CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Appeal(s) Involved:

C/21628/2017-SM

[Arising out of Order-in-Appeal No. 78/2016-17 dated 30/08/2016 passed by the Commissioner of Customs , Cochin (Appeals)]

Subicsha Coconut Producers Company Ltd. NP 9/708A, Chlikara, Naduvannur Po Perambra Kozhikode – 673 614 Kerala	**Appellant(s)**

Versus

Commissioner of Customs Cochins Custom House Cochin – 682 009 Kerala	**Respondent(s)**

Appearance:

Mr. M. Kunhammed, Chairman	For the Appellant
Mr. Madhupsharan, Assistant Commissioner (AR)	For the Respondent

Date of Hearing: 02/08/2018
Date of Decision: 02/08/2018

CORAM:
HON'BLE MR. P DINESHA, JUDICIAL MEMBER

Final Order No. 21098 / 2018

Per : P DINESHA

Assessee is before this Court being aggrieved by the order of Commissioner (Appeals), Cochin.

2. Appellant had imported capital goods under Bills of Entry No. 183296 dated 04.08.2006 at concessional rate of duty as per Notification No. 97/04 dated 17.09.2004 under EPCG Licence No. 10300000752 dated 11.01.2006 issued by Joint Director General of Foreign Trade, Cochin. Total duty foregone in this case as per licence was Rs. 28,29,112/- and the duty foregone as per assessment was Rs. 29,70,250/-. The adjudicating authority was of the view that the appellant had not fulfilled the conditions of Notification No. 97/2004 dated 17.09.2004 since the importer was required to produce the Installation Certificate dated 06.02.2007 issued by the Central Excise Assistant Commissioner but they failed to produce evidence of fulfillment of export obligation in respect of the block of 1st to 6th year (50%) which ended on 10.01.2012 and the block of 7th & 8th year (50%) which ended on 10.01.2014. Hence, it appeared that the importer was liable to pay duty of Rs. 29,70,250.00 leviable on the goods imported but for the exemption contained in the Notification, together with applicable interest from the date of clearance of the goods, as per the conditions of the Notification and the bond executed by them. A personal hearing was granted and not being satisfied by the explanation, the adjudicating authority vide a order dated 13.01.2016 confirmed the interest of Rs. 15,55,109/- (Rupees Fifteen Lakhs Fifty Five Thousand One Hundred and Nine only). The appellant did not meet with success in its appeal before the Commissioner (Appeals), Cochin.

3. Heard Mr. M. Kunhammed, authorized representative for the assessee and Mr. Madhupsharan, learned DR for the Revenue.

4. From the records made available, I find that though the adjudicating authority has recorded the pleadings of the appellant that it was a Central Government sponsored project with some purposes; though substantially they had paid the duty foregone; that as per the communication from Ministry of Commerce and Industry (Office of the Joint Director General of Foreign Trade) the duty saved was only Rs. 26,76,077.82 (Rupees Twenty Six Lakhs Seventy Six Thousand and Seventy Seven only) as against Rs. 29,70,250/- (Rupees Twenty Nine Lakhs Seventy Thousand Two Hundred and Fifty only) etc., but there is no findings given by either the adjudicating authority or the appellate authority on these specific pleadings.

5. I therefore, deem it proper in the interest of justice to remand the matter back to the file of adjudicating authority who pass a speaking order afresh after considering all such legal pleas of the appellant. It goes without saying that the Adjudicating Authority shall afford reasonable opportunities to the appellant and after considering the documents as also the case-law, if any, relied upon by the appellant and then pass a fresh order. The case is therefore allowed for statistical purposes.

(Operative portion of the Order was pronounced
in Open Court on **02/08/2018**)

(P. DINESHA)
JUDICIAL MEMBER

iss...