CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>CHENNAI</u>

REGIONAL BENCH - COURT No. III

(1) Customs Appeal No. 41407 of 2015

(Arising out of Order-in-Original No.36201/2015 dated 31.03.2015 passed by Commissioner of Customs, Chennai-IV, Custom House, No.60, Rajaji Salai, Chennai 600 001)

M/s. Aurobindo Pharma Ltd. **.... Appellant**
Regd. Office: Plot No.2, Maithri Vihar,
Ameerpet,
Hyderabad 500 038.

VERSUS

The Commissioner of Customs
Chennai II Commissionerate **... Respondent**
Custom House, No.60, Rajaji Salai,
Custom House,
Chennai 600 001.

<u>WITH</u>

(2) Customs Appeal No. 41408 of 2015

(Arising out of Order-in-Original No.36201/2015 dated 31.03.2015 passed by Commissioner of Customs, Chennai-IV, Custom House, No.60, Rajaji Salai, Chennai 600 001)

Shri A.V.S Murali Mohan **.... Appellant**
Sr. General Manager-Commercial
(Sr. Manager during Relevant Period)
M/s.Aurobindo Pharma Ltd.,
Plot No.2, Maitrivihar, Ameerpet,
Hyderabad 500 038.

VERSUS

The Commissioner of Customs
Chennai II Commissionerate **... Respondent**
Custom House, No.60, Rajaji Salai,
Custom House,
Chennai 600 001.

AND

(3) Customs Appeal No. 41410 of 2015

(Arising out of Order-in-Original No.36201/2015 dated 31.03.2015 passed by Commissioner of Customs, Chennai-IV, Custom House, No.60, Rajaji Salai, Chennai 600 001)

Shri K. Nityananda Reddy **.... Appellant**
Vice Chairman,
(Managing Director during Relevant Period)
M/s.Aurobindo Pharma Ltd.,
Plot No.2, Maitrivihar, Ameerpet,
Hyderabad 500 038.

VERSUS

The Commissioner of Customs
Chennai II Commissionerate **... Respondent**
Custom House, No.60, Rajaji Salai,
Custom House,
Chennai 600 001.

APPEARANCE :

Shri G. Vidyadhar Reddy, Advocate for the Appellant
Ms. Anandalakshmi Ganeshram, Authorized Representative for the Respondent

CORAM :

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)

FINAL ORDER Nos.40551-40553/2025

DATE OF HEARING : 23.01.2025
DATE OF DECISION :29.05.2025

Per: Shri P. Dinesha

These appeals are filed against the common Order-in-Original dated 31.03.2015 passed by the Commissioner of Customs, Chennai-IV.

2. Brief facts as could be gathered from the impugned order is that the Appellant who is engaged in the manufacture of Bulk Drugs, Pharmaceutical Ingredients and Formulations, were alleged to have contravened the conditions of Customs Notification No. 43/2002 in respect of 20 Advance Authorizations by way of importing various inputs duty-free under the advance licensing scheme, but had failed to fulfil the export obligation cast on them. The above appeared to have resulted in contravening the provisions of EXIM/FTP and Customs Notification No. 43/2002 and that they were hence liable to pay customs duty to the tune of ₹2,26,93,114 along with applicable interest. It appears that the above was the outcome of investigations conducted by DRI.

3. Observing that the assessee did not fulfil the obligations cast under the relevant statutes in so far as fulfilling the export obligation is concerned, it appears that the Original Authority after putting the appellant on notice,

confirmed the demands proposed in the SCN by denying the benefits claimed by them, against which it appears that the appellant preferred an appeal before CESTAT, Chennai and this Bench after satisfying itself felt it appropriate to set aside the impugned order therein and thus, vide Final Order Nos.40233 to 40235/2013 dated 29.05.2013 allowed the Appeals by way of remand with a certain directions. Consequently, the Original Authority after adhering to the directions of this Bench in its Final Orders *supra* took up the matter for *de novo* adjudication and afforded the opportunities to the appellant. In the *de novo* proceedings, the participation of the assessee and also the filing of written submission has been taken note of. In the written submission filed before the lower authority, it has been recorded at paragraphs 13.1, 13.2 and 13.3 that out of 20 advanced licenses, they did not dispute the part non-fulfilment of export obligation in respect of 13 Advance Licenses; in respect of five Advance Licenses, they have received EODC from the DGFT and in respect of the remaining 2 Advance Licenses, they were contesting the demand. Further, in respect of 13 Advance Licenses, the mistake in the demand was also pointed out by the appellant and also indicated that the demand due should have been

₹2,40,15,912. It has also been highlighted that in respect of 13 Advance Licenses, the total duty foregone was ₹1,66,48,100 which they were not contesting on which even the interest was worked out and paid; the said amount of ₹1,74,27,737 was paid before issue of SCN and against the balance, they also paid ₹42,40,000.

4. In the adjudication order which is impugned herein, the Original Authority has, in terms of the written submissions filed by the importer-appellant, confirmed the demands in respect of 15 Advance Licenses since primarily the assessee itself did not dispute non-fulfilling of the export obligation in so far as 13 Advance Licenses are concerned. In respect of two other Advance Licenses which were contested by the importer, the Original Authority has held that since the assessee did not file any EODC in respect of these 2 imports/Advance Licenses, he had no option but to deny the benefits and thus confirmed the consequential duty. In the impugned order, the Original Authority has also ordered imposition of penalty under Section 112 (a) on the firm, on the Managing Director and on the Senior Manager (Commercial) of the firm. It is against these demands that the present appeals have been filed before us separately.

5. Heard Shri G. Vidyadhar Reddy, Ld. Advocate for the Appellant and Smt. Anandalakshmi Ganeshram, Ld. Authorized Representative for the Respondent. Upon hearing the rival contentions, the only issue that requires our consideration is, "whether the demands confirmed in respect of/against the appellants is justified as a sequel to non-fulfilment of EODC ?"

6. Learned Advocate appearing for the first appellant has contended that the Original Authority did not consider the crucial aspect that they had requested for extension of time for fulfilling export obligation and during the pendency of the said application, there was a change in the FTP due to which, its application came to be rejected. But, however, the fact remains on record that the appellant having exported the balance 273 kgs. by 11.07.2006 was not taken into consideration. It was further contended that the EODC was not issued by the DGFT due to the intervention of DRI and hence, it was submitted that the appellant having fulfilled the export obligation, the impugned order and the demand therein are liable to be set aside.

7. This was rebutted by the Ld. Department Representative since, according to her, the statute mandates the fulfilment of not just export obligation, but also of obtaining and furnishing of EODC from the concerned Authority namely DGFT, which having not been done in the case on hand, there is no fallacy in the impugned order. It may be their case that they had fulfilled the export obligation as on 11.07.2006, however, in terms of the FTP, as was in force during the relevant time, the FTP prescribed the timeframe within which the export obligations were required to be fulfilled and the same having not been fulfilled even before the expiry of the extended period allowed by the said Authority (DGFT) alone and not by the Customs authorities. In the case in hand, there being no such certificate furnished by the appellant to the Customs as obtained from the concerned authority even while passing the impugned order, it has to be held that the appellant has failed in discharging its statutory obligation of fulfilling the export obligation and hence, the appeal filed by the appellant lacks merit, which is therefore required to be dismissed.

8. We have carefully considered the rival contentions and we have also carefully considered the documents placed on

record. At the outset, we find no infirmity in the order since out of 20 Advance Licenses, 13 Advance Licenses were given up by the appellant itself for not having fulfilled the obligation; we have observed the gist captured in the Table at para 31 of the OIO. The Original Authority has therefore passed order based on the pleadings urged before him. It is the case of the appellant that they have fulfilled the Export Obligation in full even before the passing of the Adjudicating Order, which was not considered, but however, we do not find any material to the effect that such a pleading was ever urged before the Authority. It is not only just the pleadings, but what was relevant are the documents in support, especially the EODC obtained from the concerned DGFT. The advance license scheme read in juxtaposition with the FTP as applicable at the relevant point, mandates the fulfilling of the export obligation within a certain period of time; the concerned exporter may request for additional time in case the export obligation could not be made within the timeframe. It is for the Authority, namely DGFT to permit such extension of time. Admittedly, in the case on hand, the Export Obligation claimed to have been fulfilled is much beyond the permitted period. If the said claim is accepted, then the schemes of advanced licensing for duty-free import and Foreign Trade Policy for meeting Export Obligation becomes redundant, which is not the legislative intention. The objective behind these schemes would fail and anybody could make such exports at any time and there will be no end to such claims; consequently, the authorities would never be able to pass any adjudication order, which is again not the scheme of the Customs Act.

9. In view of the above discussions, we are of the view that there is no infirmity in the impugned order in so far as the duty demand is concerned. Hence, we do not find any merit in the appeal filed by the firm. The said appeal No.**C/41407/2015** therefore stands dismissed.

10. Insofar as the other appellants are concerned, one by Managing Director of the firm of Appellant No.1, and the other by Sr. Manager (Commercial) of the Appellant No.1, we do not find any justification in the levy of penalty under Section 112 (a) of the Act. Admittedly, the issue relates to meeting of fulfilment of the export obligations in terms of the Advance Licenses obtained by the firm and from the impugned order, we do not find any material piece of evidence against these appellants as the reasons behind the

non-fulfilment of export obligation or the non-obtaining of EODC. Hence, the penalties on these appellants stand set aside and the Appeals **C/41408/2015 & C/41410/2015** of the respective appellants are allowed with consequential benefits, if any, as per law.

11. The appeals are disposed of accordingly.

(Order pronounced in open court on 29.05.2025)

(M. AJIT KUMAR)
Member (Technical)

(P. DINESHA)
Member (Judicial)

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