IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH - COURT NO.1

Customs Appeal No.78535 of 2018

(Arising out of Order-in-Original No.KOL/CUS/COMM/PORT/44/2018 dated 29.05.2018 passed by Commissioner of Customs (Port), Kolkata.)

Commissioner of Customs (Port), Kolkata
(15/1, Strand Road, Custom House, Kolkata-700001.)

...Appellant

VERSUS

M/s. Patna Offset Press

.....Respondent

(Naya Tola, Near Dharhara Kothi, Patna-800004.)

APPEARANCE

Shri A.K.Choudhary, Authorized Representative for the Revenue
Shri K.K.Pandey, Consultant for the Respondent

CORAM: HON'BLE SHRI ASHOK JINDAL, MEMBER(JUDICIAL)
HON'BLE SHRI RAJEEV TANDON, MEMBER(TECHNICAL)

FINAL ORDER NO. 77536/2023

DATE OF HEARING : 21 November 2023
DATE OF DECISION : 21 November 2023

Per : ASHOK JINDAL :

The revenue is in appeal against the impugned order wherein the adjudicating authority did not impose any redemption fine and penalty on the respondent.

2. The facts of the case are that the respondent obtained Zero Duty EPCG Authorization No.2130000128 dated 12.05.2011 was issued by the Asstt.Director General of Foreign Trade, under the Office of Jt. Director General of Foreign Trade, Patna along with the condition sheet (Annexure A), in which the terms and conditions of the said Authorization was incorporated. The said condition sheet states that:

i) The Authorization will be operative as per the provisions of Foreign Trade Poicy (2009-2014) and Handbook of Procedures (Vol.I) 2009-2014 or any other law/provision for the time being in force read with concerned Customs Notification No.102/2009 dated 11.09.2009 as amended from time to time.

ii) The authorization holder shall execute Bank Guarantee/LUT (As the case may be) to Customs Authority before clearance of the first consignment as per Customs Circular No.58/2004 dated 31.10.2004 as amended from time to time.

iii) The authorization holder shall submit installation certificate to Regional Authority within six months from the date of completion of imports against the subject authorization.

iv) The Authorization holder is under obligation to export item worth US $ 1,442,091.33 i.e. 6 times the duty saved of Capital goods on FOB Basis within a period of 6 years. The export obligation shall be fulfilled by the use of the imported capital goods.

v) The authorization holder is also required to maintain its average of the past three years export performance of the same and similar products.

vi) Authorization holder shall submit statement of export within three months from the expiry of block year duly certified by a chartered Accountant and concerned bank to the Regional Authority. He shall also submit yearly performance of export to the RA by 30th April of every year.

3. Para 5.8 of the Hand Book of Procedures (2009-14) Volume-I, has stipulated that License under the Zero duty EPCG scheme shall fulfill the export obligation over the specified period in the following proportions:-

Sl.No.	Period (Zero Duty)	Proportion of minimum export obligation to be fulfilled
1.	First Block of 1st to 4th year	50%
2.	Second block of 5th and 6th year	50%

4. Para 5.8.3 of the Hand Book of Procedures (2009-14), Volume-I, stipulates that where export obligation of any particular block of years is not fulfilled in terms of the above proportions, except in such cases where the export obligation prescribed for a particular block of the year is extended by the regional Authority subject to payment of composition fee of 2% on duty saved amount equal to unfulfilled portion of EO, such Authorization holder shall within 3 months from the expiry of the block of years, pay duties of customs (along with applicable interest as notified by DoR) of an amount equal to the proportion of the duty leviable on the goods which bears the same proportion as the unfulfilled portion of the export obligation bears to be total export obligation.

5. Without payment of duty, the goods were cleared. The authorization was in operation as per the provisions of Foreign Trade Policy (2009-2014) and Handbook of Procedures (Vol.I) 2009-2014 or any other law/provision for the time being in force read with concerned Customs Notification No.102/2009 dated 11.09.2009 as amended from time to time. The condition No.6 of the Notification No.102/2009-Cus dated 11.09.2009, as amended, provides that the importer executes a bond in such form and for such sum and with such surety or security as may be specified by the Dy/Asstt.Commissioner of Customs binding himself to comply with all the conditions of this notification as well as to fulfill export obligation on Free on Board (FOB) basis equivalent to six times the duty saved on the goods imported as may be specified on the authorization, or for such higher sum as may be fixed or endorsed by the Licensing Authority or Regional Authority in terms of Para 5.10 of Handbook Procedures Vol I, issued under Para 2.4 of the Foreign Trade Policy, within a period of six years from the date of issue of Authorization, in the following proportions namely:-

Sl.No.	Period (Zero Duty)	Proportion of minimum export obligation to be fulfilled
1.	First Block of 1^{st} to 4^{th} year	50%
2.	Second block of 5^{th} and 6^{th} year	50%

6. Condition (8) of the Notification No.102/2009-Cus dated 11.09.2009, as amended, provides that the importer produces within 30 days from the expiry of each block from the date of issue of authorization or within such extended period as the Deputy/Asstt. Commissioner of Customs may allow evidence to the satisfaction of the Deputy/Asstt. Commissioner of Customs showing the extent of export obligation fulfilled, and where the export obligation of any particular block is not fulfilled in terms of preceding condition, the importer shall within three months from the expiry of the said block pay duties of Customs equal to an amount bears the same proportion to the duties leviable on the goods, but for the exemption contained herein, which the unfulfilled portion of the export obligation bears to the total export obligation, together with interest rate at the rate of 15% per annum from the date of clearance of the goods.

7. As the respondent could not fulfill their export obligation in terms of the condition No.6 of the Notification, therefore, DRI investigated the case and on pointing out by the DRI the respondent paid the duty payable along with interest. But, the proceedings were initiated against the respondent by issuance of the show cause notice to impose redemption fine and penalty along with demand of duty and interest. The matter was adjudicated. The adjudicating authority after recording the fact that on pointing out, the respondent paid duty and interest and refrained from imposing redemption fine and penalty on the respondent. Against the said order, revenue is before us.

8. The Ld.AR appearing on behalf of the revenue submits that as the appellant violated the condition of the Notification, therefore, redemption fine and penalty were required to be imposed on the respondent, in that circumstances, the impugned order qua not imposing redemption fine and penalty is to be modified.

9. On the other hand, the Ld.Consultant appearing on behalf of the respondent submits that as per the Handbook Procedure of Foreign Trade Policy Volume-I of Foreign Trade Policy for 2009-2014, the respondent is required to fulfill export obligation within

6-8 years and they were under premise within 6 years they have to fulfill the export obligation, therefore, they did not pay duty after 4 years on account of non-fulfilling the export obligation. But on pointing out, they paid duty along with interest. Therefore, the redemption fine is not imposable on the respondent.

10. Heard the parties, considered the submissions.

11. We find that in this case no doubt the respondent in terms of Notification, has failed to fulfill the export obligation within a block of 4 years, the respondent is required to pay 50% of duty along with interest @ 15% within 30 days from the expiry of each block, but the respondent was not aware of this condition as they were under an impression that they were required to fulfill the export obligation within a period of 6 years. But, as and when investigation started the respondent immediately paid duty and interest. Further, as per the condition of the Notification, the appellant is required to pay duty along with interest. In that circumstances, the adjudicating authority has rightly refrained from imposing redemption fine and penalty on the respondent. As the respondent has complied with the condition of the Notification, therefore, we do not find any infirmity in the impugned order. The same is upheld and appeal filed by the revenue is dismissed.

(Operative part of the order was pronounced in the open Court.)

Sd/
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/
(RAJEEV TANDON)
MEMBER (TECHNICAL)

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