CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL AHMEDABAD
REGIONAL BENCH, COURT NO. 1

CUSTOMS APPEAL NO. 11630 OF 2015

[Arising out of Order-in-Original/Appeal No AHD-CUSTM-000-APP-442-14-15 dated 19.03.2015 passed by Commissioner of CUSTOMS-AHMEDABAD]

MURALIDHAR CREATION **Appellant**

Plot No. 39-40, Ambika Industrial Estate, Opp. Bhavani Inds. Estate,
Saroli, Surat, Gujarat

VERSUS

COMMISSIONER OF CUSTOMS-AHMEDABAD **Respondent**

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

WITH

CUSTOMS APPEAL NO. 11770 OF 2015

[Arising out of Order-in-Original/Appeal No AHD-CUSTM-000-APP-441-14-15 dated 16.03.2015 passed by Commissioner of CUSTOMS-AHMEDABAD]

Bal Mukund Creation **Appellant**

Plot No. 108, Shiv Darshan Society, Div-1, Puna Simada Road, Punagam, Nr. Yogi Chowk,
SURAT
GUJARAT

VERSUS

C.C.-Ahmedabad **Respondent**

CUSTOM HOUSE,
NEAR ALL INDIA RADIO NAVRANGPURA,
AHMEDABAD,
GUJARAT

Appearance:
Present for the Appellant :Shri Paritosh Gupta, Advocate
Present for the Respondent: Shri Sanjay Kumar, Advocate

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

FINAL ORDER NO. 11976-11977/2024

Date of Hearing/Decision : **04/09/2024**

SOMESH ARORA

The matter pertains to import of 24 machines under EPCG scheme by the appellant out of which three machines were reportedly sold and liability for which has been accepted, along with the penal consequence of the appellant. Regarding remaining 21 machines it has been mentioned that 12 were shifted to their own different premises and nine were stated to be in possession of appellants only after getting released from ICD.

1.1. The remaining 9 machines at the time of invoking of case by the department were lying at the ICD. It is stated position that as of date appellants have obtained export obligation certificate which is placed before us and which sates that export obligation has been met "in full in proportion to the amount utilized by you. Consequently, export obligation has been discharged against the said authorization in terms of para 5.3 of handbook of procedure." The certificate is dated 30th August, 2019. Therefore, as the adjudication process was completed before the year 2014, the same could not be produced at the time of adjudication. Similar, situation is with other appeal i.e. of appellants M/s. Balmukund Creation, which is brought before us. The appeals are involving a common issue and therefore are being disposed of by this the common order. The Advocate for the appellant relies upon decision of Vency Creation V/s. COMMISSIONER OF CUSTOMS- Ahmedabad as reported in 2019 (369) ELT 1126 (Tri-Ahmedabad) in which it was mentioned that the diversion of machinery, other than at the address declared due to termination of rent deed etc. is of no consequence.

1.2. It was submitted that the machines lying at other premises were in their possession only. Similarly, it is also stated that the benefit cannot be denied to them in relation to 9 other machines which were used by them at their rented premises.

2. The learned AR for the department indicates that EODC needs to be considered by the Adjudicating Authority as well as the decision of M/s. Vency Creation (cited Supra), which laid down the principle as stated by the Advocate, needs to be considered by Adjudicating Authority to re-determine liability, including if any on the admitted number of machines which were sold and therefore have penal consequences. He therefore requested to remand the matter.

3. We have considered rival submissions and the principle laid down in M/s. Vency Creations matter (cited above). It clearly indicates that the diversion of machinery due to some reason is of no consequence till the time export obligation is stated to be discharged.

3.1. We accept the principle and direct giving benefit of ratio of the decision of M/s. Vency creation (supra) after reconsideration by the Adjudicating Authority and to give due benefit on the machine that were found to be used and found in possession of the appellants. EODC is also accordingly, to be considered by the Adjudicating Authority.

4. Matter is remanded for redetermination of duty interest and penalty by the Adjudicating Authority after considering submissions or legal authorities that may be pleaded by the appellants. Matter is accordingly remanded back.

(Dictated and pronounce in the open court)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)

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