CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 20706 of 2016

(Arising out of Order-in-Appeal No. 47/2016 dated 15.02.2016 passed by the Commissioner of Customs (Appeals), Bangalore)

M/s. Fouress Engineering (India) Ltd.,
Plot No. 2, Phase – II, Peenya Industrial Area,
Bangalore – 560 058.

Appellant(s)

VERSUS

The Commissioner of Customs
Air Cargo Complex Division,
Menzies Aviation Bobba Cargo Terminal,
Bangalore International Airport,
Devanahalli,
Bangalore – 560 300.

Respondent(s)

APPEARANCE:

Mr. H. Y. Raju, Advocate for the Appellant.

Mr. K.A. Jathin, Deputy Commissioner (AR) for the Respondent.

CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

FINAL ORDER NO. 20678 / 2024

DATE OF HEARING: 14.08.2024

DATE OF DECISION: 14.08.2024

PER: R. BHAGYA DEVI

This appeal is filed against Order-in-Appeal No. 47/2016 dated 15.02.2016 issued by Commissioner of Customs (Appeals), Bangalore.

2. The brief facts are the appellant, M/s. Fouress Engineering (India) Ltd., imported duty-free inputs under the Advanced Licence Scheme. The appellant had fulfilled the export obligation within the specified time limit but failed to obtain Export Obligation Discharge Certificate (EODC) from JDGFT. In view of the above, Customs Duty of Rs.12,96,500/- along with interest was demanded by the original authority. Aggrieved by this order, the appellant had filed an appeal before the Commissioner (Appeals) on the ground that they have not imported any material against the licence and therefore, there is no debit of the duty on the bond executed by them. They have submitted all the documents to JDGFT who are yet to issue the EODC. Since, the domestic raw materials is used for complying the export obligation and no imports were made against Advanced Licence, the question of duty liability does not arise. However, the Commissioner (Appeals) observing that EODC is the certificate which confirms the fulfillment of the export obligation and which is the statutory requirement under the Notification and para 4.26 of hand book of the procedures; hence, the bond filed by the appellant needs to be enforced for demanding necessary customs duty. Aggrieved by the above order, the appellant is in appeal before us.

3. Learned counsel submits that there is no evidence on record placed by the Revenue for demand of duty for the imported goods since no goods were imported by the appellant. On an RTI application filed by the appellant requesting for copies of Bills of Entry on which duty has been demanded, the Revenue vide letter dated 18.06.2016 replied that the bond file pertaining to Advance Licence No.0710006469 dated 29.11.2000 under Bond No. 27/2003 dated 18.01.2003 of the appellant was not traceable. Therefore, it is submitted that the demand of the

duty cannot be confirmed only by enforcing the said Bond without any evidence to prove that the goods were imported.

4. The Authorized Representative on behalf of the Revenue reiterating the findings of the authorities below submitted that the closure of the Bond takes place only after the production of EODC as per the Notification No.43/2002 dated 19.04.2002. Having failed to produce the EODC, the authorities were right in enforcing the bond.

5. Heard both sides and perused the records. The show-cause notice dated 30.08.2006 alleges that the appellant had imported duty-free import of inputs as specified in the said licence and there is no evidence to indicate that the licensee has exported the resultant product and no evidence of discharge of export obligation is produced as prescribed under the Notification No. 43/2002-Cus. dated 19.04.2002. The appellant had replied stating that they have fulfilled the export obligation within the time frame specified but failed to obtain EODC from JDGFT. It was also submitted that they had not imported any material under the said Advance Licence. Neither in the show-cause notice nor in the impugned order, specific details of Bills of Entry on which duty-free imports have been undertaken by the appellant has been mentioned. It is also admitted that the file is not traceable and demand in the impugned order appears to be without any proof of evidence of import of duty-free inputs. Moreover, clause (iii) of the Exemption to Import against Advance Licence (Notification No.43/2002-Cus. dated 19.04.2002) reads as:

> **"(iii) that the importer at the time of clearance of the imported materials executes a bond with such surety or security and in such form and for such sum as may be specified by the Assistant Commissioner of Customs or Deputy Commissioner of Customs binding himself to pay on demand an amount equal to the duty leviable, but for**

> **the exemption, on the imported materials in respect of which the conditions specified in this notification have not been complied with, together with interest at the rate of twenty four per cent per annum from the date of clearance of the said materials.**
>
> **Provided that bond shall not be necessary in respect of imports made after the discharge of export obligation in full."**

6. In the instant case, there is no evidence that the goods were imported by the appellant, hence as per the above clause there cannot be any demand of duty unless the goods are imported duty-free. Therefore, we do not find any reason to sustain the impugned order which enforces the Bond without any legal basis.

7. In view of the above, the impugned order is set aside and the appeal is allowed.

(Operative portion of the order was pronounced in Open Court on conclusion of hearing on 14.08.2024.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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