FAX : 0532-2400149

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 30/11/2017

To

Appellant as per address in table below
Respondent as per address in table below

Final Order No. A/71712-71713/2017-SM[BR] dated 20/11/2017

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 129-A(4) of the Customs Act, 1962.

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	C/494/2011	**J.P.RICE EXPORTS PVT LTD** 2717, First Floor, Galli Patte wali, Naya Bazar, Delhi-06
2	C/495/2011	**JITENDRA KUMAR JAIN** J.P. Rice Exports Pvt Ltd, 2717,First floor, Galli Patte Wali, Naya Bazar, Delhi.
		Name and Address of Respondent
3		-C.C.E. NOIDA C-56/42, Sector-62, Noida-201307
4		-C.C.E. NOIDA C-56/42, Sector-62, Noida-201307

Other Appellants and Respondents as per Annexure

Copy To

5Advocate(s) / Consultant(s):

S. Sunil (Advocate)
46, BANK ENCLAVE,
DELHI
110092

6 Bar Association, CESTAT, Allahabad

7 Director Publications, Customs, Excise. I.P. Estate, Delhi

8 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp ICICI Bank of Defence Colony New Delhi-3

9 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

10 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

11 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

12 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

13 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

14 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

15 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

16 C.D.R. 17 Office Copy 18 Second Folder Copy 19 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. C/494-495/2011-CU[SM]
(Arising out of Order-in-Original No. 09/COMMR/2011-12 dated 31/05/2011 passed by Commissioner of Central Excise, Service Tax & Customs (Appeals), Noida)

M/s J.P. Rice Exports Pvt. Ltd. (in Appeal No. C/494/2011) &

Shri Jitendra Kumar Jain (in Appeal No. C/495/2011) **Appellant(s)**

Vs.

Commissioner of Central Excise, Noida **Respondent(s)**

Appearance:

Shri S. Sunil (Advocate) for Appellant(s)
Shri Mohd. Altaf (Asstt. Commr.) AR for Respondent(s)

CORAM:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)

Date of Hearing : 20/11/2017
Date of Decision : 20/11/2017

FINAL ORDER NOs. 71712-71713/2017

Per: Archana Wadhwa

After hearing both the sides duly represented by Shri S. Sunil, Advocate for the appellant and Mohd. Altaf, Assistant Commissioner A.R. for the respondent, I note that the appellant filed Shipping Bills for export of Basmati Rice by declaring the same as "Indian Cream Sella Basmati Rice" brand name "Green Falcon". After the let export orders were made and after drawing samples, which were sent to Basmati Export Development Foundation, Modipuram, it was found that the goods were not Basmati Rice and export of the same was prohibited.

2. The test report of Basmati Export Development Foundation, Modipuram, is as followed:-

Creamy Parboiled Milled Rice

- *Average pre cooked grain length in mm* 07.65
- *Average pre cooked grain breadth in mm* 01.82
- *Length to Breadth ratio (L/B)* 04.20
- *% of other rice grains including red grain*43.85
- *Broken & fragments (%)* 02.80

(The sample does not meet the specification as prescribed by the DGFT for Export of Basmati Rice.)

3. On the above basis the consignment was stopped from being exported and further investigations were conducted, statement of the Export Manager was recorded wherein he admitted that consignment contained 43.85% of other rice, grains including, red grain.

4. On the above basis proceedings were initiated against them vide issuance of show cause notice dated 25.05.2011 proposing confiscation of the goods as also for imposition of penalties. The said notice culminated into an order passed by the Commissioner vide which he held the consignment to be

that of Non-Basmati Rice and confiscated the same with an option to the appellant to redeem the same on payment of redemption fine of Rs. 15,00,000/-. In addition penalty of Rs. 2,00,000/- was imposed upon in respect of unit and imposition of penalty of Rs. 75,000/- was imposed on the Director.

5. The present two appeals stand filed by them challenging the above order. Learned advocate appearing for the appellants submits that in terms of DGFT Notification No. 57/2009-2014, prescribing the criteria of length and length to breadth ratio only is provided for deciding as to whether the consignment is that of Basmati Rice or not. As long as the said criteria is met, any reference to the presence of extraneous material in the consignment is irrelevant. This was so held by the Tribunal in the case of Global Agro Impex vs. Commissioner of Customs, Noida reported at 2013 (290) ELT 717 (Tri. – Del.). However, he fairly agrees that the said decision of the Tribunal was considering by Hon'ble Delhi High Court in the case of Commissioner of Customs vs. Orion Enterprises reported at 2015 (326) ELT 117 (Del.) and was not approved of.

6. It is seen that the Hon'ble Delhi High Court observed that the specification prescribed in Schedule 2 to Basmati Rice (Export) Grading and Marketing Rules, 1979 are applicable for determining whether rice consignment meant

for export is Basmati or not. As these specifications allowed maximum presence of 20% of other rice including red grain in Basmati Rice, the consignment cannot be considered to be of Basmati Rice if the other ingredients are more than 20%. By holding so, the Hon'ble Delhi High Court set aside the order of the Tribunal laying to the contrary and restored the order of the Original Authorities fixing the redemption fine and imposition of penalties.

7. After hearing the learned A.R. appearing for the Revenue, I find that admittedly in the present case, the presence of other rice grain including red grain is to the extent of 43.85% when viewed in the light of the specifications laid down in Schedule 2 to Basmati Rice (Export) Grading and Marketing Rules, 1975, the same does not confer status of Basmati Rice to the consignment in question following. In view of the Hon'ble Delhi High Court's decision in the case of Orion Enterprises, it has to be held that the said specifications are applicable and would convert the consignment into that of a Non-Basmati Rice consignment. The argument of the learned advocate that Notification only prescribes the length and length to breadth ratio and, the finding of the lower authorities are perverse, cannot be appreciated in the light of the law declared by the Hon'ble Delhi High Court.

8. As such, I find no merits in the present appeals. At this stage, learned advocate prays for reduction in the redemption fine and penalty. From the Hon'ble Delhi High Court, I find that the total value of the goods was around Rs. 42,00,000/- and a redemption fine of Rs. 8,00,000/- was imposed which is almost 1/5 of the total value alongwith penalty of Rs. 3,00,000/-. By following the same ratio in the present case where the value of consignment is around of Rs. 66,00,000/-. I reduce the redemption fine from Rs. 15,00,000/- to 13,00,000/-. As regards penalty I find that the same is already on lower side and requires no further reduction. However, keeping in view that the Export Unit has been penalized by way of redemption fine as also by way of penalty, I find no justification to impose a separate penalty on the director of the company. Accordingly, the same is set aside and his appeal is accordingly allowed. Both the appeals are disposed of in above terms.

(Dictated and pronounced in Court)

Sd/-
(Archana Wadhawa)
Member(Judicial)

Ankit

प्रमाणित प्रति/Certified True Copy
03/01/18
सहायक पंजीकार/Asstt. Registrar
सीमा शुल्क, उत्पाद शुल्क एवं सेवा कर अपील अधिकरण/C.E.S.T.A.T.
38, एम.जी.मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001