CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL NEW DELHI.

PRINCIPAL BENCH - COURT NO.III

Customs Appeal No.50205 of 2020 (DB)

(Arising out of original No. CC(A)/Customs/D-I/Exp/NCH/444/2019-20 dated 19.11.2019 passed by the Commissioner of Customs (Appeals), New Custom House, New Delhi).

M/s. Aarham Softronics **Appellant**
Plot No.30, Industrial Area,
Baddi, Distt.- Solan (H.P.).

VERSUS

Commissioner of Customs **Respondent**
(Air Cargo Exports),
New Custom House,
New Delhi-110037.

APPEARANCE:

Shri Joy Kumar, Advocate for the appellant
Shri Rakesh Kumar , Authorised Representative for the respondent

CORAM:

HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

FINAL ORDER NO.50053/2024

DATE OF HEARING: 16.11.2023
DATE OF DECISION:15.01.2024

BINU TAMTA:

The appellant has filed the present appeal challenging the Order-in-Appeal No.CC(A)/Customs/D-I/Exp/NCH/444/2019-20 dated 19.11.2019 affirming the Order-in-Original passed by the Commissioner of Customs (Appeals).

2. The appellant herein obtained EPCG licence no.2230000312 dated 28.04.2006 from DGFT, Ministry of Commence and Industries,

Chandigarh, under which they had imported capital goods viz. SINUMERIX 802 D CNC System with System with Servo Motors Drive for Lathe vide Bill of Entry No.373254 dated 11.07.2006 on concessional rate of duty of 5% under Notification No.97/2004-Customs dated 17.09.2004, as amended, subject to the conditions that the importer fulfils export obligations as prescribed therein.

3. That as per the conditions of the said Notification, the importer was required to fulfil the conditions of the said notification including the condition to produce within 30 days of the expiry of each block year from the date of issue of licence, evidence showing the extent of Export Obligation fulfilled and where export obligation of any particular year is not fulfilled, the importer shall within 3 months from the expiry of said block pay duties of Customs of an amount equal to that portion of the duties leviable on the goods but for the said exemption, which bears the same proportion as the unfulfilled portion of the Export Obligation bears to the total Export Obligation together with interest at the applicable rate from the date of clearance of the goods. The obligation to fulfil Export Obligation is on importer, who should on his own is required to pay the duty along with interest, if he was not able to comply within time the conditions laid down in the Notification.

4. That the show cause notice dated 17.03.2015 was issued to the appellant on the ground that he failed to submit the evidence of fulfilment of Export Obligations as per notification and also failed to submit Export Obligation Discharge Certificate (EODC). The appellant submitted its reply dated 31.01.2015 that they have already fulfilled

67% of the Export Obligations and they have applied to the EPCG Committee at DGFT, New Delhi for extension of Export Obligation period. From the documents placed on record, the appellant submitted that vide letter dated 31.01.2014, he had requested the Joint Director General Foreign Trade to grant extension of two years to fulfil the remaining Export Obligations against the EPCG licence dated 28.04.2006. This was followed by another letter dated 16.02.2015 by the appellant. Subsequently, vide letter dated 09.04.2015, the appellant informed the Asstt. Director, DGFT that they have fulfilled the balance Export Obligations vide Shipping Bill No.8467213 dated 19.03.2015 from CFS, Ludhiana, whereupon the appellant was advised by the Asstt. Director, DGFT to submit obligation as per ANF - 5B, ANFC along with requisite documents prescribed therein and accordingly, on 24.11.2015, the appellant filed the said application for issuance of EODC. It appears that pursuant to the fulfilment of the said obligation, the office of DGFT called upon the appellant to submit the requisite documents. Finally, vide letter dated 16.02.2016 issued by the Asstt. Director, DGFT, the EODC was issued in respect of the EPCG licence dated 28.04.2006.

5. The show cause notice was adjudicated by the order-in-original dated 26.02.2016 in a very routine manner that the appellant has failed to submit the EODC issued by the DGFT within the time period stipulated in the exemption notification and hence the amount of duty forgone is recoverable in terms of the provisions of Section 143(3) and Section 28 of the Customs Act, 1962 along with interest under Section 28AA of the Act. Accordingly, the duty amounting to

Rs.2,00,000/- was confirmed for violation of the conditions of the Notification. Further, penalty of Rs.50,000/- under Section 112 and Rs.5,000/- under Section 125 of the Customs Act was imposed. Being aggrieved, the appellant filed an appeal, *inter alia,* submitting that the impugned order was pre-mature since there was no communication from the DGFT. The Commissioner (Appeals) observing that the Adjudicating Authority was in touch with the DGFT and DGFT have served a deficiency memo for compliance of the conditions and since the matter is pending since long, confirmed the order-in-original. The appellant has challenged the impugned order in the present appeal before this Tribunal.

6. Learned Counsel for the appellant has submitted that the Authorities below ought to have considered the EODC issued to him by DGFT under letter dated 16.02.2016, which confirmed redemption of authorisation on account of 100% fulfilment of Export Obligations. He also challenged the imposition of penalties as per the impugned order.

7. The Authorised Representative for the Revenue has emphasised that the appellant had violated the conditions of the exemption notification, wherein they were required to produce EODC certificate from the Competent Authority within 30 days i.e. on or before 27.05.2012 from expiry of each block and hence they are liable to pay duty and penalty as imposed by the Adjudicating Authority. Learned Authorised Representative has referred to catena of decisions on the principle that exemption notification has to be construed strictly and in the absence of compliance of Import Obligations, the goods are liable

for confiscation and also penalty under the provisions of the Act. In the present case, the EODC has been issued beyond the period of 6 years for 50% Export Obligations and total 8 years for 100% Export Obligations and hence, prayed that the impugned order be affirmed.

8. Having heard both the sides and perused the records, we find that the delay in issuance of EODC has been considered in various decisions and the same has been held to be in favour of the importer, where the delay is on the part of the DGFT. In the present case, we find that the appellant had been requesting the DGFT to grant him extension of two years to fulfil the 100% Export Obligations. Under the notification, the Authorities are empowered to grant extension of time, as can be inferred from the provisions of Clause 4 of the Notification, which says—

> "that the importer produces within 30 days from the expiry of each block from the date of issue of licence or within such extended period as the Dy. Commissioner of Customs or the Asstt. Commissioner of Customs may allow".

Further, it is relevant to note in para-7 of the Notification, which reads as:-

> "**7.** Notwithstanding anything contained in condition (4), where the Licensing Authority grants extension of block-wise period for any block(s) or oversell period of fulfilment of export obligation upto a period of two years or regularisation of shortfall in export obligation, not exceeding five per cent of such export obligation, the said block-wise period or overall period of export obligation shall be extended or condoned by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be:
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> Provided that in respect of sick unit referred to in the second proviso to condition (2), extension of overall period of export obligation shall not be allowed."

9. In view of the aforesaid provisions, the application made by the appellant seeking extension of time by two years, was maintainable and should have been granted by the Licensing Authority. As per the documents produced by the appellant, we find that he had fulfilled the balance Export Obligations vide Shipping Bill No.8467213 dated 19.03.2015 and though it appears that there have been several communications in that regard between the appellant and the DGFT, EODC was finally issued on 16.02.2016. No doubt, that the EODC has been issued after much delay, however, the same was issued prior to the passing of the order-in-original passed by the Adjudicating Authority on 26.02.2016 and much before the impugned order on 19.11.2019. The fact that the EODC has been issued showing complete fulfilment of 100% Export Obligation, the Appellate Authority was required to consider the same and in the light of the various decisions of the High Court as well as of this Tribunal, ought to have granted the necessary relief.

10. We may refer to the decision of the Delhi High Court in **SMIIEL Vs. Dy. Commissioner of Customs – 2017 (347) ELT 20 (Delhi)**, which took note of the earlier decisions and observed as under:-

> "8. In the similar circumstances, where the EODC was obtained subsequent to passing of the impugned order by the Customs Department, but, for the reasons not attributable to the petitioner, this Court has set aside such demand and penalty and remanded the matter to the adjudicating authority for a fresh determination after taking into consideration the EODC obtained. A sampling of the orders is as under :
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> **(i) Order dated 25th August, 2015 in W.P. (C) No. 7896 of 2015 (*Jonson Rubber Industries Ltd.* v. *UOI*)**
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> **(ii) Order dated 12th January, 2016 in W.P. (C) No. 10031 of 2015 = 2016 (334) E.L.T. 410 (Del.) (*Lifelong India Pvt. Ltd.* v. *UOI*)**

(iii) Order dated 15th January, 2016 in W.P. (C) No. 11852 of 2015 (*Lloyd Electric & Engineering Ltd.* v. *UOI*)

(iv) Order dated 29th January, 2016 in W.P. (C) No. 741 of 2016 (*Keli Industries Ltd.* v. *UOI*)

11. In view of the consistent view taken, we are of the opinion that since the appellant has complied with the conditions of fulfilling 100% export obligation and which stands approved as per the EODC issued by DGFT, no fruitful purpose will be served in denying the benefit to the appellant. Once EODC is issued by DGFT, it cannot be said that the appellant had violated any of the conditions of the Notification. Accordingly, the impugned order deserves to be set aside and the matter is remanded to the Adjudicating Authority for a fresh decision after taking into consideration the EODC issued by the Additional Director, DGFT on 16.02.2016

(Order pronounced on 15th January, 2024).

(Binu Tamta)
Member (Judicial)

(Hemambika R. Priya)
Member (Technical)

Ckp