

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

Customs Appeal No. 50534 of 2018

**[Arising out of the Order-in-Appeal No. 1276/2015 dated
30.9.2015. passed by Commissioner (Appeals), of Customs, New
Delhi]**

M/s. Eicher Tractor.

Appellants

Vs.

CC, New Delhi

Respondent

Appearance:

Shri Nand Kishore, Advocates for the Appellants

Shri Rakesh Kumar, AR for the Respondent

CORAM:

Hon'ble Mr. C L Mahar, Member (Technical)

Hon'ble Ms. Rachna Gupta, Member (Judicial)

Date of Hearing/ Decision: 13.09.2018

FINAL ORDER No. 53017 / 2018

Per Rachna Gupta:

Present appeal is directed against the order No. 1276/2015 dated 30.9.2015.

2. Relevant facts are that the appellants have imported and cleared the goods under EPCG License No. 0530137601 dated 15.12.2004 at concessional rate of 5% under Notification No. 097/2004-Cus dated 17.9.2004, as amended subject to condition that the license holder shall fulfill the Export Obligation as prescribed in the said notification and for which they have executed a Bond for an amount

of Rs10,20,000/- . Department alleged that appellants failed to fulfill the conditions within the prescribed period resulting in issuance of Show Cause Notice No. 59/2013 dated 9.10.2013 proposing the recovery of Rs. 10,20,000/- from the appellant on alleged violation of conditions contained in the said notification. During the pendency of the same, impugned Show Cause Notice No.208/2014 dated 31.11.14 has been issued proposing the same demand of the said Show Cause Notice which was originally confirmed vide order No. 120/2014 dated 18.9.14. The appeal against the said order was filed where the learned Commissioner of Customs (Appeals) recorded that an appropriate order will be passed only upon issuance of EODC or receipt of any order from DGFT in respect of the application for EODC filed by the appellant. Meanwhile order under challenge dated 30.9.2015 in appeal No. CC(A) Cus/ 1276/2015 was also passed. Being aggrieved, the present appeal has been filed.

3. We have heard Shri Nand Kishore learned advocate appearing for the appellant and Shri Rakesh Kumar, learned DR appearing for the Department.

4. It was submitted on behalf of the appellant that infact the impugned Show Cause Notice being subsequent upon the same cause of action is not sustainable, specially when the adjudication of the prior Show Cause Notice is still pending before the adjudicating authority below i.e. Commissioner (Appeals). In addition, it is

impressed upon that the compliance of the conditions of the notification as far as Export Obligation is concerned, the appellant has a fresh evidence in that respect. The same was brought to the notice even of Commissioner (Appeals), but those documents have been ignored.

5. While rebutting these arguments learned DR submitted that authorities below have specifically informed that Export Obligation discharge Certificate which was to be issued from DGFT has not been produced by the appellant. Since there was no evidence seeking time extension for such certificate resultantly authorities have committed no error while deciding the show cause notice against the appellant. The order challenged is prayed to be upheld and appeal be dismissed.

6. After hearing both the sides and perusing the record along with the documents produced by the appellant as on date corroborating the ground as mentioned in para 11 of appeal memorandum. Also, after observing the order in challenge that appeal has been dismissed only for want of said EPCG certificate, we are of the opinion that the appellant be given an opportunity to put forth the documents as impressed upon today before us before the original adjudicating authority being crucial to the adjudication. Accordingly, we remand the matter to the original adjudicating authority requiring them to consider the documents about fulfillment of the Export Obligation as

assailed by the appellant and thereafter to decide the Show cause notice afresh.

7. Accordingly, the appeal stand allowed by way of remand.

(Dictated and pronounced in the open Court)

(C L Mahar)
Member (Technical)

ss

(Rachna Gupta)
Member (Judicial)