

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD**

REGIONAL BENCH - COURT NO. - I

Customs Appeal No. 30574 of 2018

(Arising out of **Order-in-Appeal** No.VIZ-CUSTOM-000-APP-074-17-18 dated 28.03.2018
passed by Commissioner of Central Excise and Customs (Appeals), Visakhapatnam)

M/s Alexander Agro Food Processing Pvt Ltd., .. **APPELLANT**
D.No. 8-2-293/82/333 A,
MLA Colony, Road No. 12,
Banjara Hills,
Hyderabad,
Telangana - 500 034.

VERSUS

Commissioner of Customs Visakhapatnam - Customs .. **RESPONDENT**
Port Area,
Visakhapatnam,
Andhra Pradesh - 530 035.

AND

Customs Appeal No. 30250 of 2019

(Arising out of **Order-in-Appeal** No.VIZ-CUSTOM-000-APP-054-18-19 dated 31.12.2018
passed by Commissioner of Central Excise and Customs (Appeals), Visakhapatnam)

M/s Alexander Agro Food Processing Pvt Ltd., .. **APPELLANT**
D.No. 8-2-293/82/333 A,
MLA Colony, Road No. 12,
Banjara Hills,
Hyderabad,
Telangana - 500 034.

VERSUS

Commissioner of Customs Visakhapatnam - Customs .. **RESPONDENT**
4th Floor,
Customs House,
Port Area,
Visakhapatnam,
Andhra Pradesh - 530 035.

APPEARANCE:

Shri K. Chandrashekar Reddy, Advocate for the Appellant.
Shri K. Sreenivasa Reddy, Authorized Representative for the Respondent.

**CORAM: HON'BLE Mr. A.K. JYOTISHI, MEMBER (TECHNICAL)
HON'BLE Mr. ANGAD PRASAD, MEMBER (JUDICIAL)**

FINAL ORDER No.A/30596-30597/2025Date of Hearing: 15.12.2025
Date of Decision: 15.12.2025**[ORDER PER: A.K. JYOTISHI]**

M/s Alexander Agro Food Processing Pvt Ltd., (hereinafter referred to as appellant) are in appeal against the Order-in-Appeal dated 28.03.2018 in appeal no. C/30574/2018, whereby, their appeal against the Order-in-Original dated 11.12.2017, rejecting of refund by the Original Authority, was upheld and appeal filed against the same was rejected. In another appeal no. C/30250/2019, the order of rejection of Department in respect of application made for amendment under Section 149 of the Customs Act, 1962 by the appellant was rejected and on appeal Commissioner (Appeals) against said reject, he upheld the said rejection vide order dated 31.12.2018.

2. In both these appeals, the facts are common except for the provisions invoked. Therefore, we proceed to decide both appeals together.

3. The brief fact of the case is that the appellants are importer of raw cashew nut in shell. At the time of import they had paid 5% duty in terms of Notification No. 12/2012-Cus dated 17.03.2012. Subsequently, on realising that they were entitled for exemption under Notification No. 96/2008-Cus dated 13.08.2008, they adopted two curative methods. In appeal no. C/30574/2018, they filed refund application dated 06.10.2017, which was rejected on the ground that the date of furnishing the Country of Origin (COO) certificate is beyond one year from the date of issue of the said certificate and therefore in terms of provisions under Sub-Rule 16 & 17 of Customs Tariff (Determination of Origin of Products under the Duty Free Tariff Preference Scheme for Least Developed Countries) Rules 2015 (hereinafter referred to as Rules) country of origin rules, the same would not be valid, to cover the

consignment cleared and assessed. Further, a valid certificate is mandatory requirement for availing nil rate of duty under Notification No. 96/2008-Cus.

4. In another appeal No. C/30250/2019, the request under Section 149 of Customs Act for allowing the amendment of the original Bill of Entry was also rejected, almost on similar grounds that the concerned certificate has not been verified/submitted and it has been produced after one year from the date of issue. It was also, inter alia, observed that no re-assessment has been sought by either appellant or resorted to by Department in respect of said Bill of Entries covered in both the appeals.

5. Learned Advocate is mainly contesting that they had valid country of origin certificate under the Rules and it was also furnished at the time of filing of Bill of Entry on the system. However, they could not claim the admissible benefit in terms of said notification in their Bill of Entries by mistake and therefore they have taken recourse to refund, as well as Section 149, in respect of different Bill of Entries to get whatever benefit was eligible to them in terms of said notification.

6. Learned AR on the other hand submits that it is not in dispute that the Bill of Entries have been filed and assessed finally. It is also not in dispute that the Department was made aware of these certificates at a date beyond one year from the date of issue of such certificate, which is a mandatory requirement for availing benefit. It is also not in dispute that this particular country 'Guinea Bissau' itself was brought under the ambit of Notification No. 96/2008-Cus, by way of an amendment in Notification No. 46/2016-Cus dated 23.08.2016 and therefore even one Bill of Entry No. 6412288 dated 19.08.2016 is before the said notification itself.

7. Heard both the sides and perused the records.

8. We find the short question is whether the appellants are entitled for benefit of said notification as claimed by them though not at the time of import. We find from the impugned orders against which the appeals have been filed before this Tribunal, that in both the cases, the concerned competent Original Authorities have made certain observation about the filing of the country of origin certificate beyond stipulated period of one year. It is also noted that no Physical Hearing or opportunity were given before finalising these orders by the Original Authorities. Therefore, the appellant had no occasion to substantiate their claim that country of origin certificate was also filed at the time of filing of Bill of Entry or it was also mentioned in the Bill of Entry. If that being so, obviously, the Department has the record of its existence and submission even on the date of filing of Bill of Entry itself. In such case, obviously, the amendment could have been allowed under Section 149 and the refund could also have been entertained on merit considering the filing of the country of origin certificate vis-à-vis the consignments covered by said Bill of Entries. This aspect needs to be verified by the Original Authority.

9. In so far as the issue of their not having filed for any re-assessment of Bill of Entry etc., it would be relevant only at the time of decision subsequent to decision on this issue, which can be taken up by the concerned Refund Sanctioning Authority or Competent Authority to decide Section 149. We, in the interest of principles of natural justice, remand the matter back to the Original Authority to decide this issue after taking into consideration all the submissions and other documentary evidence about existence of country of origin certificate and its furnishing to the Department well within the statutory period of filing of country of origin concerning.

10. With these directions, the matter is remanded back to the Adjudicating Authority.

11. Appeals are allowed by way of remand.

(Dictated and pronounced in open court)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

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