

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

REGIONAL BENCH-COURT NO. 3

Customs Appeal No. 12365 of 2018 -DB

(Arising out of OIO-AHM-CUSTOM-000-COM-022-18-19 dated 31/05/2018 passed by Principle Commissioner Customs, Excise and Service Tax-AHMEDABAD)

Cadila Healthcare Ltd

Zydus Tower, Satellite Cross Road,
Ahmedabad, Gujarat

.....Appellant

VERSUS

Commissioner of Customs-Ahmedabad

Custom House,
Near All India Radio Navrangpura,
Ahmedabad, Gujarat

.....Respondent

APPEARANCE:

Shri Devan Parikh Sr. Advocate with Shri Dhaval K Shah & Shri Nisarg Desai,
Advocates for the Appellant

Shri Rajesh Nathan, Assistant Commissioner (AR) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU**

Final Order No. 11598/2024

DATE OF HEARING: 05.04.2024
DATE OF DECISION: 22.07.2024

RAMESH NAIR

The appellant are engaged in the manufacture of Drug Intermediate falling under Chapter 28 and 29 of the first schedule to Central Excise Tariff Act 1985 and they were also granted permission to function as a 100% EOU (export oriented unit) by the Development Commissioner Kandla Special Economic Zone Kandla. The appellant had later on applied for exist from EOU scheme to the Development Commissioner KASEZ Kandla who vide Letter dated 16.03.2016 granted permission to exist from the EOU scheme subject to condition that the no dues certificate is given by jurisdictional Central Excise authorities. At the time of de bonding and exit from the EOU scheme the appellant obtained EPCG license No. 08300080107 dated 04.03.2016 and cleared capital goods without payment of duty in the light of EPCG license obtained. On the scrutiny of the records

of the appellant by the CERA Auditors an audit objection was raised to the effect that while de-bonding and clearing capital goods under EPCG license, the appellant had not complied with the prescribed procedure before clearance of the goods laid down in the custom Notification No. 16/2015-cus dated 01.04.2015. It was observed by the Auditors that the appellant had not:-

- 1) Registered their EPCG license at the port of import
- 2) Not submitted any bond and bank guarantee. It was also observed by the auditors that the department had not made any endorsement/debited entries on the EPCG license before de-bonding the capital goods.

1.1 On the basis of Audit objection, show cause notice bearing F. No. VIII/10-11/ PR. COMM.R./O & A/ 2018 dated 06.04.2018 was issued to the appellant for recovery of Customs/ Central Excise duties to the tune of Rs. 6,48,65,591/- on the ground that the said appellant had:-

- (i) Not registered their EPCG license at the port of import and thereby violated conditions and failed to follow procedure prescribed under Notification 16/2015-Cus dated 01.04.2015
- (ii) Not submitted any bond and bank guarantee and thereby violated conditions and failed to follow condition prescribed under Notification No. 16/2015-CUS dated 01.04.2015
- (iii) failed to get an endorsement on the authorization from the jurisdictional Central Excise Authorities
- (iv) failed to produce authorisation for debit before the proper officer of customs at the time of the clearance of the goods

- (v) Violated the provision of para 6.8 (a) and 6.8 (b) of the Foreign Trade Policy in as much as that the said assessee exited from the EOU scheme without payment of duty on capital goods.

1.2 The show cause notice has been adjudicated vide the Impugned Order-In-Original No. AHM-CUSTOM-000-COM-022-18-19 dated 31.05.2018 wherein the following order was passed:-

"(I) I deny the benefit of exemption notification no 16/2015-Cus dated 01 04.2015 availed under EPCG License No 0800008107 dated 04.03.2016.

(II) I order to confiscate the capital goods procured under procured by availing the benefit of Notification No 16/2015-Customs and by debiting irregular EPCG license under Section 111(0) of the Customs Act, 1962. However, the goods ordered to be confiscated are released on payment of Redemption Fine amounting to Rs. 3,50,00,000/- (Rupees Three Crore Fifty Lakh Only)

(III) I order to recover total customs duty amounting to Rs 6,48,65,591/- (Rupees Six crore forty eight lakh sixty five thousand five hundred ninety one only) under the provisions of Section 28(1) of the Customs Act, 1962 along-with interest under Section 28AA of the Customs Act, 1962.

(IV) I impose a penalty amounting to Rs.60,00,000/- (Rupees Sixty Lakh only) under Section 112 (a) (ii) of the Customs Act, 1962 for the acts of omissions and commissions.

(V) I impose a penalty amounting to Rs 1,00,000/- (Rupees One Lakh only) sunder Section 117 of the Act for not following the procedure/conditions for utilization of EPCG license as prescribed under Notification No 16/2015-Cus dated 1.4.2015.

(VI) Show Cause Notice No. VIII/10-11/Pr. Commr./O&A/2018 dated 06.04.2018 is disposed off, accordingly."

1.3 Being aggrieved by the above Order-In-Original, appellant filed the present appeal.

2. Shri Deven Parikh, Learned Senior Counsel with Shri Dhaval K Shah and Shri Nisarg Desai, Learned Advocates appearing on behalf of the appellant submits that the Principal Commissioner of Customs has completely failed to consider that there was no direct import by the appellant and therefore there was no question of registration of

authorization at the port of import or production of authorization before the Customs officer at the time of import as per the Customs Notification No. 16/2015-Cus .

2.1 Moreover, appellant has submitted NOC No. KASEZ /100% EOU /II/28/2003-04/VOL.II/9914 dated 09.11.2015 and total duty assessed statement duly certified by officer of the Assistant Commissioner Central Excise & Customs, Vadodara and the difference of the same was also endorsed into EPCG authorization.

2.2 He submits that the Principal Commissioner of Customs failed to appreciate that there is a marked different between a direct EPCG authorization holder and an authorization holder who has converted into the EPCG Scheme after de-bonding from the EOU Scheme. The procedure required to be followed for conversion is different from that required to be followed for direct EPCG authorization. The procedure of conversion from EOU to EPCG Scheme is provided under Para 6.8 of the Foreign Trade Policy and Para 5.07 of the Hand Book of Procedures and the appellant herein has duly followed the procedure as prescribed.

2.3 He further submits that Learned Principal Commissioner has erroneously observed that on account of the use of word 'shall' in the language of the Customs Notification 16/2015, particularly in Para 2.2, the condition was mandatory. He submits that since there is no import of goods referred to in table 1 at any port and therefore there is no question

of registration of authorization or debit by proper officer at the time of import.

2.4 He submits that there is an independent proviso and the procedure for conversion of EOU to EPCG scheme which is provided under the Foreign Trade Policy and hand book of procedure and the same nowhere envisage that a holder of EPCG authorization who has converted to EPCG scheme after de- bonding from 100% EOU is required to register the authorization at the port of import, as the appellant have complied with the relevant provision of the Foreign Trade Policy.

2.5 As regard the allegation of non-submission of bank guarantee, he submits that the Custom Circular No. 58/2004 clearly provides that all exporters having an export turnover of at least Rs. 5 Crores in the current or preceding financial year and having a good track record of 3 years of exports will be eligible on the ground of furnishing a bank guarantee and may furnish eligibility in lieu of the bank guarantee. The appellant has four star export house exceeding a turnover of Rs. 5 Crors as certified by the chartered accountant and therefore the appellant is exempted from financial bank guarantee. However, the appellant have produced undertaking dated 19.02.2016 which is sufficient compliance. Therefore on this basis the impugned order is not correct and legal.

2.6 He further submits that as regard the discharge of export obligation under EPCG the appellant have furnished the shipping bills which are concrete proof of appellant having fulfilled its export obligation as required under the authorization. It is not even in dispute that appellant have duly

fulfilled its export obligation as required under the EPCG authorization and therefore there is no question of appellant being denied the benefit of exemption notification.

2.7 He further submits that the appellant since have duly complied with the procedure for conversion from EOU to EPCG scheme and has also discharged its export obligations completely, there is no question of denial of exemption. He also placed reliance on the following judgments:-

- Schneider Electric Infrastructure Ltd. Vs. C.C., C.Ex. & S.T.- 2019 (370) ELT 1352 (Tri.-All.)
- Commissioner of customs & C. Ex. Vs. J.S. Gupta and Sons-2015(318) ELT 63 (All.)
- Sabare International Vs. Commissioner of Central Excise, Trichy- 2014 (308) ELT 609 (Tri.-Mad)
- Hydraulics India Services Pvt. Ltd. Vs. Commissioner of C.Ex., Bangalore-II- 2013 (294) ELT 163 (Tri.Bang.)
- Well Known Polyesters Ltd. Vs. Commissioner of C. Ex., Vapi- 2012 (25) STR 411 (Tri. Ahmd.)
- Jolly Board Ltd. Vs. Commissioner of Central Excise, Aurangabad- 2017 (49) STR 620 (Tri.-Mumbai)
- Salzer Controls Ltd. Vs. Commissioner of C.Ex. Chennai- 2003 (160) ELT 1169 (Tri.-Chennai)
- Thermax Private Ltd. Vs. Collector of Customs- 1992 (61) ELT 352 (SC)
- Salora components Pvt. Ltd. Vs. Commissioner of C.Ex. & S.T., Ahmedabad-III- 2019 (370) ELT 925 (Tri.-Ahmd.)

3. On the other hand Shri Rajesh Nathan, Learned Assistant Commissioner (AR) appearing on behalf of the revenue reiterates the finding of the impugned order. He submits that there is no relaxation of the any condition of the notification under which the appellant have sought the exemption under EPCG scheme therefore for various noncompliance of the condition of the notification the appellant was not entitled for the exemption. Hence, the demand was rightly confirmed by the adjudicating authority.

4. We have carefully considered the submission made by both the sides and perused the records. We find that as per the facts of the case, the appellant was 100% Export Orient Unit Manufactured bulk drugs ever since 2003, there was no dispute that the appellant have fulfilled the condition of Net Foreign Exchange as positive therefore as far as status of 100% EOU there was no dispute. However, the appellant on 01.07.2015, filed a Form-ANF-6D in terms of Para 6.18 of the Foreign Trade Policy, 2015-20 (FTP) for exit from the EOU. On 27.10.2015, the appellant approached the Development Commissioner for a provisional exit order stating that they wish to debond from the EOU to Export Promotion Capital Goods (EPCG) scheme and that they have furnished the required details to the concerned Excise and Customs Officers. They opted to pay duty on the closing stock and accordingly prayed for a provisional exit order. The development Commissioner vide letter dated 09.11.2015 granted 'No objection' to the debonding under the EOU scheme and required the appellant to submit certain documents for obtaining the final exit order. The appellant have supplied the documents to the Development Commissioner which is not in dispute.

4.1 The appellant, vide letter dated 14.12.2015 submitted all details of imported and indigenous capital goods as well as raw material as on 30.11.2015 whereby closing stock of all kind of goods as on 30.11.2015 were disclosed. They again vide letter dated 02.02.2016 given the reminder wherein it was clearly mentioned that they shall be exiting from EOU and shall opt for EPCG scheme. The Assistant Commissioner of Central Excise and Customs vide letter dated 12.02.2016 worked out the customs and excise duty on the imported and indigenous capital goods as well as raw materials. The appellant have also submitted a legal undertaking in the letter dated 09.11.2015, a copy of the EPCG license was also submitted. Thus the appellant have complied with all the requirement as asked by the department under letter dated 09.11.2015, thereafter the Development Commissioner as well as the Commissioner of Central Excise and Customs required EPCG license to be submitted for the purpose of issuance of 'No Dues Certificate', which was also submitted to the Excise and Customs Department and it was only after this the Central Excise department as well as the Development Commissioner vide letter dated 15.03.2016 granted the 'no due certificate' and the final exit order dated 16.03.2016 was thus granted by the Development Commissioner having permitted the debonding by the Development Commissioner, the customs department also permitted export of goods worth more than 44 Cr towards discharge of the export obligation without any objection.

4.2 We find that despite the above compliance, the adjudicating authority has denied the benefit of EPCG only on the ground that :-

- (i) the EPCG license in question is not registered with the port of Import mentioned therein

- (ii) the license is not made available for the debit of the capital goods
- (iii) non-filing of undertaking as required under Customs Notification No. 16/2015.

4.3 We find that there is no dispute that the appellant have not cleared goods from the port of import under EPCG scheme whereas the goods initially imported were cleared under exemption Notification No. 52/2003-CUS which is eligible to 100% EOU, thereafter the goods were brought to the unit of the appellant for installation and use in the manufacture of goods. It is only at the time of debonding the appellant have proposed to exit from EOU to EPCG scheme and after all the compliances, the appellant was allowed to exist from EOU there is no dispute that the appellant were in possession of EPCG license.

4.4 As regard the contention of the adjudicating authority that the license was not registered with the port of import as mention in the EPCG license, we find that since the goods were not cleared from the port of import under EPCG scheme whereas the goods were debonded while exiting from EOU there is no question of registering the license with the port of import as once the goods were cleared from the port of import there is no locus standi of Customs Department, after inbonding of the imported goods in the EOU, the jurisdiction of the EOU is with Development Commissioner and local Excise and Customs Department. From the events mentioned above there is no dispute that the Development Commissioner as well as the Custom and Central Excise Department given the 'no due certificate' to the appellant for exiting from EOU that too specifically under EPCG scheme. Since, the appellant have debonded the EOU, in our considered view there is no need of any registration of license at the port of import, if at all there

is any requirement since, there is no clarity in the notification, in this regard this requirement is only a procedural requirement. The objective of the EPCG scheme is that capital goods imported under EPCG scheme can be allowed duty free/concessional rate of duty subject to condition of the fulfillment of export obligation that means against the value of the capital goods and duty involved therein export of a particular value must be exported in fixed manner, during the period provided in the notification. In the present case these conditions are not in dispute that the appellant have undertaken to fulfill the export obligation under EPCG scheme. Therefore, in our considered view even if at all there is lapse of non registration of license at the port of import, this is mere procedural requirement and breach of such requirement the substantial benefit of EPCG scheme cannot be denied to the appellant.

4.5 As regard the second reason that license is made available for the debit of the capital goods, we find that license is very much in existence and the same can be made available for debit of capital goods. The Central Excise and Custom Department can very well ask for the license and debit the capital goods. In fact during the process of exiting from the EOU admittedly the appellant have submitted EPCG license to the Central Excise and Custom Department. Therefore, it is not correct to say that the license was not made available for debit of the capital goods.

4.6 As regard the condition of filing of undertaking as required under customs Notification No. 16/2005-Cus which is meant for under EPCG scheme. We find that appellant at the time of debonding of the unit have given the undertaking for discharging the duty if there is any short fall even after the debonding of the unit. Therefore, even if the undertaking is not in a particular format but once the appellant have undertaken to discharge

duty liability if any arise in future, the undertaking given is sufficient and the same is in compliance to the undertaking as required under custom Notification No. 16/2015. From the above, it can be seen that after the whole compliance for exiting EOU to EPCG scheme, the exit was allowed by the Development Commissioner as well as Custom and Central Excise officer. Moreover, as discussed above almost all the compliances as required under Notification No. 16/2015-Cus have been made in one or other form. Therefore, in our view there is no non compliance of any condition of the Notification No. 16/2015-Cus, even if there is any lapse, it is a procedural lapse and for which the substantial benefit of EPCG scheme cannot be denied to the appellant when there is no allegation of non fulfillment of export obligation.

5. Therefore, we are of the view that the impugned order is not sustainable. Hence, the same is set aside. Appeal is allowed with consequential relief.

(Pronounced in the open court on 22.07.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)