IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

APPEAL NO: C/604 & 605/2010

[Arising out of Order-in-Original No: 10/2010-11 dated 19th May 2010 passed by the Commissioner of Customs (Export), Nhava Sheva.]

KRRDS
Shree Samudri Enterprises … ***Appellants***

versus

Commissioner of Customs (Export)
Nhava Sheva …***Respondent***

Appearance:

Shri S P Joshi, Consultant for appellants

Shri MK Mall, Assistant Commissioner (AR) for respondent

CORAM:

Hon'ble Shri C J Mathew, Member (Technical)
Hon'ble Shri Ajay Sharma, Member (Judicial)

Date of hearing: 27/07/2018
Date of decision: 29/08/2018

ORDER NO: A/ 87197-87198/2018

Per: C J Mathew

The issue in these appeals against order-in-original no. 10/2010-11 dated 19th May 2010 of Commissioner of Customs (Export), Nhava Sheva pertains to the eligibility for drawback on goods that were exported as ‘brass sanitary fittings’ valued at ₹ 76,75,321/- *vide* the shipping bill no. 6575428 dated 13th August 2008. Drawback of ₹ 13,81,558/- was rejected and approval was limited to ₹ 1,68,857/- on the basis of the examination report that the said goods are ‘brass nuts and bolts’ falling under 7415 of the drawback schedule and not 741802 as claimed. Furthermore, the goods were confiscated and redemption fine of ₹ 15,35,064/- with attendant penalty of ₹ 7,67,532/- imposed on the appellant-exporter and of ₹ 3,83,766/- on custom house agent, M/s Shree Samudri Enterprises.

2. Heard the Learned Counsel for appellants and Learned Authorised Representative.

3. The shipping bill, at the time of export of the goods, did not vary the original description of ‘brass sanitary fittings’. Had the goods been something other than that conformed to this description, it was incumbent upon the assessing authorities to have this description amended to that which was appropriate to the report of examination before allowing the export. Furthermore, it is admitted that the samples that were drawn at the time of allowing of the export did not appear to have been subjected to any test, or ascertainment, by the adjudicating authority before issue of the show cause notice or before deciding upon the same.

4. There is substantial difference between ‘nuts and bolts’ and ‘sanitary fittings made of brass’. In the absence of any evidence other than the examination report, the ground on which the drawback was denied by the competent authority does not appear to have the sanctity of law. Furthermore, as pointed out *supra*, the competent authority should have insisted upon the amendment of the shipping bill to conform to that which was exported.

5. In the circumstances noted above, we find it difficult to accept the contention of Revenue that the goods that were exported were not ‘brass sanitary fittings’ for which reason we set aside the impugned order and allow the appeals.

(Pronounced in Court on 29/08/2018)

(Ajay Sharma)
Member (Judicial)

(C J Mathew)
Member (Technical)

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