CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Appeal(s) Involved:

C/20984/2019-SM

[Arising out of Order-in-Original No. COC-CUSTOMS-000-COM-16-2019-20 dated 20/07/2019 passed by Commissioner of CUSTOMS, COCHIN.]

M/s. LMJ International Ltd.
24/104 Perumanoor Jetty Road
Willington Island
COCHIN - 682003
KERALA

Appellant(s)

VERSUS

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

Respondent(s)

Appearance:

Ms. Jovit Lobo, Advocate
P.A.AUGUSTIAN, ADVOCATE
FAIZEL CHAMERS,
PULLEPADY CROSS ROAD,
COCHIN-682018

For the Appellant

Mr. P. Gopakumar
Jt. Commissioner (AR)

For the Respondent

CORAM:

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

Final Order No. 21021 / 2019

Date of Hearing: 21/11/2019
Date of Decision: 21/11/2019

Per : S.S GARG

The present appeal is directed against the impugned order dated 20.7.2019 passed by the Commissioner of Customs (Appeals) whereby the Commissioner (A) rejected the request of the appellant for 'No Objection

Certificate’ for claiming MEIS by amendment of reward option from ‘No’ to ‘Yes’ in the shipping bills.

2. Briefly the facts of the present case are that the appellant is exporting goods for the last 35 years by availing the reward under MEIS. From 2015-2016, while filing the EDI shipping bills, due to an inadvertent mistake, staff of the customs broker marked the reward column as ‘N” instead of ‘Y’. However, the shipping bills were filed specifically mentioning that the appellant intended to claim rewards under Merchandise Export. As a result, the shipping bills were not electronically transmitted to DGFT for processing METS scrips. The appellant requested the Department to allow amendment of the shipping bills of correcting the endorsement from "N' to 'Y' in the shipping bills. The Commissioner after hearing the appellant 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, Commissioner observed that the appellant has not followed the procedure and conditions laid down, 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 MEIS benefit in their shipping bills. In fact the appellant actually has declared the intention to claim the MEIS 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. Learned counsel also submitted that this Tribunal in identical cases 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** and **Kuruwa Enterprises & Ors. vs. CC, Cochin** vide **Final Order No.21016 – 21018/2019 dated 19.11.2019**, 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.

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 MEIS 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 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, 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. I also find that the issue in the present appeal is squarely covered by the decisions 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 **M/s. Kuruwa Enterprises & Ors. vs. CC, Cochin** vide **Final Order No.210216-21018/2019 dated 19.11.2019** 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 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.

(Operative portion of the Order was pronounced
in Open Court on **21/11/2019.**)

S.S GARG
JUDICIAL MEMBER

rv...