CUSTOMS EXCISE & SERVICE TAX APPLELLATE TRIBUNAL NEW DELHI.
PRINCIPAL BENCH – COURT NO.II

Customs Appeal No.50873 of 2019 (SM)

[Arising out of Order-in-Appeal No.CC(A)CUS/D-I/ACC-Exp/240-241/2018 dated 28.08.2018 passed by the Commissioner of Customs (Appeals), New Customs House, Near I.G.I. Airport, New Delhi]

ANKH **Appellant**
C-401, Stellar King Court,
F-32, Sector-50,
Noida, U.P. 201 301.

Versus

Commissioner of Customs **Respondent**
New Customs House,
Near I.G.I. Airport,
New Delhi- 110 037.

APPEARANCE:

Ms. Suruchi Thapar and Ms. Kanika Baweja, Advocates for the appellant.
Shri Ravi Kapoor, Authorised Representative for the respondent/Department.

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO.52117/2021

DATE OF HEARING/DECISION:10.11.2021

ANIL CHOUDHARY:

The issue involved in this appeal is whether the appellant have discharged the export obligation with respect to the import of machine under EPCG Licence No.0096146 dated 27.08.1998, under Notification No.28/97-Cus dated 1.4.1997, as amended.

2. The brief facts are that under the aforementioned licence, the appellant imported a 'dry cleaning machine' on 26.09.98, which was installed by them on 28.8.1999. The net Foreign Exchange Earning (NFE) target was fixed under licence at 75,200 US $ equivalent to Rs.5,57,44,628/-. The

appellant was a partnership firm during the period comprising of three partners. The partnership firm was dissolved w.e.f. 1.10.2006 under a Deed of Resolution dated 27.01.2007. Vide impugned order-in-appeal, the Commissioner (Appeals) pursuant to issue of show cause notice dated 9.1.2009 (read with Addendum/Corrigendum dated 26.02.2014) held the goods imported under concessional rate of customs duty against EPCG licence were liable to confiscation under Section 111(o)of the Customs Act. The Bond given by the appellant was directed to be enforced, and an amount of Rs.3,53,926/- being customs duty, be recovered with interest. Further, penalty of Rs.53,089/- was imposed under Section 112 of the Customs Act, 1962 and another penalty of Rs.50,000/- was imposed under Section 117 of the Customs Act, 1962.

3. Being aggrieved, the appellant is before this Tribunal.

4. Ld. Counsel states that the appellant have discharged the export obligation, which is apparent from some of the documents, which are available with them. However, the appellant is handicapped in producing all the documents, as there was a massive fire in their premises in Jan. 2007, wherein most of the documents were destroyed, wherein FIR was also registered, which supports the incident of fire, which had happened on 10.01.2007, at the premises of the appellant located at D-37, Sector 59, Noida. The estimated damage to the property and machinery, etc. was estimated at Rs.7 crores. Further, a list of damaged property has been listed, *inter alia,* for stationary, tax records, excise-tax books, books of account, stock records, sampling records regarding buyers, shipping bills of exports, cargo receipts and promotion support copy of Shipping Bill, bank related certificates, GSP, Original certificates, etc.

5. Further, ld. Counsel has referred to statement of exports /redemption as per form under EPCG Scheme (Appendix -9 A), wherein the appellant has filed the return with the DGFT, wherein the appellant has given the details of licence and the import value as well as the value of the export obligation to be discharged, wherein the appellant have mentioned the details of the exports made of cotton made-ups vide a Shipping Bill No.828400 dated 18.09.98, having invoices value US$27,890, and also vide a Shipping Bill No.27860 dated 26.09.1998, having invoice value US$ 60,530. Thus, aggregating the total invoice value comes to US$ 88,420/-, which is more than the 'net foreign exchange earning' target under the said EPCG licence at US$75200. Thus redemption application was submitted with the office of the DGFT duly certified by the Chartered Accountant – Singhal Matta & Co., New Delhi. Further, the said redemption application also contains a certificate from the banker of the appellant firm, which certified that , "all realised exports" have been shown in Sl.Nos. (iii) and (iv) . The above are in freely convertible currency and the payments of the same have been released. Further, the ld. Counsel has taken us through one of the copies of the shipping bills available with them, being Shipping Bill No.27860 dated 26.09.201, which certifies the export to USA, valued at US$ 60,530 and it is also stated that Shipping Bill was passed under DEPB Scheme, and at page 2 of the Shipping Bill, there is endorsement no.DEPB 1595 dated 5.10.98.The appellant have also annexed copy of the relevant invoice no.AE/1054 dated 10.09.98.Further, a copy of the bank certificate of export realisation issued by Canara Bank, New Delhi, has also been produced, certifying realisation of USD60,530.The ld. Counsel states that due to happening of fire accident, the matter has become so old that they are not

able to trace the relevant documents in support of any other shipping bill(s). It is also pointed out that relevant file or application sent to the office of the DGFT for grant of EODC is also untraceable, and which is the main reason for non-issue of EODC till date by the DGFT.

6. Under the aforementioned facts and circumstances, ld. Counsel states that the appellant has given reasonable proof of discharge of their export obligations under EPCG scheme, with regard to the said licence No.0096146. The ld. Counsel also points out to the chart of the EPCG certificate obtained by the assessee, which are 7 in number, during the period August, 1998 to Feb. 2003, wherein they have imported 7 machines from time to time. Even for the subsequent machine imported being import licence no.0530130536, they have been granted 'export obligation discharged' and also for licence no.053013239 being subsequent import on 19.09.2000, wherein EODC has been granted on 27.10.2005. It is also stated that as the appellant has received EODC for subsequent imports, it can be reasonably inferred from the evidence led, that they were issued the EODC for the EPCG Licence no.0096146, which is also under dispute. However, such licence was destroyed in the event of fire.

7. Accordingly, she prays for allowing their appeal with consequential benefits in accordance with law.

8. Ld. Authorised Representative for the respondent/Department relies upon the impugned order and further urges that under the facts and circumstances, the matter may be remanded to the lower court for re-consideration.

9. Having considered the rival contentions and under the facts and circumstances and the evidences produced, I hold that the appellant have discharged the export obligations under the disputed EPCG licence no.0096146 dated 27.08.98. However, I grant liberty to the Revenue to verify their record with respect to the shipping bill no.828400 dated 18.09.98, which also appears filed under DEPB scheme. If any, mis-declaration is found, Revenue is granted liberty to initiate action, after verification.

8. Accordingly, I allow this appeal and set aside the impugned order. The appellant is entitled to consequential benefits in accordance with law.

[Order dictated & pronounced in open court]

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Ckp.