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

Date of hearing/decision: 11.09. 2017

Customs Appeal No. 50442 / 2017
(Arising out of order in original No. 033/2016/ N.K. Sinha/ COMMR/EXP/EPM/ICD /TKD dated 30.11.2016 passed by the Commissioner (Export), ICD, New Delhi).

M/s Treadstone Limited Appellant

Vs.

CC, New Delhi Respondent

Appearance:

Ms. Reena Rawat, Advocate for the appellant
Sh. R. K. Manjhi, A. R. for the Revenue

Coram:

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

Final Order No. 56556/2017

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

The present appeal is filed by the appellant against the order in original No. 033/2016/ N.K. Sinha/ COMMR/EXP/EPM/ICD /TKD dated 30.11.2016 passed by the Commissioner (Export), ICD, New Delhi.

2. Brief facts of the case are that the appellant had imported various inputs under advance licence under Customs Notification at "nil" rate of duty subject to the condition that the licence holder shall fulfil the export obligation and other conditions. In the instant case, the appellant has fulfilled all the conditions except the "advance licence" certificate as per the EXIM Policy 1997 – 2002 for import

of certain capital goods. So, customs duty alongwith penalty was demanded. Being aggrieved, the appellant has filed the present appeal.

3. With this background, we heard Ms. Reena Rawat, ld. Advocate for the appellant and Sh. R. K. Manjhi, ld. AR for the Revenue.

4. During the course of arguments, Ms. Reena Rawat, ld. Advocate submits that the certificate is already pending with the DGFT which is likely to be obtained very shortly and a chance may be given to submit the same before the competent authority.

5. After hearing both the parties and on perusal of record, it appears that the issue of "advance licence" come up before the Tribunal in the case of ***Prime Opthalmic Product Pvt. Ltd. vs. CC –Final Order No. C/A/52899/2017-CU(DB) dt. 05.04.2017*** where it was observed that –

> "5. *The appellant has imported goods under the Customs Notification No.93/2004 dated 10.09.2004 under the Advance License issued by the DGFT. In terms of the conditions in the notification, the appellant is required to fulfil the export obligation and other conditions specified in the Advance license. It is on record that the Customs authorities have chosen to demand Customs duty involved in the goods imported under the said advance license for violation on the part of the appellant to submit the export documents to the DGFT, who will in turn issue the DODC.*
>
> *6. The appellant has claimed that they have fulfilled the export obligation and have submitted the list of shipping bills said to cover such exports. They have also clearly admitted that they have by mistake not mentioned advance license number in the export documents.*
>
> *On going through the relevant notification, it is seen that the export obligation needs to be fulfilled by the appellants. The notification nowhere specify that such fulfilment of the export obligation is to be established only on the basis of EODC to be obtained from the DGFT. It would be open to the Customs authorities to satisfy themselves about the fulfilment of such export obligation on the basis of other export related documents also.*
>
> *7. In view of the above, we deem it appropriate to set aside the impugned order and remand the matter to the original adjudicating*

> *authority with a direction to undertake verification of the export documents and to satisfy about the fulfilment of the said obligation. No doubt the original adjudicating authority will extend the effective hearing giving the opportunity to the appellant to produce all the relevant documents to establish their case. We also make it clear that the authorities will be at liberty to raise demands of Customs duty against the appellant in case the appellant is not able to satisfy the fulfilment of the export obligation.*
>
> *8. In view of the above, the impugned order is set aside and the appeal is disposed of by way of remand*".

6. By following the ratio laid down (supra), we set aside the impugned order and remand the matter to the original Adjudicating Authority with the direction (supra) to decide the issue **denovo**, but by providing an opportunity of being heard. Fresh evidence, if need be, may be admitted as per law.

7. In the result, the appeal is allowed by way of remand.

(Dictated and pronounced in the open Court).

(V. Padmanabhan) Member (Technical)	(Justice (Dr.) Satish Chandra) President

Pant