IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

REGIONAL BENCH - COURT NO. – III

Customs Appeal No. 40960/2019 in C/CO/40371/2019

(Arising out of Order-in-Appeal Sea C.Cus. II No. 12/2019 dated 23.1.2019 passed by the Commissioner of Customs (Appeals – II), Chennai)

Commissioner of Customs **Appellant**
Sea – Chennai – II
Chennai Seaport North
Customs House, 60, Rajaji Salai
Chennai – 600 001.

Vs.

M/s. Rathna Packaging India Pvt. Ltd. **Respondent**
No. 19, 15th Cross, Sector 4
Bangalore – 560 102.

<u>APPEARANCE:</u>

Ms. T. Usha Devi, DC (AR) for the Appellant
Shri Ramesh, Consultant for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri P. Venkata Subba Rao, Member (Technical)

Final Order No. **41186 / 2019**

Date of Hearing: 29.10.2019
Date of Decision: 29.10.2019

PER BENCH

Brief facts are that the respondents filed 11 Bills of Entry for the import and clearance of "MLLDOE Granules" utilizing their MEIS licenses issued by DGFT. The said Bills of Entry were processed and on scrutiny of earlier imports it was noticed that the subject item is classifiable under CTH 39012200 and are eligible for duty exemption in terms of FTA Notification 010/2008-Cus. dated 15.1.2008. The benefit of the said notification was inadvertently not claimed at the time of import and duty was paid against 2 Bills of Entry and for the remaining Bills of Entry by utilizing the scrips. The respondent represented the same vide letter dated 13.8.2018 and requested to extend the benefit of notification and to reassess the Bills of Entry. This was rejected by letter dated 30.8.2018. Aggrieved by such order of rejection, the respondents filed appeal before Commissioner (Appeals). After considering the appeal, the Commissioner (Appeals) set aside the assessments in the 11 Bills of Entry and directed the lower authority to reassess the Bills of Entry by extending the benefit of duty exemption as per FTA Notification 010/2008-Cus. dated 15.1.2008. Aggrieved by such order, department has now preferred the appeal.

2. The ld. AR Ms. T. Usha Devi reiterated the grounds of appeal. It is submitted by her that Rule 13 of India Singapore Comprehensive Economic Cooperation Agreement prescribes the time limit for presentation of the certificate of origin. It is stated that the certificate of origin has to be submitted to the customs authorities within its validity period together with the documents required at the time of customs clearance of goods. Again, Rule 10(b) of the said Agreement stipulates that in exceptional cases where a certificate of origin has not been issued at the time of exportation or within three working days from the date of shipment due to involuntary errors of omissions or other valid causes, certificate of origin may be issued retroactively but no longer than one year from the date of shipment

bearing the word "Issued Retrospectively". That in the instant case, the certificates of origin are not issued retrospectively except for 5 Bills of Entry and for these Bills of Entry also the certificate of origin was issued before the filing of the Bills of Entry. So the importer cannot seek refuge under Rule 10(b) for not furnishing the certificate of origin at the time of filing the Bills of Entry. Consequent to this, Rule 12 has to be applied which stipulates that the original certificate of origin shall be submitted to the customs authority at the time of lodging the import entry for the products concerned. The importer herein has failed to furnish the certificates of origin at the time of filing of Bills of Entry. Therefore, the original authority had rightly disallowed the claim for benefit of notification. She prayed to set aside the order passed by the Commissioner (Appeals).

3. On behalf of the respondent, ld. counsel Shri Ramesh appeared and argued the matter. He supported the findings in the impugned order. He submitted that there is no dispute that the respondents are eligible for benefit of notification. However, the only allegation is that they have not claimed it at the time of import. On coming to know that they are eligible for the benefit of the notification, they requested for reassessment of the Bills of Entry. Despite explaining the genuineness of the issue and the eligibility of the claim, the notification benefit was not extended stating the reason that 11 Bills of Entry were fully facilitated by Risk Management Systems (RMS) without assessment and examination. That there is no proper examination report to confirm the origin of the subject goods. The Commissioner (Appeals) have rightly considered all these aspects and

held that non-availability of examination report can never be a ground to doubt the veracity of the description declared in the Bills of Entry. He stressed that the respondents failed to claim the benefit of FTA Notification 010/2008-Cus. dated 15.1.2008 only due to bonafide omission. He also relied upon various decisions wherein it has been held that the importer is at liberty to reassess the Bills of Entry in terms of section 149 of the Customs Act, 1962.

4. Heard both sides.

5. The issue is whether the respondents are eligible for the benefit of the FTA Notification 010/2008-Cus. dated 15.1.2008. The main ground raised by ld. AR is that the goods were cleared under RMS and therefore there is no examination report so as to correlate the goods that have been imported with the country of origin certificate; that therefore the country of origin certificate produced later cannot be accepted. The Commissioner (Appeals) in para 6 of the order has observed that on perusal of records it is seen that FTA certificate is produced for each and every bill of entry and they are dated prior to the date of filing the Bill of Entry covering the goods imported under the said Bills of Entry. Further, section 149 of the Customs Act, 1962 speaks about amendment of documents. As per this provision, amendment of a Bill of Entry or a shipping bill can be allowed after clearance of goods on the basis of documentary evidence which is in existence at the time the goods were cleared, deposited or exported as the case may be. Thus, on perusal of records as well as applying the provision of law, we are of the considered opinion that the Commissioner (Appeals) is right in holding that the respondents have

to be extended the benefit of FTA Notification 010/2008-Cus. dated 15.1.2008. We find no infirmity in the impugned order passed by the Commissioner (Appeals). The appeal filed by Revenue is dismissed. The cross-objection filed by the respondent is disposed of accordingly.

(Dictated and pronounced in open court)

(**SULEKHA BEEVI C.S.**)
Member (Judicial)

(**P. VENKATA SUBBA RAO**)
Member (Technical)

Rex