**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE**

REGIONAL BENCH - COURT NO. 3

**Customs Appeal No. 2608 of 2011**

(Arising out of Order-in-Original No. 07/2011 Cus. Adjn. dated 27.05.2011 passed by the Commissioner of Customs, Bangalore.)

**M/s. Bilwa Labs,**
Prop: Sri. N. A. Jayaram,
No. 53, 1st Floor,
Sannidhi Cross Road,
Basavanagudi,
Bangalore – 560 004. ……….**Appellant(s)**

**Versus**

**The Commissioner of Customs,**
C. R. Building, P. B. No. 5400,
Queens Road,
Bangalore – 560 001. ……..**Respondent(s)**

**APPEARANCE:**
Mr. Raghavendra. B. Hanjer, Advocate for the Appellant.
Mr. Vinod Kumar Garhwal, Superintendent (AR) for the Respondent.

**CORAM:**
**HON'BLE MR. P.A. AUGUSTIAN, MEMBER (JUDICIAL)**

**Final Order Nos. 22204 /2025**

Date of Hearing: 30.07.2025
Date of Decision: 19.12.2025

**PER: P.A. AUGUSTIAN**

The issue in the present appeal is regarding penalty imposed on the Appellant allegedly while exporting goods illegally.

2. The Appellant had filed certain documents such as checklist for export, invoice, packing list…etc described the goods as industrial salt BL 98 Potassium Chlorite, BL 98 shape inhibitor and density increaser for oil drilling and the shipping bill No. 2231280 dated 12.05.2009 and 2232302 dated 20.05.2009 were filed. Goods were classified under CTH

3827 39 90 as other chloride. The officers of Agriculture Department drawn the samples on 28.08.2009 and conducted testing. The fertilizer was requested to draw from the export consignment and gives the report that the goods are muriate of potash containing potassium chloride more than 60% and it is classifiable under CTH 3104 20 00 as fertilizer and it is restricted for export and required license for export. Accordingly goods were seized and on completion of the investigation, show cause notice dated 12.03.2010 were issued to Appellant and others. Thereafter Adjudication authority as the impugned order reclassified the goods and ordered absolute confiscation of the goods. In addition to that, penalty of Rs. 25 lakhs was imposed on the Appellant. The penalties proposed on the co-noticees were dropped. Aggrieved by said order, present appeal was filed.

3. When the appeal came up for hearing, the Learned Counsel for the Appellant submits that they never mis-declared the goods for export and it was Potassium Chloride known as Industrial Salt. The appellant was only a trader of chemicals and they are not doing any repacking and the goods are exported in the packing in which they have been received the goods. There were no restrictions for export of Industrial Salt and the chemical analysis report obtained by the department to allege illegality does not contain any details regarding the content of potassium chloride which decides the fact as to whether the product was industrial salt or Muriate of Potash as alleged. Learned Counsel further submits that the appellant had previously exported identical products which were permitted to be exported after withdrawal of samples. The said sample were tested by Geological and Metallurgical Laboratories and based on the test reports of Geological and Metallurgical Laboratories, the previous consignments were allowed to be exported. Learned Counsel also drew our attention to a few sample copies of the test reports pertaining to the previous export. In previous exports, the export was allowed after the testing of samples and after the due satisfaction of the Customs Department. The DEPB sanctioned to the appellant in respect of the previous exports was also on post export basis only and thus the bonafides of the appellant were clearly proved. However, the present

test report is obtained from Deputy Director of Agriculture (FCL) Bangalore, leads to suspicion that was only with an intention to get a report suitable to the department, i.e., to prove that the sample was not Industrial Salt, but a fertilizer. Learned Counsel further submits that from the very beginning of investigation, it was clearly stated that, the content of Potassium Chloride will decide as to whether the product was Industrial Salt or fertilizer, Learned Counsel also drew my attention to the test report obtained from the Agricultural Department and submits that the content of potassium chloride is not mentioned or tested. Learned Counsel further submits that while submitting reply to SCN appellant had requested for retesting of sample by an independent agency agreeable to both the department as well as the appellant particularly with reference to the content of Potassium Chloride as it was essential to decide whether the product was industrial salt or fertilizer, that this was very important since in the previous consignments exported, it could be seen that, in all those reports the details of constituents particularly Potassium Chloride (KCI) were tested and then only the goods were permitted to be exported. It was also submitted that another report particularly with reference to the content of Potassium Chloride will enable the appellant to defend their case effectively.

4. As regarding the comparative data as export by others, which are relied by the Adjudication Authority, Learned Counsel submits that while submitting reply to SCN, the appellant had requested for providing them copies of the test reports if any, pertaining to those exports to enable them to counter the allegations to arrive at the conclusion as to whether the product exported by them is Muriate of Potash. As alleged by considering the percentage of Potassium chloride and also the value since there was an allegation with regard to mis-declaration of price which was based on the comparison of prices of other exporters. Further submits that in the Show Cause Notice and impugned order the price has also been determined on based on a website report and it was settled law that transaction value cannot be determined based on the details obtained from website. Learned Counsel also submits that when it is

alleged that the appellant had undervalued the price of the goods by declaring it as Rs.19.57 per kg, whereas, it is the contention of the department that the price should be around Rs.35/- per kg. But there was no evidence to allege under valuation. Further from the list of prices indicated in the impugned order, in some of the cases, the prices declared were around the same price as declared by the appellant, Further the appellant would have gained substantially only if there was over invoicing and hence this allegation of under valuation has got nothing to do with the facts of this case and only made to prejudice the decision of quasi judicial authority.

5. Learned Counsel further draws our attention to the judgment of the Hon'ble Court of City Civil Station, Sessions Judge in Criminal Appeal No. 138/2018 dated 20.02.2024 and submits that after considering the evidence and the cross examination of the prosecution witness, while acquitting the appellant in criminal proceedings, the Hon'ble Court held that; "Further, it is very clear that based upon the label put by the Custom Officer while sending the sample, so called expert witnesses have mentioned in their report that it is muriate of potash/potassium chloride. Mandatory guidelines have not been followed while drawing samples and conducting test. Casual approach has been adopted by Customs Officers with regard to seizure of goods, taking up samples and conducting test for analysis. It is to be noted that when the mandatory procedures under Customs Act, Fertilizer Control Act have not been followed by the Custom Officers while conducting investigation and when the matter was investigated by the CBI, they also did not collect the samples and conducted proper investigation with regard to the mandatory procedure, that was required to be followed by the Customs officials while seizure of goods and taking samples. It is clear that there is lapse on their part. But, the learned trial judge has mainly relied upon the statement of accused recorded under Section 108 of Customs Act and conclusively held that, that is sufficient to prove the guilt. There cannot be any absolute presumption under law against the accused. Presumption always is rebuttal and hence accused are entitled to rebut the same during the course of trial". Further on perusal of the evidence,

the Court also observed that the person who conducted the examination of the goods is not authorized person to conduct such examination. Learned Counsel also draw our attention to the following decisions:-

***(i) Commissioner Vs. Parminder Jit Singh - 2013 (293) ELT 241 (Tribunal)***

***(ii) Suraj Prakash Vs. CC., New Delhi - 2016 (333) ELT 366 (Tri.-Del.)***

***(iii) Arif Shaikh Vs. Commissioner - 2011 (272) ELT 596 (Tribunal)***

***(iv) Commissioner Vs. M. Naushad - 2007 (210) E.L.T. 464 (Tribunal)***

***(v) Parvati Kailasam Vs. CCE., Tirupati - 2010 (252) ELT 405 (Tri.-Bang.)***

***(vi) Department of Customs Vs. Arvind Kumar - 2017 (348) ELT 411 (Del.)***

6. Learned Counsel draws my attention to the analysis report dated 01.09.2009 of the fertilizer samples relied by the Adjudication authority and submits that during cross examination, the signatory to the above certificate also admitted that she is not aware about the nature of the both Potassium Chloride and industrial salt. Scientifically potassium chloride and muriate of potash are different items and both of them different properties and chemical components and chemical composition.

7. Learned Counsel further drew our attention to the findings recorded also with regard to the proposed classification of the goods meant for export as 'MOP" and submits that the Ld. Commissioner has rejected the request of the appellant for retest on the ground that the Fertilizer Control Department of Government of Karnataka is a notified laboratory and hence their test report is final. The Ld. Commissioner failed to note that when he has rejected the test report furnished by the appellant and when the appellant has not accepted the test report of the said Government agency(though they may be a notified laboratory), the Ld. Commissioner should have acceded to the request of retest, which would have brought out the truth.

8. As regarding valuation, the Learned Counsel submits that though the Adjudication authority enhanced the value of the goods to Rs.35 per Kg, it was sold @ 3.09 per kg. In this regard, Learned Counsel draw our attention to the judgment of Hon'ble High Court of Madras in the matter of **M/s A Sundaram Vs. State of Tamil Nadu (2009 (255) E.L.T 659)** and submits that once the lab report relied by the Adjudication authority is prima facie unsustainable, the entire proceedings is unsustainable.

9. Learned Authorized Representative (AR) for the revenue reiterated the finding in the impugned order and as regarding credibility of the test report submits that test samples were drawn and sent for testing to M/s. Geological and Metallurgical Laboratories, Bangalore to ascertain (a) the nature and composition of the material and (b) whether the goods are of fertilizer grade or not. M/s. Geological and Metallurgical Labs reported that the sample is white crystalline material with very low impurities; that the chemical composition indicated the material to be potassium chloride; that the sample has low concentration of chlorides of calcium, magnesium, sodium and insoluble; that visual observation and chemical characteristics suggest the material to be of technical grade. As the report had not specifically stated the nature and composition of the sample and as to whether the same was of Fertilizer grade or not, further clarification was sought on 06.05.2009 by the Joint Commissioner of Customs, ICD, Bangalore. Instead of furnishing a detailed report, M/s. Geological and Metallurgical Labs vide their letter dated 07.05.2009, simply stated that the samples are naturally occurring inorganic chemical compounds. As per the Export policy prevailing during the relevant time, straight potassic fertilizer (Muriate of potash) were restricted for export and required an Export licence. The test reports received from M/s. Geological and Metallurgical labs was silent regarding the query raised by the department. The test results merely stated that the sample predominantly comprises of potassium chloride and the material is naturally occurring inorganic chemical compounds. Hence, on the suspicion that fertilizer (MOP) was being exported by mis-declaring

the same as "Industrial salt" test samples were again drawn and sent to the Chemical Examiner, Custom House, Chennai to ascertain whether the sample is (i) of mine origin or industrial origin and (ii) whether potassium fertilizer or otherwise. The Chemical examiner in her report dated 23.07.2009 stated that the sample is in the form of white & a few orange coloured crystals; that it is comprised of potassium chloride together with small amounts of compounds of sodium and magnesium; that for query No. (ii), an expert opinion may be obtained. Another sample was drawn on 20.08.2009 and sent to the Deputy Director of Agriculture (Fertilizer Control Laboratory), Government of Karnataka. The result of test of Samples drawn on 20.08.2009 was given on 07.09.2009 by the Deputy Director of Agriculture (Fertilizer Control Laboratory), Government of Karnataka. The test report indicated that the item under export is 'Muriate of Potash' containing water soluble Potash (as K2O) percent by weight ranging between 61.93 to 63.04. Shri N. A. Jayaram, Proprietor of M/s Bilwa Labs in his statements recorded under Section 108 of Customs Act, 1962 has deposed interalia that; they procured Industrial Salt (Potassium Chloride-Industrial grade) from local suppliers- Shri.Kumar (Babu) and Shri.Sadashiva Shastry; that he did not know the source from where his suppliers got the chemicals. Further stating that industrial salt is purchased from the local agents who do not raise invoices and he gets bills from other sources and such invoices are used for accounting purpose; that the description of the goods is different as the person who has raised the bill has not supplied the goods; that he does not remember the names of the agents who have supplied industrial salt; that he has not maintained any records and all the payments are made in cash; that he agreed to the manipulation by way of bogus bills. From the nature of these transactions, it appeared that Mr. Jayaram otherwise known as fertilizer dealer as per statements by his suppliers knew fully well that he was exporting fertilizer only, by misleading the department. He has admitted sending the packing material to the supplier and yet claims that he did not know the actual suppliers of these goods, declared as Industrial salt but actually being fertilizer, MOP. His entire transactions were in cash and entire operations were dubious in nature. Having been successful in mis-declaring the goods in a few export shipments, he got emboldened and even tried to take export incentives in the form of DEPB scripts.

10. Heard both sides and perused the records including the test report. I find that as per the evidence relied by Hon'ble Session Court in Court Appeal No. 138/2018, the revenue failed to establish that the goods exported by the appellant is MOP as alleged. Further it is evident that as per the experts, content of potassium chloride will decide as to whether the product was industrial salt or fertilizers. In the test report relied by the Adjudication Authority, there is no mention regarding percentage of potassium chloride. Fact being so, I find that there is no admissible evidence to substantiate the finding that the goods exported by the appellant is MOP as by Adjudication Authority.

11. Accordingly, Appeal is allowed, penalty is set aside with consequential relief, if any, in accordance with law.

*(Order was pronounced in Open Court on 19.12.2025. )*

**(P. A. AUGUSTIAN)**
**MEMBER (JUDICIAL)**

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