CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Appeal(s) Involved:

C/284/2009-DB

[Arising out of Order-in-Appeal No. 18-09 dated 17/01/2009
passed by CC(Appeals), Cochin]

INDO GERMAN CARBONS LIMITED
OLD MOSQUE ROAD, EDAYAR INDUSTRIAL AREA, BINANIPURAM — Appellant(s)

VERSUS

Commissioner of Customs
COCHIN-CUS
NULL CUSTOM HOUSE, WILLINGDON ISLAND
COCHIN - 682009
KERALA — Respondent(s)

Appearance:

Shri N. Anand, Advocate
No. 152(18), Race Cource
Bangalore, - 560001
Karnataka — For the Appellant

Shri Rama Holla, Superintendent(AR) — For the Respondent

CORAM:
HON'BLE MR. S.S GARG, JUDICIAL MEMBER
HON'BLE MR. P.V. SUBBA RAO, TECHNICAL MEMBER

Final Order No. 20665 / 2019

Date of Hearing: 22/08/2019
Date of Decision: 22/08/2019

Per : S.S GARG

The present appeal is directed against the impugned order dt. 17.01.2009 / 27.01.2009 passed by the Commissioner(Appeals) whereby the Commissioner(Appeals) has rejected the appeal of the appellant.

2. Briefly the facts of the present case are that the appellant is a 100% EOU under the Cochin Special Economic Zone and is a One Star Export House. Appellant is engaged in manufacture and export of coconut shell based steam activated carbon. They exported 20MTs (40 bags) of activated carbon to M/s. Donau Carbon Corporation, USA vide Shipping Bill No.1395616 dt. 28/08/2006. But due to quality problems, the foreign buyer returned 12.5 MTs. (25 bags) exported by the appellant and the appellant had to re-import the same into India for re-processing. On re-importation, the appellant filed Bill of Entry No.196154 dt. 19/03/2007 and claimed duty exemption under Customs Notification No.52/2003-Cus dt. 31/03/2003. However, in the Bill of Entry, the appellant incorrectly mentioned the Shipping Bill reference under which the goods were re-imported as SB No.1295966/16/03/2005 instead of SB No.1395616/28.08.2006. thereafter the appellant re-processed the goods and also exported the same during April 2007. Subsequently, during the audit of the records of the appellant, the Department found that the appellant was not entitled to claim duty exemption on re-importation of exported goods since in terms of Sl.No.15 in Annexure-I to Notification No.52/03-Cus dt. 31/03/2003, the goods could have been imported only if the import had taken place before the expiry of one year from the date of export. Hence the Department demanded the duty. The original authority after hearing the appellant ordered the appellant to pay Rs.3,11,151/- being the duty foregone on import of goods. Aggrieved by the said order, appellant filed appeal before the Commissioner(Appeals) who rejected the same.

3. Heard both sides and perused records.

4.1. Learned counsel for the appellant submitted that the impugned order is not sustainable in law as the same has been passed without appreciating the facts and the law. He further submitted that in the present case, following facts are undisputed and there is not contrary findings as far as these facts are concerned.

i. The appellant is a 100% EOU.
ii. The appellant had exported its final product.
iii. The final product was re-imported for carrying out re-processing due to complaint received from the foreign buyer.
iv. The re-imported goods were re-processed.
v. The imported goods were finally exported.

4.2. He further submitted that adjudicating authority has wrongly denied the exemption by invoking Sl.No.15 of Annexure-I of Notification No.52/2003-Cus whereas the said Serial Number is not applicable in the facts of the present case. He further submitted that in the appellant's case, the foreign buyer did not refuse to take delivery or there was no failure of the foreign buyer to take delivery. He further submitted that the appellant is a EOU and is otherwise entitled in law to import all goods for the purpose of manufacture and export thereof. The learned counsel made alternative prayer that the goods re-imported by the appellant fall in terms of Sl.No.14 of Annexure-I of Notification No.52/2003-Cust dt. 31/03/2003 which reads as "Goods re-imported within three years from the date of exportation for repair or reconditioning". He further submitted that it is a fact that after repair, appellant has reexported the same to the same buyer which has not been disputed.

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

6. After considering the submissions of both sides and perusal of the material on record, we find that in the present case, the appellant is 100% EOU and they had exported the final product and subsequently the final product was re-imported for carrying out re-

processing due to complaint from the foreign buyer and the appellant re-processed the imported goods and finally exported the same which is not in dispute. Further we find that the Commissioner(Appeals) has not given any findings on this material aspect also. Further we also find that appellant's case falls under Sl.No.14 of Annexure-I of Notification No.52/03-Cus dt. 31/03/2003 wherein a period of three years is provided from the date of exportation for repair and reconditioning and the appellant re-exported the goods within this period. In view of this, we are of the considered view that the impugned order is not sustainable in law and therefore we set aside the same by allowing the appeal of the appellant.

(Operative portion of the Order was pronounced
in Open Court on **22/08/2019**)

S.S GARG
JUDICIAL MEMBER

P.V. SUBBA RAO
TECHNICAL MEMBER

Raja...