CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 87313 OF 2019

[Arising out of Order-in-Original No: 03/SA(03) ADG(ADJ.) DRI, MUMBAI/ 2019-20 dated 25th April 2019 passed by the Additional Director General (Adjudication .), Directorate of Revenue Intelligence, Mumbai.]

Rothe Erde India Pvt Ltd
Gat No. 429, Village Wardivarhe, Post Gonde,
Tal: Igatpuri, Nasik, Maharashtra - 422403 … ***Appellant***

versus

Additional Director General (Adjudication),
Directorate of Revenue Intelligence, 2nd Floor
Old Building, New Customs House, Ballard Estate
Mumbai – 400001 ***…Respondent***

APPEARANCE:

Shri Jitendra Motwani, Advocate with Mr Rizwan Khatri, Advocate for the appellant

Shri Bhushan Kamble, Assistant Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: A / 87294 /2021

DATE OF HEARING: 13/10/2021
DATE OF DECISION: 13/10/2021

PER: C J MATHEW

This appeal lies against order-in-original no. 03/SA(03) ADG(ADJ.) DRI, MUMBAI/2019-20 dated 25th April 2019 of

Additional Director General (Adjudication), Directorate of Revenue Intelligence, Mumbai which has confirmed recovery of ₹6,95,64,905/, being duty foregone on capital goods imported by them under Export Promotion Capital Goods (EPCG) Scheme of the Foreign Trade Policy, under section 28 of Customs Act, 1962, along with interest thereon under section 28AB of Customs Act, 1962, besides confiscating the said goods, though permitted to be redeemed on payment of fine of ₹ 1,00,00,000/-, under section 111 of Customs Act, 1962 and imposing penalty of ₹ 30,00,000/- under section 112 of Customs Act, 1962.

2. The dispute pertains to two authorizations – 3130004721/ 06.04.2010 and 3130005308/01.12.2010 with export obligation of ₹ 4,07,78,750/- and 2,41,20,999/- for the first block ending 5th April 2014 and 30th November 2014 and which has been held to be not fulfilled even by 5th April 2016 and 30th November 2016 respectively as permitted by the licencing authority. The claim of appellant of having executed export orders worth ₹ 39.67 crores was not accepted in the absence of 'export obligation discharge certificate (EODC)' to be obtained from the licencing authority. Their application filed with the licensing authorities for issue of 'redemption letter' was responded to only on 3rd September 2020 and 7th September 2020 respectively. On perusal, we find that these are in the prescribed format and from the licensing authority.

3. We have heard Learned Authorised Representative.

4. Our attention has been drawn to the decision of the Tribunal in *Alka Technologies v. Commissioner of Customs, Nhava Sheva [final order no. A/85543/2019 dated 19th March 2019 disposing off appeal no. C/87067/2018] 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*] in which, in identical circumstances, the matter was referred back to the original authority for appropriate disposal of the claim of the appellant therein that conditions of the relevant notification had been complied with.

5. Accordingly, we set aside the impugned order and remand the matter back to the original authority for deciding the matter afresh after taking into consideration the certification issued by the licensing authority. Needless to say, the appellant should be afforded an opportunity to be heard. The appeal is accordingly disposed off.

(Operative Part of the Order Pronounced in Open Court on 13th October 2021)

(AJAY SHARMA)	**(C J MATHEW)**
Member (Judicial)	***Member (Technical)***

**/as*