CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Appeal(s) Involved:

C/20930/2019-SM, C/20931/2019-SM, C/20932/2019-SM

[Arising out of Order-in-Original No. COC-CUSTOMS-000-COM-19-2019-20 dated 20/07/2019 passed by Commissioner of CUSTOMS , COCHIN(Appeal)]

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

[Arising out of Order-in-Original No. COC-CUSTOMS-000-COM-21-2019-20 dated 20/07/2019 passed by Commissioner of CUSTOMS , COCHIN(Appeal)]

Kuruwa Enterprises
18/24 Thoppumpady
COCHIN - 682005
KERALA
Appellant(s)

RBG Trading Corporation Pvt Ltd
VI/93 Jew Town
KOCHI - 682002
KERALA
Appellant(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)

Appearance:

Mr. M BALAGOPAL, ADVOCATE
#A5, HIG AVENUE, GANDHI
NAGAR ROAD, KADAVANTHARA
COCHIN - 682020
KERALA
For the Appellant

Mrs. C. V. Savitha,
Superintendent (AR)
For the Respondent

CORAM:

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

Final Order No. 21016-21018 / 2019

Date of Hearing: 19/11/2019
Date of Decision: 19/11/2019

Per : S.S GARG

Appellants have filed these three appeals against impugned order all dated 20.7.2019 passed by the Commissioner of Customs whereby the Commissioner has rejected the request of the appellants for no objection certificate for claiming MEIS by amendment of reward option from 'No' to 'Yes' in shipping bills.

2. Since the issue involved in all the three appeals is identical, therefore, all the three appeals are being disposed of by this common order.

3. Briefly the facts of the present case are that the appellants had filed Shipping Bills for the export of various spice products. All the exports covered under the Shipping Bills were either under Advance Authorisation Scheme or Drawback Scheme. None of the Shipping Bills were 'Free Shipping Bills' However, inadvertently in the Shipping Bills, in the window against the query with regard to the intention of claiming the MEIS benefit, it was mentioned as 'No' instead of 'Yes'. As a result, the Shipping Bills were not electronically transmitted to DGFT portal for processing the MEIS scrips. Since the appellants could not file their MEIS claim because of the non-transmission of SB copies, the appellants requested the Department to allow amendment of the shipping bill by correcting the endorsement 'No' to 'Yes' in the Shipping Bills.

3.1 Appellants were heard by the Commissioner and the request for amendment was rejected on the ground that the non-declaration of intend for 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. Since the appellants have not declared 'Yes' in the reward column, the cargo escaped Customs examination which is against the conditions laid in the said Circular No.36/2010 and the request for amendment of Shipping Bills was turned down.

4. Heard both the parties and perused the records.

5. 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 Commissioner has approached the case with a wrong notion that the appellants have not declared their intention to claim MEIS benefit in their shipping bills. In fact the appellants actually has declared the intention to claim the MEIS benefit on the face of the shipping bills in two cases viz., M/s. RBG Trading Corporation Pvt. Ltd. and M/s. Universal Oleoresins but did not declare the same in the case of M/s. Kuruwa Enterprises 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 appellants inadvertently mentioned as 'N' instead of 'Y', which is only procedural irregularity as the substantial compliance of declaration of intention is made by the appellants 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. Learned counsel also submitted that this Tribunal in identical case vide its **Final Order No.20909/2019 dated 28.10.2019**, in the case of **M/s. N.C. John & Sons Pvt. Ltd. vs. Commissioner of Customs, Cochin**, has allowed the appeal of the exporter and directed the Customs Authorities to allow the amendment in the Shipping Bills as per the request of the exporter. Learned counsel also relied upon the judgment of the Kerala High Court in the case of **Mangalath Cashews & Ors vs. Commissioner of Customs, Cochin** vide W.P. (C) No.27126 of 2019 (M) dated 13th November 2019.

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

7. 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 appellants have declared their intention to claim MEIS benefits in two cases out of three cases, 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 MEIS benefit as per the export policy. Failure to mention 'Y' in the reward column of the shipping bill for availing the benefit under MEIS 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, I 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 appellants have made the declaration on the front page of the shipping bills regarding their intention to claim the MEIS benefit except in the case of M/s. Kuruwa Enterprises. Further, I find that the other ports have allowed the amendment of shipping bill in identical situation. I also find that the issue in the present appeals are squarely covered by the decision of this Tribunal rendered in the case of **M/s. N.C. John & Sons Pvt. Ltd. vs. Commissioner of Customs, Cochin** vide **Final Order No.20909/2019 dated 28.10.2019** and by the judgment of the Kerala High Court in the case of **Mangalath Cashews & Ors. vs. Commissioner of Customs, Cochin.** In view of my discussion above, I am of the considered view that rejection of request for amendment of shipping bills by the Commissioner is not sustainable in law and therefore, I set aside the impugned orders and direct the Custom Authorities to allow the amendment in the shipping bills as per the request of the appellants on production of certified copy of this order. Appeals are, accordingly, allowed.

(Operative portion of the Order was pronounced
in Open Court on **19/11/2019.**)

S.S GARG
JUDICIAL MEMBER

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