(2021) 03 CESTAT CK 0028

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 21034 Of 2019

MRF Limited APPELLANT

Vs

Commissioner Of Customs Cochincus RESPONDENT

Date of Decision : 12-03-2021

Acts Referred:

Citation : (2021) 03 CESTAT CK 0028

Hon'ble Judges : S.S. Garg, J

Bench : Single Bench

Advocate : Rukmani Menon, C.V. Savitha

Final Decision : Allowed

Judgement

1. The present appeal is directed against the impugned order dated 20.07.2019 passed by the Commissioner of Customs whereby the Commissioner has denied the benefit of MEIS-Scheme with respect to 94 shipping bills during the period from April 2015 to November 2015 merely on a procedural lapse i.e. in the said shipping bills in the column where they are claiming benefit of this scheme instead of putting "Y" CHA has put "N".

2. Briefly the facts of the present case are that the appellants vide their letter dated 24.10.2016 requested the office of the Deputy Commissioner to retransmit the subject shipping bills to DGFT with intent as "Y". Thereafter, the Customs by their letter dated 07.11.2016 had replied that 35 shipping bills were transmitted on 01.11.2016 and thereafter by mail dated 04.01.2017, the appellant had once again requested Customs that some of the shipping bills had been transmitted, which were not reflected and requested for doing the needful. In reply, there was a mail dated 11.01.2017 from Customs where they stated that appellant's request for modifying shipping bills was under process. However, thereafter in spite of the appellant's constant follow-up, there was no response from the Customs. Thereafter, the appellant by their letter dated 03.04.2017 requested the Customs for a no objection certificate which has been rejected vide impugned

order.

3. Heard both the parties and perused the records of the case.

4. Learned Counsel for the appellants submitted that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the law. She further submitted that the only ground on which request for NOC has been rejected is because the appellant's broker put "N" instead of "Y" on the shipping bills. This mistake on the part of the Custom broker is only a procedural lapse based on which a substantial benefit cannot be denied as has been done by the Commissioner in the impugned order. She further submitted that the Commissioner has wrongly relied upon the CBEC Circular No.36/2010 dated 23.09.2010 which pertains to conversion of shipping bills from one export promotion scheme to another whereas in the present case it does not amount to conversion from one scheme to another and therefore the Circular dated 23.09.2010 is not applicable to the facts of the present case. She further submitted that from the correspondence transpired between the parties which is on record, it is clear that the Customs Department had at some point had agreed to retransmit the shipping bills by putting "Y" instead of "N" but in the impugned order, they have rejected the request of the appellant. She further submitted that the Commissioner has relied upon the case laws which are not applicable to the facts of the present case. In the present case, there was an inadvertent error which happened as the appellant and their new Custom broker was new to this scheme and subsequently the appellants have been claiming the benefit of the scheme and this mistake has never reoccurred. In support of her submission she relied upon the following decisions:

· Pasha International Vs CC, Tuticorin, 2019 (365) ELT 669 (Mad.)

· ATC Tires Pvt. Ltd. Vs Zonal Additional DGFT, Chennai, 2020 (374) ELT 896 (Mad.)

· P.A. Footwear Pvt. Ltd. Vs DGFT, New Delhi, 2020 (372) ELT 660 (Mad.)

· Davinci Leather Pvt. Ltd. Vs CC, Chennai, 2020 (372) ELT 367 (Mad.)

· Kancor Ingredients Ltd. Vs CC, Cochin, 2020 (374) ELT 250 (Tri. Bang.)

4.1. She further submitted that the ratio of these decisions are squarely applicable to the facts of the appellant's case, even otherwise she submitted that it is the settled principle of law that merely for a procedural lapse, substantial benefit cannot be denied.

5. On the other hand, learned AR reiterated the findings of the impugned order.

6. After considering the submissions of both the parties and perusal of the material on record, I find that the appellant is a three-star export house and once the largest exporters of tyres in India. Further, I find that the MEIS-Scheme was introduced in 2015 and the appellant filed the shipping bills but by a procedural lapse in the shipping bills in the column for claiming the benefit of the

scheme instead of putting "Y" CHA inadvertently put "N" which is purely a procedural mistake. Further, in the shipping bills, the appellant has stated that they want to avail the benefit of MEIS-Scheme. Further, I find that the request of the appellant to issue NOC by the Customs was denied vide impugned order by relying on the Circular dated 23.09.2010 of the CBEC which is not applicable in the present case because that Circular relates to conversion of shipping bills from one export promotion scheme to another which is not the case in the present case. In the present case, it is only a correction by a procedural lapse putting "Y" instead of "N" for claiming the benefit of the scheme. Further, the Commissioner has relied upon the case laws which are not applicable in the present case. On the other hand, the appellant has relied upon the various decisions which are squarely applicable in the present case. In the case of Pasha International Vs CC, Tuticorin (cited supra), the Hon'ble Madras High Court in Para 4 held as under:

4. I am of the view that a similar direction can be given in the present case also. Of course in the present case, the Learned Counsel for the respondent is only seeking time. Considering the facts and circumstances of this case, the second respondent can be directed to issue N.O.C. to enable the petitioner to avail the benefit from the third respondent. The third respondent shall consider the claim of the Writ petitioner and pass appropriate orders thereon expeditiously. This order is passed, taking note of the fact that only due to inadvertence, the Writ petitioner instead of putting "Yes", had put "No" in the form.

6.1. Further, in the case of ATC Tires Pvt. Ltd. (cited supra) wherein the Hon'ble High court has observed as under:

"I hold that the exporter ought not to suffer for inadvertent mistake committed by him (while filing shipping bills under MEIS Scheme, he opted for no instead of yes. As already pointed out that this is a sheer inadvertent mistake by the Petitioner's Representative. The Petitioner had actually intended to claim the benefit under the aforesaid scheme. The Petitioner deserves to be given one more opportunity to set things right."

6.2. Similarly, in the case of P.A. Footwear Pvt. Ltd. Vs Director General of Foreign Trade (cited supra), the Hon'ble High court has observed as under:

"In the case on hand also, it is the case of the Petitioner that only due to inadvertence, yes was not mentioned in the online platform while filing the shipping bills and the only reason for rejection of the Petitioner's application is that no cogent reasons have been given by him for not mentioning yes while filing the shipping bills in the online platform. In view of the identical facts this court is of the considered view that the decisions relied upon by the Learned Counsel by the Petitioner are squarely applicable to the facts of the instant case also."

6.3. Further, in the case of Davinci Leather Pvt. Ltd. Vs CC, Chennai (cited supra) the Hon'ble High court has observed as under:

"This very issue as to whether the inadvertent error of not claiming benefit under the MEIS was fatal to the claim itself has come to be considered by Learned Single Judges of this Court in Pasha International Vs Commissioner of Customs, Tuticorin, 2019 (365) ELT 669 and Global Calcium Pvt. Ltd. Vs Asst. Commissioner [order dated 10.06.2019 in W.P. No.3321 of 2019) [2019 (370) E.L.T. 176 (Mad.)] in favour of the petitioner.

I am also of the view that the error in not stating 'YES' to availment of the Scheme, such error, admittedly being inadvertent and Mr. Rajnish Pathiyil fairly does not dispute, this should not stand in the way of consideration of entitlement on merits."

6.4. Further, in the case of Kancor Ingredients Ltd. Vs CC, Cochin (cited supra), this Tribunal has held as under:

"The only lapse on the part of the Appellant was that they have mentioned in the reward column as 'N' instead of 'Y', which is only a procedural defect. Further, I find that otherwise the Appellant is entitled to claim MEIS benefit as per the export policy. Failure to mention 'Y' in the reward column of the shipping bill for availing the benefit under MEIS Scheme can be correct by amending the shipping bill as Court in the case of Kedia (Agencies) Pvt. Ltd. (Supra) has also allowed the amendment even in a situation where there was no declaration of intention."

7. In view of my discussion above and by following the ratio of the various decisions of the Tribunal and the High Courts, I am of the considered view that rejection of the request for issuing NOC is not sustainable in law and therefore, I set aside the impugned order and direct the authorities below to issue the NOC after verifying the shipping bills as per the request of the appellant on production of certified copy of this order. The appeal is accordingly allowed.

(Order pronounced in the open court on 12/03/2021)