IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing : 25/09/2018

Date of pronouncement: 22/02/2019

Appeal No. C/51774/2018-(DB)

(Arising out of Order-in-Appeal No. CC-CUS-ICD-TKD-EXPORT-12-2018 dated 28/03/2018 passed by COMMISSIONER OF CGST & CENTRAL EXCISE-NEW DELHI(ICD ITC)

R D EXTRUSIONS P LIMITED **Appellant**

Vs.

C C-NEW DELHI ICD TKD EXPORT **Respondent**

Appearance
Shri Prem Garg, Advocate for the appellant
Shri Sunil Kumar, DR for the respondent

CORAM: **Hon'ble Mr. Anil Choudhary, Member (Judicial)**
Hon'ble Mr. Bijay Kumar, Member (Technical)

Final Order No:50285/2019

Per Bijay Kumar

1. The present appeal is filed against the Order-in-Appeal No. CC-CUS-ICD-TKD-EXPORT-12-2018 dated 28/03/2018, passed by the Ld. Commissioner of Customs, ICD Tuglakabad, New Delhi, wherein he has permitted the conversion of free shipping bill to drawback shipping bill for the export made by the appellant in respect of 30 consignments in response to remand order passed by this Tribunal vide Final Order No. 53434/2017 dated 23.05.2017. However, he has rejected the conversion in respect of three supporting Bills, namely, 1762847 dated 06.09.2007, 1785542 dated

13.11.2007 & 1785491 dated 12.11.2007. Being aggrieved with the order, the appellant is before this Tribunal.

2. Heard parties and perused the case records.

3. This second round of litigation before this Hon'ble Tribunal. In the first round of litigation, the case was remanded back to the Original Adjudicating Authority to consider the claim for conversion of free shipping bill into drawback shipping bill in terms of Section 149 of the Customs Act read with CBEC Circular No. 4/2004-Cus dated 16/1/2004 along with Rule 12 of Customs and Central Excise Service Tax Duty Drawback Rules. After following the remand order and also the decision of Hon'ble Suprem Court in case of **Cargil India Pvt Ltd. vs Commissioner of Customs & Central Excise, Vishakapatnam-II [2015 (325) ELT 801(SC)]** in the impugned order conversion was permitted but for the three S/ Bs as mentioned above**.** It is not apparent from the impugned order that as to why the permission was not granted in respect to aforesaid three shipping Bills for their conversion into drawback shipping bill at All Industrial Rate(AIR). We find that in this case the export, have been made by the appellant under the supervision of Jurisdictional Central Excise Officer and the consignment was factory sealed in container. The export of the said consignments vide the aforesaid three Shipping Bill is not in doubt.

4. In view of above, following the CBEC Circular and decision of Hon'ble Supreme Court in case of ***Cargil India Pvt. Ltd***. we set aside the impugned order and allow the conversion of these three shipping bill into drawback shipping bill as done in case of other 30 S/Bs. The appellant will be entitled for consequential benefit as per law.

(Pronounced in open court on 22/02/2019)

(Anil Choudhary)
Member (Judicial)

(Bijay Kumar)
Member (Technical)

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