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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/368 /2011 - CU[DB] Date **18/10/2011**

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

To :
VRS FOODS LTD.
D-55, GROUND FLOOR,
EAST OF KAILASH, NEW DELHI.

VRS FOODS LTD. Appellant

Vs

C.C.E. NOIDA Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/440/ 2011 CU[DB]** dated 14.10.2011 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. NOIDA
C-56/42, SECTOR-62, NOIDA-
201307

2. Adv. / Consult
MR.PIYUSH KUMAR,ADV
B-25,LAJPAT NAGAR-III,
NEW DELHI – 110 024.

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 Registra
(Customs Appeal Branch

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

Customs Appeal No.368 of 2011-Customs

M/s. V.R.S. Foods Ltd. Appellant

Versus

CCE, Noida Respondent

[Arising out of Order-in-Appeal No.116/CUS/Appl/Noida/11 dated 13.06.11 passed by the Commissioner of Customs, Noida (U.P.)].

For approval and signature:

Hon'ble Smt. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Rakesh Kumar, Member (Technical)

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1. Whether Press Reporters may be allowed to see 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?

Appearance: Rep. by Shri Piyush Kumar, Advocate for the appellant.
Rep. by Shri Sunil Kumar, SDR for the respondent.

CORAM : **Hon'ble Smt. Archana Wadhwa, Member (Judicial)**
Hon'ble Shri Rakesh Kumar, Technical Member

Final Order No. C/440/11 Dated : 19.9.2011

Per Rakesh Kumar:

The facts leading to this appeal are, in brief, as under:-

1.1 Ministry of Commerce and Industries, Department of Commerce, New Delhi vide Notification No.23(RE-2010)/2009-2014 dated 18.02.2011 prohibited the export of --

(a) Milk and Cream, concentrated or containing added sugar or other sweetening matter including skimmed milk powder, whole milk powder, dairy whitener and infant milk food;

(b) Casein, caseinates and other casein derivatives; casein glues.

1.2 The Commerce Ministry vide Notification No.25/(RE-2010)/2009-2014 dated 24.02.2011 notified that transitional arrangements under para 1.5 of Foreign Trade Policy, 2009-14 shall not be applicable in respect of export of milk powders (including skimmed milk powder, whole milk powder, dairy whitener and infant milk foods), Casein and Casein products prohibited under Notification No.23(RE-2010)/2009-2014 dated 18th February, 2011. However, Notification dated 24.02.2011 was amended vide Notification No.37(RE-2010)/2009-2014 dated 24.03.2011 by which it was provided that in relaxation of the prohibition imposed by Notification No.23 dated 18.02.2011 read with Notification No.25 dated 24.02.2011, **export of milk powders, Casein and Casein products etc. (as described above) would be permitted in respect of such consignments only which were already handed over to customs for examination and export on or before 18.02.2011.**

1.3 In this case on 17.2.2011, the appellant filed a Shipping Bill No.2547229 for export of two containers of Acid Casein and on 18.02.2011 filed shipping bill no.2547232 for export of 4 containers of Acid Casein and Shipping Bill No.2562256 for export of one container of skimmed milk powder. These containers covered by the above mentioned three Shipping Bills were presented for examination in the factory to the jurisdictional Central Excise Officers on the same day i.e. 18.02.2011, who examined the goods and after recording Hr examination report on the reverse of the respective shipping bills, sealed the containers with central excise seal and released the same for export under ARE-I. Out of 7 containers,(six of Acid Casein and one of skimmed milk powder), covered under three Shipping Bills, four containers covered under Shipping Bill No.2547229 dated 17.02.2011 and No.2547232 dated 18.02.2011 were allowed to be exported by issue of LET EXPORT order between 23-30 hours to 23-32 hours on 18.02.2011. However, when remaining three containers – two containers No.CMU183200020 and No.165329920 covered by the Shipping Bill No.2547232 dated 18.02.11 and container No.TNCU 7439834-40 covered under Shipping Bill No.2562256 dated 18.02.2011 were presented to the Customs at the port for Let Export order and their loading for export, between 0-00 hours and 0-42 hours of 19.02.11, their export was disallowed on the ground that they had been presented after 24-00 hours on 18.02.2011 and the next day had started and in terms of the Ministry of Commerce

Notification No.18.02.2011, their export had become prohibited. The matter was adjudicated by the jurisdictional Addl. Commissioner vide Order-in-Original dated 4.5.2011 by which he held that these three containers are not covered by the relaxation under Notification No.37/2009-2014 dated 24.03.2011 as the same had been presented to the Customs on 19.02.11 and that presenting all these containers before the jurisdictional Central Excise Officers in the factory for examination does not amount to handing over the same to the Customs for examination and export. On this ground, he disallowed the export of the goods and ordered the same to be taken back to the town. On appeal to the Commissioner (Appeals) against the Addl. Commissioner (Appeals)'s order, the Commissioner (Appeals) vide order-in-appeal dated 13.06.11 upheld the order of the Addl. Commissioner. Against this order of the Commissioner (Appeals), the present appeal has been filed.

1.4 The appellant in the meantime filed Writ Petition No.5567/2011 before Delhi High Court against the order of the Ministry of Commerce prohibiting the export. The Hon'ble High Court on being appraised by the appellant that an appeal against the Commissioner (Appeals)'s order has been filed before the Tribunal, vide order dated 5.8.2011 directed this Tribunal to deal with that appeal and finalise the same within a period of 10 days. Accordingly, this matter was taken up for disposal in terms of the directions of the Hon'ble Delhi High Court.

1.5 Heard both the sides.

1.6 Shri Piyush Kumar, Advocate, ld. Counsel for the appellant, pleaded that containers, in question, covered by the Shipping Bill No.2547232 dated 18.02.2011 and No.2562256 dated 18.2.11 had been presented for infactory examination before the jurisdictional Central Excise Officers on 18.02.11 itself, that the central excise officers while examining the goods in the factory had recorded their examination report on the reverse of the Shipping Bills, that in terms of the Board's Circular No.201/2010 dated 22.02.2010, the permission for in factory examination, stuffing and sealing of the containers by jurisdictional central excise officers is granted by the concerned Customs House, that once export containers had been examined with the permission of the concerned Customs House by the jurisdictional central excise officers and thereafter sealed, the same are normally not opened and examined at the port, that in terms of Notification No.31/97-Cus (NT) dated 7.7.1997 all Superintendents and Inspectors of Central Excise Departments in any place of India have been appointed as officers of Customs, that in view of this, the goods, in question, have to be treated as presented for examination before the Customs on 18.02.11, that the examination had been done on 18.2.11, that in view of this, even if the sealed container were presented for Let EXPORT order before the Customs Officers at the port in the early hours of 19.02.11, the export has to be allowed, that Commissioner's findings that infactory examination of export goods by jurisdictional central excise officers is not examination by Customs is not correct, that for the purpose of export, the goods have to be treated as covered by the relaxation under Ministry of Commerce Notification dated 24.3.2011 and that in view of this, the impugned order is not correct.

6.1 Shri Piyush Kumar also pleaded that earlier in an identical matter, the Commissioner (Appeals) vide Order-in-Appeal dated 27.04.2011 had held that the exportc.. goods can be stuffed in the container at the port of export as well as at the factory premises of the manufacturer and that when the export goods were presented to the jurisdictional central excise officers in the factory for examination and sealing of the containers, the same have to be treated as having been presented to the Customs for examination on that day. He pleaded that no reasons have been given by the Commissioner (Appeals) in the impugned order for taking a different view.

7. Shri Sunil Kumar, ld. SDR defended the impugned order by reiterating the findings of the Commissioner (Appeals) and pleaded that presenting the export consignments to the jurisdictional central excise officers for examination and sealing, cannot be treated as presenting/handing over the goods to the Customs, that since the goods were presented /handed over to the Customs only on 19.02.2011, the same are not covered by the relaxation under the Ministry of Commerce under Notification No.24.3.2011.

8. We have carefully considered the submissions from both the sides and perused the records. There is no dispute about the fact that the Shipping Bills in respect of the three containers had been filed on 18.02.11 and on that date itself, these containers containing Acid Casein had been presented to the central excise officers for in factory examination and sealing of the containers and which had been done on the basis of the permission in this regard granted by the concerned Customs House in accordance with the Board's Circular No.60/2001-Customs dated 1.1.2001 read with Circular No.20/2010 dated 22.07.2010. From the Board's Circular dated 1.11.2001, it is clear that in factory examination, ~~for~~ stuffing and sealing of the export containers by the jurisdictional central excise officers is done with the permission of the concerned Customs House having jurisdiction over the port/ICD from where the goods are to be exported and in terms of this circular, the system of six monthly permission from the Customs House had been done away with and only one time permission for factory stuffing was required. The subsequent circular dated 22.07.2010 prescribed certain safeguards in granting the permission for factory stuffing. From these circulars, it is clear that in factory examination, stuffing and sealing of the containers by the jurisdictional central excise is done with the permission of the concerned Customs House where the shipping bill for export would be filed and thus, the examination by the jurisdictional central excise officers is the examination on behalf of the Customs House. We also find that in

terms of Notification No.31/97-Customs (NT) dated 7.7.97 issued under Section 4 (1) of the Customs Act, 1962, all the Superintendent and Inspectors of Central Excise in any place in India are notified as officers of customs. When the jurisdictional central excise officers are notified under Section 4(1) of the Customs Act, 1962 as officers of Customs and they examined the export consignments in the factory and supervised the stuffing and sealed the containers on the basis of the permission granted by the concerned Customs House and recorded the examination report on the shipping bills, in our view, the in factory examination of the goods has to be treated as examination by the Customs House as further handing over of the goods to Customs at the Port/ICD for examination is not necessary unless the seals are found to be tampered with.

9. While the export of the Casein and milk powder had been prohibited by Ministry of Commerce dated 18.02.11 in terms of Notification No.24.03.11, the export of those consignments of milk powder and casein products were permitted/provided the export consignments were to be handed over to the Customs House for examination and for let export order on or before 18.02.11. In this case, the goods, in question, had been presented for examination to the jurisdictional central excise officers on 18.02.11 and examination had been completed on that date itself and as discussed above, this examination was on the basis of permission in this regard given by the concerned Customs House. The central excise officers who had examined

the goods are also notified as customs officers as per Notification No.31/97-Customs dated 7.9.2007. Therefore, the goods, in question, have to be treated as having been handed over to the Customs for examination and export on 18.02.11 only and just because by the time the containers reached the Customs Port from where the same were to be exported and were presented to the Customs for let export order, the next day i.e. 19.02.11 had started, the export cannot be disallowed. In our view, the goods in question are covered by the relaxation under Ministry of Commerce Notification No.37(RE-2010)/2009-2014 dated 24.03.11. In view of this, the impugned order is not correct. The same is set aside. The appeal is allowed.

[Operative part of the order already pronounced in the open court].

(Archana Wadhwa)
Member (Judicial)

(Rakesh Kumar)
Member (Technical)

Ckp.