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

APPEAL NO: C/347/2010

[Arising out of Order-in-Original CAO No: CC-(RT) 1/2010 ACC dated 12th January 2010 passed by the Commissioner of Customs (Export), Air Cargo Complex, Mumbai.]

For approval and signature:

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

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	:	Yes
2.	Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	Yes
3.	Whether Their Lordships wish to see the fair copy of the Order?	:	Seen
4.	Whether Order is to be circulated to the Departmental authorities?	:	Yes

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Marico Ltd … ***Appellant***

versus

Commissioner of Customs (Export)
ACC, Mumbai ***…Respondent***

Appearance:

Shri T Vishwanathan, Advocate for appellant

Shri Anil Choudhary, Asstt Commissioner (AR) and Shri SR Nair, Inquiry Officer (AR) for respondent

CORAM:

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

Date of hearing:	**28/12/2018**
Date of decision:	**17/01/2019**

ORDER NO: A/85114 / 2019

Per: C J Mathew

M/s Marico Ltd was proceeded against in relation to imports effected against five licenses issued under Export Promotion Capital Goods scheme in the Foreign Trade Policy notified under Foreign Trade (Development & Regulation) Act, 1992 and, in order no. CC-(RT) 1/2010 ACC dated 12th January 2010, Commissioner of Customs (Export), Air Cargo Complex, Mumbai held the goods, imported under bill of entry no. 1764/11.9.2002, 1765/11.9.2002, 3783/18.7.2002, 3784/18.7.2002, 1744/11.8.2003, 1745/11.8.2003, 1746/11.8.2003, 3357/22.9.2003 and 1570/11.11.2003, to be liable for confiscation under section 111(o) of Customs Act, 1962 but permitted to be redeemed on payment of fine of ₹20,00,000 and imposed penalty of ₹5,00,000 under section 112 of Customs Act, 1962. Though the show cause notice did propose recovery of duty of ₹ 2,76,05,262, the adjudicating authority forbore to do so. The importer is in appeal against the consequence of confiscation and imposition of penalty.

2. According to the impugned order, the licence holder had failed to comply with the conditions prescribed in the fourth paragraph of notification no. 44/2002-Cus, mirroring paragraph no. 5.9 of the Handbook of Procedures relevant to the Foreign Trade Policy 2002-07, requiring the installation of capital goods at the place indicated in the license by removal for re-installation elsewhere, even though installed at the declared premises initially, without intimation to the customs authorities.

3. According to Learned Counsel for appellant, the premises at which the goods were re-installed were also their own and that, though the addresses was not listed in the license, subsequent amendments had been effected by the licensing authority to incorporate these. Furthermore, it is his contention that the export obligation was discharged in full and that the licensing authority had certified so in the knowledge of the place of utilisation of the imported capital goods. He places reliance on the decision of the Tribunal in *Thiagarajar Mills Ltd v. Commissioner of Customs, Trichy [1999 (111) ELT 288 (Tribunal)]* that regularisation of addresses at which the capital goods were deployed would erase the irregularity. Furthermore, citing the decision in *Indian Seamless Metal Tubes Ltd v. Commissioner of Central Excise & Customs, Goa [2017 (348) ELT*

577 (Tri-Mumbai)], Learned Counsel seeks relief.

4. Learned Authorised Representative opposed the submissions made on behalf of appellant by placing reliance on the decision of the Hon'ble High Court of Bombay in *Zenith Computers Ltd v. Commissioner of Central Excise [2014 (303) ELT 336 (Bom)]* that defined the scope of appellate jurisdiction vested in the Tribunal, *viz.*, to test the reasonableness of conclusion in an impugned order on the set of facts as established and not for discrediting the decision merely because an alternative conclusion is possible. The submission of Learned Authorised Representative is that facts are undisputed and, notwithstanding the claim of discharge of export obligation being unquestionable, the finding of the adjudicating authority that one of the conditions in notification no. 44/2002-Cus dated 19th April 2002 had not been complied with is not amenable to discarding. We note that the decision of the Hon'ble High Court of Bombay cited by Learned Authorised Representative was handed down in circumstances in which the facts were not contested at all.

5. It is on record that the imported goods had been deployed at the addresses that were originally, or subsequently by amendment, included in the licenses. It would appear that the facts now established are not in congruity with the facts that guided the adjudicating authority in arriving at his conclusions. Therefore, the decision in *re*

Zenith Computers Ltd does not find application here.

6. That the capital goods were installed, and utilized, at locations which had been, either originally or through amendment, approved by the licensing authority is not in question. Notification no. 44/2002-Cus dated 19th April 2002 is a composite exemption for facilitating an export promotion scheme. That the export obligation in pursuance of the license had been fulfilled is also not in question. The conditions in such notifications are intended to ensure that the element of control on capital goods is exercised without having to place those under physical supervision. The objectives of the notification, and indeed of the export promotion scheme in the Foreign Trade Policy, should prevail over technical irregularities that were repaired in the fullness of time. Visiting detriment of confiscation and penalties under section 111 and 112 of Customs Act, 1964 in the light of such rectification, and compliance with export obligation, would not be appropriate.

7. In view of the above, we set aside the impugned order and allow the appeal.

(Pronounced in Court on 17/01/2019)

(Ajay Sharma) | **(C J Mathew)**
Member (Judicial) | ***Member (Technical)***

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