CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. 1

Date of hearing/decision: 02.02.2017

Customs Appeal No. 53057 of 2016

(Arising out of order-in-original No. MIJM/ACE/06/2011 dated 21.01.2011 passed by the Commissioner of Customs (Exports), Air Cargo, New Customs House, New Delhi).

M/s Mediplus India Limited Appellant

Vs.

CC, New Delhi Respondent

Appearance:

Sh.B. M. Jyotishi and Sh. Amit Joshi, Advocates for the appellant
Sh. Amresh Jain, AR for the Revenue

Coram:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. Ashok K. Arya, Member (Technical)

Final Order No. 50671/ 2017

Per: **Justice (Dr.) Satish Chandra**:

The present appeal is filed by the appellant against the order dated 21.01.2011 passed by the Commissioner of Customs (Exports), New Customs House, New Delhi.

2. Brief facts of the case are that the appellant had imported and cleared various inputs valued at Rs. 5,70,85,787/- under Advance Licence No. 051068013 dated 5.10.2005 and claimed exemption as per notification No. 43/02-Cus dated 19.04.2002, as amended at Nil rate of Customs duty in terms of Section 143 of the Customs Act, 1962 subject to the condition that the licence holder shall fulfil the Export obligation and other conditions prescribed in the

said notification during the validity period of the said licence for which they have duly executed a bond for an amount of Rs. 2,99,63,348/-. The said bond is in force till cancellation and as per conditions of the bond, the appellant is bound to submit the certificate duly signed by the appropriate authority necessary for discharge of the bond. As per the conditions of the said notification, the appellant was required to produce evidence of fulfilment of Export Obligation viz;

(a) Export obligation Discharge Certificate (EODC) issued by the "Licensing Authority" within 30 days of expiry of the said licence, and

(b) Proof of export for the resultant products to be exported against the above licence or otherwise pay an amount equal to duty leviable on the imported material but for exemption contained therein together with the interest at the rate of 24%/ 15% per annum from the date of clearance of imported material till the date of payment of duty.

3. The appellant failed to submit requisite documents within the prescribed period despite reminders dated 14.1.2003 and 30.12.2006. So, the demand was raised after issuance of the show cause notice. Being aggrieved, the appellant has filed the present appeal.

4. With this background we heard Sh. B. M. Jyotishi and Sh. Amit Joshi, ld. Advocates for the appellant and Sh. Amresh Jain, ld. AR for the revenue.

5. During the course of arguments, our attention was drawn to the corrigendum dated 06.05.2011 issued by the Commissioner where the date of hearing was fixed on 19.05.2011. It is the allegation of the ld. Advocate that

when the date was fixed for 19.05.2011 how the impugned order was passed on 21.01.2011.

6. From the impugned order, it appears that appellant failed to produce requisite documents within the prescribed period as observed in para 3 of the impugned order. During the hearing, ld. Advocate submits that necessary document was already produced, even they are ready to produce again. When it is so, then we set-aside the impugned order and remand the matter to the original authority to decide the issue afresh but after providing reasonable opportunity of hearing to the appellant. Additional evidence, if need be, may be admitted as per law.

7. In the result, the appeal filed by the appellant-assessee is allowed by way of remand.

(Dictated and pronounced in the open Court).

(Ashok K. Arya)
Member (Technical)

(Justice (Dr.) Satish Chandra)
President

Pant