Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.3

Customs Appeal No. 12452 of 2018-SM
(Arising out of OIA-MUN-CUSTM-000-APP-068-070-18-19 Dated-01/06/2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)

M/s. Gokul Agro Resources Ltd ....Appellant
B-402, Shapath Hexa, Near Ganesh Meridian, Opp. Gujarat High Court, Sola, AHMEDABAD, GUJARAT

VERSUS

C.C.-Mundra ....Respondent
Office of the Principle Commissionerate of Customs, Port User Buld.
Custom House Mundra, Mundra, Kutch, Gujarat-370421

WITH
Customs Appeal No. 12453 of 2018
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VERSUS

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APPEARANCE:
Shri. S.J.Vyas , Advocate for the Appellant
Shri. Sanjiv Kinker, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR

Final Order No. A/ 10730-10732 /2020

DATE OF HEARING: 02.03.2020
DATE OF DECISION: 02.03.2020

RAMESH NAIR

The brief facts of the case are that the appellant have exported goods claiming the scheme namely Merchandise Exports from India Scheme (MEIS) on the first page of the shipping bill. However, on the second page of shipping bill in the column "Scheme Reward", the appellant mentioned "NO". Thereafter, they made an application to the competent authority for amendment in shipping bill under Section 149 of the Customs Act, 1962. The Adjudicating Authority has rejected the request on the ground that as per the DGFT Public Notice such correction was only allowed for the period 01.06.2015 to 30.09.2015 Since, the present shipping bill were filed thereafter the correction cannot be made in the shipping bills. The appellant being aggrieved with this rejection of the amendment in Shipping Bill vide Order-In-Original filed an appeal before the Commissioner (Appeals). The Commissioner (Appeals) also concurring with the view of the Adjudicating Authority upheld the order of adjudicating authority. Therefore, the present appeal filed by the appellant.

2. Shri S J Vyas, Learned counsel appearing on behalf of the appellant submits that the amendment was requested under Section 149. Since the appellant had clear intention to claim the benefit of MEIS, they have declared on the first page of the Shipping Bill such claim and of the second page it is only due to clerical error instead of "Yes", "No" was mentioned therefore, it is the fit case for amendment in the Shipping Bill under section 149. He placed reliance on the following judgments:-

- Kancro Ingrdiantes Ltd-2020 2 TMI 61
- Anu Chashews and Mangalath Cashews-2016 11 TMI 795 HC Kerala
- Pasha international-2019 TMI 1187 HC MAD
- Kuruwa Enterprises-2019 11 TMI 1052-TRI BANG

3. Shri Sanjiv Kinker, Learned Superintendent (Authorized Representative) appearing on behalf of the revenue reiterates the finding of the impugned order.

4. Heard both the sides and perused the records, I find that both the Lower authorities have denied the amendment in the Shipping Bill only on the reliance of the DGFT Public Notice which provided for amendment in similar situation only for the period from 01.06.2015 to 30.09.2015. I am of the view that only because DGFT Public Notice prescribe certain period that

doesn't mean after that period, amendment cannot be made. Section 149 clearly provides for amendment in the documents such as Shipping Bill Entry, Bill of etc, in the case where document is on record at the relevant time. In the present case, at the time of export which is established from shipping bill wherein the appellant have categorically claimed the benefit of MEIS, therefore, I don't see any reason why the amendment in the Shipping Bill under section 149 should not be allowed. Absolutely identical issue has been considered by co-ordinate Bench of Bangalore of this Tribunal in the case of Kancor Ingredients Ltd (supra) and the tribunal has given the finding as under :-

> "6. *After considering the submissions of both the parties and perusal of the material on record, I find that the Commissioner has failed to notice that the appellants have declared their intention to claim MEIS benefits in two cases out of three cases, the shipping bills which have been produced on record. The only lapse on the part of the appellant was that they have mentioned in the reward column as 'N' instead of 'Y', which is only a procedural defect. Further, I find that otherwise the appellant is entitled to claim MEIS benefit as per the export policy. Failure to mention 'Y' in the reward column of the shipping bill for availing the benefit under MEIS scheme can be corrected by amending the shipping bill as held by the Hon'ble Madras High Court in the case of Pasha International cited supra. Further, I find that Hon'ble Delhi High Court in the case of Kedia (Agencies) Pvt. Ltd. (supra) has also allowed the amendment even in a situation where there was no declaration of intention whereas in the present case, the appellants have made the declaration on the front page of the shipping bills regarding their intention to claim the MEIS benefit except in the case of M/s. Kuruwa Enterprises. Further, I find that the other ports have allowed the amendment of shipping bill in identical situation. I also find that the issue in the present appeals are squarely covered by the decision of this Tribunal rendered in the case of M/s. N.C. John & Sons Pvt. Ltd. vs. Commissioner of Customs, Cochin vide Final Order No.20909/2019 dated 28.10.2019 and by the judgment of the Kerala High Court in the case of Mangalath Cashews & Ors. vs. Commissioner of Customs, Cochin. In view of my discussion above, I am of the considered view that Customs Appeal No. 20007 of 2020 5 rejection of request for amendment of shipping bills by the Commissioner is not sustainable in law and therefore, I set aside the impugned orders and direct the Custom Authorities to allow the amendment in the shipping bills as per the request of the appellants on production of certified copy of this order. Appeal is, accordingly, allowed."*

4.1 I am in complete agreement with the finding given by the tribunal Bangalore in the above judgment. Hence, I hold that the appellant is entitled for amendment in the Shipping Bill as claimed by them.

5. Accordingly, the impugned orders are set aside. Appeals are allowed with consequential relief, if any, in accordance with law.

(Dictated Pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

Prachi