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

Appeal(s) Involved:

C/21592/2018-DB

[Arising out of Order-in-Appeal No. 108-109-2018 dated 18/04/2012 passed by Commissioner of CUSTOMS , COCHIN(Appeal)]

Travancore Titanium Products
P.b No 1,thiruvanthapuram
TRIVANDRUM - 695021
KERALA

Appellant(s)

Versus

Commissioner of Customs Cochin-cus
CUSTOM HOUSE
COCHIN - 682009
KERALA

Respondent(s)

Appearance:

Shri G. Shivadass, Advocate
LAKSHMI KUMARAN & SRIDHARAN
WORLD TRADE CENTRE NO.404-406, 4TH FLOOR, SOUTH WING BRIGADE GATEWAY CAMPUS NO.26/1, DR. RAJKUMAR ROAD,
BANGALORE - 560 055
KARNATAKA

For the Appellant

Smt. Kavita Podwal, Superintendent(AR)

For the Respondent

Date of Hearing: 09/10/2018
Date of Decision: 09/10/2018

CORAM:
HON'BLE MR. S.S GARG, JUDICIAL MEMBER
HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER

Final Order No. 21597 / 2018

Per : S.S GARG

The Registry has issued a defect memo dt. 24/08/2018 directing the appellant to make a mandatory predeposit @ 7.5% / 10% of the total duty demanded in terms of Section 35F of the Central Excise Act, 1944. The learned counsel for the appellant submitted that in the present case, appeal has been filed against the letter dt. 17/01/2018 issued by the Commissioner of Customs, Cochin wherein he has rejected the request for extension of time for installation of machinery imported under EPCG Scheme vide Notification No.97/2004-Cus dt. 17/09/2004 on the ground that the assessee has failed to comply with the directions of the Hon'ble CESTAT vide Final Order No.20036/2015 dt. 05/01/2015. The learned counsel further submitted that there is no consequential demand of duty, interest or penalty involved in the present appeal. Consequently, the mandatory predeposit in terms of Section 35F of the Central Excise Act, 1944 by the appellant is not required in the present case.

2. After hearing the learned counsel for the appellant, we hold since there is no demand of duty, interest or penalty in the present case and the present appeal is against the letter dt. 17/01/2018, mandatory predeposit under Section 35F is not required. Appeal is taken on record.

3. Since the issue is in narrow compass, with the consent of both the parties, we have decided to dispose of this appeal at this stage itself.

4. Briefly, the facts of the present case are that the appellants are a Government of Kerala undertaking and are engaged in the manufacture of Titanium Dioxide, Sulphuric Acid and Potassium Nitrate falling under the

Central Excise Tariff Heading Nos. 2823.00, 2807.00 and 28431.90 respectively. The appellants are in the process of installing Pollution Control Equipments and accordingly they applied to DGFT, Trivandrum and obtained 7 EPCG licences to import capital goods viz. equipments of Pollution Control projects at concessional rate of duty under Notification No.97/2004-Cus dt. 17/09/2004. Due to the financial crunch, the appellant could not complete the installation and commissioning of the goods imported for Acid Recovery Plant and Copper Recovery Plant. Thereafter the appellant on 26/11/2008 filed a letter to the Asst. Commissioner of Customs seeking extension of time for installation of goods imported against EPCG licences. The Deputy Commissioner vide order dt. 20/05/2010 rejecting the application for extension of time and demanded the duty foregone on the imported capital goods along with interest. Aggrieved by the said order, appellant filed appeal before the Commissioner(Appeals), who vide Order-in-Appeal dt. 05/06/2012 rejected the appeal on the ground that there was no justification for the delay in installation of the capital goods. Aggrieved by the said order, appellant filed appeal before the CESTAT and the CESTAT vide Final Order No.20036/2015 dt. 05/01/2015 granted extension of time for installation of imported goods till December 2015 considering the genuiness and the bona fide nature of the delay on the part of the appellant. But in spite of the extension given by the Tribunal till December 2015, the appellant could not complete the installation and thereafter sought extension further from the Department and vide the impugned letter dt. 17/01/2018, the Additional

Commissioner of Customs rejected the request for further extension of time up to 31/12/2018 on the ground that the appellant has failed to comply with the directions of the CESTAT vide Order No.20036/2015 dt. 05/01/2015. Against the said order, the appellant has filed the present appeal.

5. Heard both sides and perused records.

6. Learned counsel for the appellant submitted that the impugned letter dt. 17/01/2018 has been issued in complete violation of the principles of natural justice as the appellant has not been heard and no reasons have been provided in the letter for such rejection. He further submitted that the impugned letter only states that the appellants have failed to comply with the directions of the CESTAT order dt. 05/01/2015. He further submitted that the Commissioner of Customs has failed to provide detailed ground for rejection of the request of the appellant. He further submitted that the appellant has written various letters which are also enclosed along with the present appeal giving the reasons for non-completion of installation but same has not been considered and further the appellants have complied with the Final order dt. 05/01/2015 and informed the Department through various letterd dt. 26/12/2015, 20/01/2016, 21/09/2016, 23/03/2017 and 22/12/2017 clearly explaining detailed progress of the installation and requesting for grant of extension of time. He further submitted that the appellant could not complete the installation on account of shortage of funds and now the Government has released some funds and the

appellants are in process of installation and is only praying for some more time to complete the installation.

7. On the other hand, the learned AR justified the rejection of request for extension of time on the ground that sufficient time has been given to the appellant for installation of the capital goods but they are not completing the installation expeditiously.

8. After considering the submissions of both the sides and perusal of records, and the previous order of the Tribunal dt. 05/01/2015, we find that the appellants are a Government of Kerala undertaking and is primarily depending upon the funds provided by the Government. The appellants are engaged in the installation of the neutralization plant which found part of the pollution control equipment to be installed on the instructions of the Hon'ble Supreme Court and the appellant's funds were diverted towards setting up of neutrlisation plant. Further we find that the Tribunal in the earlier order dt. 05/01/2015 has also observed that if there are justification, the appellant can seek further extension depending upon the progress made by the appellant in installation of the capital goods. Since in the present appeal, the only prayer is extension of time up to 31/12/2018 for installation of machinery imported under EPCG scheme, we think it appropriate to grant the extension up to 31/12/2018 and direct the appellant to complete the installation within this period as the appellants were having genuine fund difficulty on account of which they could not complete the

installation. In view of this, we dispose of the present appeal by granting them extension of time up to 31/12/2018. Appeal is accordingly disposed of.

(Operative portion of the Order was pronounced
in Open Court on **09/10/2018**)

P. ANJANI KUMAR
TECHNICAL MEMBER

S.S GARG
JUDICIAL MEMBER

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