IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. IV

Customs Appeal No. 60623 of 2013

[Arising out of Order-In-Appeal No. RT/ACE/ 49-52 /2013 dated 8.8.2013 passed by Commissioner, New Delhi]

M/s. Tex Corp Ltd. **Appellant**

Vs.

Commissioner of Customs **Respondent**
New Delhi

Appearance:

Shri R K Srivastava, Advocate for the Appellants
Shri Yogesh Agarwal, AR for the Respondent

CORAM:

Hon'ble Ms Archana Wadhwa, Member (Judicial)
Hon'ble Mr. V Padmanabhan, Member (Technical)

Date of Hearing / Decision: 05.04.2017

FINAL ORDER NO . 52755 /2017

Per Archana Wadhwa:

After hearing both sides duly represented by Shri R K Srivastava, learned advocate appearing for the appellant and Shri Yogesh Agarwal, learned DR appearing for the Revenue, we note that vide its impugned order Commissioner (Customs) have confirmed the demand against the assessee along with interest and imposition of penalties on the findings that the appellants have imported duty free raw material against Advance License issued by the DGFT, in terms of notification No. 93/04-Cus dated 10.9.04 but have not submitted Export Obligation Discharge Certificate issued by DGFT so as to establish that the exports have taken place. The adjudicating authority has observed that the matter pertain to the year 2004 onwards and till date i.e. 2013, the EODC certificate do not stand issued by the DGFT.

2. On going through the file records, we note that the appellants had applied to the DGFT in 2011 for grant of EODC certificate. Further correspondence shows that such certificate were not issued by the proper officer by observing that export obligation have not been fulfilled within time and vide an order imposing penal penalties. The said adjudication order dated 19.1.11 passed by DGFT was appealed against before the higher appellate authority under DGFT and vide order dated 16.7.2012, it stand observed as under:

> *"5. I have gone through the facts of the case available on record, submissions made and letter dated 24/05/2012 from Regional Authority. As the appellants have now submitted all the prescribed documents before the Regional Authority and the Regional Authority has confirmed that the appellants have fulfilled export obligation, case needs review by Regional Authority keeping in view the facts mentioned above."*

Accordingly, the adjudication order dated 19.1.2011 passed by the Jt. DGFT, New Delhi was set aside by the Additional Director General of Foreign Trade and the matter was remanded for denovo consideration and finalization.

3. Further proceedings thereafter are not on record and neither side is able to throw any light on the same.

4. However, learned DR appearing for the Revenue submits that said proceedings relate to only one advance license whereas there are three more licenses involved in the present case.

5. We note that notification No. 93/2004 -Cus dated 10.9.2004 requires the importer to produce evidence of discharge of export obligation to the satisfaction of the proper officer of the Customs. No doubt, the EODC certificate issued by the DGFT for releasing of the advance license is one of the sufficient evidence, which can be taken into account. However, we note that there is no condition in the notification requiring the production of EODC certificate and the fact that the export has taken place can also be established from the other evidences. The condition of production of EODC certificate by DGFT cannot be introduced in the notification, as per the settled principle of interpretation.

6. As such, in view of the foregoing, we deem it fit to set aside the impugned order and remand the matter to the Commissioner for

examining the factum of export, the effect of the remand order of DGFT and any development that might have taken place thereafter and to given an opportunity to the appellant to produce evidence to establish the factum of export in respect of all the advance licenses.

7. The appeal is thus allowed by way of remand.

(dictated and pronounced in the open court)

(Archana Wadhwa)
Member(Judicial)

(V Padmanabhan)
Member (Technical)

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