IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT NO. I

Appeal No. C/369, 455 to 457/2012

(Arising out of Order-in-Appeal No. 92 & 93 (Gr. VII-H)/2012 (JNCH)/EXP-9 & 10 dated 16.02.2012 passed by the Commissioner of Customs (Appeals), JNCH, Nhava Sheva).

M/s Gardenia Cosmocare Pvt. Ltd.	Appellant

Vs.

Commissioner of Customs (Export), Nhava Sheva	Respondent

Appearance:

Shri J. Aurther Prem, Advocate	for Appellant
Shri Bidhan Chandra, ADC (AR)	for Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR. S. SRIVASTAVA, MEMBER (TECHNICAL)

Date of Hearing: 16.01.2019

Date of Decision: 16.01.2019

ORDER NO. **A/ 85380-85383/2019**

Per: Dr. D.M. Misra

These appeals are filed against Order-in-Appeal No. 92 & 93 (Gr. VII-H)/2012 (JNCH)/EXP-9 & 10 dated 16.02.2012 passed by the Commissioner of Customs (Appeals), JNCH, Nhava Sheva.

2. Briefly stated the facts of the case are that the appellants had filed respective Bill of Entry during the relevant period for

import of goods namely, Air Fresheners, After Shave Lotions, Mist Cologne, Deodrant Perfume spray etc. classifiable under Customs Tariff Heading 33059030 and 33072000 of Customs Tariff Act, 1975. The appellant had also claimed the benefit of Notification No. 97/2009, 02/2008 and 29/2010. The goods were assessed to Basic Customs Duty (BCD) @ 10% along with other applicable duty on the imported items. After the assessment/clearance of the goods, it was realized that since the goods imported were from Indonesia, consequently preferential rate of customs duty would be applicable to imported goods in terms of Notification No. 153/2009-Cus read with Notification No. 103/2010-Cus and the applicable BCD would be 5% instead of 10% as levied in the EDI system. Aggrieved by the assessment without allowing the said benefit, the appellant filed appeal before the learned Commissioner (Appeals), who in turn, rejected their appeal. Hence, the present appeal.

3. At the outset, learned Advocate for the appellant has submitted that the appellants are eligible to the benefit of Notification No. 153/2009-Cus but the same could not be claimed under respective Bill of Entry. It is their contention that later on being claimed, the learned Commissioner (Appeals) rejected their contention on the ground that the relevant certificate of country of origin has not been produced before him during the appellate proceedings. The learned Advocate has categorically submitted that the relevant certificate indicating the country of origin was produced after clearance of the goods through their letter dated 05.04.2007 addressed to the Dy Commissioner of Customs. It is his contention that without

taking note of the said certificate, the learned Commissioner (Appeals) has rejected their appeal on the ground of non production of country of origin certificate. In support of his contention, he has referred to certificate of country of origin enclosed at page 59 to 75 of the appeal paper book.

4. Learned AR for the Revenue reiterates the findings of the learned Commissioner (Appeals).

5. We find that the appellant while filing the Bill of Entry, not claimed the benefit of the exemption Notification No. 153/2009-Cus in the respective Bill of Entry, but later through their letter dated 05.04.2007, they claimed the benefit of the said Notification since their goods were of Indonesian origin and placed the invoices of overseas supplier along with other evidences, establishing the certificate of origin as Indonesia. We find that the Commissioner (Appeals) has rejected their appeal solely on the ground that relevant certificate of origin was not produced before him. We do not find merit in the observation of the learned Commissioner (Appeals). Consequently, the matter is remanded to the learned Commissioner (Appeals), to examine the evidences produced by the appellant, indicating the country of origin of the imported goods as Indonesia.

5. Accordingly, the impugned orders are set aside and the appeals are allowed by way of remand.

(Operative portion of the order pronounced in Court)

(S. Srivastava) **Member (Technical)**	**(Dr. D.M. Misra)** **Member (Judicial)**

Sinha