CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH

Customs Miscellaneous Application (EH) No. 85204 of 2020
(On behalf of Appellant)
Customs Appeal No. 85089 of 2018

(Arising out of Order-in-Original No. 67/2017-18/Commr/NS-IV/JNCH dated 25.10.2017 passed by Commissioner of Customs (NS-IV), JNCH, Nhava Sheva)

M/s. Prabhat Printing Works **Appellant**
427/A/1, Gultekedi,
Pune 411 037.

Vs.

Commissioner of Customs, Nhava Sheva-IV **Respondent**
JNCH, Nhava Sheva,
Taluka Uran, Raigad 400 707.

Appearance:

Shri C.K. Chaturvedi, Consultant, for the Appellant
Shri Mohd. Shamshad Alam, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO. **A/85795/2020**

Date of Hearing: 29.09.2020
Date of Decision: 29.09.2020

PER: S.K. MOHANTY

The applicant-appellant has filed this miscellaneous application, seeking for early hearing of appeal on the ground that in respect of the imports made under EPCG licence, the applicant-appellant had already achieved the export obligation and thus, the adjudged demands confirmed on the applicant-appellant cannot be sustained on merits. On perusal of the miscellaneous application, we are of the view that the prayer made for early hearing of appeal can be considered in the interest of justice. Hence, the miscellaneous application is allowed. Since the appeal lies in a narrow compass, with the consent of both sides, we have taken up the appeal for hearing and disposal today.

2. Brief facts of the case are that the appellant had imported capital goods under EPCG licence for duty saved amount of Rs.88,82,117/-. In terms of the conditions under EPCG licence read with Notification No.64/2008-C.E., dated 09.05.2008, the appellant had executed requisite bond and furnished bank guarantee before the jurisdictional Customs authorities for fulfilling the conditions enumerated therein. According to the department, the appellant did not fulfil the conditions provided in the bond, EPCG licence and the relevant Customs notification. Thus, the department initiated proceedings against the appellant, which culminated into the adjudication order dated 25.10.2017 (for short, referred to as “the impugned order”), wherein, the learned Commissioner of Customs has denied the exemption benefit availed by the appellant and ordered for recovery of customs duty amounting to Rs.88,82,117/- along with interest. The impugned order also confiscated the imported goods under Section 111(o) of the Customs Act, 1962, providing the option to the appellant to redeem the same on payment of redemption fine of Rs.18,00,000/-. Besides, the impugned order also imposed penalty of Rs.12,00,000/- on the appellant under Section 112(a) *ibid*. Feeling aggrieved with the impugned order, the appellant has preferred this appeal before the Tribunal.

3. The learned Consultant appearing for the appellant submitted that the appellant had already fulfilled the requisite export obligation in respect of the EPCG licence issued by the competent authorities. He further submitted

that the fact regarding achievement of export obligation had also been endorsed by the office of the DGFT, who had issued the EPCG licence in favour of the appellant. Thus, he prayed for setting aside the impugned order and for allowing the appeal in favour of the appellant.

4. On the other hand, the learned AR appearing for the Revenue reiterated the findings recorded by the adjudicating authority in the impugned order dated 25.10.2017.

5. Heard both sides and perused the records.

6. We find that for non-fulfilment of export obligation as per the conditions of EPCG licence read with the Customs Notification No.64/2008-C.E., dated 09.05.2008, the proceedings were initiated by the department and the adjudged demands were confirmed on the appellant. Since the appellant submits that it had already achieved the export obligation against the goods imported by it, we are of the view that the adjudged demands cannot be confirmed on the appellant on the ground of non-fulfilment of the export obligation. However, since the facts regarding achievement of export obligation are required to be examined at the original stage, we are of the view that the matter should be remanded to the original authority for verification of the documentary evidences for a proper satisfaction of the fact that the export obligation in respect of the imports made under EPCG licence had already been achieved by the appellant.

7. Therefore, after setting aside the impugned order, we remand the matter to the original authority for *de novo* adjudication of the issue of actual achievement of the

export obligation, as claimed by the appellant. Needless to say, that opportunity of personal hearing should be granted to the appellant before deciding the issue afresh.

8. In the result, the appeal is allowed by way of remand.

(Pronounced in the open court)

(S.K. Mohanty)
Member (Judicial)

(Sanjiv Srivastava)
Member (Technical)

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