CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 87290 OF 2019

[Arising out of Order-in-Appeal No: 97(CAC)/2019(JNCH)/Appeal-I dated 7th May 2019 passed by the Commissioner of Customs (Appeals), Jawaharlal Nehru Port Trust, Nhava Sheva, Mumbai – II.]

Ultima Switchgear Ltd
B-3 (Basement) DDA, Local Shipping Complex
Mayur Vihar, Phase – I, Delhi - 110091 … ***Appellant***

versus

Commissioner of Customs (NS-IV)
Jawaharlal Nehru Port Trust, Nhava Sheva, Tal: Uran
Dist: Raigad …***Respondent***

APPEARANCE:

Shri Lilesh P Sawant, Advocate for the appellant

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

CORAM:

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

FINAL ORDER NO: A/ 87409/2021

DATE OF HEARING: 23/12/2021
DATE OF DECISION: 23/12/2021

The limited contention of Learned Counsel appearing for M/s Ultima Switchgear Ltd in this appeal against order-in-appeal no. 97(CAC)/2019(JNCH)/Appeal-I dated 7th May 2019 of Commissioner of Customs (Appeals), Jawaharlal Nehru Port Trust, Nhava Sheva, Mumbai – II is the lack of opportunity afforded for presenting the evidence available with them to counter the demand proposed in the show cause notice.

2. The appellant had imported capital goods valued at ₹64,76,928/- under the Export Promotion Capital Goods Scheme (EPCG) of the Foreign Trade Policy (FTP) and claimed concessional rate of duty afforded in notification no. 97/2004-Cus dated 17th September 2004 for implementing the said scheme. The appellant was proceeded against for recovery of duty foregone, to the extent of ₹ 20,49,060/-, which was confirmed by the original authority and, who, in addition to confiscation of goods under section 111(o) of Customs Act, 1962 with option to redeem on payment of ₹ 16,00,000/-, also imposed penalty of ₹ 2,00,000/- under section 112 of Customs Act, 1962. Allegedly, the appellant had failed to furnish evidence of installation of capital goods at the appropriate location and had not furnished the 'export obligation discharge certificate (EODC)' from the competent authority. The first appellate authority upheld the order of the original authority for the same reasons.

3. According to Learned Counsel for the appellant, the consistent stand taken by them before the lower authorities had been that their application before the competent authority for discharge certificate was pending and that they had, therefore, been unable, for the moment, to furnish the same. It was submitted that the 'installation certificate' had been submitted by them to the licensing authority and to the customs authorities. It is also pointed out that as the export

obligation had been completed and application for redemption filed with the competent authority, the failure on the part of the licensing authority to issue the redemption certificate in time should not have led to unwarranted demand of duty and other consequences under section 111 and 112 of Customs Act, 1962.

4. It is seen from the records that the status of certification of fulfillment of export obligation had been intimated to the lower authorities which, however, went unheeded by both the lower authorities culminating in the detriments enunciated *supra.* In these circumstances, the determination of recovery and imposition of detriments by the original authority was premature. The first appellate authority should have held so. Accordingly, the impugned order is set aside and the matter is remanded to the original authority for considering the claim made by the appellant and, should any delay in disposal of notice be cause of irreparable damage to the interests of Revenue, the said authority is directed to ascertain correctness of the claim of having discharged the export obligation from the records of the customs department.

5. Appeal is disposed off in these terms.

(Operative part of the Order Pronounced in Open Court on 23rd December 2021)

(C J MATHEW)
Member (Technical)

**/as*