

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE**

REGIONAL BENCH - COURT NO. 1

Appeal(s) Involved:

C/20553/2019-SM

[Arising out of Order-in-Appeal No. COC-CUSTOM-000-APP-102-2018-19 dated 28/02/2019 passed by Commissioner of CUSTOMS , COCHIN(Appeal)]

**Lulu International Convention
Centre Pvt Ltd**

Tc/49-31 Puzhakkad Ayyanthole
Kunnamkulam Road
THRISSUR - 680003
KERALA

Appellant(s)

VERSUS

Commissioner of Customs Cochinchus

CUSTOM HOUSE, WILLINGDON ISLAND
COCHIN - 682009
KERALA

Respondent(s)

Appearance:

Shri P.A.AUGUSTIAN, ADVOCATE

FAIZEL CHAMERS, PULLEPADY CROSS ROAD,
COCHIN-682018

For the Appellant

Shri P. Rama Holla, Superintendent(AR)

For the Respondent

CORAM:

HON'BLE MR. S.S GARG, JUDICIAL MEMBER

Final Order No. 20612 / 2019

Date of Hearing: 31/07/2019

Date of Decision: 31/07/2019

Per : S.S GARG

The present appeal is directed against the impugned order dt. 28/02/2019 passed by the Commissioner of Customs (Appeals) whereby he rejected the appeal of the appellant and upheld the Order-in-Original whereby the adjudicating authority rejected the refund

claim filed by the appellant for Rs.8,43,975/- being the amount of interest.

2. Briefly the facts of the present case are that the appellant was issued EPCG Authorisation License No.1030000611 dt. 04/08/2005 by Joint Director General of Foreign Trade (JDGFT), Cochin for import of goods at concessional rate of duty @ 5% in terms of the conditions specified under the Notification No.97/2004 Cus. dt. 17/09/2004. Total duty foregone as per the said licence was Rs.23,83,155/- and the duty foregone as per assessment was Rs.21,57,215/-. Since the appellant could not fulfil the export obligation within the stipulated time period, they requested the JDGFT for extension of the Export Obligation Period. The JDGFT, vide letter F.No.10/36/021/00041/AM.06/445 dt. 03/06/2016 directed the appellant to pay 50% of the duty saved for the unfulfilled portion of Export Obligation to customs as a pre-condition to consider their request for second extension. Accordingly, the appellant paid an amount Rs.4,96,526/- towards the duty foregone and Rs.8,43,975/- towards the interest on this amount. Subsequently the appellant vide letter dt. 17/03/2017 submitted an application for refund of the interest paid by them on the grounds that they had wrongly remitted the interest. The original authority held that interest is applicable for delayed payment of duty in terms of Section 28 of Customs Act, 1962. On appeal, Commissioner(Appeals) upheld the Order-in-Original.

3. Heard both sides and perused records.

4. Learned counsel for the appellant submitted that the impugned order is not sustainable in law as the same has been passed without appreciating the Policy regarding Export Promotion Capital Goods Scheme. He further submitted that both the authorities have failed to appreciate that as per the Policy, extension in Export Obligation period beyond the two years period, JDFT may consider with a condition that 50% of duty payable in proportion to the

unfulfilled export obligation as composition fee to Customs and there is no provision to pay interest on such composition fee. He further submitted that as per the Policy, appellant is not required to pay interest and the appellant was made to pay the interest by the Customs erroneously and therefore the denial of refund of interest paid wrongly with composition fee is illegal and not sustainable. He further submitted that the appellant had submitted evidence regarding the redemption of the EPCG authorization before the appellate authority and also submitted that the appellant is even entitled for refund of 50% duty paid for getting extension of the Export Obligation period; but the appellate authority failed to consider the same and consider the payment of said 50% duty as demand under Section 28 of Customs Act, 1962 to confirm demand of interest on such duty. He also submitted that both the authorities have failed to appreciate that finalization of the export obligation issue is pending and goods are only provisionally released and on finalization of the issue after verifying the document furnished by the appellant regarding fulfillment of export obligation, payment of duty if any will be assessed and appellant will have to pay customs duty with the interest for such unfulfilled portion of export obligation. He further submitted that the finding in the impugned order that the appellant failed to fulfill the export obligation within the stipulated time is factually incorrect. He also submitted that both the authorities have not followed the Circular No.46/2004 dt. 26/07/2004 issued by the CBEC wherein it has been provided that if Customs have any doubt, then before taking action, the jurisdictional Commissioner of Customs should bring this to the notice of the Board which will take up the matter with concerned DGFT authorities whereas in the present case, the Customs authorities did not clarify the issue from the DGFT before demanding interest on the duty.

5. On the other hand, the learned AR defended the impugned order.

6. After considering the submissions of both sides and perusal of the material on record, I find that appellant has finally discharged the export obligation and has also obtained redemption certificate from DGFT. Further I find that as per the EPCG Scheme, there is a provision that extension in export obligation period beyond two years period may be considered for a further extension up to 2 years with a condition that 50% of the duty payable in proportion to the unfulfilled export obligation is paid by the authorization holder to Customs authorities before an endorsement for extension is made on EPCG by RA concerned. This provision clearly states that only 50% of the duty is to be paid as a composition fee for not fulfilling the export obligation and seeking extension of the export obligation period. There is no mention in the Policy that this composition fee which is paid as a duty is to be paid along with interest. Further I find that this is not the duty under Section 28 of the Customs Act, 1962 which is paid by the appellant because the final duty is yet to be assessed after verifying the document furnished by the appellant regarding the fulfillment of export obligation. Further I find that the Customs authorities should have sought clarification from the DGFT authorities but the same has not been done and interest was demanded for not fulfilling the obligation, which is contrary to the Policy. In view of this, I am of the considered view that the rejection of the refund of Rs.8,43,975/- is not sustainable in law and therefore I set aside the impugned order by allowing the appeal of the appellant with consequential relief, if any.

(Operative portion of the Order was pronounced
in Open Court on **31/07/2019**)

S.S GARG
JUDICIAL MEMBER