

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE  
TRIBUNAL, KOLKATA**

REGIONAL BENCH – COURT NO.2

**Customs Appeal No. 77308 of 2018**

(Arising out of Order-in-Appeal No.KOL/CUS(PORT)/AA/577/2018 dated 07.03.2018 passed by Commissioner of Customs (Appeals), Kolkata)

**M/s. Fort Projects Pvt. Ltd.**

(59C, Chowringhee Road, Kolkata-700020)

**Appellant**

*VERSUS*

**Commissioner of Customs (Port), Kolkata**

(Customs House, 15/1, Strand Road, Kolkata-700001)

**Respondent**

**APPEARANCE :**

Mrs. Manju Agarwal & Mr. P. Roy, both Advocate for the Appellant  
Mr. Tariq Sulaiman, Authorized Representative for the Respondent

**CORAM:**

**HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)**

**FINAL ORDER NO.75802/2023**

Date of Hearing : 20 June 2023

Date of Decision : 20 June 2023

**PER R. MURALIDHAR**

The Appellant is a service provider and they had obtained EPCG Licences for import of capital goods under concessional rate of Customs Duty. They have imported the capital goods vide four Bills of Entry during the period 2007-2009 getting the Customs Duty benefit under the EPCG Licences. Their imports were covered by the Bank Guarantee for about Rs.33 Lakhs. The DGFT after about six years, cancelled the EPCG Licence on the ground that the Appellant was not entitled to import the capital goods under concessional rate of Customs Duty. Thereupon, the Appellant were required to pay the Custom Duty foregone by the Revenue at the time of imports. The Appellant vide their letter dated 30/12/2013 addressed to the Commissioner of Customs (Port), Kolkata has submitted that the Customs Duty in question may be realized by encashing the Bank Guarantee already available with the Department. The Department has encashed the bank guarantee towards Customs Duty liability and made a demand of

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Rs.30,58,895/- as interest amount. For arriving at this interest amount, the number of days' delay between the date of clearance of goods and date of realization of bank guarantee has been taken. Being agitated by the confirmed demand of interest, the Appellant is before the Tribunal.

2. The Learned Advocate appearing on behalf of the Appellant submits that the DGFT took the decision to cancel their licence after an enormous delay of six years. The DGFT never made any enquiries as to whether the Appellant was entitled to get the benefit of EPCG Licence or not. The Appellant had agreed to pay the Customs Duty liability by way encashment of Bank Guarantee and had pleaded that interest and penalty may be waived. She also submits that there is no justification to charge interest when the EPCG Licences were cancelled suddenly after more than six years. Hence, she prays that the present Appeal may be allowed.

4. The Learned AR submits that the Customs Department can take any step only after action has been initiated by the DGFT. Since, DGFT has cancelled the Licences in 2013, the Appellant is required to pay the entire Customs Duty foregone at the time of import along with interest. Therefore, he justifies the orders passed by the lower Authorities.

5. Heard both sides.

6. The facts are not in dispute and both sides agree that the EPCG Licences were issued in 2007 but were cancelled by DGFT in 2013. So far as the Customs Duty initially saved is concerned, in terms of Notification No.97/2004-Cus and 64/2008-Cus, the Appellant has the liability to discharge the Customs Duty along with applicable interest as per Para 2(5) of these Notifications, if the conditions of these Notifications are not fulfilled. Therefore when Licence has been cancelled and Customs Duty is paid, the interest liability on such Customs Duty payment cannot be waived. Hence, the prayer of the Appellant to waive the interest is rejected. However, going through the documents submitted by them, it is seen that the Appellant has written a letter on 30/12/2013 submitted to the Department on 02/01/2014 wherein they have requested to Commissioner to realize the Customs

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Duty by encashing the Bank Guarantee. It is seen from letter F. No. S60(MISC)-265/14A.EPCG dated 12/08/2016 issued by the office of the Deputy Commissioner of Customs, the Bank Gurantee has been enchased on 07/03/2014 and 25/02/2015. This means that the encashment is after more two months in respect of two Bills of Entry and after about one year four months in respect of the other two Bills of Entry. The Adjudicating Authority is directed to re-calculate and re-quantify the interest payable by taking the realization date as 03/01/2014 as their consent to the Department for encashment of Bank Guarantee was given on 02/01/2014 itself . The Appellant is liable to pay the re-quantified interest within 30 days from the date of re-quantification.

7. The Appeal is disposed of thus.

(Dictated and pronounced in the open court.)

Sd/-

**(R. Muralidhar)**  
**Member (Judicial)**

Pooja