

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, BANGALORE**

**Appeal Nos. C/21728/2016-SM, C/21729/2016-SM,
C/21730/2016-SM, C/21731/2016-SM**

**Arising out of Order-in-Appeal No. 81/2016-17, Dated: 30.08.2016
Passed by Commissioner of CUSTOMS, COCHIN (Appeal)**

**Arising out of Order-in-Appeal No. 82/2016-17, Dated: 30.08.2016
Passed by Commissioner of CUSTOMS, COCHIN (Appeal)**

**Arising out of Order-in-Appeal No. 83/2016-17, Dated: 30.08.2016
Passed by Commissioner of CUSTOMS, COCHIN (Appeal)**

**Arising out of Order-in-Appeal No. 84/2016-17, Dated: 30.08.2016
Passed by Commissioner of CUSTOMS, COCHIN (Appeal)**

Date of Hearing: 12.03.2019

Date of Decision: 12.03.2019

**M/s MEAT PRODUCTS OF INDIA LTD
EDAYAR P O KOTHATTUKULAM, ERNAKULAM - 686662 KERALA**

Vs

**COMMISSIONER OF CUSTOMS
COCHIN-CUS. CUSTOM HOUSE COCHIN - 682009
KERALA**

Appellant Rep by: Mr Asif Ali, Adv. K L Lakshmi Rani

Respondent Rep by: Mrs Kavitha Podwal, Superintendent AR

CORAM: S S Garg, Member (J)

Cus - Assessee have imported the capital goods at concessional rate of duty under EPCG license as per Notfn 97/2004 - Cus. and saved the duty amount - Further, as per the said Notfn, assessee was required to discharge the export obligation but they have failed to comply with the conditions of Notification as a result of which both the authorities have confirmed the demand and short-levy along with applicable interest - The Doctrine of Promissory Estoppel is not applicable because the assessee have admittedly failed to discharge export obligation as required under said Notification - In the absence of not discharging export obligation, Commissioner (A) has rightly confirmed the demand: CESTAT

Appeals dismissed

FINAL ORDER NOS. 20257-20260/2019

Per: S S Garg:

Appellants have filed these four appeals against different impugned orders all dated 29.8.2016 whereby the Commissioner (A) has rejected the appeals

of the appellant and upheld the Orders-in-Original. Since the issue involved in all the four appeals is identical, therefore, all the four appeals are being disposed of by this common order. The details of all the four appeals are given herein below:

Appeal No.	Amount	Bill of Entry & date
C/21728/2016	Rs.4,14,274/-	No.182188 dt.19.07.2006
C/21729/2016	Rs.1,76,967/-	No.182160 dt.19.07.2006
C/21730/2016	Rs.1,81,476/-	No.182859 dt.29.07.2006
C/21731/2016	Rs.1,55,915/-	No.180330 dt.20.06.2006

2. For the sake of convenience, the facts of appeal No.C/21728/2016 are taken. The appellant had imported capital goods under Bill of Entry No.182188 dated 19.7.2006 and 182160 dated 19.7.2006 at concessional rate of duty as per Notification No.97/2004 dated 17.9.2004 under EPCG License dated 6.7.2006 issued by JDFT, Cochin whereby the total duty foregone was Rs.4,90,185/-. Since the appellant failed to produce evidence of fulfillment of export obligation, the Original Authority vide Order No.62/2015 dated 21.12.2015 confirmed a short levy of duty amounting to Rs.4,14,274/- (even though total duty saved amount as per the license is Rs.4,90,185/-, there is an unutilized duty portion of Rs.75,911/-) along with applicable interest in respect of the goods imported against the EPCG Authorization. Aggrieved by the Order-in-Original, appellant preferred appeals before the Commissioner (A) who rejected the same.

3. Heard both the parties and perused the records.

4. Learned counsel for the appellant submitted that the impugned orders are not sustainable in law as the same has been passed without properly appreciating the facts and the material on record. He further submitted that the appellant is a 100% Kerala Government Undertaking engaged in the manufacture and marketing of meat products which includes beef, buffalo, veal, mutton, chicken, rabbit and quail ranging from 500 gm to 900 gm packets. He further submitted that they have imported the meat processing machine under EPCG license with the intention of exporting quality meat products. He further submitted that the appellant could not fulfill the export obligation for the reasons beyond their control such as non-receipt of funds in time from the Ministry of Food Processing Industries. It is his further submission that in such a situation the Doctrine of Promissory Estoppel comes into operation and the respondent is restrained from taking punitive action against the defaulter.

5. On the other hand, the learned AR defended the impugned orders and submitted that admittedly, the appellants have failed to fulfill the export obligation within the stipulated period. She further submitted that the appellant have also not got extension from the DGFT extending the period for meeting the export obligation. She also submitted that the Doctrine of Promissory Estoppel is not applicable in the present case.

6. After considering the submissions of both the parties and perusal of the material on record, I find admittedly appellants have imported the capital goods at concessional rate of duty under EPCG license as per Notification No.97/2004 - Cus. and saved the duty amount of RS.4,90,185/-. Further, I find that as per the said Notification, appellant was required to discharge the export obligation but they have failed to comply with the conditions of the Notification as a result of which both the authorities have confirmed the demand and short-levy amounting to Rs.4,14,274/- along with applicable interest. Further, I find that the Doctrine of Promissory Estoppel is not applicable in the facts and circumstances of this case because the appellant have admittedly failed to discharge the export obligation as required under the said Notification. In the absence of not discharging the export obligation, the Commissioner (A) has rightly confirmed the demand and I do not find any infirmity in the impugned orders which are upheld by dismissing all the four appeals of the appellant.

(Operative portion of the Order was pronounced in Open Court on 12.03.2019)