CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL NEW DELHI.

PRINCIPAL BENCH - COURT NO. II

(BY VIDEO CONFERENCING)

Customs Appeal No. 50919 of 2020-SM

(Arising out of order-in-appeal No. CC(A) CUS/D-II/ICD TKD/348/2020 dated 28.07.2020 passed by the Commissioner of Customs (Appeals), New Custom House, IGI Airport, New Delhi).

M/s S. L. Saraf Impex Pvt. Limited **Appellant**
Room No. 11, Y-9, Loha Mandi
Naraina, Delhi-110028.

VERSUS

Commissioner of Customs **Respondent**
IGI Airport, New Delhi.

APPEARANCE:

Shri G. S. Arora, Advocate for the appellant
Shri Yashvir Singh, Authorised Representative for the respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER No. 50759/2020

DATE OF HEARING/DECISION: 07.09.2020

ANIL CHOUDHARY:

The issue in this appeal is whether the benefit of Notification No. 096/2008-Cus have been rightly denied to the appellant.

2. In the impugned order in appeal, the learned Commissioner (Appeals) has dismissed the appeal on the ground of limitation observing that the normal limitation of sixty days ended on 22.02.2020, thus there was delay of 27 days from the date of limitation, although the same was within condonable period of thirty days. It has been observed that there was no such grave situation of

Covid-19 in India which prevented the appellant from filing the appeal in time. Thus, the appellant have failed to show sufficient cause which prevented them from filing the appeal within limitation period.

3. Learned Counsel for the appellant has drawn my attention to order of Hon'ble Supreme court dated 23.03.2020, where the Apex Court taking *suo motu* cognizance of the situation arising due to Covid-19 and the resultant difficulties being faced by the litigants across the country, in *suo motu* Writ Petition No. 3/2020 ordered –

> "That the period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not, shall stand extended w.e.f. 15.03.2020 till further orders to be passed".

Further, clarifying that the order is passed under the powers of the Supreme Court as per Articles 142 read with 141 of the Constitution of India.

4. Learned Authorised Representative relied upon the finding of the learned Commissioner on limitation.

5. Having considered the contention of the parties on the issue of limitation, I find that Commissioner (Appeals) have erred in dismissing the appeal on limitation, vide the impugned order dated 28.07.2020, which is in violation of the direction of the Hon'ble Supreme court. Accordingly, the present appeal is admitted for hearing on merits.

6. On the issue of merits, learned Counsel states that the only objection of the Assistant Commissioner for denial of benefit of

concessional tariff for exemption with respect to Bill of Entry No. 4943296 dated 18.09.2019, and 5508385 dated 31.10.2019 with respect to import of 'Gum Arabic', imported from Chad. The appellant had initially submitted Certificate of Origin No. 000764 & 000809 dated 13.07.2019 & 26.08.2019 respectively, in which Column No. 10 was given for Invoice No. and date, was left blank, and subsequently submitted revised Certificate Nos. 000865 and 000864 dated 25.11.2019 containing the particulars of invoice No. and date, and with a foot note – "this certificate of origin is issued in lieu of old certificate of Origin number and date".

7. It was further observed that these revised certificates are not eligible for the COO benefit as Rule 15(8) of Duty Free Tariff Preference Scheme for the Least Developed Countries Rules, 2008 states as follows:-

> "The certificate of origin shall be issued at the time of exportation, or within seven working days from the date of shipment whenever the product to be exported can be considered originating in the beneficiary country but under exceptional cases, where a certificate of origin has not been issued at the time of exportation or within seven working days from the date of shipment due to involuntary errors or omissions, or any other valid reasons, the certificate of origin may be issued retrospectively but not later than one month from the date of shipment, bearing the words "ISSUED RETROSPECTIVELY" in box 4 of the certificate of origin, and the issuing authority shall also record reasons in writing stating the exceptional circumstances due to which the certificate has been issued retrospectively".

Further observing that the revised country of origin certificate submitted by the appellant, is issued retrospectively. Hence, the goods imported by them are not eligible to the exemption benefit under Notification No.096/2008 dated 13.08.2008.

8. Learned counsel for the appellant urges that the learned Assistant Commissioner has misconstrued the provisions of law. If the facts of this case, it was not issue of COO retrospectively, as per facts on record the certificate of origin as required have been issued at the time of export of goods from the exporting country, and the same was presented for availing the exemption or concessional tariff along with the bill of entry. It was only on objection raised by Revenue, the appellant approached the exporter /shipper who procured the rectified COO. Such rectified COO also contains reference to the original COO issued alongwith its number and date. Thus, the Court below have misconstrued Rule 15(8) of the said Rules, which is not attracted there being no case of issue of COO retrospectively. Learned Counsel further drawn my attention to Rule 18 of the said Rules which provides – Minor discrepancies between the certificate of origin and the documents submitted to the customs authority at the port of importation for the purpose of carrying out the formalities for importing the products, shall not ipso facto invalidate the certificate of origin: Provided that, such certificate of origin corresponds to the products under importation.

9. Learned Counsel submits that at best it was a minor discrepancy in the certificate of origin submitted initially with the bill of entry, and as there was no mis-match with regard to goods under import or the other accompanying documents like bill of lading, invoice, packing list, etc. the same should have been accepted under the spirit of Rule 18 under the said Rules. Learned Counsel further submits that rejection of benefit of country of origin in respect of the Notification No.

096/2008, as amended by Notification No. 39/16-Cus, may be allowed and the impugned order set aside. He further relies on the ruling of the Division Bench of this Tribunal in **Commissioner of Cus. Tuticorin vs. Sterlite Industries (India) Ltd., -2015 (315) ELT 482 (Tri. Chennai)**. Learned Counsel further states that the goods are perishable in nature and are lying in the bonded warehouse for almost a year and are losing their quality and value, being an edible product.

10. Learned Authorised Representative appearing for the Revenue relies on the impugned order. He further prays that the matter may be remanded to the Commissioner (Appeals) for a decision on merit.

11. Having considered the rival contentions, I find that the rejection of certificate of origin is bad as it was a case of minor discrepancy and was fit to be ignored in terms of Rule 18 of the said rules. Further, the appellant had produced the rectified certificate of origin, which have been wrongly treated as issue of certificate retrospectively. Accordingly, I hold that the certificates of origin submitted by the appellant are in order. Therefore, the appellant is held entitled to the benefit of exemption/ concessional tariff under Notification No. 096/2008-Cus. The impugned order is set aside and the appeal is allowed with consequential benefits.

(Operative portion of order pronounced in open Court).

(Anil Choudhary)
Member (Judicial)

Pant