

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
1st Floor, WTC Building, FKCCI Complex, K. G. Road,
BANGLORE-560009

COURT-2

Customs Appeal No. 1123 of 2010

*[Arising out of the Order-in-Appeal No.28/2010-Cus. dated
22.02.2010 passed by the Commissioner of Customs
(Appeals), Bangalore.]*

The Commissioner of Customs

New Customs House,
Panambur,
Mangalore – 575 010.

....Appellant

Vs.

M/s. R.M.K.S Minerals Exports P. Ltd.

No.21/1, 5th Cross Street,
CIT Colony, Mylapore,
Chennai – 600 004.

....Respondent

Appearance:

Mr. K. A. Jathin, AR

....For Appellant

None

.... For Respondent

CORAM:

HON'BLE MR. P. A. AUGUSTIAN, MEMBER (JUDICIAL)
HON'BLE MRS R. BHAGYA DEVI, MEMBER (TECHNICAL)

Date of Hearing: 07.08.2023

Date of Decision: 04.01.2024

FINAL ORDER No. 20025 of 2024

Per R. BHAGYA DEVI:

The respondent filed a shipping bill No.93/07 which was assessed on 23.04.2007 at the applicable rate and based on the assessment, duty was paid on 24.04.2007. Thereafter 'Let export order' and 'allowed for shipment' order was issued on 28.04.2007. Consequent to this, Notification No.62/2007-Cus. dated

03.05.2007 was issued reducing the rate of duty and on account of this reduction in duty, the respondent filed a refund claim on 4.08.2007 under Section 27 of the Customs Act, 1962. This claim was rejected by the original authority on the ground that as per Section 16(1)(a) of the Customs Act 1962, the rate of duty applicable to any export goods shall be the leading force on the date on which the proper officer makes an order permitting clearance and loading the goods for exportation under Section 51 of the Customs Act, 1962. Since the duty was paid as per the rate prevalent on the date the 'Let export order' was issued, the benefit of reduction in the rate of duty cannot be extended to the goods and accordingly, the refund was rejected. However, the Commissioner (Appeals) in the impugned order taking into consideration the date of loading of the goods into the vessel as the relevant date, allowed the refund claim. Aggrieved by this, Revenue is in appeal against this impugned order.

2. The Authorised Representative on behalf of the Revenue submitted that the Commissioner was wrong in considering the date of sailing of the vessel as the relevant date while the laws prescribed the date of 'Let export order' as the relevant date and accordingly, requested for setting aside impugned order allowing their appeal.

3. The question before us is what is the relevant date for payment of duty in the case of goods being exported. Section 16 which is the relevant Section reads as:

- (18) "export", with its grammatical variations and cognate expressions, means taking out of India to a place outside India;
 (19) "export goods" means any goods which are to be taken out of India to a place outside India;

Section 16. Date for determination of rate of duty and tariff valuation of export goods.-

- 1[(1) The rate of duty and tariff valuation, if any, applicable to any export goods, shall be the rate and valuation in force,-
 (a) in the case of goods entered for export under section 50, on the date on which the proper officer makes an order permitting clearance and loading of the goods for exportation under section 51;
 (b) in the case of any other goods, on the date of payment of duty.]
 (2) The provisions of this section shall not apply to baggage and goods exported by post.

Clearance of export goods:

Section 50: Entry of goods for exportation. -

- (1) The exporter of any goods shall make entry thereof by presenting ¹[electronically] ²[on the customs automated system] to the proper officer in the case of goods to be exported in a vessel or aircraft, a shipping bill, and in the case of goods to be exported by land, a bill of export ³[in such form and manner as maybe prescribed]:

⁴[**Provided** that the ⁵[Principal Commissioner of Customs or Commissioner of Customs] may, in cases where it is not feasible to make entry by presenting electronically ⁶[on the customs automated system], allow an entry to be presented in any other manner.]

- (2) The exporter of any goods, while presenting a shipping bill or bill of export, shall ⁷[* * *] make and subscribe to a declaration as to the truth of its contents.

⁸[(3) The exporter who presents a shipping bill or bill of export under this Section shall ensure the following, namely:-

- (a) the accuracy and completeness of the information given therein;
- (b) the authenticity and validity of any document supporting it; and
- (c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.]

The relevant Sections to determine the rate of duty is Section 16 read with Section 50 of the Customs Act ,1962. The reliance placed on Section 18 and 19 of the Customs Act, 1962 by the Commissioner (Appeals) is irrelevant as far as determination of rate of duty is concerned. As per Section 16, the date of `let

export order' is the date for determining the rate of duty. This view is also upheld by the Hon'ble High court of Bombay in the case of **Narayan Bandekar & Sons Pvt. Ltd. Versus Commr. of Cus. & C. EX, Goa 2010 (259) E.L.T. 362 (Bom.)** dated 18-8-2010 observed that:

"6. We are concerned with clause (a) of sub-section (1) of Section 16 which provides that in case of goods entered for export under Section 50, the date of determination of rate of duty and tariff valuation of export goods will be the date on which the proper officer makes an order permitting clearance and loading of the goods for exportation under Section 51 of the said Act. Sections 50 and 51 of the said Act read thus :

"50. Entry of goods for exportation.- (1) *The exporter of any goods shall make entry thereof by presenting to the proper officer in the case of goods to be exported in a vessel or aircraft, a shipping bill, and in the case of goods to be exported by land, a bill of export in the prescribed form.*

(2) *The exporter of any goods, while presenting a shipping bill or bill of export, shall at the foot thereof make and subscribe to a declaration as to the truth of its contents.*

51. Clearance of goods for exportation.- *Where the proper officer is satisfied that any goods entered for export are not prohibited goods and the exporter has paid the duty, if any, assessed thereon and any charges payable under this Act in respect of the same, the proper officer may make an order permitting clearance and loading of the goods for exportation."*

7. Sub-section (1) of Section 50 contemplates that the exporter of the goods should make entry thereof to the proper officer by presenting a shipping bill. After satisfying that the exporter has paid the duty assessed on the goods, the proper officer can exercise power under Section 51 and make an order permitting clearance and loading of the goods for exportation. In the case of *Prime Mineral Exports Private Ltd. v. Union of India and another*, (W.P. No. 374/2010, decided by this Court on 5th July, 2010 [2010 (257) E.L.T. 414 (Bom.)], in paragraph 7, this Court has observed thus :

As per paragraph 40 of the CBEC's Customs Manual of Instructions, on passing of a shipping bill by the Export Department, the exporter has to present the goods to the shed appraiser (export) in docks for examination. The shed appraiser may mark the document to a Custom Officer for examining the goods. If the description and other particulars of the goods are found to be as declared, the shed appraiser gives a "let export order" after which the exporter may contact the preventive superintendent for supervising the loading of the goods on the vessel. The order passed in the nature of "let export order" is an order permitting the clearance and loading of the goods for exportation in accordance with Section 51 of the said Act.

The Shipping Bills show that Let Export Order was signed on 28th February, 2007 by the Superintendent Central Excise and on the same day an order "allowed for shipment in full" was

passed by the said officer. Admittedly, as of 28th February, 2007, only cess was payable on export of iron ore. There is no dispute that cess of Rs. 25,000/- and Rs. 17,000/- respectively was paid against the shipping bills on 28th February, 2007. Admittedly, on 28th February, 2007 no export duty was payable and what was payable was the export cess which was admittedly paid on the same day. The remarks made by the Superintendent of Central Excise show that he was satisfied that the goods were not prohibited goods and, therefore, he passed an order "allowed for shipment" on 28th February, 2007 and signed "Let Export Order" on the same day. Thus, the order permitting clearance and loading of goods for exportation under Section 51 of the said Act was made on 28th February, 2007. Thus, 28th February, 2007 is the date for determination of the rate of duty. Admittedly, on that day, the export duty was not payable. It became payable with effect from 1st March, 2007. The Commissioner of Customs (Appeals) held that the Let Export Order was issued on 28th February, 2007 and, therefore, both the requirements of filing of the shipping bill and issue of the Let Export Order were completed on 28th February, 2007 and, therefore, the relevant date under Section 16(1)(a) is 28th February, 2007. This aspect has been completely overlooked by the CESTAT. The CESTAT committed an error by holding that the relevant date as per Section 16(1)(a) of the said Act will have to be treated as 1st March, 2007 when loading was actually started. On a plain reading of Section 51 read with clause (a) of sub-section (1) of Section 16 of the said Act, the date of determination of the duty is the date on which an order was passed under Section 51 by the proper officer which in this case is 28th February, 2007. The date on which actual loading of iron ore was started is totally irrelevant."

3.1 The Tribunal in the case of **Commissioner of C. EX., CUS. & S.T., BBSR-I Versus Kashvi Power & Steel (P) Ltd. 2018 (364) E.L.T. 332 (Tri. - Kolkata)** dated 11-7-2017 Held that:

"5. Regarding the relevant date for applying the rate of export duty, we note that the let export order was duly issued by the competent officer on 25-2-2011. As per records, there is no other let export order issued for this consignment and neither any such order was asserted by the Revenue. In this connection, we refer to the decisions of Hon'ble Bombay High Court in the case of *Prime Mineral Exports Pvt. Ltd. v. Union of India* reported in [2010 (257) E.L.T. 414 (Bom.)] and in the case of *Narayan Bandekar & Sons Pvt. Ltd. v. Commr. of Customs & Central Excise, Goa* reported in [2010 (259) E.L.T. 362 (Bom.)]. The High Court examined the relevant date for export of applicable in identical situation and held that the date of "let export order" permitting loading of goods was relevant to decide the correct rate of duty. The High Court also held that the date on which the actual loading of iron ore was started is totally irrelevant. Following the ratio of these decisions and in terms of clear legal provisions of Section 16 read with Sections 50 and 51 of the Customs Act, 1962, we find that

the impugned order has been passed in line with the said legal provisions. We find no force in the present appeal by the Revenue to persuade as to interfere with the findings of the Commissioner (Appeals). Accordingly, the appeal is dismissed.”

4. In view of the above, the impugned order is set aside and the appeal filed by the Revenue is allowed.

*(Order pronounced in open court on **04.01.2024.**)*

(P. A. AUGUSTIAN)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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