CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>BANGALORE</u>

REGIONAL BENCH - COURT NO. 1

<u>Appeal(s) Involved:</u>

C/20772/2019-SM

[Arising out of Order-in-Appeal No. COC-CUSTM-000-APP-13-2018-19 dated 15/05/2019 passed by Commissioner of CUSTOMS , COCHIN(Appeal)]

M/s Universal Oleoresins
Viii/946 Navaratna House Jawahar Road
COCHIN - 682002
KERALA

Appellant(s)

VERSUS

Commissioner of Customs Cochin-cus
CUSTOM HOUSE, WILLINGDON ISLAND
COCHIN - 682009
KERALA

Respondent(s)

<u>Appearance:</u>

MR. M.BALAGOPAL, ADVOCATE
ROOM NO. 301, 4TH FLOOR, DD VYAPAR BHAVAN, K.P. VALLON ROAD, KADAVANTHRA, COCHIN 682 020
COCHIN - 682020
KERALA

For the Appellant

MR. RAMA HOLLA, SUPERINTENDENT (AR)

For the Respondent

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

<u>Final Order No. 20707 / 2019</u>

Date of Hearing: 09/09/2019
Date of Decision: 09/09/2019

Per : S.S GARG

The present appeal is directed against the impugned order dated 14.05.2019 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 has imported Light Black Pepper Berries under two Bill of Entry without payment of Customs duty claiming exemption under Customs Notification No.96/2009 dated 11.09.2009 under DEEC Scheme Advance Authorization No. 1010034784 dated 05.08.2009. The total duty foregone was Rs.22,09,896/- As per the conditions of the Notification, the appellant has to discharge export obligation within a period specified by the licensing authority and produce evidence of discharge of the export obligation to the satisfaction of the Asst. Commissioner of Customs. The export obligation period in the present case was over by 12.02.2010 but the importer failed to produce EODC and export related documents to the adjudicating authority. The importer vide letter dated 16.02.2015 informed the adjudicating authority that they have approached Hon'ble High Court of Kerala against the decision of the Policy Relaxation Committee and therefore requested to keep in abeyance all further proceedings. The Hon'ble High Court vide their final order dated 05.09.2016, dismissed the Writ Petition filed by the importer stating that the Committee have already taken appropriate decision in the matter but allowed WP(C)21000/16 setting aside the DEL order and ordered the petitioner to file objection to the SCN issued by the JDFT against them within 4 weeks. The importer preferred an appeal before the Division Bench of the Hon'ble High Court against the said judgment but later they withdraw the same. After due procedure, the adjudicating authority found that the appellant is liable to pay the duty foregone amount of Rs.22,09,896/- along with applicable interest for not fulfilling the export obligation as per the conditions of the Customs Notification No. 96/2009 and the Bond executed by the appellant. Accordingly, the said duty demand of Rs.22,09,896/- was confirmed by the adjudicating authority. Aggrieved by the Order-in-Original, the appellant filed appeal before the Commissioner (Appeals) who rejected the same.

3. Heard both the parties and perused the records.

4. Learned Counsel for the appellants 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, in fact, fulfilled the export obligation and has also produced export obligation discharge certificate and redemption letter from the DGFT dated 29.07.2019. He further submitted that when the appeal was pending before the Commissioner at that time, he could not produce the EODC certificate but subsequent to the decision of the Commissioner, appellant got the EODC certificate and redemption letter which has been placed on record. He further submitted that in view of the EODC certificate issued by the DGFT, the appeal should be allowed and demand should be set aside.

5. On the other hand, Learned AR reiterated the findings of the impugned order.

6. After considering the submissions of both the parties and perusal of the material on record, I find that the appellant has produced the EODC certificate/redemption letter dated 29.07.2019 which shows that he has fulfilled the export obligation as was required under the advance authorization. Since the appellant has fulfilled the export obligation as per the letter placed on record, I allow the appeal of the appellant and set aside the impugned order subject to the verification of the EODC certificate issued by the DGFT by the original authority. Consequently, the appeal is allowed in above terms.

(Operative portion of the Order was pronounced
in Open Court on **09/09/2019**)

S.S GARG
JUDICIAL MEMBER

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