IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH: KOLKATA

Customs Appeal Nos. C/16/10, C/21/10 & C/615/09

(Arising out of Order-in -Original No. 28/CUS/CC (P)/WB/2009 dated 30.09.2009 passed by the Commissioner of Customs (Prev.), W.B., Kolkata)

1) M/s. Tapan Traders
2) Sri Raju Bose
3) Sri Samir Bhattacharyya

Applicant (s)/Appellant (s)

Vs.

Commr. of Customs (P) W.B.

Respondent (s)

Appearance:

NONE for Sl. No. (1) & Shri Rajendra Jonko , Consultant
For 2 & 3

For the Appellant (s)

Shri S. Guha, A.C. (AR)

for the Respondent (s)

CORAM:

SHRI P.K. CHOUDHARY, HON'BLE JUDICIAL MEMBER
SHRI V. PADMANABHAN, HON'BLE TECHNICAL MEMBER

Date of Hearing/Decision :- 10.01.2019

ORDER NO. FO/A/75287-75289/2019

PER SHRI V. PADMANABHAN

These appeals are directed against the Order-in -Original No. 28/CUS/CC (P)/WB/2009 dated 30.09.2009 passed by the Commissioner of Customs (Prev.), W.B., Kolkata.

2. The dispute concerns the export of 200 MT of non-Basmati rice under DEPB Scheme. This item was allowed for export until 24/3/2008 when its export was prohibited. This resulted in difficulties for consignments which were already in the process of export. Customs Department issued public notice dated 25/3/2008 in which certain transitory arrangements were made to allow export of consignments of non Basmati rice which were received within the Customs approved area by 6/3/2008.

3. M/s. Tapan Traders, Calcutta (Proprietor Shri Tapan Kundu) filed bills of export for 200MT of non Basmati rice through the Petrapole Land Customs Station . The Bills of export No. 3444-3555 both dated 3/3/2008 were filed through the CHA M/s. Overland Agency (Proprietor Shri Samir Bhattacharyya). Shri Raju Bose, an employee of the CHA, handled the export consignment.

4. On 30/5/2008, 11 trucks loaded with 200MT arrived at the border for export on the strength of two bills of export No. 3444-3555 both dated 3.3.2008 filed by M/s. Tapan Traders. Five trucks were allowed to cross border containing 90MT of rice. The remaining six trucks containing 110 MT were dropped and seized by the Customs authorities since it was noticed that five out of these six trucks, sported registration Nos. of trucks which had already just crossed the border. The five trucks on their return were also detained for investigation.

5. The investigation conducted by the Customs authorities revealed that 200MT of non Basmati rice, loaded in six trucks , reached the Customs approved area for export. On 6/3/2008. During the period of waiting, these trucks were

taken out during (17^{th} to 19^{th} March); were unloaded in a godown at Kutabari and thereafter the same goods were loaded in eleven different trucks. Since the Registration Nos. of the trucks which had already reached the earmarked Customs area prior to 6/3/2008, were already recorded by Customs Authorities, the registration Nos. of five trucks were changed to those already in the list of trucks waiting for export. Such fraudulent change of number plates came to light during verification of Registration numbers at the time of export. This led to the seizure of the six trucks alongwith 110MT of Basmati rice awaiting export. After issue of show cause notice, case was adjudicated by the Commissioner of Customs by issue of the impugned order in which he ordered confiscation not only of 110MT of seized non Basmati rice but also 11 trucks used in the transactions. He also imposed penalties on various persons.

6. Presently the appeals filed by M/s. Tapan Traders, Shri Samir Bhattacharyya, proprietor, as well as Shri Raju Bose, employee of the CHA (M/s. Overland Agency) are before us. These appeals are taken up for disposal through a common order.

7. None appeared on behalf of M/s. Tapan Traders. Shri Rajendra Jonko , Consultant appeared for Sri Raju Bose and Sri Samir Bhattacharyy. Shri S. Guha, A.C. (AR) represented the Department.

8. The arguments advanced on behalf of the appellants are summarised below:

(i)DGFT issued Note No.87 dated-24.03.2008 wherein the export of Non-Basmati Rice was prohibited but transitional period was given. Customs

Deptt. issued Public Notice dated 25.03.2008 and Trade Notice dated 28.03.2008 giving the procedure, the transition period and cut off date. Export of goods was to be allowed as per B/E to those goods which reached the designated Customs approved area by 06.03.2008. Due to paucity of space at C.W.C. , the Kalitala Parking Area, of the Municipality Area, approved by Customs, was been permitted to park the loaded Trucks with allowed export goods.

(ii) 90 M.T. of Rice was already exported and crossed the Border. The Balance 110 M.T. of Rice arrived in 6 Trucks loaded from Bablu Das Kultibari godown and Raju Bose intimated the Customs Officer who endorsed the papers and listed the trucks in the Register maintained at the Parking Area of Kalitala. Therefore, all the Customs Procedures of Clearance completed at this end.

` (iii) *Incident of Changing Number Plates was allegedly during the period from 17 to 19th March, 2008 when the 6 loaded trucks were taken out from the Parking Area and taken back to Kultibari. Rice was unloaded and again re-loaded into 11 Trucks. These 11 Trucks then again went back to Kalitala Parking zone and awaited to Cross the Border with 110 M.T. Rice.The detection of change in No. of Registration of Trucks took place while checking the returning trucks which correlated to that of 5 waiting trucks. Hence, detention and seizure of the returning trucks as well the waiting trucks for investigation.*

iv) The Investigation was lop sided and partial in as much as the concerned persons were not investigated. Copies of Customs papers B/Es etc. were not produced; the copy of Register at the Parking zone not produced; the statement of the Caretaker of the Parking area not recorded, the statement of the Customs Officer who handled and processed the export Customs papers like B/Es etc. , the statements of Trucks Drivers and Khalasi ,Custodian of Vehicles, papers and keys have not been recorded which could *throw light on the actual offender and motive behind changing the Number Plates.*

v) The S.C.N. has been issued only on partial enquiry and hence is not legal and cannot be legal and sustainable. The S.C.N. has been issued without documentary evidences. The parties (Noticees C.H.A. & employee) could not reply and called for relied upon documents vide letter dated 15.12.2008 which were not supplied at all.

`vi)The Commissioner adjudicated the case without replies from the Party and rejected as not justified. This action of Adjudication Authority violated Ministry's Circular No. 65 dated 27.07.2000.

9. Ld. D.R. justified the impugned order. He submits that the appellants have tried to play a fraud on the restrictions, imposed for export of non Basmati rice. Hence, he submitted that the appeals may be dismissed.

10. We have heard both sides and perused the appeal records.

11. M/s. Tapan Traders filed two bills of export proposing to export 200 MT of Non-Basmati rice. At the time of filing the bills of export on 3/3/2008, there was no restriction on the export of non-Basmati rice. The goods covered by the bills of export were also entered duly for export loaded in the form of six trucks containing 200 MT of the goods. Non Basmati rice was prohibited for export w.e.f. 24.03.2008. Since, such prohibition was sudden, it created serious difficulties for consignments which were already in the process of export, certain transitory arrangements were to be made by which export consignments which had already reached customs designated parking area by 6/3/2008 were allowed for export, even after 24/3/2008 when the prohibition was notified. In the facts of the present case, there is no dispute that the goods covered by two bills of export were duly entered for export at the Customs designated area on or before

6/3/2008. The subsequent developments have given rise to the present case.

12. The investigation by the Customs Authorities have revealed that the goods already loaded on six trucks were taken out and reloaded in eleven trucks and subsequently produced on 30/5/2008. Out of 200 MT, the consignments to the extent of 90 MT were exported. However, the balance 110MT was not allowed for export but seized when it came into light that the trucks carrying these goods were not the same trucks which were entered in the parking lot on 6/3/2008. The adjudicating authority has considered this as an attempt to illegally export 110 MT of non Basmati rice after the prohibition on 24.03.2008. In this case 110MT of non Basmati rice was received in the Customs ear-marked area on or before 6/3/2008. The relevant bills of export were duly filed on 3/3/2008 and assessed and allowed for export. Investigation, on the other hand, established that the goods which were brought for export at the Land Customs Station were the very same goods which entered the parking lot on 6/3/2008. However, the trucks in which they were originally brought were not the trucks carrying the goods to the Land Customs Station on 30.3.2008.

13. If we consider the facts of the case with reference to the exportability of the goods, we find that 110 MT of Non-Basmati rice will not be hit by the prohibition imposed on 24/3/2008 in as much as these goods were entered for export on or before 6/3/2008 and were entitled to be exported in view of the relaxation given on procedural measures. Once we hold that 110MT of Non Basmati rice is not hit by the prohibition, the order of confiscation of the goods as well as the vehicles, are not warranted and are required to be set aside and we

do so.

14. Before we part with the matter, we wish to record that the above findings of the Tribunal should not be construed as approval of the fraud done by way of fraudulently manipulating the number plates of the five trucks. The investigation has also identified the persons who have attempted to tamper the number plates presumably for reasons other than contravening the prohibition in the export of rice. We direct the Jurisdictional Customs authorities to take up these frauds with the appropriate agencies for further necessary action.

15. In the result, the impugned order is set aside and the appeals are allowed.

(Operative part of the order already pronounced in the court)

P.K. CHOUDHARY (JUDICIAL MEMBER)

V. PADMANABHAN (TECHNICAL MEMBER)

k.b/-