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

Date of Hearing/Decision:10.08.2017

Customs Appeal No.50850/2017

[Arising out of Order-in-Original No.34/2016/N.K. SINHA/COMMR/EXP/EPM/ICD/TKD dated 27.12.2016 passed by the Commissioner of Customs (Export) Inland Container Depot, New Delhi]

M/s.Shirdi Industries Ltd. Appellant

Vs.

CC, New Delhi Respondent

Appearance:
Rep. by Ms. Nupur Maheshwari, Advocate for the appellant.
Rep. by Shri K. Poddar, DR for the respondent.

Coram: Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Final Order No.55893/2017

Per Justice Dr. Satish Chandra

The present appeal is filed against the Order-in-Original No.34/2016/N.K.SINHA/COMMR/EXP/EPM/ICD/TKD dated 27.12.2016 passed by the Commissioner of Customs (Export), New Delhi.

2. The brief facts of the case are that the appellant was authorized to import the goods and within prescribed time, they were supposed to export the goods. The relevant period is 2009-2010.

3. During the period under consideration, the appellant was required to fulfill the export obligations within a period of three years. Being a sick unit, the appellant had failed to fulfill the export obligations. So, the duty demand was made

by the Adjudicating Authority and penalty was also levied. Being aggrieved, the appellant filed the present appeal.

4. With this background, we heard Ms. Nupur Maheshwari, ld. Counsel for the appellant and Shri K. Poddar, ld. Departmental Representative for the Department.

5. After hearing both the parties and on perusal of record, it appears that the appellant had failed to fulfill the export obligations within the prescribed time. During the course of hearing, ld. Counsel drew our attention to the Foreign Trade Policy – General Provisions regarding import and export wherein at **para 4.1.9A,** where it is mentioned that, "Any firm/company registered with BIFR or any firm/company acquiring a unit, which is under BIFR shall be allowed Export Obligation Period (EOP) extension as per rehabilitation package prepared subject to approval of BIFR or 5 years if not specified, without payment of composition fee. This facility will also be made available to SSI units as per rehabilitation scheme of concerned State Government".

6. Further, in the Customs Circular No.30/2005-Customs dated 12.07.2005 issued by the Board vide para 5.3 it is mentioned that "Units registered under BIFR & sick SSI units have been allowed export obligation (EO) extension as per the rehabilitation package or a period upto five years reckoned form the date of issuance of the advance licence, whichever is higher (para 4.1.9A of the FTP)".

7. Accordingly, the above quoted provisions were not considered by the Adjudicating Authority. When it is so, then we set aside the impugned order and remand the matter to the Adjudicating Authority to decide the issue de novo, but

by providing reasonable opportunity of hearing to the appellant. Fresh evidence, if necessary, may be admitted as per law.

8. In the result, the appeal filed by the appellant is allowed by way of remand.

[Order dictated & pronounced in open court]

(Justice Dr. Satish Chandra)
President

(V. Padmanabhan)
Member (Technical)

Ckp.