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

Application(s) Involved:

C/Stay/20125/2014, C/Stay/20126/2014, C/Stay/20127/2014 in C/20157/2014-SM, C/20158/2014-SM, C/20159/2014-SM

Appeal(s) Involved:

C/20157/2014-SM, C/20158/2014-SM, C/20159/2014-SM

[Arising out of Order-in-Appeal No. 386 to 388/2013 dated 11/10/2013 passed by Commissioner of CUSTOMS (Appeals), BANGALORE]

Hungi Granites
No.20,1st B Cross,rmv Extention
BANGALORE - 560080
KARNATAKA

Appellant(s)

Versus

Commissioner of Customs Bangalore-cus
C.R. BUILDING,QUEENS ROAD,
P.B.NO. 5400,
BANGALORE - 560001
KARNATAKA

Respondent(s)

Appearance:

Shri G.G. Bhat Prasad, Consultant — For the Appellant

Shri Gopal Kumar, Jt. Commissioner(AR) — For the Respondent

Date of Hearing: 03/01/2019
Date of Decision: 03/01/2019

CORAM:
HON'BLE MR. S.S GARG, JUDICIAL MEMBER

Final Order No. 20014-20016 / 2019

Per : S.S GARG

The appellants have filed these three appeals against the common impugned order dt. 11/10/2013 passed by the Commissioner(Appeals) whereby the Commissioner(Appeals) has rejected the appeals of the appellant and upheld the Order-in-Originals. Since the issue involved in all the three appeals is common, they are being disposed of by this order.

2. Briefly the facts of the present case are that the appellants are engaged in the manufacture and export of monumental granites to foreign countries and obtained licence for duty free import of goods under DEEC scheme. The appellant was issued a show-cause notice dt. 21/10/2006 on account of the non-fulfillment of export obligation and non-submission of EODC certificate in proof of fulfillment of export obligation. Further the allegation against the appellant is that non-submission of EODC contravenes the provisions of Notification No.43/2002 dt. 19/04/2002 and para 4.26 of Handbook of Procedures. After following the duce process, the Assistant Commissioner confirmed the demand of duty along with interest at the applicable rate by enforcement of DEEC bond and in one case, the Assistant Commissioner also confiscated the goods and imposed a redemption fine of Rs.10,000/- under Section 125(1) of the Customs Act along with a penalty of Rs.5000/- under Section 112(a) of the Act. Aggrieved by the Order-in-Original, appellant filed appeals before the Commissioner(Appeals) who rejected the same.

3. Heard both sides and perused records.

4. Learned counsel for the appellant submitted that the impugned order is not sustainable in law as the same has been passed without

properly appreciating the facts and the law. He further submitted that the appellant has exported and has fulfilled the conditions as prescribed in Notification No.43/2002. He further submitted that the impugned order has been passed on technical ground of non-submission of EODC despite the undisputed fact that the appellants have fulfilled their export obligation. He further submitted that non-submission of the EODC certificate is only a procedural requirement and the customs authorities can very well find out the exports and the foreign exchange realization. He further submitted that the basic condition of Notification No.43/2002 is export of goods and realization of foreign exchange and not the production of EODC. He further submitted that it is settled law that if exports and realization can be proved with other corroborative evidences, then also such benefit cannot be denied. In this regard, he relied upon the decision in the case of Prima Opthalmic Products P. Ltd. Vs. CC, New Delhi [2017(358) ELT 814 (Tri. Del.)]. He further submitted that the appellant is a small manufacturer and he has already closed down the business and after the dismissal of the appeal by this Tribunal for non-prosecution, the Revenue initiated the recovery and the appellant had already paid the confirmed demand in all the three appeals and has prayed that a lenient view should be taken to set aside the interest and penalty.

5. On the other hand, the learned AR defended the impugned.

6. After considering the submissions of both the parties and perusal of the material on record, I find that the only ground on which the

demand has been confirmed is non-submission of EODC proving the factum of export and foreign realization. It is not disputed that the appellant has not fulfilled and has not realized the foreign exchange and has also not followed the conditions as prescribed in Notification No.43/2002. Further I find that the submission of EODC issued by JDFT is only a procedural condition and if the appellant can prove by way of other corroborative evidences the factum of export and foreign exchange realization, then the benefit of notification cannot be denied to them. since in the present case, the only prayer of the appellant is for dropping the interest and penalty in view of the facts and circumstances of the present case, considering that appellant was a small time manufacturer and he has already closed down his business and has paid the demand despite the fact that he has fulfilled the export obligation and realized the foreign exchange. In view of these facts, I am of the opinion that the demand of interest and imposition of penalty is not warranted and therefore I set aside the imposition of penalty and demand of interest and confirm the duty demand. Accordingly appeals are partly allowed. Stay petitions also get disposed of.

(Operative portion of the Order was pronounced
in Open Court on **03/01/2019**)

S.S GARG
JUDICIAL MEMBER

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