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

Customs Appeal No. 50448 of 2016

[Arising out of Order-In-Original No. CC(A) Cus/D-II/ICD/1220/2015 dated 27.11. 2015 passed by Commissioner of Customs (Appeals), New Delhi]

Commissioner of Customs Delhi — **Appellants**

Vs.

M/s. Multivac India Pvt. Ltd. — **Respondent**

Appearance:

Shri K Poddar, AR for the Appellants
Shri Parmod Kumar Rai, Advocate for the Respondent

CORAM:

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

Date of Hearing : 07.03.2017
Date of Decision : 21.04.2017

FINAL ORDER NO . 52968/2017

Per Archana Wadhwa:

Being aggrieved with the order passed by Commissioner (Appeals), Revenue has filed the present appeal.

2. We have heard Shri K Poddar, learned AR for the Revenue and Shri Parmod Kumar Rai, learned Advocate for the Respondent-assessee.

3. As per facts on record, the respondents imported various inputs under Advance License, in terms of Customs Notification No. 93/2004 dated 10.9.2004, which allows imports at nil rate of duty subject to the importer fulfilling the export obligation and the other conditions prescribed in the license. They also executed bond with the Customs. As the respondent could not produce export obligation discharge certificate (EODC) from the DGFT, establishing that the export had taken place, proceedings were initiated against them by way of show cause notice dated 2.4.2013 demanding the entire duty foregone in respect of imports. The said Show cause notice culminated into an order passed by the original adjudicating authority, who confirmed the demand along with interest and imposed penalty on the ground that the appellant could not produce EODC from DGFT and thus violated the condition of the notification.

4. On appeal, the respondent took a categorical stand that they had made request to DGFT for grant of export obligation discharge certificate but the same were not issued by them and DGFT was taking time. However, they have submitted various other documents as proof of discharge of export obligation for the satisfaction of Deputy

Commissioner. They also submitted that they have complied the export obligation to a large extent and wherever they could not fulfill the export obligation, they have already paid the duty. The respondent produced a copy of the advance license along with its utilization certificate issued by the Customs; copies of the shipping bill assessed by the Customs, showing export against the advance license, bank realization certificate as also Chartered Accountant certificate and challans etc. They also placed on record a copy of the application submitted to DGFT for issuance of EODC.

5. Commissioner (Appeals) observed that notification No. 93/04 - Cus dated 10.9.04 nowhere specifies the conditions regarding submission of EODC. The relevant condition under the notification is in respect of fulfillment of export obligation. The same requires the importer to produce evidence of discharge of export obligation to the satisfaction of the Deputy Commissioner of Customs or Asstt. Commissioner of Customs within a period of 30 days of the expiry of period allowed for fulfillment of export obligation. As such, he held as under:

> *"9. I find that the conditions with respect to the discharge of EO as extracted above states that i) EO should be discharged as per the license and; ii) the importer should*

produce evidence of discharge of export obligation to the satisfaction of the Deputy Commissioner of Customs or Assistant Commissioner of Customs. Thus the confirmation of demand on the ground of non submission of EODC issued by DGFT treating it as a violation of Notification 93/2004-Cus dated 10.9.2004 is not sustainable and thus OIO needs to be set aside on this ground alone. "

He also relied upon the Hon'ble Supreme Court decision in the case of ***Commissioner of Customs, Hyderabad vs. Penner Industries Ltd. [2015 (322) ELT 402 (SC)]*** as also other decisions to hold that Customs authorities are required to look into the completion of condition of notification independently and EODC issued by DGFT cannot be conclusive for fastening or absolving from liability under the Customs Act. Thereafter, he examined the various documents placed before him and made certain observations about the shipping bill numbers and passed the impugned orders as under:

a. *"Adjudicating Authority must take note of shipping bills which are duly authenticated by customs & BRC submitted by appellant towards fulfillment of export obligation against the license in question.*

b. *With respect to missing zero on Shipping Bills, I direct the adjudicating authority to verify whether there was any import against the 9 digit license no. printed on these* *shipping bills and if the answer is no, then these shipping bills need to be counted against the license in question by treating it as a typographical error because shipping bill cannot be utilized for an Advance License under which no import took place.*

c. *Adjudicating Authority will further recheck the calculations submitted by the appellant regarding the duty & interest paid on imports corresponding to the unfulfilled EO. If he finds that the shortfall in EO is more compared to as submitted by the appellant, or calculation are not correct in any respect, he will be at liberty to quantify the corresponding duty liability and the appellant shall* be *liable to pay the differential duty along with interest."*

6. Being aggrieved with the said order, Revenue filed the present appeal. Learned AR appearing for the Revenue draws our attention to Chapter 4 of the Foreign Trade Policy which deals with the Advance Authorization Scheme and Duty Exemption Scheme and in terms of the said scheme, the importer is required to produce EODC certificate and the Customs shall verify that the details of the export as given in the discharge certificate as per their records. It stands argued before us that there is no provision which empowers the Customs department to redeem the advance license issued by DGFT.

7. We find that the issue in the present case is not redemption of the advance license which undoubtedly has to be done by the DGFT. The issue involved is as to whether the Customs duty foregone in terms of notification at the time of import is required to be adjudicated and confirmed, in case EODC are not produced but the factum of export is otherwise established from the parallel document. The respondents have made it clear that they are not claiming redemption of advance license from the Customs which could only be done by DGFT and they are only aggrieved with the confirmation of Customs duty.

On going through the notification as also the order of Commissioner (Appeals), we find that there is no such condition in the notification which requires the importer to produce EODC certificate from the DGFT for establishing the factum of export. The notification condition requires the importer to produce the evidence of discharge of export obligation to the satisfaction of the authorities. Such discharge of export obligation can be established by any evidence, which need not be EODC. If such discharge of export obligation can be established by the importer from the other documents, as has been done in the present case, the non-submission of EODC certificate can not be held to be violation of condition of notification. It is well settled law that no extraneous condition can be introduced into any notification and insistence upon such conditions cannot be made by the Revenue, when there is no such condition in the notification. In the absence of any such condition in the notification, any reference to the provisions of Foreign Trade Policy, which mainly deals with the issuance of the license and redemption of the same, would be a futile exercise. If legislature intended to make the production of EODC certificate as one of the essential and relevant condition of the notification, the same would have found its place in the language of the notification itself. As such, we are of the view that notification has to be interpreted as it stand and no infirmity can be found in the order of Commissioner (Appeals). Accordingly, Revenue's appeal is rejected.

(pronounced in the open court on 21.04.2017)

(Archana Wadhwa)
Member(Judicial)

(V Padmanabhan)
Member(Technical)

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