

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

WEST ZONAL BENCH

Customs Appeal No: 823 of 2012

[Arising out of Order-in Original No:06/Commr./GOA/CX/-2011-12 dated 31st March 2012 passed by the Commissioner of Customs, Central Excise & Service Tax, Goa.]

Venture Resort Holdings
Suvarn Bandekar Building, Swatantra Path, Vasco-Da-
Gama, Goa.

... Appellant

versus

Commissioner of Customs & Central Excise
ICE House, EDC Complex, Patto Plaza, Panaji
Goa - 403 001

...Respondent

WITH

**(i) Customs Appeal No. 824 of 2012 (Santosh V. Mahale);
Customs Appeal No. 825 of 2012 (Vinod Rauji Shet); Customs
Appeal No. 826 of 2012 (Suvarn Rajaram Bandekar); Customs
Appeal No. 827 of 2012 (Deepak Ananant Bandekar) and Customs
Appeal No. 828 of 2012 (Shridhar R. Patil)**

[Arising out of Order-in Original No:06/Commr./GOA/CX/-2011-12 dated 31st March 2012 passed by the Commissioner of Customs, Central Excise & Service Tax, Goa.]

APPEARANCE:

Shri H K Maingi, Advocate with Shri C S Biradar, Advocate for the appellant
Ms P Vinitha Sekhar, Additional Commissioner (AR) for the respondent

CORAM:

**HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)**

FINAL ORDER NO: A/86411-86416 / 2019

DATE OF HEARING:	20/02/2019
DATE OF DECISION:	20/08/2019

PER: C J MATHEW

M/s Venture Resort Holdings was proceeded against for export of 50,000 MTs of 'iron ore' at Panaji, a minor port, without discharging the appropriate duty liability against shipping bill no. 283/06-07 dated 28th February 2007 in which loading commenced on 1st March 2007. The demand for ₹ 1,53,37,200/- arose from the imposition of export duty on 'iron ore' at ₹ 300/MT effective from midnight of 28th February 2007/1st March 2007; till then such exports were subject only to cess of ₹ 1/MT and the new levy came into force while the vessel was yet in port of loading.

2. It is alleged that the appellants connived to ante-date the survey report and other records pertaining to shipment and payment of cess despite non-availability of the vessel till 1st March 2007 with intent to evade the new duty that had been imposed.

3. The findings in the impugned order leading to recovery of the differential duty and imposition of penalties on the other appellants herein are based upon statements and overwriting in the report of the initial survey and the date of encashment of the demand draft for payment of cess; these, taken together, were held as sufficient to

conclude that the exports had actually commenced only on 1st March 2007 after the levy came into force and that the 'let export order' had been granted without completion of the requirements prescribed in section 51 of Customs Act, 1962.

4. It is the contention of Learned Counsel for appellants that section 16 of Customs Act, 1962 prescribes that the rate of duty applicable to any export goods is, in the case of goods entered for export under section 50 of Customs Act, 1962, the date on which the 'proper officer' makes an order permitting clearance and loading of the goods for exportation under section 51 of Customs Act, 1962. According to him, the 'let export order' permitted by the proper officer, viz., Superintendent, Minor Port dated 28th February 2007, should put an end to the controversy. Drawing attention to the decision of the Hon'ble Supreme Court in *The Principal Appraiser (Exports) v. Esajee Tayabally Kapasi* [1995 SCC (6) 536], it is contended that there is no scope for deviation from the provisions of section 16 of Customs Act, 1962.

5. Learned Authorised Representative contends that a clear finding have been recorded in the impugned order to conclude that the loading of exports could not have commenced till after imposition of export duty and that the documentation had been tampered with to wrongly claim that the statutory requirement of export had been

complied with on 28th February 2007 itself. She also points out that, as established in the impugned order, the proper officer could not have carried out the examination as prescribed under section 51 of Customs Act, 1962, on that date and, hence, in the absence of surveyor or readiness of vessel, the 'let export order' lacked the validity. She places reliance on the decision of the Hon'ble Supreme Court in *Commissioner of Customs v. Candid Enterprises* [2001 (130) ELT 404 (SC)], *Commissioner of Customs, Kandla v. Essar Oil Ltd* [2004 (172) ELT 433 (SC)] and *Union of India v. Asian Food Industries* [2006 (204) ELT 8 (SC)].

6. Having heard the rival submissions at length and having perused the various decisions cited by both the sides, we have no doubt that the correctness of the demand can be adjudged only in the context of the facts and circumstances coupled with the provisions of law defining the completion of export. Duties of customs are levied through notifications which generally come into force on the midnight of the day of imposition. The process of imports and exports is, invariably, attended by a gap between the loading/landing of goods and their exit/clearance and, in the interregnum, new duties and levies could come into force. Likewise, is the scope for enhancement, or reduction, of duties. It is for that very reason that section 15 and section 16 of Customs Act, 1962 have enshrined, in law, that certain actions and events determine the applicability of new, or altered,

levies. In the present context, in connection with the goods entered for export against a shipping bill, it is the date of permission granted for loading that is relevant and is contingent upon compliance with section 51 of Customs Act, 1962; a perusal of the said provisions would be worthwhile.

‘Section 51 - Clearance of goods for exportation.—Where the proper officer is satisfied that any goods entered for export are not prohibited goods and the exporter has paid the duty, if any, assessed thereon and any charges payable under this Act in respect of the same, the proper officer may make an order permitting clearance and loading of the goods for exportation.’

7. It is not in dispute that the shipping bill was filed on 28th February 2007. The proper officer of customs is required to complete the assessment and examination of the shipping bill and, before grant of ‘let export order’, ascertain that the duties prescribed by law have been paid. Hence the grant of ‘let export order’ is statutorily accorded sanctity for determination of duty liability. The goods so assessed are necessarily to be loaded on board; neither the commencement, nor the completion of, loading are relevant.

8. There can be no doubt that date of the initial draft survey, which is contractually necessary to establish quantity loaded, has been overwritten. We have also noted that ‘entry inwards’, granted on 28th February 2007 by the proper officer, has also been taken into account

though discarded as irrelevant by the adjudicating authority.

9. There are two aspects that appear to have been overlooked. It is seen that the application for 'entry inwards' was filed by the exporter, unusually, instead of having been made on behalf of 'master of the vessel' by the steamer agent. While 'entry inwards' is a pre-requisite for unloading of imported goods as *per* section 31 of Customs Act, 1962, 'entry outwards' is a pre-requisite for loading of export cargo as per section 39 of Customs Act, 1962. The spacing of the two ensures that there is no mix-up of either and that both inward and outward cargo are separately accounted for. It is normal for the 'entry outwards' to be granted only after space is available for loading export cargo; for bulk carriers, effectively it is given only after the vessel is empty. It is, therefore, a permission that is consequent to the 'entry inwards'. The adjudicating authority has failed to render a finding on the validity of 'entry inwards' in the circumstances *supra* and we find no record for ascertainment of the date of entry outwards. Even though these would not, in any way, detract from the sanctity of validly granted 'let export order', the validity itself could be called into question on findings of facts and circumstances. It is also seen that no conclusions have been drawn from the circumstances in which the demand draft for payment of cess was not deposited on 28th February 2007 despite which 'let export order' was granted.

10. We, therefore, find ourselves unable to decide upon the validity of the 'let export order' granted by the proper officer of customs. Being a controversy over facts, those should have been addressed in the impugned order. In the absence of such, we are compelled to set aside the impugned order and remand the dispute back to the original authority to ascertain those facts before coming to a conclusion on the veracity of the claim of the appellant that the 'let export order' of 28th February 2007 is valid in law.

11. Appeals are disposed off

(Order pronounced in the open court on 20/08/2019)

(C J Mathew)
Member (Technical)

(Ajay Sharma)
Member (Judicial)