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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/479 /2006 - CU[DB] Date 12/10/2010

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

To :
M/S OVERSEAS CARRIER
A-294, ROAD N. 6, N.H.-8,
MAHIPALPUR, NEW DELHI 110037

M/S OVERSEAS CARRIER Appellant

Vs

COMMISSIONER OF CUSTOMS (APPEALS) Respondent

I am directed to transmit herewith a certified copy of **Final order No. C/153/ 2010 CU[DB]** Dated 01.10.2010 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
   COMMISSIONER OF CUSTOMS (APPEALS)
   NEW CUSTOMS HOUSE, NEAR IGI AIRPORT,
   NEW DELHI - 110 037
2. Adv. / Consult
   MR.J.K.SRIVASTAVA, ADV.,
   CHAMBER NO.87, PATIALA HOUSE COURTS,
   NEW DELHI 110 001.
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. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
10. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
11. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
12. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
13. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(Customs Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
Court No.IV

C/Appeal No. 479/2006

(Arising out of order in appeal No.CC/A/12/ICD/D.II/06 dated 29.3.2006 passed by the Commissioner of Central Excise (Appeals), New Delhi)

Date of Hearing: 29.9.2010

For approval and signature:

Hon'ble Shri M.V. Ravindran, Member (Judicial)
Hon'ble Shri M. Veeraiyan, Member (Technical)

1. Whether Press Reporters may be allowed to see Under Rule 27 of the CESTAT (Procedure) Rules, 1982?

2. Whether it should be released under Rule 27 of the CESTAT(Procedure) Rules, 1982 for publication in any authoritative report or not?

3. Whether Their Lordships wish to see the fair copy Of the order?

4. Whether Order is to be circulated to the Departmental Authorities?

M/s Overseas Carrier	Appellants
Vs	
CC, New Delhi	Respondent

Appeared for the Appellant: Shri J.K. Srivastava, Advocate
Appeared for the Respondent: Shri I. Beg, DR

Coram: **Hon'ble Shri M.V. Ravindran, Member (Judicial)**
Hon'ble Shri M. Veeraiyan, Member (Technical)

Final ORDER No. C/153/10

Per M.V. Ravindran:

This appeal is directed against the order in appeal No.CC(A)/12/ ICD/D.II/06 dated 29.3.2006.

2. The relevant facts that arise for consideration are that the appellants herein imported two consignments of Rigenera NP.711 (hereinafter called the impugned goods) and filed bills of entry for clearance of the same declaring the goods as fertilizers containing mixture of Nitrates and Phosphates. Samples from consignments were drawn and report of samples confirmed that the goods contained meat and bone meat. The Adjudicating Authority acceding to the request of the appellants for waiver of show cause notice, conducted the adjudication proceedings wherein the appellant participated in the personal hearing. The Adjudicating Authority came to the conclusion that the goods are liable for confiscation as they are banned goods, allowed the goods to be re-exported on request of the appellants. He imposed a redemption fine of Rs. 1,25,000/- under Section 125 of the Customs Act, 1962 and also imposed penalty of Rs. 1 lakh on the appellant.

3. Aggrieved by the order, the appellant filed appeal before the Commissioner (Appeals). The first Appellate Authority by the impugned order, conconcurred with the view of the adjudicating authority and rejected the appeal. Hence this appeal before Tribunal.

4. The learned Counsel appearing on behalf of the appellant, draws our attention to the bills of entry and also to the test report of the samples of the goods drawn in the earlier consignments. He also draws our attention to the Notification No.SO 802(E) dated 17th August, 2001 issued by the Ministry of Agriculture. It is the submission that the appellant had understood the products as fertilizer, as has been told to him by the Overseas Supplier. He would

submit that the lower authorities have not drawn any evidence that these goods were coming from the country where diseases belonging to TSE group of diseases are found. He would submit that the redemption fine imposed and personal penalty be set aside.

5. The learned DR on the other hand, would submit that this is a case of mis-declaration. He would submit that the appellant had not disclosed that these goods were to be used as fertilizes. It is his submission that in an identical case of the very same appellant for earlier consignment, Tribunal vide Final order No. 313/2009 dated 21.7.2009 has held in favour of the Revenue and rejected the appeal filed by the appellant.

6. In rejoinder, the learned Counsel would submit that the order of the Tribunal dated 15.7.2009 does not show anything about the argument taken by the appellant today i.e. the goods were imported from Italy and the said place was not declared a country affected by TSE group of diseases.

7. We have considered the submissions at length from both the sides.

8. It is undisputed that the test report of the samples of the consignments revealed the same as fertilizers containing meat and bone meant products. As per Notification dated 17th August, 2001, these goods are prohibited goods if they were imported from country where the diseases belonging to TSE group of diseases are prevalent. We find that this stand has been taken by the appellants from the beginning right up to first appellate authority. It is not disputed by the

appellants that the goods are of meat and bone meat origin. We also find that the Tribunal's own case is also holding the same view.

9. In view this, the appellants have not made out a case setting aside confiscation. In the entire facts and circumstances of this case, we find that the redemption fine and penalty imposed by the adjudicating authority seems to be excessive. In the interest of justice, we are of the considered view that the redemption fine and penalty imposed on the appellants, if reduced to Rs.50,000/- each, would meet the ends of justice.

10. Subject to above modification as indicated above, the appeal filed by the appellant is disposed of.

(M.V. RAVINDRAN)
Judicial Member

(M. VEERAIYAN)
Technical Member

MPS*