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

Customs Appeal No. 412 of 2010 (DB)

[Arising out of Order-In-Original No. 21/2010 dated 21.04.2010 passed by Commissioner of Customs, ICD, Tuglakabad, New Delhi]

M/s. R D Extrusion Pvt Ltd. **Appellants**

Vs.

Commissioner of Customs, **Respondent**
New Delhi

Appearance:

Shri Prem Garg, Managing Director for the Appellants
Shri R K Manjhi, DR for the Respondent

CORAM:

Hon'ble Mr S K Mohanty, Member (Judicial)
Hon'ble Mr. V Padmanabhan, Member (Technical)

Date of Hearing/ Decision: 23.05.2017

FINAL ORDER NO .53434 /2017

Per S K Mohanty:

This appeal has been filed against the impugned order dated 21.4.2010 passed by the Commissioner of Customs, New Delhi wherein the request of the exporter (appellant herein) for conversion of free shipping bills into DEPB shipping bills has been rejected.

2. Heard both sides and perused the records.

3. During the period September, 2007 to November, 2007, for export of forged machine parts, appellants filed 33 shipping bills before Customs Authorities for assessment. The goods were factory stuffed in containers under the supervision of jurisdictional Central Excise authorities. However, appellant failed to claim the benefit of DEPB scheme. Instead of filing the shipping bills for DEPB benefits, the appellants filed free shipping bills before Customs authorities. On realization of mistake, the appellant, vide its letter dated 21.1.2008, had requested the Commissioner of Customs for conversion of free shipping bills to DPEB shipping bills. In the same letter, they had also made the alternate plea to convert the shipping bills into drawback shipping bills so that All Industry Rate can be claimed by them. In the said letter, the appellant had also enclosed the documents, namely copies of AR 3, Examination report of Central Excise authorities, copies of Export invoices / packing list, duly checked and verified by the Central Excise authorities, copies of shipping bills, certified copy of certificates of Foreign Inward remittance etc. Subsequent to letter dated 21.1.2008, there was correspondence between the department and the appellant on the subject. Finally, on the request of the appellant, matter was adjudicated by the learned Commissioner vide impugned order dated 21.04.2008 in which he denied the request for conversion of shipping

bills. On perusal of the impugned order, we find that the learned Commissioner has recorded the finding for rejection of the request of the appellant in para 8 of the impugned order. The said paragraph is extracted herein below:

> “ 8. I observe that the contention of the exporter relating to identity, description, value and its admissibility to DEPB benefit is established in accordance with Chapter 7 para 7.5 of Excise manual CBEC Supplementary Instructions read with Para 2.1 (A) of Circular No. 6/2002-Cus dated 23.1.2002, Circular NO. 69/97-Cus dated 08.12.1997 (as amended) and Para 4.41 of HBP in respect of 33 Shipping Bills except those appearing at S.No. 1.29 and 30. However, the issue involved in the present case is the conversion of Free Shipping Bills into DEPB Shipping Bills. The scrutiny of the export documents does not reflect any evidence existing at the time of export which can indicate the intention of the exporter to avail the benefit of DEPB. Section 149 of Customs Act stipulates that “Save as otherwise provided in sections 30 and 41, the proper officer may, in his discretion, authorise any document, after it has been presented in the Customs House to be amended.
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> ***Provided** that no amendment of a bill of entry or a shipping bill or bill of export shall be so authorized to be amended after the imported goods have been cleared for home consumption or deposited in a warehouse, or the export goods have been exported, except on the basis of documentary evidence which was in existence at the time the goods were cleared, deposited or exported, as the case may be.”*

*The plain reading of Section 149 entails that documentary evidence must exist at the time of export for making any amendment in the Shipping Bill. The amendment in the Shipping Bills may also include conversion of Free Shipping Bills into Scheme Shipping Bills also. The identify, description, value and admissibility of DEPB benefit on export goods may be one aspect while the existence of documentary evidence to avail such benefit at the time of export is entirely a separate issue. This issue has also been delved into by the Board in para 3.2 of Circular No. 4/2004-Cus dated 16.1.2004 which provides that “*as regards permitting conversion of free shipping bills into Advance License /DEPB/DFRC shipping bills is concerned, it is true over a period of time, with liberalization having been ushered in the Customs administration, clearance of goods is being permitted mostly on the basis of self-declaration made by the exporters on the shipping bills. Such self-assessment scheme necessarily casts the responsibility on the exporter to make up his mind at the time of filing shipping bills as to which export promotion incentive he likes to avail. With the introduction of the system of online assessment, such request for conversion at a later date creates difficulties and it is not advisable to encourage such conversion.*” The observations in Board’s Circular are fully in sacrosanct with the proviso to Section 149 of the Customs Act, 1962. The plea of the exporter that the Free Shipping Bills were filed due to the mistake of CHA is not tenable as even if it is presumed to be CHA’s mistake, the same could not have remained unnoticed for 33 shipping Bills filed in the span of three months period. Moreover, CHA is only a service provider who has to file Shipping Bills on the directions of his* *clients. Thus the exporter's plea that Free Shipping Bills were filed due to CHA's mistake is totally* baseless. *"*

4. Learned Counsel for the appellant submits that CBEC vide Circular No. 4/2004 –CUS dated 16.1.2004 has empowered the Commissioner to relax the condition of conversion of free shipping bills into Draw back shipping bills subject to certain conditions. He further submits that the goods were factory stuffed and removed from the factory to the port of export. He further submits that Commissioner should have considered the alternate request of the appellant for conversion of free shipping bills into draw back shipping bills at All Industry Rates.

5. The fact is not in dispute that the goods in question were exported by the appellant and same were sealed at the factory in the presence of jurisdictional Central Excise authorities and duly certified by the said authorities. Further, the condition of receipt of foreign inward remittance certificate in respect of payment in support of exportation of goods has also not been disputed by the jurisdictional Commissioner of Customs. Thus in terms of Circular dated 16.1.2004, he should have examined the case on merits and thereafter to order conversion of free shipping bills into draw back shipping bills (All Industry Rates). In this case, since power conferred in Circular No. 4/2004 has not been exercised by the Commissioneris, we are of the view that the matter should go back to the

Commissioner of Customs for re-consideration of the request of appellant for conversion of free shipping bills into draw back shipping bills (All Industry Rates).

6. Accordingly, after setting aside the impugned order, we remand the matter to the Commissioner of Customs for passing necessary/ appropriate orders with regard to the request of appellant for such conversion. Needless to say opportunity of personal hearing is to be granted before deciding the matter afresh. The period involved in this case pertains to 2007. In the interest of justice, it is expected that matter should be decided within a period of 3 months from the date of receipt of this order. The appellant shall also co-operate in adjudication of the matter afresh.

7. The appeal is disposed of in the above terms.

(pronounced in the open court)

(S K Mohanty)
Member(Judicial)

(V. Padmanabhan)
Member(Technical)

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