IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 08.12.2016

PRONOUNCED ON: 27.04.2017

CORAM

THE HONOURABLE MR. JUSTICE HULUVADI G. RAMESH

AND

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

C.M.A.Nos.597 to 599 of 2010

The Commissioner of Customs (Exports)
Chennai,
Customs House,
No.60, Rajaji Salai,
Chennai 600 001. .. Appellant in all appeals

Vs

1.Mrs.Suraj Agro Products,
St. Thomas Buildings,
3rd Floor,
150, Luz Church Road,
Mylapore,
Chennai 600 004.

2.Customs, Excise and
Service Tax Appellate Tribunal,
South Zonal Bench,
Shastri Bhawan,
1st Floor,
No.26, Haddows Road,
Chennai 600 006. .. Respondents in all appeals

Prayer: Civil Miscellaneous Appeals filed under Section 130 of Customs Act, 1962 praying to set aside the common Final Order No.1196 of 2009, 1197 of 2009 and 1198 of 2009, dated 08.09.2009 respectively received on 29.09.2009 in Custom House, Chennai 600 001 on the file of CESTAT, Chennai-6 against the Order of the Commissioner of Customs (Appeals) dated 18.05.2009 vide in C50/85/0/2008-sea cus.No. 356/2009, C50/86/0/2008-sea cus.No.360/2009 and C50/84/0/2008-sea cust.No.359/2009 respectively.

For Appellant in all appeals : Mr.T.Pramodkumar Chopda

For Respondent in all appeals : Mr.T.Ramesh

J U D G M E N T

(Order of the Court was pronounced by Dr.Anita Sumanth, J.)

These Departmental Civil Miscellaneous Appeals challenge an order of the CESTAT dated 8.9.2009 raising the following substantial question of Law:

> "Whether the "date of shipment" is relevant date for the purpose of amendment of shipping bill as stipulated under Section-149 of Customs Act 1962?"

2. The assessee respondent is engaged in the export of agricultural products and filed a shipping bill, No: 2778761 dated 12.9.2007 for the bulk export of Indian cane molasses. The procedure requires declaration of the actual quantity of export in form ARE 1. The shipping bills had, admittedly, been filed omitting the number of the ARE 1 and a request was made by the CHA for incorporation of the same. The provisions of section 149 of the Central Excise Act (hereinafter referred to as 'Act') permitted the amendment of shipping bill upon condition that the documents establishing the amendment were available even prior to the export of the goods. The appellant thus sought the incorporation of the contents of the ARE 1 forms in the shipping bill for suitable endorsement of the actual quantity exported. The receipt issued by the Mate i.e., Captain of the Vessel as well as the bill of lading were relied upon stating that the same were contemporaneous with shipping and thus establish the actual quantity of the contents shipped. The request was however, turned down by the Commissioner of Customs (Export) holding that no evidence had been let in to establish the actual quantity available at the time of export.

3. In first appeal, the Commissioner of Customs (Appeals) partly allowed the plea remanding the issue to the assessing authority for carrying out a detailed verification to ascertain the actual quantity of molasses shipped to the shore tank at the Port Trust. In doing so, the authority was directed to advert to the Daily account stock register, excise invoices, transport documents and other relevant statutory documents. The appeal was allowed, subject to the aforesaid verification to include only goods shipped prior to 14.09.2007 and rejected with respect to shipments subsequent to 14.9.2007. The sanctity of the aforesaid date was that the Dock officers had examined the consignments and issued a 'let export' order on the said date.

The Appellate Authority thus concluded that the quantum of exports after 14.09.2007 might well have been inflated.

4. The CESTAT, in an appeal filed by the appellant noted the nature of the cargo, being cane molasses and the manner of storage and loading into the Vessel by way of pumping from the storage tank. The Bench observes that it was not possible for the Dock Officers to have verified the actual quantity of molasses in the tank on the dates when the LET EXPORT orders were issued.

5. The Tribunal finds, as a fact, that the quantities mentioned in the ARE 1 forms as well as exported are one and the same. The efficacy of the 'let export' order in a case such as the present has its limitations as there can, in fact, be no physical examination of the molasses remaining in the storage tank on the date of the 'let order'. All relevant documents including the shipping bills, ullage reports and let export orders confirm the quantity exported to be one and the same.

6. The conclusion of the Department to the effect that there has been an incorrect representation of the quantity of exports thus appears to have been based wholly on surmises and nothing has been brought on record to substantiate the same. The conclusion of the Tribunal is thus well founded and the departmental appeal liable to be dismissed.

7. The amendment of a shipping bill is a matter of exercise of discretion by the proper officer who has to taken into account the necessary circumstances arising out of a transaction. In the present case, the Assistant Commissioner of Customs has omitted to notice the peculiar nature of his goods exported and the aspects of storage and transfer which necessarily should have been taken into account by him in deciding whether the amendment is to be effected or not. The substantial question is answered in the above terms and the appeal dismissed. No costs.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

msr

To

1. The Registrar
Customs, Excise and
Service Tax Appellate Tribunal,
South Zonal Bench,
Shastri Bhawan,
1st Floor,
No.26, Haddows Road,
Chennai 600 006.

2.The Commissioner of Customs (Exports)
Chennai,
Customs House,
No.60, Rajaji Salai,
Chennai 600 001.

+1cc to M/S.T.Ramesh, Advocate SR. 36434

+1cc to Mr.T.Pramodkumar Chopda, Advocate in sr.25841 (13/12/17)

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MP(CO)

VR(13/10/2017)