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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/504 /2009 - CU[DB] Date **23/08/2011**

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

To :
M/S NAV BHARAT INTERNATIONAL LTD.
5192, NAYA BAZAR, DELHI-110006

M/S NAV BHARAT INTERNATIONAL LTD. Appellant

Vs

C.C.E. GHAZIABAD Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/367/ 2011 CU[DB]** dated 12.08.2011 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.E. GHAZIABAD
C.G. O. COMPLEX-II, KAMLA
NEHRU NAGAR, GHAZIABAD
201302

2. Adv. / Consult
MR.RAJESH RAWAL
249, LAWYERS CHAMBERS,
HIGH COURT OF DELHI, NEW DELHI.

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise, I.P. Estate, New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. III

Customs Appeal No. 504 of 2007

[Arising out of Order-in-Appeal No. 89/ CE/Ghaziabad/2009 dated 31.3.2009 passed by the Commissioner of Central Excise & Customs (Appeals), Meerut I]

For approval and signature:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Mathew John, Member (Technical)

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	:	No
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	No
3. Whether Their Lordships wish to see the fair copy of the Order?	:	Seen
4. Whether Order is to be circulated to the Departmental authorities?	:	Yes.

M/s. Nav Bharat International Ltd. Appellants

Vs.

Commissioner of Central Excise & Custom, Ghaziabad Respondent

Appearance:
Shri G.L.Rawal with Shri Rajesh Kumar, Advocates for the Appellant
Shri Sunil Kumar, SDR for the Respondent

CORAM:
Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Mathew John, Member (Technical)

Date of Hearing : 01.08.2011
Date of decision : 12.08.2011

Final **ORAL ORDER NO.** C/367/11

Per Archna Wadhwa (for the Bench):

The facts of the present case are clear and undisputed. The appellants filed two shipping bills on 3.11.08 for export of 'Rice-Pusa 1121' to Dubai under non-basmati category. The said rice falls under H.S. Code 10063020 and does not attract any duty. Only export duty of Rs.8000/- per tonne was leviable on the export of basmati rice vide Notification No. 66/2008-Cus dated 10.5.08.

2. However, before the said shipping bills could be processed and 'let export' orders could be passed, a notification No. 55 (RE-2008) dated 5.11.08 was issued by DGFT laying down the law that variety of 'Pusa-Rice 1121' would be considered as basmati rice. Accordingly, the said export attracted the duty of Rs.8,000/- per tonne in terms of Notification No. 66/2008 Cus. The assessments were accordingly done and 'let export order' was passed on 5.11.2008. The appellant deposited the duty amount of Rs.22,46,400/- under protest and exported the consignment.

3. Aggrieved with the assessment, ~~the~~ an appeal was filed before the Commissioner (Appeals) on the ground that they presented two shipping bills on 3.11.08 and inasmuch on the said date the 'Rice-Pusa 1121' was considered to be non-basmati rice, the subsequent notification No. 55/2008 dated 5.11.08 would not be applicable to their consignment.

The said plea of the appellant was not accepted by the Commissioner (Appeals) and hence, the present appeal.

4. After hearing both sides duly represented by Shri G.L. Rawal, Advocate for the appellants and Shri Sunil Kumar, SDR for the revenue, we find that in terms of provisions of Section 16 of the Customs Act, 1962, the date for determination of rate of duty ~~in~~ and tariff value of export goods is the one applicable on the date on which the proper officer makes an order permitting clearance and allowing the goods for exportation under Section 51 of the Customs Act. Section 51 requires a proper officer to make an order permitting clearance and loading of the goods for exportation after he is satisfied that the goods entered for export are not prohibited goods and the exporter has paid the duty, if any, assessed thereon and other charges payable under the Act. As such, the combined reading of the two provisions makes it clear that the rate of duty applicable to the export goods would be the rate applicable on the date when 'let export order' is passed. The said 'let export order' is required to be passed after the proper officer is satisfied about the declaration of the exported goods and about the duty payment particulars etc.

5. In the present case, as per the report of the Assistant Commissioner vide his letter dated 26.2.2009, the cargo was presented to the customs on 5.11.08 for examination. The proper officer ~~after~~. examin~~ing~~ed the goods on 5.11.08, + let export order was passed by the proper officer on the same date itself. Inasmuch as on 5.11.08, the

quality of the rice was held to be ~~as~~ falling under the category of Basmati Rice, the rate of duty applicable on the basmati rice as on 5.11.08 would be the proper rate of duty. We find no infirmity in the views of the Commissioner (Appeals) that the relevant date for the purpose of applying the rate of duty would be 5.11.08 and not 3.11.08 when the shipping bills were ~~passed~~. presented.

6. In view of the above discussions, we find no merits in the appeal and reject the same.

(Pronounced in the Court on 12/8/11

(Archana Wadhwa)
Member(Judicial)

(Mathew John)
Member(Technical)

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