CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD

REGIONAL BENCH

Customs Appeal No. 30137 of 2022

(Arising out of order-in-appeal No. VIZ-CUSTM-000-COM-04-2021-22 dated 29.12.2021 passed by Principal Commissioner of Customs Visakhapatnam)

IND Synergy Ltd., **...Appellant**
P.H. 18-20, Village Kotmar,
Raigarh,
Chhattisgarh-496001

Versus

Commissioner of Customs, Visakhapatnam **...Respondent**
Port Area,
Visakhapatnam-530035

APPEARANCE:
Mr R.k Tomar, Adv for the appellant
MrMir Anwar Mohiuddin, Authorized Representative for the Revenue

CORAM:
HON'BLE MR. ANIL CHOUDHARY, MEMBER(JUDICIAL)
HON'BLE MR. P. V. SUBBA RAO MEMBER (TECHNICAL)

FINAL ORDER NO.30109 of 2022

Date of Hearing: 12.09.2022

PER P.V. SUBBA RAO

This appeal has been filed by M/s IND Synergy Ltd., (Raipur) assailing the order-in-original dated 29.12.2021 passed by the Principal Commissioner of Customs Visakhapatnam, the operative part of which is as follows:

"(a) I deny the benefit of Customs Notification 64/2008 dated 09.05.2008 as amended availed by the importer in respect of five Bills of Entry Nos 553972/14.07.2009, 551795/13.04.2009, 551609/01.04.2009, 551608/01.04.2009 and 550812/18.02.2009 against EPCG Licence No. 0330021966 dated 05.12.2008.

(b) I confirm the demand and order recovery of differential duty of Rs 1,29,20,746/-)Rupees One Crore Twnety Nine Lakh Twenty Thousand Seven Hundred Fourty Six only) with applicable interest in terms of Section 143(3) of the Customs Act 1962 read with Notification 64/2008 dtd 9.5.2008 and EPCG Bond No. 200900061 executed by the importer.

(c) I hold that Capital goods imported vide five Bills of Entry listed at (a) above totally valued Rs 6,95,57,021/- (Rupees Six Crores Ninety Five Lakh Fifty Seven Thousand and Twenty One only) are liable for confiscation under Section 111(o) of Customs Act 1962 and order accordingly.

(d) However, I give an option to the importer to redeem the confiscated goods on payment of redemption fine of Rs 1,00,00,000/-(Rs one crore only) under Section 125 of Customs Act 1962.

(e) I impose penalty of Rs 12,00,000/- (Rs Twelve Lakhs only) under Section 112(a) of Customs Act 1962 on M/s Ind Synergy Limited for the violations committed discussed in the order.

31. This order is issued without prejudice to any other action that may be initiated or pending under the Customs Act 1962 or any other law for the time being in force."

2. The facts of the case in brief are that the appellants were issued a license dated 5.12.2008 under export promotion of capital goods (EPCG) Scheme by the Director General of Foreign Trade, Mumbai. As per the scheme, read with Customs Notification No. 64/2008-Cus dated 09/05/2008, capital goods imported under license are exempted from payment of duty in excess of 5% subject to certain conditions including the condition that the appellant has to fulfill the export obligation equivalent to 8 times the duty suffered on capital goods on FOB basis within a period of 8 years from the date of issue of license i.e., by 04.12.2016 and thereafter the appellant had to obtain export obligation discharge certificate (EODC) from the DGFT and produce before the Customs Officer.

3. The appellant executed a bond at the time of import to the effect that it would observe all the terms and conditions of the said notification and license and in the event of failure to fulfill either in full or part the export obligation, it would pay customs duty but for the exemption notification along with interest. The Office of the Commissioner called upon the importers to produce EODC repeatedly but it had failed to do so. Learned counsel for the appellant fairly submits that the appellant was not able to fulfill the complete export obligation within time. Therefore, a show-cause notice dated 19.04.2021 was issued by the Commissioner to the appellant

proposing to deny the benefit of the exemption notification due to the aforesaid failure and demand duty from them under Section 28(1) of the Customs Act 1962 along with interest under Section 28 AA read with conditions of bond executed by the appellant for non-compliance of the conditions stipulated therein. It was further proposed to confiscate the goods which were imported under Section 111(o) for failure to fulfill the conditions subject to which the goods were exempted under the Notification. It was also proposed to impose a penalty on the appellant under Section 112.

4. After following due process, the Commissioner passed the impugned order.

5. Learned counsel for the appellant submits that during the relevant period the appellant was not able to produce EODC because it had not fulfilled the export obligation. However, it applied to the DGFT and further to the Ministry of commerce seeking extension of time to fulfill the export obligation. The appellant's request was finally accepted and on 1st April 2022 their license was amended as follows:

"As per the decision taken in PRC Meeting, EOP of the license is extended for two years from the date of endorsement i.e. 31.03.2024"

6. Learned counsel submits that PRC stands for "Policy Relaxation Committee" of Ministry of Commerce which has now granted them two years further time to fulfill the export obligation i.e. up to 31.03.2024. He, therefore, submits that in the light of the amendment to the license, the impugned order cannot be sustained any longer. He prays that the same may be set aside and the appeal may be allowed. He further submits that since the appellant's capital goods have been confiscated in the impugned order, unless they are released immediately, the appellant will not be able to fulfill the export obligation because the capital goods must be used to manufacture the goods for export. Learned authorized representative for the Revenue reiterates the impugned order.

7. We have considered the submissions of both sides and perused the records. The impugned order was passed correctly as per the conditions of the license which existed during the relevant period. Thereafter, the licensing authority and the Policy Relaxation Committee have modified the

conditions of license and allowed two years further time to the appellant to fulfill the export obligation. Therefore, the impugned order can no longer be sustained at this stage and we accordingly set aside the same.

8. Needless to say that if the appellant fails to fulfill the export obligation within the extended period Revenue is free to initiate further action.

8. The impugned order is accordingly set aside and the appeal is allowed with consequential relief.

(Order dictated and pronounced in the open Court)

(ANIL CHOUDHARY)
MEMBER(JUDICIAL)

(P.V.SUBBA RAO)
MEMBER (TECHNICAL)

Neela reddy