CUSTOMS,EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST ZONAL BENCH : AHMEDABAD

REGIONAL BENCH : COURT NO. 3

EXCISE Appeal No. 12611 of 2018-DB

[Arising out of Order-in-Original/Appeal No CCESA-AUDIT-SRT-VK-147-2017-19 dated 25.07.2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I]

Transrail Lighting Limited ...Appellant

Survey No 178-182
Village: Amboli, Kherdi-surangi Road
Silvassa, Dadar And Nagar Haveli- 396230

VERSUS

C.C.E & S.T.-Silvasa ...Respondent

Commissioner Central Excise, Customs & Service Tax, Silvassa, 4th floor, Adarsh
Dham Building, Vapi Daman Road Vapi
Opp. Old Town Police Station
Vapi,Gujarat

with

EXCISE Appeal No. 13111 of 2018-DB

[Arising out of Order-in-Original/Appeal No CCESA-SRT-APPEAL-PS-332-2018-19 dated 31.08.2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I]

Transrail Lighting Ltd ...Appellant

(formerly M/s. Gammon India Ltd),
Survey No-178-182, Village-amboli, Kherdi-surangi Road,
Silvassa, Dadra & Nagar Haveli-389350

VERSUS

C.C.E. & S.T.-Daman ...Respondent

3rd Floor...Adarsh Dham Building, Vapi-Daman Road, Vapi
Opp.Vapi Town Police Station,
Vapi, Gujarat-396191

And

EXCISE Appeal No. 10562 of 2019-DB

[Arising out of Order-in-Original/Appeal No CCESA-SRT-APPEAL-627-2018-19 dated 30.11.2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I]

Transrail Lighting Ltd ...Appellant

Survey No 178 To 182
Village Amboli, Kherdi-surangi Road
Silvassa, Dadra And Nagar Haveli-396230

VERSUS

C.C.E. & S.T.-Daman ...Respondent

3rd Floor...Adarsh Dham Building, Vapi-Daman Road, Vapi
Opp.Vapi Town Police Station,
Vapi, Gujarat-396191

Appearance:
Present for the Appellant :Shri A K Patel, Consultant
Present for the Respondent: Shri P. Ganesan, Superintendent (AR) and Shri Sanjay Kumar, Superintendent (AR)

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU

Final Order No. 12299-12301/2024

DATE OF HEARING: 18.06.2024
DATE OF DECISION: 03.10.2024

RAJU

This appeals have been filed by the M/s. Transrail Lighting Ltd.

2. Learned Counsel pointed out that the appellants in export of goods to Bhutan under Notification No. 45/2001-CE (NT) 26.06.2001 as amended. The Appellant had produced the necessary proof of export, however, the said proof of export has not been accepted by the lower authority in violation of circular No. 1058/07/2017-18 dated 16.05.2017.

2.1. Learned Counsel produced order in Appeal No. 13111/2018, which accepts the payment of price in Indian rupees.

2.2. The appellant had presented before the bond officer, the documents like the original and duplicate copy of invoice duly endorsed but the same not been accepted as proof of export for want of quadruplicate Copy of invoice. Similarly, in Appeal No. 12611/2018, the proof of export was not accepted on account of non-production of bank certificate or remittances in freely convertible currency while the original and duplicate copy of invoice was accepted as proof of export.

2.3. In Appeal No. 10562/2019 the proof of export was rejected on account of failure Appellant to produced quadruplicate copy of invoice and bank certificate.

2.4. Learned Counsel pointed out that earlier, in separate proceedings, the Commissioner (Appeal) had accepted original and duplicate copies of invoice as sufficient proof of export vide OIA NO. 54/AGU/ADT-VAD/2017-18 dated 23.05.2018. Thereafter, no Appeal was filed by revenue before Tribunal in the said case and therefore, litigation reached finality.

3. Learned AR relies on the impugned orders.

4. We have considered rival submission we find that the appellant is engaged in export of goods of availing benefit of Notification No. 45/2001-CE (NT). The said notification prescribed the following procedure :-

> *"2) Procedure at the Land Customs Station. (i) the exporter or his agent shall present the goods to the officer of customs in-charge of the land customs station along with the original copy of the invoice and the sealed cover containing duplicate, triplicate and quadruplicate copies and obtain acknowledgement, (ii) Where the contents of all the copies of invoices tally and the packages, goods or container are satisfactorily identified with their seals in tact, the officer of customs in-charge of the land customs station shall make necessary entries in the register maintained at the land customs station and allow the goods to cross into the territory of Nepal or Bhutan and certify accordingly on each of the four copies of the invoice and indicate the running serial number in red ink prominently visible and encircled. In case the seals are not found intact, the officer of customs in charge of the land customs station may re-seal the containers with his own seal after satisfying himself as to the identity of the containers and the goods from the particulars shown on the invoice by opening and examining the goods, if necessary:*

(iii) the officer of customs, then deliver the original copy of the invoice duly endorsed to the exporter or his agent alongwith the goods for presentation to the Customs Officer of Nepal or Bhutan. He shall also send, directly the duplicate and triplicate copies of the invoice to the Nepalese or Bhutanese Customs Officer in- charge of the check post through which the goods are to be imported into Nepal or Bhutan, as the case may be;

(iv) the goods are then to be produced before the Nepalese or Bhutanese Customs Officer, as the case may be, at the corresponding border check-post alongwith the original copies of the invoice. The Nepalese or Bhutanese Customs Officer shall deal with the original and triplicate copies of the invoice as directed by His Majesty's Government of Nepal or His Majesty's Government of Bhutan and return the duplicate copy, after endorsing his certificate of receipt of goods in Nepal or Bhutan, as the case may be, directly to the officer of customs-in-charge of the land customs station in India;

(v) The officer of customs in-charge of the land customs station shall forward the duplicate copy to the Central Excise Officer in charge of the factory or warehouse from which the goods were removed for export without payment of duty. For this purpose, the said officer in charge of the land customs station

should keep a note of the return of duplicate copies from the Customs Officer of Nepal or Bhutan and remind the exporter for such copies as have not been received, failing which the exporter may be liable to pay full duty on such consignments,

(vii) the officer of customs officers, at the land customs station shall also maintain a separate record of all such in-bond exports of the goods without payment of duty and shall assign running serial number on the invoice at the time of export as indicated earlier. "

The procedure prescribes that the appellants were required to make four copies of invoices. The duplicate, triplicate and quadruplicate copies were to be given by the custom officer to given in cover to the exporter for delivery at the port of export to the customs officers posted there. The custom officer posted at the port will made necessary entries in the register maintained at custom station and allow the goods to cross into the territory of Nepal and Bhutan. He was required to certified accordingly on each of the four copies of invoices and also indicate running Serial number prominently visible and circled. Original copy of invoice duly endorsed was to be handed over to the exporter and the Custom Officer was required to send the duplicate and triplicate copies of the invoice to the Nepalis/ Bhutani customs on the check post. Bhutani's/ Nepalis 's Custom Officer would thereafter endorse and return the duplicate copy of invoice. The duplicate copy of invoice would thereafter be forwarded to the Central Excise Officer in the charge of the factory or ware house from where goods were removed. The exporter was thereafter required to present quadruplicate copy of duly endorse invoice to the officer in charge in the factory for availing benefit of duty exemption in respect of export of goods.

4.1. In the instant case the appellants have produced original and duplicate copies of invoice before the officer in charge of factory. However, they have failed to produce quadruplicate copy of invoice. From the procedure prescribed for export it is seen that the original, duplicate and quadruplicate copies of invoice all travelled the same route. The Duplicate copy of invoice always remains in the custody of revenue and is never in custody of exporter. The original and quadruplicate remain in the custody of exporter for most of the time. In this background this felt that duplicate copy of endorsed invoice is the most full proof evidence of export of goods and production of quadruplicate copy of invoice is only a supporting proof. In case the appellant has failed to produce quadruplicate copy of invoice, the revenue could have verified the facts from the port of export directly. There was no necessity of rejecting the proof of export on this account. Specially, when the duplicate copy of invoice duly endorsed has been produced by the exporter. Moreover, we find that in Appeal No. 12611/2018 the Production of original and duplicate copies have been accepted as proof of export by the original Adjudicating Authority and no challenge has been made in the said appeal on that count. In separate proceeding the Commissioner (Appeal) vide OIA NO. 54/AGU/ADT-VAD/2017-18 dated 23.05.2018 has accepted the original and duplicate as a sufficient proof of export.

4.2. In this background we find that the production of original and duplicate copies of duly endorsed invoice is a sufficient proof of export. The board circular dated 16.08.2017 relied by the appellant points out that in view of the indo Bhutan agreement trade, commerce and transit, the payments can be received in Indian Rupees and there is no necessity of producing any certificate for receipt of payment in freely convertible currency as required under Notification No.45/1-CE (NT). In the background there is no necessity of producing any bank certificate regarding receipt of payment in freely convertible currency. Consequently, this ground also does not survive.

4.3. It is seen that the hydro electric Project for which goods has been exported entirely funded by India through norms with the facilities for payment in Indian rupees. In this circumstances the amendment although made on 16 August, 2017 i.e. after the export shall be deemed to be clarificatory in the nature.

5. Consequently, all the impugned order cannot be survive and Appeals are allowed.

(Pronounced in the open court on 03.10.2024 *)*

RAMESH NAIR
MEMBER (JUDICIAL)

RAJU
MEMBER (TECHNICAL)

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