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

Appeal(s) Involved:

C/20532/2019-SM

[Arising out of Order-in-Appeal No. COC-CUSTOM-000-APP-108-2018 dated 15/03/2019 passed by Commissioner of CUSTOMS , COCHIN(Appeal)]

M/s Cii Guardian International Ltd
Plot No 16b Csez Cochin
KAKKANAD
KERALA
682037

Appellant(s)

Versus

C.C-Cochin-cus
CUSTOM HOUSE, WILLINGDON ISLAND
COCHIN
KERALA
682009

Respondent(s)

Appearance:

MR. M BALAGOPAL, ADVOCATE
#A5, HIG AVENUE, GANDHI
NAGAR ROAD, KADAVANTHARA COCHIN
COCHIN
KERALA
682020

For the Appellant

MR. MADHUP SHARAN, ASST. COMMISSIONER (AR)

For the Respondent

Date of Hearing: 09/09/2019
Date of Decision:16/09/2019

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

Final Order No.20719 /2019

Per : S.S GARG

The present appeal is directed against the impugned order dated 15.03.2019 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 is a unit established and operated in Cochin, Special Economic Zone under the control and supervision of Development Commissioner and Customs authorities of Cochin SEZ. During the period from 29.10.2015 to 30.03.2016, appellants have exported 123 consignments of goods manufactured in the SEZ unit by Filing Shipping bills for export. As an incentive for export done and the foreign exchange earned, the appellant claimed export incentive under MEIS (Merchandise Export Incentive Scheme), against all the 123 Shipping Bills and the Regional Authority of DGFT has issued the MEIS scrips against all the 123 Shipping Bills after satisfying that the goods were exported and the proceeds were also repatriated. Later on the Customs authorities in Cochin SEZ found that the declaration of appellant's intention to claim the MEIS benefit was not declared in the impugned Shipping Bills and as such the same cannot be registered. Thereafter, the appellant vide letter dated 22.05.2017 requested the Development Commissioner for amendment of the Shipping Bills under the provisions of Section 149 of the Customs Act, 1962. In reply to the said request, the Deputy Commissioner, Customs, Cochin SEZ vide letter dated 25.10.2017 has rejected the application of the appellant for amendment of the Shipping Bills for the following reasons:

a. In terms of CBEC Circular No. 36/2010, conversion can be permitted on the basis of documentary evidence which was in existence at the time when the goods were exported; that the goods were eligible for Export Promotion Scheme to which conversion has been requested and that free Shipping Bills are subject to 'Nil' examination norms, conversion from 'Free Shipping Bills' to 'Export Promotion Scheme' cannot be permitted;

b. That as per Circular No. 06/2002 amendment vide Circular No. 01/2009, which deals with examination norms provides that the exporters who want to claim incentives shall make their intention at the time of export itself and also provides stringent examination norms depending on the sensitivity of the destination and value of cargo.

c. That Section 149 of Customs Act, 1962, provides for amendment only on the basis of documentary evidence which was in existence at the time when the goods were exported.

Aggrieved by the said decision, the appellant filed appeal before the

Commissioner who upheld the order of the Deputy Commissioner. Hence, the present appeal.

3. Heard both the parties and perused the 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 binding judicial precedents on the same issue. He further submitted that Circular No. 36/2010 itself provides that conversion of Shipping Bills is governed by the provisions of Section 149 of Customs Act, 1962. Thereafter, the Learned Counsel took me through Section 149 of the Customs Act and submitted that Section 149 does not mention any time limit to make a claim for amendment of documents. According to this Section, amendment can be made any time even after clearance for home consumption, the only condition being that the documentary evidence which was in existence at the time the goods were cleared, deposited or exported, are available. He further submitted that when the Act itself does not have a time restriction for amendment of Shipping Bills, the same cannot be imposed by way of a circulars and the finding to this effect by both the authorities is not sustainable. For this submission, he relied upon the following decisions:

- *V.R.A. Cotton Mills Pvt. Ltd. Vs Commissioner of Customs, Jamnagar, 2014 (309) ELT 100 (Tri. Ahmd.).*
- *Parle Products Pvt. Ltd. Vs Commissioner of Customs, Nhava Sheva-II, 2017 (358) ELT 341 (Tri. Mumbai).*
- *Diamond Engineering (Chennai) P. Ltd. Vs CC, (Seaport- Export), Chennai, 2013 (288) ELT 265 (Tri. Chennai).*

4.1. He further submitted that the findings of the Commissioner (Appeals) that there was an unexplained delay in filing the application for amendment cannot legally sustain because there was no such allegation raised by the original authority. He further submitted that other grounds raised by both the authorities for rejecting the claim of amendment is that since the impugned Shipping Bills were “Free Shipping Bills”, the same were not subjected to examination whereas there are strict and stringent examination norms for Shipping Bills filed under Export Promotion Scheme. He further submitted that both the authorities have wrongly relied upon the Circular No. 06/2002, which only covers the exports made from DTA and not from SEZ. During the relevant period, no examination of cargo under whatever scheme was prescribed under Rule 46 of SEZ Rules. Further, the physical examination of cargo exported from an SEZ unit under MEIS Scheme was incorporated only on 19.09.2018 vide Notification G.S.R. No. 909 (E) dated 19.09.2018. It is his further submission that in the case of SEZ unit, entire operations are under the strict control of the Development Commissioner and the officers of the Customs posted in SEZ. He further submitted that the proper officer could have examined the quantity and description of the goods by examining such statutory register kept by the appellant. Moreover, identical goods are being regularly exported by the appellant under MEIS Scheme for which no objection, whatsoever, was raised either by the Customs or by DGFT. He further submitted that the amendment of Shipping Bills for declaration of MEIS is clearly covered by the following decisions:

- *Pasha International Vs Commissioner of Customs, Tuticorin, 2019 (365) ELT 669 (Mad.).*
- *Kedia (Agencies) Pvt. Ltd., 2017 (348) ELT 634 (Del.).*
- *Polydrug Laboratories Pvt. Ltd. Vs. CC (General), Mumbai, 2015 (317) ELT 271 (Tri. Mumbai).*
- *Suminter India Organics Pvt. Ltd. Vs CC (Export) Nhava Sheva, Mumbai-II, 2016 (343) ELT 599 (Tri. Mumbai).*

4.2. He also submitted that in identical matter, other Ports are issuing NOC for amendment of Shipping Bills and he has produced on record NOC issued by Krishnapattanam Customs in an identical matter.

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

6. After considering the submissions of both the parties and perusal of the material on record, I find that the appellant is working as a SEZ unit and he has exported 123 consignments of goods by filing Shipping Bills and the Regional Authority has issued MEIS scrips after satisfying that the goods

were exported and proceeds were repatriated. Further, I find that when the appellant approached the Customs authorities for the registration of MEIS scrip at that time, it was found that the appellant have not declared their intention to avail the benefit of MEIS by making declaration in the Shipping Bills. Thereafter, the appellant requested for the amendment of the Shipping Bills under Section 149 of the Customs Act which was declined by both the authorities on the ground that there is delay in applying the amendment and further as per Circular No. 36/2010, examination were not conducted whereas for Export Promotion Scheme, stringent examination norms are prescribed. Further, I find that as far as examination of the consignment is concerned during the relevant time, there was no provision for physical examination of the cargo exported from SEZ unit under MEIS Scheme and that requirement was incorporated only on 19.09.2018 vide Notification G.S.R. No. 909 (E) dated 19.09.2018. Further, I find that the entire export took place prior to incorporation of the physical examination requirement. Further, I find that in the case of SEZ, the entire operations are under the control of Development Commissioner and the officers of the Customs posted therein and they can easily verify the entire records but the same was not done in this case. Further, I find that in view of the various decisions relied upon by the appellant cited supra, amendment of Shipping Bills for the declaration of MEIS is clearly covered in favour of the assessee. Moreover, the appellant has also produced one NOC vide which amendment of Shipping Bills was allowed on identical facts. Therefore, in view of the law laid down by various decisions cited supra, I am of the considered view that the impugned order denying the amendment of the Shipping Bills is not sustainable in law and therefore I set aside the same and direct the respondent to carry out the amendment in the Shipping Bills. The appeal is accordingly allowed.

(Order was pronounced
in Open Court on **16/09/2019**)

S.S GARG
JUDICIAL MEMBER

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