IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Customs Appeal No.42169 of 2013

(Arising out of Order-in-Appeal C. Cus. No. 1107 to 1111/2013 dated 12.8.2013 passed by the Commissioner of Customs (Appeals), Chennai)

M/s. Tropical Biomarine Systems Pvt. Ltd. **Appellant**
1st Floor, Mahaveer Chambers
103, Nyniappa Naicken Street
Chennai – 600 003.

Vs.

Commissioner of Customs **Respondent**
Chennai IV Commissionerate
Custom House
Chennai – 600 001.

With

Customs Appeal No.42171 of 2013

M/s. Eurasia Nutritions Pvt. Ltd. **Appellant**
1st Floor, Mahaveer Chambers
103, Nyniappa Naicken Street
Chennai – 600 003.

Vs.

Commissioner of Customs **Respondent**
Chennai IV Commissionerate
Custom House
Chennai – 600 001.

Customs Appeal No.42172 of 2013

Shri Rajesh Khanna, Director **Appellant**
M/s. Tropical Biomarine Systems Pvt. Ltd.
1st Floor, Mahaveer Chambers
103, Nyniappa Naicken Street
Chennai – 600 003.

Vs.

Commissioner of Customs **Respondent**
Chennai IV Commissionerate
Custom House
Chennai – 600 001.

Customs Appeal No.42173 of 2013

Shri S.V. Dhaneshwar **Appellant**
M/s. Tropical Biomarine Systems Pvt. Ltd.
1st Floor, Mahaveer Chambers
103, Nyniappa Naicken Street
Chennai – 600 003.

Vs.

Commissioner of Customs **Respondent**
Chennai IV Commissionerate
Custom House
Chennai – 600 001.

and

Customs Appeal No.42174 of 2013

Shri Vinod Kumar Khanna, Director **Appellant**
M/s. Tropical Biomarine Systems Pvt. Ltd.
1st Floor, Mahaveer Chambers
103, Nyniappa Naicken Street
Chennai – 600 003.

Vs.

Commissioner of Customs **Respondent**
Chennai IV Commissionerate
Custom House
Chennai – 600 001.

APPEARANCE:

Shri Hari Radhakrishnan, Advocate for the Appellant
Shri S. Balakumar, AC (AR) for the Respondent

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Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)

Final Order Nos. **40076-40080 / 2022**

Date of Hearing : 09.11.2021
Date of Pronouncement: 22.02.2022

Per Ms. Sulekha Beevi C.S.

Brief facts are that the Directorate of Revenue Intelligence, Kolkata Zonal Unit received specific intelligence that M/s. Tropical

Biomarine Systems Pvt. Ltd. had illegally exported about 300 kilograms of Nor-Ephedrine kept in 15 bags in two pallets concealed along with the declared items of exported goods namely (i) Shrimp feed premix (ii) MPEX Shrimp Feed and (iii) Golden Spawn in Container No. 3853006 covered by Shipping bill dated 31.1.2007 to Enbiosys Services Pte. Ltd. Singapore. Information was also received that one Switch Bill of Lading was raised for changing the destination of the consignment from Singapore to PT Gita Mandiri Abadi, Jakarta, Indonesia. The said consignment was lying at the Jakarta at that time. One Shri Rajesh Khanna, Director of the export company namely M/s. Tropical Biomarine Systems Pvt. Ltd. was behind this illegal act. The issue was taken with the Indonesian Customs through the diplomatic channel and they were requested to conduct 100% examination of the container.

2. On 29.3.2007, the Consul (Eco), Embassy of India, Hong Kong intimated that the Indonesian National Police had examined the cargo in the container. They recovered 337 kilograms of a chemical substance in 15 bags concealed along with the declared goods. On preliminary examination, the chemical in these bags were found to be pseudo ephedrine, a precursor chemical scheduled under the NDPS Act, 1985. In the letter dated 29.3.2007, Shri Indradi Thanos, Police Brigadier General, Director Narcotics and Organized Crime, Jakarta stated that the substance under question was a white powder and not of the same consistency as the remainder of the shipment. These 15 bags in which the suspect substance was shipped were marked with a small "x" on the bottom of the bag differentiating the bag from the rest of the shipment. The bags were marked with the name "Eurasia

Nutritious, GF-A, Jamals, Ras Bhavan, Chennai" and also mentioned as "Shrimp Feed Premix". The marking of "x" on the bottom of these bags was to differentiate the bags from the rest of the shipment. These facts were also corroborated with the photographs by the container line. Subsequently, on 25.4.2007, the Consul (Eco), Embassy of India, Hong Kong intimated that the National Narcotics Board of Indonesia had provided the chemical analysis report of the substance seized from the container. The said substance was identified to be "Norephedrine" which is listed in the UN's Drug Convention of 1988 as a precursor used in the manufacture of drugs. The Indonesian Police estimated the said Norephedrine to have a street price as almost 3-million-dollar equivalent to Indian value of Rs.12 crores.

3. Meanwhile, in connection with another seizure (of 34 cartons of goods arrived at Howrah Railway Station from Chennai by Train) made by the same DRI, Shri Rajesh Khanna appeared before the officers on 14.3.2007 in response to summons issued to him. In his voluntary statement, inter alia he stated that he was the proprietor of Pharmagem (India) and also one of the Directors of M/s. Tropical Biomarine Systems Pvt. Ltd. He was one of the partners of Tropical Biomarine Hatchery. That all these firms operated from the same address i.e. Mahaveer Chambers, 1st Floor, 103 Nyniappa Niacken Street, Chennai – 3. He stated that Pharmagem (India) was engaged in trading of various prawns / fish / poultry feed and feed additives.

4. The other Directors of M/s. Tropical Biomarine Systems Pvt. Ltd. were Shri S.V. Dhaneshwar and Shri Suresh Nayak. M/s. Tropical Biomarine Systems Pvt. Ltd. was engaged in trading of various

products used in prawn / fish / poultry feed / cattle feed and feed additives.

5. He stated that M/s. Tropical Biomarine Systems Pvt. Ltd. had exported only one consignment in the previous six months declaring the goods as Shrimp Feed Premix, "MPEX" larvae food and "golden spawn". One of the Directors of the consignee company i.e. Enbiosys Services Pte. Ltd. Singapore had placed the order with him over telephone. As per instruction of the consignee, goods were sent to Indonesia via Singapore. That "MPEX" larvae food and "Golden Spawn" feed were imported by M/s. Tropical Biomarine Systems Pvt. Ltd. about eight months ago and Shrimp Feed Premix was procured by them in course of local purchase from Eurasia Nutritious; that he did not know who were the partner / director / proprietor of the said company namely Eurasia Nutritious.

6. However, in his subsequent statements given before the DRI officers on different dates, Shri Rajesh Khanna stated inter alia that he had asked Expeditor International (freight forwarder) to switch the bill of lading and deviate the destination of the consignment. This was done on the request of the consignee M/s. Enbiosys Services Pte. Ltd. Singapore. He stated that he did not know any person related to PT Gita Mandiri Abadi of Indonesia to whom the consignment was deviated by raising switch Bill of Lading. It was stated by him that he was a Director of Eurasia Nutritions and the other Directors are Bernard Devresse and also his father Shri Vinod Khanna. Shri Sacheeb was the General Manager of the company looking into the day to day affairs. Shri Sacheeb was working in Eurasia and that he used to act as per his

instructions. The registered address of Eurasia Nutritions as Mahaveer Chambers, 103, Nyniappa naicken Street, Chennai – 3. That the records and activities were maintained at the factory.

7. On being asked about the seizure of 337 kilograms of the chemical substance in 15 bags concealed in the declared cargo, he stated that he had no knowledge about it. He was the partner of Enbiosys India and the other partners were Shri S.V. Dhaneswar and Debananda Naik. The office and the lab of Enbiosys India were situated on the ECR Road, Narkanam, Tamil Nadu and the said company is involved with the diagnosis of shrimp seed, water and soil parameters and basically laboratory services to the farmer. He stated that the Enbiosys Singapore had provided the basic technology and methods of operation and had allowed Enbiosys India to use their brand image in Indian market. On being specifically asked as to how the goods meant for export are packed in Eurasia Nutritious Factory premises, Shri Rajesh Khanna stated that the shrimp feed and shrimp feed premix were packed in paper bags bearing the logo of Eurasia Nutritions printed on them and also bearing the address of Eurasia Nutritions office. He stated that he was not present during packing or transportation of the subject goods.

8. In response to summons Shri G. Rajesh of Expeditors International (India) Pvt. Ltd. Chennai who are the freight forwarders in respect of the said consignment gave statement on 21.3.2007 before the DRI officers. It was stated that M/s. Tropical Biomarine Systems Pvt. Ltd. had approached them for supply of container for the subject export shipment to Jakarta. The container was stuffed on 2.2.2007 and

was returned to Dock after stuffing and other formalities. On 9.2.2007, the vessel sailed off from Chennai Port to the shipper. Subsequently, Shri Rajesh Khanna of M/s. Tropical Biomarine Systems Pvt. Ltd. by letter dated 14.2.2007 surrendered the original Bill of Lading and requested to deviate the shipment to another consignee at Jakarta. As per request of Shri Rajesh Khanna they released the switch bill of lading.

9. On the basis of investigation conducted, it appeared that the exporter has contravened the provisions of section 50(2) of Customs Act, 1962, Rule 11 of the Foreign Trade (Development & Regulation) Rules, and Section 11 of the Foreign Trade (Development & Regulation) Act. In view of the provisions under Rule 14 of the said rules goods namely 337 kilograms of Norephedrine having street price of Rs.12 crores appeared to be liable for confiscation under section 113(e), 113(g), 113(h) and 113(i) of the Customs Act, 1962. It also appeared that the shrimp feed premix which were used for concealment of 337 kilograms of Norephedrine was also liable for confiscation under section 119 of the Customs Act, 1962.

10. Consequent to the investigation, Show Cause Notices were issued to M/s. Tropical Biomarine Systems Pvt. Ltd., M/s. Eurasia Nutritions Pvt. Ltd, Shri Rajesh Khanna, Shri Vinod Kumar Khanna and Shri S.V. Dhaneshwar to show cause as to why (i) 337 kilograms of Norephedrine having street price of Rs.12 crores shall not be held liable for confiscation (ii) why 7700 kilograms of shrimp feed premix, 505 kilograms of MPEX shrimp feed and 60 kilograms of golden spawn as declared in the subject shipping bill dated 31.1.2007 and used for

concealing restricted undeclared goods shall not be held liable for confiscation (iii) penalty under section 114 of the Customs Act, 1962 shall not be imposed upon them for their active involvement in the subject export which rendered export goods liable for confiscation under section 113 of the Customs Act, 1962.

11. After due process of law, the adjudicating authority passed the following order:-

> "(i) I hold 337 kgs of Norephedrine valued at Rs.3,13,511/- (Rupees Three Lakhs Thirteen Thousand Five Hundred Eleven only) and exported with other goods covered under the Shipping Bill No.2567339 dated 31.01.07 as liable for confiscation under Section 113 (e), 113 (g), 113 (h) & 113 (i) of Customs Act, 1962.
>
> (ii) I hold the rest of the consignment valued at Rs.5,28,056/- (Rupees Five Lakhs Twenty Eight Thousand and Fifty Six only) exported under the Shipping Bill No.2567339 dt.31.01.07 from which the misdeclared goods viz 'Norephedrine' was found as liable for confiscation in terms of Section 119 of Customs Act, 1962.
>
> (iii) I impose a penalty of Rs.5,00,000/- (Rupees Five Lakh only) each on a) M/s.Tropical Biomarine Systems Pvt. Ltd., b) M/s.Eurasia Nutritions Pvt. Ltd., c) Shri Rajesh Khanna, d) Shri Vinod Kumar Khanna and e) Shri S.V.Dhaneshwar under Section 114 (iii) of the Customs Act, 1962."

12. Aggrieved by the above order, separate appeals were filed before the Commissioner (Appeals) by M/s. Tropical Biomarine Systems Pvt. Ltd., M/s. Eurasia Nutritions Pvt. Ltd., Shri Rajesh Khanna, Shri Vinod Kumar Khanna and Shri S.V. Dhaneshwar. The Commissioner (Appeals) vide the order impugned herein upheld the order passed by the adjudicating authority except for reducing the penalty to Rs.3,13,511/-. Aggrieved by such order, the appellants are now before the Tribunal.

13. The learned counsel Shri Hari Radhakrishnan appeared and argued for the appellants. He submitted that the entire allegation of

misdeclaration is based on a test report which is said to have been issued by the National Narcotics Board, Indonesia. This report is in Indonesian language and the appellant has not been provided with official translation of the test report. He adverted to the translation copy of test report and submitted that the heading shows that it is unofficial translation. Further in the test report, which is in Indonesian language, in the column, it is stated as "X1 to X15" whereas in the unofficial translation of the said report, the goods are described as "Sample Code X – 01a to X – 07a". Though goods are described as X1 – X15 items in the original test report issued in Indonesian language, the unofficial transation of the said report shows only X – 01a – 07a. Further, the persons who have endorsed their signature in the test report is different from the persons who are seen to have singed in the unofficial translation. Again, the test report is dated as Jakarta 30, March, 2007 whereas the date noted at the bottom of the unofficial translation is 8.1.2007. For better appreciation, relevant part of the test reports are reproduced as under:-

Barang Bukti	Pemeriksaan	Hasil
Serbuk berwarna putih dari masing - masing plastic Kode X1 - X15	Kromatografi Lapis Tipis (KLT) dan Gas Chromatographi - Mass Spectromter (GC_MS)	Positif, Norephedrine

Unofficial Translation

1. Referring to an application for assistance in temporary investigating by laboratory the criminal evidence goods in the name of the suspect SURIMAN BUYUNG alias LUKAS, No.Pol : B/214/III/2007 Dit narkoba dated 30 March 2007, concerning 15 (fifteen) small plastic bags containing white powder weight @ 20 (twenty) gram gross with code X - 01a to X- 15a.

2. Referring to aforesaid point 1 (one), for the time being it has been checked in the laboratory the evidence goods :

Evidence goods	***Checkin g***	***Result***

White powder Code X - 01 a to X - 07 a	*GC - MS*	*Phenylpropanolamine (Norephedrine)*

3. Statement Phenylpropanolamine (Norephedrine) is including in the group I of precursor based on the Decree of Head for Drug and Food Controlling Board number . HK 00. 05.35022772 concerning the Precursor Monitoring and Controlling.

Jakarta, 08, January 2007
KANIT NARKOBAFOR

Signed.
Drs.BAMBANG TJAHJONO Apt MS
AJUN KOM BES POL NRP :54080448

Investigator,
Signed
TOMMY WIDODO A AMD
I P T U NRP:79052170

Signed
YUSWARDI S. Si Apt
I P T U NRP:79052194"

14. The learned counsel further urged that the seizure of the goods at the port of Jakarta has been done by not complying with the legal requirements that has to be followed. The samples from the goods were taken without ensuring the presence of the appellant or his representative. This is in violation of the provisions of section 144 of the Customs Act, 1962 and the instructions given by the Board regarding drawing samples and testing as contained in the Appraising Manual. The principles of natural justice has been violated in drawing the samples. Therefore, the test report cannot be relied.

15. Though the appellant made request for retesting, the same was not granted. When the appellant pointed out the discrepancies in the unofficial translation of the test report as well as the deficiency in the procedure adopted by the department for conduct of test of samples,

the request for retest ought to have been allowed as per the procedure prescribed in the manual.

16. Further, the appellant had requested for cross-examination of Shri S. Kumar, Consulate General of India, Hong Kong. So also request to cross-examine the investigating officers of DRI was made before the adjudicating authority. These requests were not heeded to by the department. The right to cross-examine the officials whose report has been relied, having been denied, the same cannot be used as evidence to hold the appellant guilty of export of prohibited goods. To support this argument, he relied upon the decision of the Hon'ble High Court of Allahabad in the case of CCE, Allahabad Vs. Govind Mills Ltd. reported in 2013 (294) ELT 361 (All.) and the decision of the Hon'ble High Court of Bombay in the case of Ravindra Prakash Vs. Director General, DRI, New Delhi reported in 2018 (359) ELT 304 (Bom.).

17. The appellant was not provided with copies of relied upon documents in the nature of the letter dated 10.8.2007 written by DRI, Kolkata to Narcotics Control Bureau, Gwalior. The statement of Shri Rajesh Khanna recorded on 8.5.2007 as well as communication dated 27.3.2007 to the Consulate General of India, Hong Kong was also not provided. The documents seized relating to imports and exports for the last three years and the statements of Shri Mohan Sundar dated 5.4.2007 and Shri Karthik Kumar recorded by the officers of DRI were not provided to the appellant.

18. Without prejudice to the above arguments, it was submitted by learned counsel that the department alleges the goods to be Norephedrine. Even assuming without conceding that the appellant had

misdeclared the description of the goods in the shipping bills, the alleged goods in the nature of Norephedrine are not restricted or prohibited for export. This fact has been admitted in para 28 of the Order in Original. Therefore, there was no necessity for the appellant to conceal or misdeclare the description of the goods when the item is freely exportable.

19. The learned counsel argued that the penalty imposed on appellant No. 2, 4 and 5 is unwarranted as they have not done any act in relation to the goods so as to render the goods liable for confiscation in terms of section 113 of the Customs Act, 1962. One of the mandatory prerequisites for imposing penalty under section 114 of the Customs Act, 1962 is that the party should have knowledge of the alleged act. The same is not proved. The only allegation against the appellant No. 2 company is that the name (M/s. Eurasia Nutritions Pvt. Ltd.) was found impressed on the bags. This is not a valid ground under section 114 of the Act ibid. Similarly, statement of only Shri Rajesh Khanna was recorded and no statements were recorded from Shri S.V. Dhaneshwar and Shri Vinod Kumar Khanna. Even in the Show Cause Notice, there is no allegation of any direct or indirect involvement by them in the alleged transaction. Unless a specific role is established, the penalty imposed against appellant No. 4 and 5 cannot sustain. To support this argument, he relied upon the decision in the case of Santanu Ray Vs. Union of India reported in 1988 (38) ELT 264 (Del.). The learned counsel prayed that the appeals may be allowed.

20. The learned AR Shri S. Balakumar appeared and argued for the department. He filed written synopsis also. Countering the arguments

put forward by the learned counsel for appellant, he submitted that the appellants have been furnished a copy of the test report both in Indonesian language as well as a translated version. The discrepancies pointed out by the learned counsel are too flimsy and it is clear from the test report that the goods are found to Norephedrine after conduct of test. In both the test report as well as the translated version, obtained from the Criminal Investigation Board, Police of the Republic of Indonesia, Forensic Laboratory Center, it is seen that the samples were Norephedrine. It is only a wild allegation by the learned counsel for the appellants that the test report is not correlated to the unofficial translation. There are no grounds to disbelieve these reports issued by Consulate General of India at Hong Kong. These reports were issued by investigating police of Indonesia.

21. Replying to the contention that the appellant's representative was not present at the time of taking samples, the learned AR submitted that there was no one on behalf of the appellant or his buyer in Indonesia to take up the mater with the Indonesian Police when the goods were detained. The consignee PT Gita Mandiri Abadi, Jakarta, Indonesia did not come forward to own the goods. The exporter (the appellant herein) could have deployed some person in Indonesia to assist in taking samples if he was genuinely interested in the goods. Even after coming to know that the goods have been detained, there was no effort on the part of the appellant by deploying some one at Indonesia to assist the investigation.

22. The learned AR submitted that retest of samples is not at all warranted in the present case as the test report from the lab in

Indonesia has categorically identified the goods to be Norephedrine. The appellant has requested for retest merely alleging that the translated version bears the heading 'unofficial translation'. Further the goods having been detained at Indonesia and the test also having been conducted from there, the appellant could not request for retest in the proceedings before the adjudicating authority.

23. The learned AR adverted to the findings of the adjudicating authority in para 24 of the Order in Original. On examination of cargo, it was found 15 bags could be easily differentiated from the rest. A small mark "x" was put on the bottom of the bags, though the bags looked similar to other bags. The appellant has not been able to give any plausible explanation about the markings of 15 bags which contained the prohibited goods. This fact of putting specific mark on the 15 bags would prove that the appellant has exported undeclared prohibited goods along with declared goods. Further, these marking was not in their packing list also.

24. In the statement dated 8.3.2007, Shri Rajesh Khanna has stated that he did not know as to who are the partners / directors of Eurasia Nutritions Pvt. Ltd. However, later in his statement dated 4.4.2007, he has disclosed that he was a Director of Eurasia Nutritions Pvt. Ltd. Further, it has come out from the evidence that Shri Rajesh Khanna had instructed the freight forwarder to switch the bill of lading in the name of PT Gita Mandiri Abadi, Jakarta, Indonesia. This change of address of consignee and switch bill of lading was not intimated by him to the Customs Department. This along with the contradictory statements made by Rajesh Khanna proves the commission of the

offence as well as in violation of the provisions of Customs Act, 1962. Even though there is no restriction for export of Norephedrine, the said chemical is included in Table 1 of the UN Drug Convention of 1988 against illicit traffic in Narcotic Drugs and Psychotropic Substance, 1988. This substance is a controlled substance in Indonesia. This is the reason why the appellant has exported in an undeclared manner in the guise of shrimp feed. As the goods were not at all declared, the contention of the appellant that Norephedrine is not restricted or prohibited in India cannot be accepted.

25. M/s. Eurasia Nutritions Pvt. Ltd. has supplied shrimp feed premix in which Norephedrine was exported. The name "Eurasia Nutritions" was impressed upon these boxes and they were also specifically marked with "x" as the company name is impressed on their boxes, their involvement is obvious and the plea raised by Eurasia Nutritions that they are not the exporter of the undeclared goods cannot be accepted. Further, Rajesh Khanna apart from being Director of Tropical Biomarine Systems Pvt. Ltd. (exporter in this case) is also the Director of Eurasia Nutritions Pvt. Ltd. His proactive involvement in the entire operation has been proved beyond doubt. Accordingly, Eurasia Nutritions Pvt. Ltd. is also liable for penalty. He adverted to section 140 of the Customs Act, 1962 to argue that a presumption has to be drawn on the person incharge or responsible for the company whenever an offence is committed by such company unless it is proved that the offence was committed without their knowledge. The appellant Shri Rajesh Khanna, Shri S.V. Dhaneshwar, Shri Vinod Kumar Khanna have not adduced any evidence to rebut this presumption. He prayed that the appeals may be dismissed.

26. Heard both sides.

27. At the outset, it has to be stated that though in the Show Cause Notice, the value of the the alleged goods in the nature of Norephedrine was estimated and arrived at Rs.12 crores, the adjudicating authority in his findings recorded in para 32 has worked the price of 337 kilograms of Norephedrine to be Rs.3,13,511/- only. The department has not filed any appeal against this finding of valuation arrived by the adjudicating authority. The same has become final. The relevant part of said paragraph is reproduced as under:-

> *"………. I find that DRI has taken the total value of the 337 kgs od Norephedrine as Indian Rs.12,00,00,000.00 (Rupees Twelve Crores only) which was the estimated value furnished by the Indonesian Police on the basis of street price of almost $3 million taken from the website (http://www.abc.net.au/news/stories/2007/04/05/1 891421. htm). DRI has not ascertained the transaction price of the item - Norephedrine during the normal international trade. The exporter has stated that the same product with 100% purity is officially importable in Indonesia and Imported/Exported in India at USD 16.8 to USD 21 per kg and furnished copies of data from the Indian Customs EDI system, Chennai. From the data it is seen that M/s.Hingarh Co has imported 500 kgs of 'phenylpropanolamine HCL' vide Bill of Entry No.354456 dated 11.12.2006 from Taiwan at a price of USD 21/kg. I take this price as the maximum transaction since the price of other importers were less than this. Applying this price, the total value of 337 kgs. of Norephedrine works out to Rs.3,13,511/- (Rupees Three Lakhs Thirteen Thousand Five Hundred Eleven only). The declared total value of the consignment exported under Shipping Bill No.2567339 dated 31.01.2007 was Rs.5,28,056/- (Rupees Five Lakhs Twenty Eight Thousand and Fifty Six only)."*

28. The main ground raised by the appellant is that the test report cannot be accepted as conclusive evidence to establish that the goods exported are Norephedrine. Tropical Biomarine Systems Pvt. Ltd. have exported the goods vide shipping bill dated 31.1.2007 declaring the consignment to be shrimp feed premix, MPEX shrimp feed and golden spawn. The goods were initially shipped to Enbiosys Services Pte. Ltd. Singapore. Later switch bill of lading obtained for deviating the goods

to PT Gita Mandiri Abadi, Jakarta, Indonesia. The exporter Tropical Biomarine Systems Pvt. Ltd. has not informed the customs authorities as to the diversion of the goods. They have obtained the switch bill of lading issued by their freight forwarder.

29. When the goods reached Jakarta, the same were detained on specific intelligence received by DRI. They were opened for examination by Indonesian Police and sent for test to laboratory. It is noted in para 4 of the adjudication order that the substance in the 15 bags was in the nature of white powder and not of the same consistency as the remainder of the shipment which granular and brown. The bags which contained the white powder substance were all imported with a small "x" on the bottom of the bag differentiating these bags from the rest of the consignment. After conducting test, the substance was found to be Norephedrine.

30. The learned counsel for appellants has pointed out many discrepancies in the test report. The relevant portion of the test report has already been reproduced above. The date in the test report (Indonesian language) is shown as 30th March 2007. However, in the unofficial translated version, the date is mentioned as 8.1.2007 at the bottom. In the reply filed to the Show Cause Notice itself, the appellant has pointed out all these discrepancies. In para 5 of the reply to Show Cause Notice dated 18.11.2011, the appellant has pointed out the discrepancies with regard to the dates mentioned in the alleged original test report (Indonesian language) and the unofficial translation. Apart from the difference in the date, it is seen that the sample code is noted as X1 – X15 in the test report (Indonesian language) whereas in the

unofficial translation, the sample code is shown as X-01a – X07a. Further, these test reports mention that the goods in plastic wrappers. The goods in the present case were packed in bags. There is no mention of any plastic wrappers. There is difference in the quantity also. As per para E of test report, the goods kept in 15 clear plastic wrappers, the total net weight is 277, 7019 grams. In the present case, the weight of alleged substance is 337 kilograms.

31. This apart, a very major flaw is seen in the test report. In para 1 of the unofficial translation, the name of the suspect is shown as Suriman Buyung Als Lukas. In the test report (Indonesian language), the very same name is seen stated in para (A) of page 1 as well as para (E) at page 2.

Name Tersangka – Name of Suspect – Suriman Buyung Als Lukas

32. There is no mention of the name of Tropical Biomarine Systems Pvt. Ltd. who is the exporter of the goods or the name of Shri Rajesh Khanna. Even the name of the consignee Enbiosys Services Pte. Ltd. or PT Gita Mandiri Abadi, Jakarta, Indonesia is not seen stated in the test reports. Instead the name of suspect is shown as Suriman Buyung Als Lukas who is not in any way connected with the present case.

33. The learned AR was not able to explain as to why the name of suspect is shown as Suriman Buyung Alas Lulkas.

34. From the difference in the date of test report (8.1.2007) and the difference in the name of suspect, the probability that can be arrived is that the test report of some other investigation has been furnished by the department in the present case.

35. Needless to say that the test report is the basis for holding that the goods exported are Norephedrine and prohibited goods. The entire case of the department is based upon the test report. Though the appellant has pointed out the discrepancies at the stage of replying to the Show Cause Notice itself, the department has not been able to explain the discrepancies. In such circumstances, I do not find any ground to uphold the impugned order which is mainly based on the test report forwarded by the Indonesian Police.

36. After appreciating the evidence, I am of the view that the impugned order is passed on erroneous facts and documents and therefore cannot sustain. The same is set aside. The appeals are allowed with consequential relief, if any.

(Pronounced in open court on 22.02.2022)

(**SULEKHA BEEVI C.S.**)
Member (Judicial)

Rex