IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

APPEAL NO: C/288/2011

[Arising out of Order-in-Appeal No: 89 (EPCG)/2011 (JNCH)/Exp-24 dated 25/02/ 2011 passed by the Commissioner of Customs (Appeals) JNCH Mumbai-II]

SSF Plastics India Pvt. Ltd. …***Appellant***

versus

Commissioner of Customs
(Export) Nhavaseva …***Respondent***

Appearance:
Shri Rajiv Gupta, Consultant for Appellant
Shri Manoj Kumar, Assistant Commissioner (AR) for Respondent

CORAM:

Hon'ble Shri C J Mathew, Member (Technical)

Date of hearing: 23/07/2018
Date of decision: 10/09/2018

ORDER NO: A/87281/2018

Per: C J Mathew

This appeal has been filed by M/s SSF Plastics India Pvt. Ltd. against order-in-appeal no. 89 (EPCG)/2011 (JNCH)/Exp-24 dated 25th February 2011 of Commissioner of Customs (Appeals), JNCH, Nhavasheva Mumbai-II which has upheld the order of the original authority for recovery of differential duty of Rs. 7529/-, along with applicable interest, for not having fulfilled export obligation to the extent prescribed as a factor of the value of imported capital goods. The appellant had procured two machines under the Export Promotion Capital Goods scheme of the Foreign Trade Policy and had executed bond and bank guarantee as prescribed in notification no. 97/2004-Cus dated 17th September 2004. On completion of the period of export obligation, the appellant had approached the Director General of Foreign Trade and obtained 'export obligation discharge certificate'. Consequent upon an application for return of the bond and bank guarantee, proceedings were initiated against the appellant to recover duty in proportion to the shortfall in export obligation.

2. It is the contention of Learned Consultant appearing for the appellant that customs authorities are not permitted to go beyond the certification issued in accordance with the powers entrusted to another agency of the government. It is his further contention that in the event of any discrepancy, the only option before customs authorities is to draw the attention of the licensing authority to it. Having failed to do so, it was not correct in law for another authority to discard such a certificate.

3. Learned Authorised Representative submits that it was well within the jurisdiction of the original authority to recover duty on the basis of its own computation of shortfall despite the existence of valid 'export obligation discharge certificate'.

4. This submission of Learned Authorised Representative in defence of the impugned order is not acceptable. The 'export obligation discharge certificate' is designed to assign a finality to the fulfillment of the conditions of export obligation prescribed in the 'Export Promotion Capital Goods' scheme. Once the obligation has been complied with, the liability to duty cannot be revisited unless there is some discrepancy which comes to light through an investigation and is reflected in revision of, or reference for such revision in, the certificate by the competent authority.

5. In the light of the above facts and circumstances, we set aside the impugned order and allow the appeal.

(Pronounced in Court on10/09/2018)

(C J Mathew)
Member (Technical)

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