIONAL TRACTORS LIMITED
Address	**City**	**State**
Category	**Issuing Authority**	**Port of Registeration**
DFIA	Office of the Additional Director General of Foreign Trade, Ludhiana	INLDH6-ICD CONCOR, DHANDARI KALAN, LUDHIANA (HB)-141001

Current Owner's Details

IEC	Firm/Company	Address
0301001279	OLECTRA GREENTECH LIMITED	5-22, 3rd Floor, Technocrats Industrial Estate
City	**State**	
Hyderabad	TELANGANA	

Transfer Details

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Transfer Initiation Date	Transfer Acceptance Date	From IEC	To IEC	Transfer Status
2024-02-16 16:42:21.0	2024-02-17 16:33:08.0	0597049572 (INTERNATIONAL TRACTORS LIMITED)	AABCV9701H (VMS GLOBAL COMMODITIES PRIVATE LIMITED)	Approved
2024-02-19 14:46:17.0	2024-02-21 10:27:25.0	AABCV9701H (VMS GLOBAL COMMODITIES PRIVATE LIMITED)	0301001279 (OLECTRA GREENTECH LIMITED)	Approved

6. He also points out that it is the "capability of use" which is to be decided. This is a factor and not the import and export has to be other similar kind of automotive battery or common parlance cannotations. He further points out that certificate of IIT engineers about the capability of Lithium Ion Battery was duly produced and considered in the case of K S Enterprises also. We find that DFIA scheme requires broad catogerisation are same and then as "capable being used in electrical vehicle". We therefore find that decision of K S Enterprises and even other decisions were in the same context (in relation to other products) and have been correctly quoted by the Learned Advocate. In view of foregoing, we find merits in the impugned order and the appeal of the Department is liable to be dismissed with consequential relief to the party.

7. Appeal Dismissed.

(Order dictated and pronounced in open court)

(SOMESH ARORA)
MEMBER (JUDICIAL)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

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