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

Appeal(s) Involved:

C/20761/2019-SM

[Arising out of Order-in-Original No. COC-CUSTOMS-000-COM-18/2019-20 dated 20/07/2019 passed by Commissioner of CUSTOMS, COCHIN.]

M/s. N. C. John & Sons Pvt. Ltd.
Branch No. 0 XVI/268 Vazhicherry
ALAPPUZHA – 688 001.
KERALA

Appellant(s)

Versus

The Commissioner of Customs
CUSTOM HOUSE, WILLINGDON ISLAND
COCHIN – 682 009.
KERALA

Respondent(s)

Appearance:

Mr. M BALAGOPAL ADVOCATE
#A5, HIG AVENUE, GANDHI
NAGAR ROAD, KADAVANTHARA
COCHIN – 682 020.
KERALA

For the Appellant

Mr. Madhup Sharan,
Asst. Commissioner (AR)

For the Respondent

Date of Hearing: 09/09/2019
Date of Decision:28/10/2019

CORAM:

HON'BLE SHRI S.S GARG, JUDICIAL MEMBER

Final Order No.20909/2019

Per : S.S GARG

The present appeal is directed against the impugned order dated 20.7.2019 passed by the Commissioner whereby the Commissioner has rejected the request of M/s. JN Freight Forwarders Pvt. Ltd., made on behalf of the appellant for 'No Objection Certificate' for claiming MEIS by amendment of reward option from 'No' to 'Yes' in shipping bills.

2. Briefly the facts of the present case are that the appellant filed 29 Shipping Bills for export of floor coverings of jute/sisal/wool/100% rubber mats. All the exports covered under the 29 shipping bills were either under Drawback Scheme or EOU Scheme; and in all the shipping bills, the appellant has declared their intention to claim METS benefit. However, inadvertently in respective column of the shipping bills where it is asked as to whether the shipping bills need to the transmitted to DGFT, it was mentioned as 'N' instead of 'Y'. As a result, the shipping bills were not electronically transmitted to DGFT for processing METS scrips. The appellant could not file their METS claim because of non-transmission of SB scrips. Appellant through their Customs Broker M/s. J.N. Freight Forwarders Pvt. Ltd. requested the Department vide their letter dated 7.6.2019 to allow amendment of the shipping bills of correcting the endorsement from "N' to 'Y' in the shipping bills. The Commissioner after hearing the Custom Broker rejected the request of the appellant on the ground that non-declaration of intent of the exporter is a vital factor for deciding the norms of examination of the export consignment and the level of examination prescribed for a consignment exported without claiming reward would be lesser than that of export consignment for which the reward is claimed. Further, the Commissioner observed that such amendment would be equivalent to conversion of shipping bill as stipulated in CBIC Circular No.36/2010-Customs dated 23.9.2010. Further, the appellant has not followed the procedure and conditions laid down in the said Circular, therefore, the request for amendment was turned down. Aggrieved by this order, appellant has filed this 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 law. He further submitted that Commissioner has approached the case with a wrong notion that the appellant has not

declared their intention to claim METS benefit in their shipping bills. In fact the appellant actually has declared the intention to claim the METS benefit on the face of the shipping bills and it was only in the Column where it was asked as to whether the shipping needs to be electronically transferred to DGFT portal, the appellant inadvertently mentioned as 'N' instead of 'Y', which is only procedural irregularity as the substantial compliance of declaration of intention is made by the appellant on the face of the shipping bill itself. He further submitted that this issue is squarely covered by the decision of the Hon'ble High Court of Madras in the case of ***Pasha International vs. Commissioner of Customs: 2019 (365) ELT 669*** (Mad.) wherein the Hon'ble High Court held that the mistake of ticking 'No' instead of 'Yes' in the reward column of the shipping bill for availing the benefit under MEIS scheme can be corrected by amending the shipping bill under the provisions of Section 149 of the Customs Act, 1962. The learned counsel further submitted that in an identical situation, this Bench in the ***case of Saurabh Overseas Traders vs. Commissioner of Customs, Cochin: 2017 (356) ELT 463 (Tri.-Bang.)*** has observed that department should not have rejected the amendment application which was only a procedural formality on a finding that the procedures are meant for furthering the justice and not to hamper them. He also places reliance on the decision of the Delhi High Court in the matter of ***Kedia (Agencies) Pvt. Ltd. vs. Commissioner of Customs: 2017 (348) ELT 634 (Del)*** wherein the Hon'ble High Court has held that except for declaration, appellant's eligibility to export benefits not questionable as the said product continued to be an eligible product. Since all relevant substantive particulars are available, fault of mere non-filing of declaration not fatal to appellant's claim on export benefits and the Customs Authorities were directed to amend shipping bills in terms of appellant's request. Learned counsel further submitted that appellant's case is on a higher footing then the case decided by the Delhi High Court where no declaration of intention was filed whereas in the present case, he has declared their intention to claim MEIS benefit on the front of the shipping bill which the Commissioner has ignored to notice. He further submitted that in an identical matters other ports are issuing NOC for amendment of shipping bills and he has produced on record one such NOC issued by Asst. Commissioner, Custom House, Krishnapatnam, wherein in identical facts change of reward details from 'No' to 'Yes' in the shipping bill was permitted.

5. On the other hand, the 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 Commissioner has failed to notice that the appellant has declared their intention to claim METS benefits in all the shipping bills which have been produced on record. The only lapse on the part of the appellant was that they have mentioned in the reward column as 'N' instead of 'Y', which is only a procedural defect. Further, I find that otherwise the appellant is entitled to claim METS benefit as per the export policy. Failure to mention 'Y' in the reward column of the shipping bill for availing the benefit under METS scheme can be corrected by amending the shipping bill as held by the Hon'ble Madras High Court in the case of ***Pasha International*** cited supra. Further, T find that Hon'ble Delhi High Court in the case of ***Kedia (Agencies) Pvt. Ltd.*** (supra) has also allowed the amendment even in a situation where there was no declaration of intention whereas in the present case, the appellant has made the declaration on the front page of the shipping bills regarding their intention to claim the MEIS benefit. Further, I find that the other ports have allowed the amendment of shipping bill in identical situation. In view of my discussion above, I am of the considered view that rejection of request for amendment of shipping bill by the Commissioner is not sustainable in law and therefore, I set aside the impugned order and direct the Custom Authorities to allow the amendment in the shipping bill as per the request of the appellant on production of certified copy of this order. Appeal is, accordingly, allowed.

(Order was pronounced in Open Court on **28/10/2019**)

S.S GARG
JUDICIAL MEMBER

rv