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

Appeal No. C/87067/2018

(Arising out Order-in-Original No. 121/2017-18/Commr/NS-IV/JNCH dated 08.03.2018 passed by the Commissioner of Customs (NS-IV), JNCH, Nhava Sheva)

For approval and signature:
Hon'ble Mr C J Mathew, Member (Technical)
Hon'ble 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?	No
2.	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
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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M/s Alca Technologies — Appellant

Vs.

Commissioner of Customs, Nhava Sheva — Respondent

Appearance:

Ms Padmavati Patil, Advocate for the appellant
Shri Bhushan Kamble, AC (AR) for the respondent

CORAM:
Hon'ble Mr C J Mathew, Member (Technical)
Hon'ble Ajay Sharma, Member (Judicial)

Date of hearing : 19-03-2019
Date of decision : 19-03-2019

O R D E R No: **A/85543 / 2019**

Per: C J Mathew

This appeal of M/s Alca Technologies against order in original no. 121/2017-18/Commr/NS-IV/JNCH dated 8th March 2018 of Commissioner of Customs (NS-IV), JNCH, Nhava Sheva pertains to demand of duty of ₹73,49,416/-, along with applicable interest, and the imposition of penalty of ₹5,00,000/- under section 112A of Customs Act, 1962 besides ordering confiscation of the goods valued at ₹2,50,46,265/- but allowed to be redeemed on payment of fine of ₹15,00,000/-.

2. After having heard Learned Counsel for the appellant and Learned Authorised Representative we find that the issue lies within narrow compass of non-availability of 'export obligation discharge certificate' at the time of issue of show cause notice and/or adjudication order but received subsequently.

3. Appellant had imported goods under 'Export Promotion Capital Goods' (EPCG) Scheme of the Foreign Trade Policy and was required to fulfil their export obligation by 11th February 2014. As this obligation prescribed in the said exemption notification no. 97/2004-

Cus dated 17th September 2004 entitling the appellant to concessional rate of duty was not evidenced, by production of ‘export obligation discharge certificate’, to have been complied with, show cause notice dated 13th November 2017 was issued to them. At the time of adjudication on 12th March 2018, the licensing authorities had not yet issued the discharge certificate. It was pointed out by Learned Authorised Representative that the application was made only on 20th November 2014 to the licensing authority and that they had been issued with letter of deficiency thereafter.

4. We find that the application to the licensing authority was made almost nine months after the prescribed period for discharge application had expired. Considering the voluminous records that were to be submitted, we find no anomaly in this lapse of time. At the stage of issue of show cause notice, as well as of impugned order, the customs authorities were not unaware that the application for ‘export obligation discharge certificate’ was yet pending with the licensing authority. Had the licensing authority been dissatisfied on this score, a show cause notice under Foreign Trade Development and Regulation Act, 1992 would have been on record. In such circumstances, it was not necessary for the adjudicating authority to proceed with such haste to dispose off the show cause notice. That this was premature is apparent from the issue of discharge certificate from the licensing authority barely six months after that. The proper

course of action for the original authority would have been to keep the notice pending till the licensing authority had responded one way or the other. Be that as it may, in view of the furnishing of the 'export obligation discharge certificate' issued by the competent authority, it would be appropriate for the impugned order to be set aside and the matter remanded back to the original authority for a decision on the liability to duty in the light of evidence of having fulfilled the prescription in the notification. Needless to say, the appellant should be granted an opportunity to be heard in person. Appeal is accordingly disposed off.

(Operative part pronounced in Court)

(Ajay Sharma)
Member (Judicial)

(C J Mathew)
Member (Technical)

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