IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT No. I

APPEAL Nos. C/466 & 513/96-Mum

(Arising out of Order-in-Original CAO No. 75-97/CAC/CC-II dated 26.6.1996 passed by Commissioner of Customs, Mumbai-II)

Akai Impex Ltd. **Appellant**
K.L. Dhingra

Vs.

Commissioner of Customs-II, Mumbai **Respondent**

Appearance:

Shri H.C. Dharmadhikari, Advocate, for appellant
Shri Ahibaran, Additional Commissioner (AR), for respondent

CORAM:

Hon'ble Mr Anil Choudhary, Member (Judicial)
Hon'ble Mr CJ Mathew, Member (Technical)

Date of Hearing: 19.1.2018
Date of Decision: 19.1.2018

ORDER No. A/86546-86547/2018

Per: CJ Mathew

These two appeals of M/s Akai Impex Ltd and Shri KL Dhingra assailed order-in-original no. CAO No. 75-97/CAC/CC-II dated 26th June of Commissioner of Customs, Mumbai-II, which has confirmed recovery of duty foregon on goods at the time of import against three 'quantity-based advance licences' issued under the Duty Exemption Entitlement Scheme with notification no.204/92-Cus dated 19th May 1992 as the operating mechanism. In this scheme, importers were permitted to procure raw materials required for the manufacture of goods specified in the licence and, subject to fulfillment of export obligation, could transact in the goods thereafter. The licensee had completed the export obligation using indigenous raw material before effecting imports and it is the denial of that privilege which is the subject matter of the dispute leading to this appeal.

2. The original authority confirmed the demand on the finding that the imported goods had been deployed for a purpose other than intended in the notification and that MODVAT credit availed on input materials used in the manufacture of export goods had not been reversed; both of which were necessary prescribed conditions for eligibility to benefit of exemption.

3. Learned Counsel for appellant contends that MODVAT credit attributable to inputs used in the export had been surrendered by deposit of cheque no. 020728 dated 12th January 1995 in favour of Collector of Central Excise, Bombay-III (as it then was) and they had thereby overcome that impediment for disposal of the goods. On the allegation of diversion of goods, it is his contention that the seized goods were those that had

been delivered to job-workers and, therefore, there was no breach of the conditions stipulated in notification no.204/92-Cus. It is also contended that no evidence of diversion had been cited in the notice issued to the appellants.

4. Learned Authorised Representative draws upon the conditions of sale/transfer in notification no.204/92-Cus which, according to him, required both strict compliance of non-availment of MODVAT credit and could have been effected only after redemption certificate was issued by the licensing authority. The first could not be established by appellant and the second was not in their possession at the relevant point in time.

5. Having heard both sides and considered all the facts on record, we are of the opinion that the obtaining of redemption certificate from the licensing authority is merely a technical formality. We take note that the redemption certificate has been issued, albeit subsequently, without casting any doubts on the exports claimed to have been effected by the appellant in their application to the licensing authority for redemption certificate. Nor is there any evidence from Revenue that the exports claimed to have been fulfilled

are questionable. Consequently, there can be no controverting that the export obligation has been fulfilled, in substance, at the time of utilization of imported raw material. All that remained for satisfaction is confirmation that MODVAT credit had been reversed. At this stage, Learned Counsel for appellant drew attention to the decision of the Tribunal in *Commissioner of Central Excise, Pondicherry v. Tanfac Industries Ltd [2010 (261) ELT 605 (Tri.-Mumbai)]*. We are not convinced that this decision would advance their case as the facts pertinent to that decision are not in conformity with that in the matter before us. We are, however, convinced that the appellant had taken steps to reverse the MODVAT credit. Whether the reversal did occur or not is still an open to question; despite the specific directions of the Tribunal *vide* order dated 23rd October 2017, Commissioner (Exports), Mumbai-II has not been able to illuminate us with a specific report. Awaiting a decisive report from that authority may be an exercise in futility. At the hearing held on 15th of January 2018, the appellant was directed to submit evidence of discharge of their obligation to reverse MODVAT credit. According to Learned Counsel for appellant, this may not be easy to comply with as all the documents of the appellant are in the custody of the authorities constituted under the Securitisation and

Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

6. The matter has been pending for more than two decades and having travelled on previous occasion through the Tribunal to the Hon'ble High Court and back, further delay for awaiting some evidence from either side would not serve any useful purpose.

7. Accordingly, we remand the matter back to the original authority with the following specific directions:

a) To ascertain within a period of forty five days, whether the reversal of MODVAT credit has taken place by encashment of the cheque.

b) In the event of a determination that the MODVAT credit has not been reversed, to give an opportunity to the appellant to do so within a further forty five days, and, upon either contingency being confirmed, the demand shall stand dropped along with penalties.

8. Appeals are disposed off in the above terms.

(Pronounced in open court)

(Anil Choudhary)
Member (Judicial)

(CJ Mathew)
Member (Technical)

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