CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD

DIVISION BENCH
Court No. I

CUSTOMS APPEAL NO. 409 of 2009

[Arising out of Order-in-Appeal No. 23/2009(V) CH dated 27.02.2009 passed by the Commissioner of Customs, (Appeals), Visakhapatnam]

RASHTRIYA ISPAT NIGAM LIMITED. VISAKHAPATNAM ... APPELLANT

VERSUS

COMMISSIONER OF CUSTOMS VISAKHAPATNAM ... RESPONDENT

APPEARANCE:
Shri Narendra Dave, Advocate for the Appellant
Shri Pavan Kumar, Authorised Representative for the Department

CORAM:
HON'BLE SHRI P V SUBBA RAO, MEMBER (TECHNICAL)
HON'BLE MRS RACHNA GUPTA, MEMBER (JUDICIAL)

DATE OF HEARING: July 28, 2022
DATE OF DECISION: July 28, 2022

FINAL ORDER No. 30076 /2022

PER DR. RACHNA GUPTA

The appellant is a public sector undertaking engaged in manufacturing of pig iron and various steel products. They were granted a Value Based Advance License (VBAL) under the Duty Exemption Entitlement Certificate (DEEC) Scheme bearing No P/L/1525115 dated 19.03.1993 permitting them to import materials to be used for manufacture of goods which are to be exported. As per said license, the Appellants were allowed to import goods to the tune of Rs.29,16,99,000/- (INR) / USD 1,02,35,160 of CIF Value. As per the terms of said license, The appellants were required to fulfill the export obligation amount at FOB value of Rs.68,56,81,500/- (in USD 2,40,59,000/-). When issuing the VBAL Licenses, the USD and INR amounts are indicated as per the exchange rate prevalent at that time. When goods are imported, the VBAL book is debited as per the exchange rate prevalent at that time of each Bill of Entry. This is a case where, if the eligibility for duty free imports under the VBAL license are considered, the appellant exhausted the limit in Rupee terms but still had balance in terms of USD. The reason for this is USD appreciated against Indian Rupee with time, more and more rupees will be debited against each USD of imports.

2. The appellants case is that it is entitled to import goods duty free so long as it has balance in the license in terms of USD and in fact, debit must be made in the license only in terms of USD and not in terms of Rupees. Revenue's position is that the appellant, having exhausted the license in terms of Rupees, cannot import duty free even if there is balance in terms of USD in its license.

3. The appellants filed two Bills of Entry No. 800-801 both dated 30.03.2000 and another Bill of Entry No. 822 dated 31.03.2000 for a total value of Rs. 77,41,458/-. The appellant had just got another Bill of Entry No. 803 dated 30.3.2000 for total CIF value Rs.70,37,725/-. As on said date the balance shown in the license was Rs. 71,31,176.33. Accordingly the said Bill of Entry No. 803 dated 30.03.2020 was cleared thereby leaving balance of Rs. 93,459/-. The said balance was much less than the value of aforementioned remaining three Bills of Entry for total value of Rs.77,41,458/-. Though the duty free benefit to the extent of value of balance i.e. Rs. 93,459/- was extended but still the appellant was asked to deposit duty on the goods of the aforesaid three Bills of entry. The same was deposited for an amount of Rs. 65,29,653/- however under protest because the appellant had balance in its license in terms of USD to cover those imports.

4. The aforesaid decision of the Department on imposition of duty was challenged by the appellant before Commissioner (Appeals), Vishakapatnam along with seeking relief of adjusting the balance of any free convertible foreign currency certifying and that duty free benefit for three of Bills of Entry which were filed for clearance for Sea Water Magnesiten may be extended. Commissioner (Appeals) vide Order-in Appeal No. 70/2006 dated 5.10.2006 set aside the decision as being violative of principles of natural justice and remanded the matter back for denovo adjudication with a directions that a show cause notice be served upon the appellants and they be heard in person. Consequent to those directions that show cause notice No. 29/2007 dated 11.05.2007 was served upon the appellants proposing the duty demand with respect to the goods covered by Bills of Entry No. 800 and 801 of 30.3.2000 and Bill of Entry No. 822 dated 31.3.2000 totally valued at Rs. 77,41,458/- and the appropriation of the amount of Rs. 65,29,653/- which was paid by them under protest. The said proposal was confirmed by the Original Adjudicating Authority vide order dated 54/2007 dated 20.07.2007. The appellant's appeal against this order has been rejected vide the Order-in-Appeal No. 23/2009 dated 27.02.2009. Being aggrieved the appellant is before this Tribunal.

5. We have heard Shri Narendra Dave, learned Counsel for the appellant and Shri Pavan Kumar, learned Authorised Counsel for the department.

6. Learned Counsel for the appellant has submitted that the VABAL license was granted to the appellant in March 1993. During the period from 1993-94 all imports were debited in DEEC book and monitored the CIF value of the Licenses only in Indian Rupees. However in all the Bills of Entries, the CIF value was clearly mentioned in freely convertible foreign currency also. The appellant was importing by debiting his license only in Indian

Currency (INR). The appellants had approached the jurisdictional Deputy Commissioner of Customs in December, 1994 for converting the debits from Indian Rupees to freely convertible foreign currency with the request that balance value could be arrived in USD. It is further mentioned that pursuant to the appellants request, Assistant Commissioner vide order dated 26.12.1994 had converted all the debits from Indian Rupees to US dollars and arrived at the balance value as Rs.29,02,076.33 INR/ 10,81,430.24 USD.

7. The Appellants further has placed reliance on the Policy Circular No.42 (RE-2008)/2004-2009 claim 20.11.2008 issued by the Directorate General of Foreign Trade, India. It is submitted that said circular clarifies that for the purpose of clearance of imported items against the advance authorization/DFIAS, imports would be allowed as per the balance CIF value in freely convertible currency irrespective of the fact as to whether the CIF value of imports had exhausted in the said authorization in terms of Rupee. And alternatively the appellant was also entitled to drawback. Hence, it was the revenue neutral situation and the demand failed to survive on this count as well. With these submissions, the confirmation of duty demand and appropriation of amount deposited under protest is alleged as wrong. Order under challenge is therefore, prayed to be set aside and appeal to be allowed.

8. While rebutting all the submissions of appellant, it is submitted on behalf of the department that as against the VABAL license issued to the appellant, they had export obligation for an amount of Rs. 68,56,81,500/- INR/ USD 2,40,59,000/-, that too within 12 months of the grant of license. The convertible rate at that point of time is mentioned as 1 USD = 28.50 Rs. It is submitted that on 26.12.1994, an balance was amounting to Rs.29,02,076/- INR and USD 10,81,430 (in the records maintained by the appellant (debit sheet). These values

shown in the appellants register reflect that the conversion rate was just Rs.2.683 to 1 USD. Since it is absolutely untenable, especially when at the relevant time the conversion rate was 1 USD =Rs.31.55 in terms of Notification No. 67/94-Cus (NT) dated 29.11.1994. Learned Departmental Representative impressed upon that other entries in the said debit sheet were reflecting such amounts in INR and corresponding USD. The conversion rate in accordance with the Notification No. 67/94 Cus (NT) dated 29.11.1994 was USD - 31.55 INR. The adjudicating authority below have confirmed the demand based on these observations solely. Hence there is no infirmity in the Order under challenge.

9. Learned Departmental Representative has further impressed upon that after the above credits the balance in Rupees is Rs.71,31,176/- and in USD it is 12,15,474, in the VABAL scrip as on 16.03.1995. If the credit Rs.29,02,076/- to USD 10,81,430 on 26.12.1994, is considered correct in Dollar value, then the value of VABAL License works out to Rs.4,69,31,757/- (i.e. 10,81,430 x 38.61 = Rs.4,69,31,757/-, at exchange rate of 1 USD = Rs.38.61/-). This value is much higher than the initial value of License No.15251115, dt.19.03.1993, which was issued to M/s RINL for total Value of Rs.68,56,81,500/- or USD 2,40,59,000. This would not be the scenario contemplated in the VABAL License.

This reason is sufficient to support the findings under challenge. Accordingly, the appeal in hand is prayed to be dismissed.

10. Having heard the rival contentions of the parties, perusing the entire record, we observe that following are the admitted facts:

(i) The VABAL license dated 19.3.1993 revalidated upto March 2000, was issued to the appellant for a total value of Rs.68,56,81,500 INR /2,40,59,000 USD at a conversion rate (conversion at that relevant time was 1 USD = 28.50 INR)

(ii) On 26.12.1994 the appellants had credit balance of Rs.29,02,076/- INR/ 10,81,430 USD.

(iii) Said credit balance was duly certified by the then Assistant Commissioner of Customs and the department continue to show the debit entries of Indian Rupees as well as in USD.

(iv) This practice continued till16.3.1995 when appellants had a balance of Rs. 71,31,176/-INR/ 12,15,474/- USD.

(v) After this date the department debited the appellants DEEC license in terms of Indian Rupees only and the debit entries of free convertible import was not shown.

11. The Commissioner (Appeals) while confirming the demand of duty on the assessable value of goods covered under three Shipping Bills No. 801 and 802 both dated 30.3.2000 and 822 dated 31.3.2000, has based the decision on the sole ground that the amount of Rs. 29,02,076 INR /10,81,430 USD as shown in the debit sheet on 26.12.1994 was factually incorrect, as there could be no conversion of USD @ R.2.683 on the relevant date. Another ground taken by Commissioner (Appeals) is that the appellants in past also had debited the license in terms of Indian Currency only and had never raised any objection with respect to this transaction. The objection with respect to impugned Bills of Entry that the balance paid was of the value of imported goods covered under those Bill of Entries, therefore is not justified. The appellants are not allowed to raise the objection that the Department had not followed the prescribed procedure for debiting through license.

12. These observations in the light of the observed admitted facts appear to be absolutely wrong on face of its record. The

period of license is covering as many as 7 years. The conversion rate of USD is the constantly changing figure. Accordingly, the comparison of the value in INR and value in USD mentioned on the date of issue of license is not at all possible which is why it was the mandate of the license that debit has to be shown in INR as well as freely convertible currency USD. We now look into the Policy Circular No.42 (RE-2008)/2004-2009 claim 20.11.2008 which has been brought to our notice by learned Counsel for the appellant . The said circular reads as follows:

> "Trade & Industry have represented that at the time of clearance of import consignment against DFIA/advance authorization, Customs authority at some of the field formations are not allowing debit of CIF value in freely convertible currency in case the CIF value in Rupee terms has been exhausted.
>
> The matter has been examined in this Directorate. It is informed that under Advance Authorization and DFIA schemes, value addition is calculated in terms of freely convertible currency and not in terms of Rupee. Further, in terms of para 9.2.1.1 of HBP v.1, "*No enhancement in Rupee value shall be necessary if remittance of foreign exchange is covered by CIF value of authorisation shown in freely convertible currency*."
>
> It is clarified that for the purpose of clearance of imported items against the advance authorization/DFIAS, imports would be allowed as per the balance CIF value in freely convertible currency irrespective of the fact as to whether the CIF value of imports had exhausted in the said authorisation in terms of Rupee. This is subject to other conditions of the Authorisation.
>
> This issues with the approval of DGFT."

13. A bare perusal makes it clear that it is the balance CIF value in freely convertible currency which is relevant for the purpose of clearance of imported items against the advance authorization. The fact that CIF value for imports has been exhausted in terms of Rupees mentioned in the said authorization is irrelevant to be considered. The logic of the Commissioner (Appeals) that if the balance in USD and balance in INR are considered the exchange rate would be 1USD = Rs. 2.683 is fallacious. As discussed above, with USD strengthening against INR over time for each USD of debit in the

licenses, more and more Rupees will be debited and it is possible that the entire Rupee balance may be exhausted while there is still balance in USD. Calculating conversion rate with these balance is absurd. For instance if only Rs.10/- is left in balance while there is still a balance of USD 1,000/- it would be absurd to calculate that each Rupee is equal to USD 100. Also all the appellants herein is none but a public sector undertaking, there can be no apparent reason for PSU to have any intent to evade the duty. Above all while making the export of goods, manufactured from those imported articles, the appellant was definitely be entitled for draw back. No importer would have any intent to evade duty in such a situation which is nothing but revenue neutral situation. Keeping in view the same, balance of USD the freely convertible currency, in VABAL License is opined to be sufficient to cover the amount of three of the said Bills of Entry. Hence, we are of the opinion that the benefit of VABAL License of duty free import has wrongly been denied to the appellant by Adjudicating Authority.

14. Resultantly, the order under challenge is hereby set aside. Consequent thereto the appeal stands allowed.

(P V SUBBA RAO)
MEMBER (TECHNICAL)

(RACHNA GUPTA)
MEMBER (JUDICIAL)

ss