IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI
COURT-IV

Date of Hearing/ Decision : **24.03.2017**

Appeal No. C/54245/2014 -CU (DB)

[Arising out of the Order in Original No. OIO-RT-ACE-26-2014 dated 25.06.2014 passed by Commissioner of Customs, New Delhi]

M/s. Britannia Industries Limited … Appellant

vs.

Commissioner of Customs, New Delhi … Respondent

Appearance:

Rep. by Shri R. Krishnan, Advocate for the Appellant
Rep. by Ms. Suchitra Sharma, DR for the respondent

Coram: Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Order No 52522/2017 –CU (DB)

Per Mrs. Archana Wadhwa

After hearing both sides, we note that the Commissioner has confirmed the demand of duty against the appellant on the ground that they have availed concessional duty imports under EPCG Scheme, in terms of Notification No. 97/2004-Cus dated 17.09.2004 but have not produced on record the Export Obligation Discharge Certificates (EODC) from the DGFT.

2. The appellant's contention is that they had been regularly taking up the matter with DGFT and are in corresponding with them. As per the latest position, DGFT is likely to issue certificates within a short span of time. As such, he prays that the impugned order be set-aside and the matter be remanded for examination of these certificates as and when produced.

3. Ld. JCDR appearing on behalf of the Revenue submits that the appellant was not responding to the show cause notice and hearing notices being issued by the adjudicating authority. In such a scenario, the adjudicating authority was left with no other alternative but to proceed to adjudicate the matter. She also submits that if the appellant was having some difficulty in procuring EODC certificates, they could have approached the Commissioner for establishing the fact of export from other relevant documents.

4. We note that the appellant is required to establish the export of their final products so as to satisfy the condition of notification. The appellants are hopeful of getting EODC from DGFT within a period of 3-4 months. As such, we deem it fit to set-aside the impugned order and remand the matter to Commissioner, to await the issuance of certificates by DGFT and then to re-decide the matter. The appellants are at liberty to contest the matter on other legal issues also.

Appeal is allowed by way of remand.

[Order dictated and pronounced in the open court]

(**V. Padmanabhan**)
Member (Technical)

(**Archana Wadhwa**)
Member (Judicial)

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