

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

REGIONAL BENCH

Customs Appeal No. 30341 of 2021

(Arising out of order-in-appeal No. VIZ-CUSTOM-000-COM-0010-20-21 dated 31.07.2020
passed by Principal Commissioner of Customs Visakhapatnam)

IND Synergy Ltd.,

P.H. 18-20, Village Kotmar,
Raigarh,
Chhattisgarh-496001

...Appellant

Versus

**Commissioner of Customs,
Visakhapatnam**

Port Area,
Visakhapatnam-530035

...Respondent

APPEARANCE:

Mr R.k Tomar, Adv for the appellant

Mr P. Amaresh, Authorized Representative for the Revenue

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER(JUDICIAL)

HON'BLE MR. P. V. SUBBA RAO MEMBER (TECHNICAL)

FINAL ORDER NO. _____

Date of Hearing/decision: 12.09.2022

PER P.V. SUBBA RAO

This appeal has been filed by M/s IND Synergy Ltd., (Raipur) assailing the order-in-original dated 31.07.2020 passed by the Principal Commissioner of Customs Visakhapatnam, the operative part of which is as follows:

- (a) "I deny the benefit of Notification No. 097/2004-Customs dated 17.09.2004 to the capital goods valued at Rs 71,92,86,693/- imported against said 12 bills of Entry under EPCG Authorization No. 0330017266 dated 28.08.2007, for non-compliance of the conditions/provisions stipulated in the Notification No. 097/2004-Customs dated 17.09.2004 and conditioned attached to the subject EPCG Authorization issued under the Chapter 5 of the Foreign Trade Policy 2004-09.

- (b) Consequently, I confirm the demand of differential duty of Rs 18,48,50,711/- (Rupees Eighteen Crore Forty Eight Lakh Fifty Thousand Seven Hundred and Eleven Only) together with applicable interest under the provisions of the Section 28(1) and 28 AA of the Customs Act 1962, respectively read with the Notification No. 097/2004(Customs dated 17.09.2004.
- (c) I order for confiscation of the subject capital goods totally valued at Rs 71,92,86,693/- (Rupees Seventy One crore Ninety Two lakh Eighty Six Thousand Six Hundred and Ninety three only) (Assessable value) under section 111(0) of the Customs Act 1962. I impose redemption fine of Rs 7,00,00,000/- (Rupees Seven Crore Only) Under section 125 of the Customs Act 1962, in lieu of confiscation.
- (d) I impose a penalty of Rs 18,49,00,000/- (Rupees Eighteen Crore Forty-nine Lakh only) on M/s IND Synergy Ltd under the provisions of Section 112(a) of the Customs Act 1962.

34. This order is issued under the provisions of the Customs Act 1962, without prejudice to any other action that may be taken/proposed to be taken in future against the importers or any other person concerned in respect of the aforesaid goods under Customs Act, 1962 and/ or any other law for the time being in force in the Republic of India."

2. The facts of the case, in brief, are that the appellants were issued a license dated 28.08.2007 under the export promotion of capital goods(EPCG scheme) by the Director General of Foreign Trade, Mumbai. As per the EPCG scheme, read with Customs Notification No. 97/2004-Cus dated 17/09/2004, capital goods imported under the license are exempted from payment of duty in excess of 5% subject to certain conditions including the condition that the appellant has to fulfill the export obligation equivalent to 8 times the duty suffered on capital goods on FOB basis within a period of 8 years from the date of issue of license i.e., by 31.08.2015 and thereafter the appellant had to obtain export obligation discharge certificate (EODC) from the DGFT and produce before the Customs Officers.

3. The appellant executed a bond at the time of import to the effect that it would observe all the terms and conditions of the said notification and license and in the event of failure to fulfill either in full or part the export obligation, it would pay the customs duty but for the exemption notification along with interest. The Office of the Commissioner called upon the importers to produce EODC repeatedly but it had failed to do so. Learned counsel for the appellant fairly submits that the appellant was not able to fulfill the complete export obligation within time. Therefore, a show-cause

notice dated 19/10/2016 was issued by the Commissioner to the appellant proposing to deny the benefit of the exemption notification due to the aforesaid failure and demand duty under Section 28(1) of the Customs Act 1962 along with interest under Section 28 AA read with conditions of bond executed by the appellant for non-compliance of the conditions stipulated therein. It was further proposed to confiscate the goods which were imported under Section 111(o) for failure to fulfill the conditions subject to which the goods were exempted under the Notification. It was also proposed to impose a penalty on the appellant under Section 112.

4. After following due process, the Commissioner passed the impugned order.

5. Learned counsel for the appellant submits that during the relevant period the appellant was not able to produce EODC because it had not fulfilled the export obligation. However, it applied to the DGFT and further to the Ministry of commerce seeking extension of time to fulfill the export obligation. The appellant's request was finally accepted and on 1st April 2022 their license was amended as follows:

"As per the decision taken in PRC Meeting, EOP of the license is extended for two years from the date of endorsement i.e. 31.03.2024"

6. Learned counsel submits that PRC stands for "Policy Relaxation Committee" of Ministry of Commerce which has now granted them two years further time to fulfill the export obligation i.e. up to 31.03.2024. He, therefore, submits that in the light of the amendment to the license, the impugned order cannot be sustained any longer. He prays that the same may be set aside and the appeal may be allowed. He further submits that since the appellant's capital goods have been confiscated in the impugned order, unless they are released immediately, the appellant will not be able to fulfill the export obligation because the capital goods must be used to manufacture the goods for export. The Learned authorised representative for the Revenue reiterates the impugned order.

6. We have considered the submissions of both sides and perused the records. The impugned order was passed correctly as per the conditions of the license which existed during the relevant period. Thereafter, the licensing authority and the Policy Relaxation Committee have modified the

conditions of license and allowed two years further time to the appellant to fulfill the export obligation. Therefore, the impugned order can no longer be sustained at this stage and we accordingly set aside the same.

7. Needless to say that if the appellant fails to fulfill the export obligation within the extended period Revenue is free to initiate further cause of action.

8. The impugned order is accordingly set aside and the appeal is allowed with consequential relief.

(Order dictated and pronounced in the open Court)

**(ANIL CHOUDHARY)
MEMBER(JUDICIAL)**

**(P.V.SUBBA RAO)
MEMBER (TECHNICAL)**

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