Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.3

CUSTOMS Appeal No. 11646 of 2016-DB

[Arising out of OIA-AHM-CUSTM-000-APP-020-16-17 dated 08/06/2016 passed by Commissioner of CUSTOMS-AHMEDABAD]

C.C.-Ahmedabad **.........Appellant**
Custom House,
Near All India Radio Navrangpura,
Ahmedabad,
Gujarat

VERSUS

Pan Drugs Limited **.........Respondent**
167, Gidc Estate,
Nandesari,
Vadodara
Gujarat

APPEARANCE:
Shri Himanshu P Shrimali, Superintendent (AR) for the Appellant
Sh. Dhruvank Parekh, CA for the Respondent

CORAM: HON'BLE MEMBER (TECHNICAL), MR. RAJU
HON'BLE MEMBER (JUDICIAL), MR. SOMESH ARORA

Final Order No. A/ 11230 /2023

DATE OF HEARING: 07.06.2023
DATE OF DECISION:07.06.2023

RAJU

This appeal has been filed by revenue against order of Commissioner (Appeals).

2. Learned AR pointed out that the respondent had obtained advance authorization. The appellant had imported certain goods and also had exported goods against the said advance authorization. The respondents have failed to submit export obligation discharge from DGFT. The demand of custom duty was confirmed by the original adjudicating authority, however, the Commissioner (Appeals) after examining some data and documents regarding to export namely shipping bill and proof of payment has remanded the matter

back to the original adjudicating authority to allow the benefit if the said documents provide sufficient proof of export. Revenue is in appeal against the said order on the ground that only EODC can be proof of export and these documents cannot be considered proof of export. Revenue also in his appeal on the ground that the proof of export has not been submitted within time prescribed within 30 days from the license period.

3. Learned Counsel appearing for the respondent has relied on the decision of Tribunal in the case of M/s. Multivac India Pvt Ltd Order No. 52968/2017 dated 21 April, 2017, to assert that EODC is not a mandatory document and the notification prescribes only production of proof of export. He also argued that the matter regarding the issue of EODC is also under active consideration of the issue of commerce. He argued that the said requirement is a procedural requirement.

4. We have considered rival submissions, we find that identical issue has been examined by tribunal in the case of M/s. Multivac India Pvt Ltd following has been observed:

> *"7. We find that the issue in the present case is not redemption of the advance license which undoubtedly has to be done by the DGFT. The issue involved is as to whether the Customs duty foregone in terms of notification at the time of import is required to be adjudicated and confirmed, in case BODC are not produced but the factum of export is otherwise established from the parallel document. The respondents have made it clear that they are not claiming redemption of advance license from the Customs which could only be done by DGFT and they are only aggrieved with the confirmation of Customs duty.*
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> *8. On going through the notification as also the order of Commissioner (Appeals), we find that there is no such condition in the notification which requires the importer to produce EODC certificate from the DGFT for establishing the factum of export. The notification condition requires the importer to produce the evidence of discharge of export obligation to the satisfaction of the authorities. Such discharge of export obligation can be established by any evidence, which need not be EODC. If such discharge of export obligation can be established by the importer*

> *from the other documents, as has been done in the present case, the non-submission of EODC certificate cannot be held to be violation of condition of notification. It is well settled law that no extraneous condition can be introduced into any notification and insistence upon such conditions cannot be made by the Revenue, when there is no such condition in the notification. In the absence of any such condition in the notification, any reference to the provisions of Foreign Trade Policy, which mainly deals with the issuance of the license and redemption of the same, would be a futile exercise. If legislature intended to make the production of EODC certificate as one of the essential and relevant condition of the notification, the same would have found its place in the language of the notification itself. As such, we are of the view that notification has to be interpreted as it stand and no infirmity can be found in the order of Commissioner (Appeals). Accordingly, Revenue's appeal is rejected."*

We also find that notification had no place prescribed production of EODC. The notification only prescribes production of evidence of export.

5. We also hold that the limitation of 30 days period in production the proof of export is extendable and in case of export of goods, the same should be liberally allowed. We do not find any merit in the argument of the department, the appeal is dismissed.

(Dictated & Pronounced in the open Court)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)

Palak