IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. C/639/2011-CU[DB]

(Arising out of Order-in-Original No.02/COMMR/NOIDA/2011-12 dated 28/06/2011 passed by Commissioner, Customs & Central Excise, Noida)

M/s Vision Minerals & Energy **Appellant**

Vs.

Commissioner, Customs & Central Excise, Noida **Respondent**

Appearance:

Shri Mohd Faraz Anees (Adv) for Appellant
Shri Mohd Altaf, Assistant Commissioner (AR), for Respondent

CORAM:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 02/08/2018
Date of Pronouncement : 25/09/2018

FINAL ORDER NO. **72296 / 2018**

Per: Archana Wadhwa

As per facts on record the appellant filed 4 shipping bills through their customs house agent M/s Vijender Singh for export of "OWC (Drilling Chemical Additive)". The said shipping bills were filed for export of the said product to the tune of 1,000 MT at a total value of Rs.2,07,01,800.00/-.

2. The examination of the goods covered by the said 4 Shipping Bills covering 40 containers and describing the

product as (OWC), it was found that the same were packed in white plastic sacks/bags of 50 Kg each marked as OWC. Whereas the description of the goods as per the invoices and Shipping Bills filed by the exporter was “OWC (Drilling Chemical Additives)”, the other details like Salt, name of the manufacturer, Batch Number etc. were not mentioned on the said sacks/bags. CHA was directed to submit the chemical examination report, if any, in respect of the said goods being exported. CHA produced a copy of “Material Data Safety Sheet” issued by the appellants, where the said goods were found mentioned as “Potassium Chloride”.

3. The export of Potassium Chloride (Muriate of Potash of fertilizer grade) is restricted for export by the DGFT vide Notification No.30 (RE-2003) 2002-2007 dated 28.01.04 issued under file no.01/91/180/1100/AM-02/PC-III as amended vide Notification No. 3/2009-2014 dated 27/08/2009 issued from file no 01/91/171/16/AM10/Export Cell read with Section 113(d) of the Customs Act, 1962 and Modus Operandi Circular dated 25/09/2009, issued under file no. SD/INT/NSPU-07/2009 (R & I) by the Commissioner of Customs (Preventive), Mumbai Zone-III, was circulated in this regard. As per the said circular, certain

unscrupulous exporters were said to be restoring to the illegal exports of subsidized MOP (Muriate of Potash) of fertilizer grade, by way of mis-declaring the same by various names as Calcium Chloride, Potassium Chloride and Oil well Drilling Chemical etc.

4. Accordingly, samples were drawn from all the 40 containers and were sent to Central Revenues Control Laboratory, New Delhi, as also to M/s Shriram Institute for Industrial Research, New Delhi. As per the test reports received from both the laboratories, the goods were found to be Muriate of Potash (herein after referred as MOP), of fertilizer grade. The said Laboratory found the percentage of K2O in the test reports as more than 60%.

As per IS 2779-1980, Indian Standard Specification for MOP Fertilizer grade, issued by the Bureau Of Indian Standard, the requirement for Potassium Chloride fertilizer grade should be minimum 60% of Potash content(as K2O) , percent by mass. As such in the light of the above Indian Standard Specification the goods were found to be MOP Fertilizer grade, the export of which is restricted. As per Notification No.3/2009-2014 dated 27.08.2009 issued by DGFT, the export of MOP is restricted and is only permitted with the prior permission of the Department of Fertilizer, by direct importers of MOP out of the quantity of imports made during last 6 month subject to certain conditions enumerated therein. As such in the light of the test reports received by the Revenue and in the light of the fact that the appellant is not importer of MOP and as such export by him is restricted, Revenue undertook further investigations.

5. During the course of further investigation, the statements of various persons like Shri Vijendra Singh, CHA, Shri Sikandar Alam, Proprietor of M/s Vision Minerals and Energy, were recorded on various dates. CHA in his statements deposed that all the papers were prepared by the exporter himself and he was not aware of the fact that the goods intended to be exported were MOP. Further Shri Sikandar Alam in his various statements revealed that the supplier of the goods in question is M/s Lalita Prasad Vaish & Sons, Lucknow and the entire 1,000 M.T. of goods/cargo covered by the 04 Shipping Bills have been purchased by him. He further deposed that he was not aware of the facts that the goods were MOP of fertilizer grade which are restricted for export and he also does not have any export documents. He also provided details of chemical composition of OWC as under:-

(i) Formulation- NaCl $(NaSiO2)_2$

(ii) Purity as -NaCl $(NaSiO2)_2$ W/ W =59.14%

(iii) Moisture W/W =36.37%

(iv) In soluble Particle = 1%

6. In a follow up action, the searches were conducted in the assesse's premises as also in the premises of their CHA. During the course of search on the appellant's premises 7 CDs were retrieved from 4 CPUs which contained the minutes of meetings between the appellant exporter with their foreign buyers agreeing to make the deal for the product of Potassium Chloride, sale contract, undertaking supply of Potassium Chloride- Technical grade and the invoices cum sale contract for supply of Potassium Chloride- Technical Grade were found. The Revenue also searched the premises of M/s Lalta Prasad Vaish & Sons, supplier of the goods in question and recorded the statement of Shri Dinash Chandra Vaish, Partner of M/s Lalta Prasad Vaish & Sons, wherein he deposed that M/s Vision Minerals & Energy have purchased fertilizers such as Potash and Gypsum, from them in the last few months, that they have licence for 'sale of fertilizers' they are the distributer of Indian Potash Ltd., Chambal Fertilizer and Tata Fertilizers' that

the final bill of MOP was given by them to said M/s Vision Minerals & Energy Ltd. in June, 2009, ' that MOP sold by them to the appellant was purchased from M/s Indian Potash Ltd. MOP of Fertilizer grade is a subsidized item. He also produced the GR book/bill book vide which the goods were sold to the appellant.

The premises of the transporter through whom the goods were sold by M/s Lalta Prasad Vaish & Sons to the appellants were also put to search wherein the transporter admitted having transported the MOP to the appellant's premises. The go-down where the said goods were offloaded were also visited and the statement of the owner of the same, Shri Bhagmal, was recorded wherein he deposed that the go-down has been given on rent to Shri Sikandar alam to store potash Khad. The premises were also being used by the Tenant for repacking of potassium chloride in new bags and the old bags were being sold by him to Kabadi. He also identified the old as also the new bags, which was dispatched through containers.

During the course of further investigation statement of Shri Lalit Gupta, forwarding agent, was also recorded, admitting that he was working for M/s Vision Minerals & Energy.

7. On the basis of the result of the investigation, Revenue entertained a view that the appellant has attempted to export MOP of Fertilizer grade which is a restricted item for export and the same was purchased by them on subsidized prices fixed by the Government for farmers and the same was being repacked by them as OWC to hide the actual identity of the goods. Inasmuch as they were not having the license to export the goods, proceedings were initiated against them by way of issuance of a show cause notice for confiscation of the goods as also for imposition of penalties. The proceedings culminated into the impugned order passed by the Commissioner vide which he ordered absolute confiscation of the goods and also imposed penalty of Rs.50,00,000/- on the appellant. Though penalties of Rs.50,000 each was imposed upon the CHA as also on the forwarding agent but no appeal stands filed by them as per the registry and only the appeal of M/s Vision Minerals & Energy, is being disposed of by the present order.

8. We have heard Shri Mohd. Faraz Anees (Advocate) appearing for the appellant and Shri Mohd.Altaf (Asstt.Commr.), A.R. for the Revenue.

9. After appreciating the submissions made by both the sides and after going through the impugned orders we note that the issue required to be decided in the present appeal is as to whether the goods attempted to be exported by the appellant were muriate of Potash of fertilizer grade or the same were OCW as declared by the assessee. The sample reports of both CRCL and SIIR confirmed the goods as MOP of fertilizer grade. It is seen that CRCL has submitted two reports vide their letters dated 08.12.2009 stating that – "the sample is in the form of white granular powder. It has the characteristics of muriate of Potash – fertilizer grade". The said report was further elaborated by CRCL vide their letter dated 21.10.2009 indicating that percentage of K20 (Potash content) is as 62.61% and 62.71% by weight.

As per IS..4150-1984 vide Indian Standard Specification for Potassium Chloride – requirement of Potassium Chloride – technical should be minimum 98.5% to 97% by mass, whereas for MOP of fertilizer grade it is above minimum 60% present by mass. Not only the reports of CRCL and SIIR have established that K2O present in the goods was more than 60%, but Shri Sikandar Alam has also informed the specifications of the goods as having K2O content more than 60%.

10. Revenue has not only relied upon the said test reports solely, but have made further investigations also. As a result, it was found that the goods in question were imported in India by Indian Potash Ltd. for use by farmers as fertilizers. These goods have been supplied by IPL to their fertilizer dealer on subsidized rates, fixed by the Government for farmers. As per the Fertilizer Control Order, the fertilizer-wise detail specification has been fixed and no fertilizer, not meeting the said specification can be sold in the country for agriculture purpose. The said goods imported by IPL and supplied to its authorized dealer i.e. M/s.Lalita Prasad & Sons were meant for further use by the farmers. M/s.Lalita Prasad & Sons have sold the goods in question to the appellant under the cover of their invoice indicating the goods as MOP. As such it gets established beyond doubt that what was purchased by the appellant from M/s.Lalita Prasad & Sons was nothing, but MOP, fertilizer grade, the export of which is banned in India.

11. Not only that, the investigations made from the owner of the godown also revealed that further packing activities were being undertaken by the appellant at the said godown with a *mala fide* intent to evade the real identity of the goods. Further the appellant has not been

able to produce any evidence to show the purchase of OWC Chemical, which was declared by them on the exported bags. In the absence of any evidence to show purchase of OWC Drilling Chemical Additive from any seller or manufacturer of the same, the contention of the appellant that he *bona fide* believed the goods to be OWC, cannot be appreciated. There is enough evidence on record to establish that M/s.Lalita Prasad & Sons were the authorized dealer of fertilizer, have procured the MOP from Indian Potash Ltd., sold the same to appellant under the cover of their invoice at the price of Rs.228/- per bag, which was the price fixed by the Govt. of India for sale of MOP at subsidized rates; that the material data safety sheet produced by the appellant also revealed the goods as Potassium Chloride; that the test reports of authorized laboratories CRCL and SIIR established the goods to be MOP fertilizer grade; that the said goods sold by M/s.Lalita Prasad were transported to the godown taken on rent by the proprietor, which godown was being used for re-packing of MOP (fertilizer grades) in the bags markings OWC. Further the computer print outs recovered from the appellant's premises also established beyond doubt that the appellant agreed to sell the MOP fertilizer grade to its foreign buyer. All these factors lead to the inevitable conclusion that the goods covered by the four Shipping Bills were nothing, but MOP.

12. Export of such MOP is admittedly banned inasmuch as the same was being supplied at subsidized rates fixed by Govt. of India and was meant for Indian farmers at a subsidized price. The appellants have procured the same at that subsidized price only from M/s.Lalita Prasad & Solns and illegal export of the same, for personal gains by the appellant, at the cost of the farmers of the country and exchequer, become a serious offense punishable under the law. As such we find no reasons to interfere in the impugned order of the Commissioner confiscating the MOP absolutely and imposing penalty of Rs.50.00 Lakhs on the appellant. Accordingly the order passed by the Commissioner is upheld and appeal filed by the assessee is rejected.

(Pronounced in Court on 25/09/2018)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

Sd/-
(Archana Wadhwa)
Member (Judicial)

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