

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST BLOCK NO. 2, R K PURAM, NEW DELHI-110066**

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)

Date of Hearing: 25.09.2018

Date of Decision: 22.02.2019

R D EXTRUSIONS PVT LTD

Vs

**COMMISSIONER OF CUSTOM
NEW DELHI ICD TKD EXPORT**

Appellant Rep by: Shri Prem Garg, Adv.

Respondent Rep by: Shri Sunil Kumar, DR

CORAM: Anil Choudhary, Member (J)

Bijay Kumar, Member (T)

Cus - The appellant company sought to export some consignments of goods - It sought the conversion of free shipping bill to drawback shipping bill - The same was denied by the Revenue - On appeal, the Tribunal remanded the matter back to the adjudicating authority, who permitted the conversion of shipping bills in respect of 30 consignments - However, the conversion in respect of three supporting bills was refused - Hence the present appeal was filed.

Held - It is not apparent from the order that as to why the permission was not granted in respect of the three shipping bills for their conversion into drawback shipping bill at All Industrial Rate - In the present case, the export was made by the appellant under the supervision of the Jurisdictional Central Excise Officer & the consignment was factory sealed in container - Hence the export of these consignments vide the shipping bill is not in doubt - Hence the O-i-O is quashed the conversion of the three shipping bills is permitted: CESTAT

Assessee's appeal allowed

Case laws cited:

R D Extrusions Pvt Ltd - 2017-TIOL-2398-CESTAT-DEL...Para 1

Cargil India Pvt Ltd. vs Commissioner of Customs & Central Excise - 2015-TIOL-263-SC-CUS...Para 3

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 = 2017-TIOL-2398-CESTAT-DEL*. 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 Supreme Court in case of *Cargil India Pvt Ltd. vs Commissioner of Customs & Central Excise, Vishakapatnam-II [2015 (325) ELT 801(SC)] = 2015-TIOL-263-SC-CUS* 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)