IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI

C/41871/2016-SM

[Arising out of Order-in-Original No.606/2016-AIR, dated 04.07.2016 passed by the Commissioner of Customs (Air Cargo), Chennai]

M/s. AMBADI ENTERPRISES LTD. APPELLANT

Versus

COMMISSIONER OF CUSTOMS (AIR-CARGO) CHENNAI-VII RESPONDENT

Appearance:

For the Appellant Shri E. Ramesh, Adv.
For the Respondent Shri B.Balamurugan, AC (AR)

CORAM:

Hon'ble Smt. Archana Wadhwa, Member (Judicial)

Date of hearing **15-05-2017**
Date of Pronouncement 19-05-2017

FINAL ORDER NO. 40701/2017

Per Archana Wadhwa:

As per facts, the appellants were registered Export Oriented Unit (EOU) for the period from 01.03.2009 to 28.02.2014 having jurisdiction at Cochin Special Economic Zone (CSEZ), Bangalore. On completion of five-year period, the appellants decided to opt out of EOU from 01.03.2014 and a request in this regard was made to the authorities. Though, in-principle approval to withdraw from EOU was given by the SEZ Authorities on 05.12.2014, the final exit order was issued in Order No.1/12/2008-EOU-CSEZ/473, dated 19.03.2015.

2. While the request for exit from EOU was under consideration, the appellants had continue to export the goods manufactured from the Unit and in the process they have filed 46

Shipping Bills for the export of 100% Silk Fabrics. These shipping Bills were filed as free bills without claiming any export incentive nor the same was filed under any Export Promotion Schemes. When the Appellants approached the Additional Director-General of Foreign Trade (ADJFT) for claiming Chapter 3 benefits of Foreign Trade Policy (FTP) in respect of those 46 shipping bills, it was not entertained by the DGFT and a 'NOC' from Customs Authorities was insisted to process the claim.

3. When the appellant approached the authorities for obtaining NOC regarding 'Declaration of Intent', the request for the same was rejected on the ground that; though, the appellant continued to be treated as EOU unit until issuance of final exit order as per the Appendix 14-I-L of FTP, they could have filed these 46 shipping bills as EP Scheme bills instead of Free Shipping Bills for which intent declaration is not required. Instead, they have filed these 46 shipping bills as free shipping bills during the transition period for which intent declaration is mandatory as per Para. 6 of the Public Notice No. 12 (RE-2012)/2009-14, dated 26.07.2012 issued by the DGFT; as per Para 4 of the Circular No.36/2010-Cus., dated 23.09.2010 free shipping bills (shipping bills not filed under any Export Promotion Scheme) are subjected to 'nil' examination. Conversion of free shipping bills to EP Scheme bills (Advance Licence, DFIA, DEPB, Reward Schemes) should not be allowed. It was further contented by the Revenue that they could have allowed All Industry Rate of duty drawback on goods exported under free shipping bills without conversion of such free shipping bill to Drawback Scheme Shipping Bill, in terms of proviso to Rule 12(1) of the Customs, Central Excise

and Service Tax Rules, 1995. However, the same could not be done as the NOC was filed by the appellant well beyond three-month time as envisaged in Para 3(a) of the Circular No.36/2010-Cus., dated 23.09.2010.

4. The present appeal is against the rejection of the assesssee's request for issuance of NOC by the Customs, which stand primarily rejected on the ground of non-filing of intent declaration in the shipping bill.

5. After hearing both sides and having gone through the impugned order, I find that the Revenue was approached by the appellants for issuance of NOC as required by the DGFT authorities. Such a request has been rejected on the ground that while filing the free shipping bills during the intermittent period, i.e., from period of intimation of appellants decision to exit EOU to the final order for exit having been given by the authorities, Shipping bills were filed without any intent declaration. As such, its stand that NOC cannot be granted to the appellants.

6. On the other hand, it is the appellant's contention that till the final order of exit was passed, they continued to remain EOU and as such, the exports were effected by them as an EOU, by following the procedures meant for EOU. This situation has arisen on account of the fact that the authorities took longer period to accept their request. In as much as, during the said period they were under supervision and control of the EOU authorities, the intent declaration was not filed along with shipping bills. They submit that the intent declaration in terms of Chapter 3 benefits of Foreign Trade Policy for export effected through the shipping bills is only a procedural requirement and the

benefits, which are otherwise available to them, cannot be denied on account of such non-following of the procedural requirement. They drew my attention to the Hon'ble Supreme Court's decision in the case of *Orient Paper Mills Ltd. Vs Union of India* reported in *1978 (2) E.L.T.J.345 (S.C.)*. The learned advocate also submits that the adjudicating authority has simplicitor followed the Circular No.36/2010-Cus., dated 23.09.2010 issued by the Board as regards to conversion of shipping bills into any other form of shipping bills. They submit that the requirement of 100% examination of goods, in respect of free shipping bills stand satisfied by them, in as much as, they were still working under the EOU scheme, which allowed self-examination. As such, the rejection of the NOC request of the assessee is not justified.

7. The sole ground on which such a request made by the appellant stand rejected by the Commissioner is non-filing of intent declaration. Admittedly, such a declaration is a procedural requirement and it cannot be adopted as a ground to deny substantive benefits which are otherwise available to an assessee. If the *factum* of availability of substantive benefits can be arrived at otherwise also, the non-adherence to a particular declaration cannot be adopted as a ground for denial of such substantive benefits.

7.1 I also find that the said non-declaration was on account of the fact that the appellants continued to be an EOU during the intermittent period on account of delay of issuing of the final order as regards their exit from EOU. It is again a well settled issue that the delay on the part of the authorities cannot act prejudice to the assessee's interest, which cannot be denied the benefits, if otherwise

Customs, Excise & Service Tax Appellate Tribunal available. As such, I am of the view that the technical objection raised by the Revenue is now warranted or justified. Accordingly, the impugned order is set aside and appeal allowed with consequential relief to the appellants.

(Pronounced in open court on **19/05/2017**)

19/5/17.

(ARCHANA WADHWA)
MEMBER (JUDICIAL)

ksr
19-05-2017

Customs, Excise & Service Tax Appellate Tribunal

प्रमाणित प्रति/Certified True Copy
1/7/6
सहायक पंजीकार/Asst. Registrar
सीमाशुल्क उत्पादशुल्क एवं सेवा कर
अपील अधिकरण/(CESTAT)
चेन्नै/Chennai