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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
CUSTOMS APPEAL BRANCH

Appeal No. C/552 /2006 - CU[DB] Date 03/08/2009

Assistant Registrar
C.E.S.T.A.T, New Delhi

To : M/S OVERSEAS CARRIER,
A-294, ROAD NO 6, NH-8,
MAHIPALPUR,NEW DELHI

M/S OVERSEAS CARRIER Appellant

Vs

C.C.N.DELHI Respondent

I am directed to transmit herewith a certified copy of **Final order No.** C/313/ 2009 CU[DB] dated 21.07.09 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(Customs Appeal Branch)

Copy to :
1. Respondent
   C.C.N.DELHI
   ICD,TUGLAKABAD,N.DELHI.
2. Adv. / Consult MR. SHEKHAR VYAS, ADV.,
   C/O MANU LAW ASSOCIATES,
   G-13, NIZAMMUDIN(W), NEW DELHI – 13.
3. S.D.R
4. J.C.D.R.
5. Bar association, CESTAT, New Delhi
6. Director Publications, Customs, Excise, I.P. Estate, New Delhi
7. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8. Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11. M/s. Deeparchie Publications, M-93, Marg, 46, Saket, New Delhi 110017
12. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
13. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
16. Office Copy
17. Guard file

Assistant Registrar
(Customs Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

COURT NO. II

Custom Appeal No. 552 of 2006-Cust. Br.

(Arising out of Order-in-Original No. 24/2006 dated 25.5.2006 passed by the Commissioner of Customs, ICD, Tughlakabad, New Delhi)

M/s Overseas Carrier | Appellant

Vs.

CC, New Delhi | Respondent

Appearance

Appeared for Appellant : Shri Shekhar Vyas, Advocate

Appeared for Respondent: Shri Sunil Kumar, DR

Date of Hearing: 15.7.2009

CORAM: HON'BLE MR. D.N. PANDA, JUDICIAL MEMBER
HON'BLE MR. RAKESH KUMAR, TECHNICAL MEMBER

Final Order No. C/313/09 dated............

Per D.N. Panda :

Ld. Counsel Shri Shekhar Vyas argued that eight consignments imported are depicted in page-1 of the order-in-original. The goods were fertilizers containing Nitrate and Phosphate element and were branded as Rigenera NP 7.11. Samples of the some of these consignments were taken by Customs and sent for chemical testing. The test report does not indicate that these goods were meant for animal feed. He further submits that technical studies have been made to show that the goods imported can be used as fertilizer. The report relied upon by the ld. Adjudicating Authority related to different consignments for which those are not permissible under law to be used against consignments of the Appellant. In view of such circumstance, the Adjudication is bad and Appellant is not liable to consequence of Adjudication.

2. Ld. DR Shri Sunil Kumar submits that samples drawn were brown powder which were subject matter of import and were subject to chemical test by Indian Veterinary Research Institute and Deen Dayal Upadhyay University. Both the reports suggest that absence of Nitrates while there was existence of Protein element in the sample tested. The Indian Veterinary Research Institute report suggested that the goods in question is composed of meat and bone meal which are of cattle origin and that is proved by scientific analysis. The report of Deen Dayal Upadhyay University also does not speak presence of Nitrates in the sample tested. The report of that university categorically mentions the brand of the goods i.e. Rigenera NP 7.11 and also the country of origin mentioned in the report.

3. Shri Sunil Kumar also draws our attention to first paragraph of order in original to submit that the imported products were banned for import. Also chemical analysis proved that the goods imported was composed of meat and bone meal ingredients. In absence of Nitrate, the proprietor of the Appellant was arrested for importing

the banned goods. Statement of the proprietor also proved that the goods imported were used for animal feed. In this context, ld. DR invites our attention to page 2 and 3 of the order-in-original. He submits that there were sufficient evidence gattered by Revenue to prove that the poultry feed manufacturers were using the imported goods. Therefore basing on the chemical report, oral evidence and outcome of investigation, the Authority below has rightly classified the goods under the heading 23099090 instead of the goods being classified under heading 31055100. The evidence on record proved that the goods imported were not fertilizers and neither Nitrate or Phosphate were present in the goods as claimed by the Appellant. Therefore department reasonably believed that there was deliberate misdeclaration for which the import called for confiscation. Accordingly, order of Adjudication does not call for disturbance.

4. Heard both sides and perused the record.

5. The crucial issue involved in this Appeal is whether the goods imported by the Appellant contained Nitrate and Phosphate. The chemical report of Indian Veterinary Research Institute and Deen Dayal Upadhyay University proved that Nitrate was absent in Rigenera NP 7.11 imported by the Appellant. The goods imported was only subject matter of test report. The Appellant has not brought out any material to suggest that the goods imported were used as fertilizer in this country. Nor there is any literature showed to us to prove that the goods were imported as fertilizer in large

commercially, to serve purpose of agricultural. Also no material was showed to us to prove that import of such goods were as fertiliser and that is financially and economically viable for massive use in agricultural. When test reports of technical institutions are seen, it does not appeal to common sense to appreciate that animal feed is also possible to be used as fertilizer in this country. It is well known to every citizen of this country that to make price of the fertilizer affordable, Government of India gives subsidy for the welfare of farmers. Therefore use of the imported goods as fertilizer is inconceivable. This view is well supported by the laboratory test report. Accordingly Revenue's claim that the goods should be rightly classified under Chapter 23099090 remains uncontroverted for which that remains untouched by the order.

6. All aforesaid evidence and reasons do not permit us to disturb the order passed by ld. Commissioner for which Appeal of the assessee is dismissed.

(Dictated & pronounced in open Court)

(D.N. PANDA)
JUDICIAL MEMBER

(RAKESH KUMAR)
TECHNICAL MEMBER

RM