CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 85343 OF 2020

[Arising out of Order-in-Appeal No. MUM-CUSTM-AXP-APP-595/19-20 dated 22nd October 2019 passed by Commissioner of Customs (Appeals), Mumbai Zone – III.]

Commissioner of Customs (Exports)
Air Cargo Complex (ACC), Sahar, Andheri (E)
Mumbai - 400099 … ***Appellant***

versus

LM Wind Power Blades (I) Pvt Ltd
Plot No. 1B, Halol Industrial Area, Phase-III,
Village Chandrapura, Taluka-Halol, Gujarat-389350. ***…Respondent***

APPEARANCE:

Mr Sydney D'Silva, Additional Commissioner (AR) for the appellant

Ms Ankita Vashistha, Advocate for the respondent

CORAM:

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

FINAL ORDER NO: A / 85519 /2023

DATE OF HEARING: 14/03/2023
DATE OF DECISION: 14/03/2023

PER: C J MATHEW

This appeal has been filed by Commissioner of Customs (Exports), Air Cargo Complex (ACC), Mumbai at the behest of the

Committee of Commissioners, empowered under section 129A of Customs Act, 1962, who, being of the opinion that the setting aside of the determination by the original authority of ‘status holder incentive scrip (SHIS)’ under the Foreign Trade Policy having been wrongly utilised for clearance of ‘refurbished capital goods’ in order[1] of Commissioner of Customs (Appeals), Mumbai-III is not legal and proper, had directed so.

2. Briefly, the facts are that M/s LM Wind Power Blades (I) Pvt Ltd had imported five consignments of ‘capital goods’ among which the import of ‘refurbished robot Fanuc P250/B/15LH30BARW’ valued at ₹ 45,88,267.54 against bill of entry no. 3785398/02.01.2016 claiming duty benefit to the extent of ₹ 12,12,599 under notification no. 104/2009 dated 14th September 2009 applicable to ‘status holder incentive scrip (SHIS)’ in the Foreign Trade Policy (FTP) (AM 2019-14) entitling ‘status holders’ to ‘duty credit scrip’ of 1% of value of exports undertaken during 2010-11, 2011-12 and 2012-13 was found to be inconsistent with its objective for promoting investments in upgradation of technology.

3. The impugned order, after considering the category of goods permitted to be imported as well as the eligible use to which imported ‘capital goods’ would be put to, came to the conclusion that there was

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[1] [order-in-appeal no. MUM-CUSTM-AXP-APP-595/2019-20 dated 22nd October 2019]

no bar on procurement of used capital goods. The appellant-Commissioner contended that the original authority had correctly placed reliance on clarification contained in letter no. 01/61/180/49/AM 14/PC3/17 dated 28th April 2014 issued from the Policy Section of Directorate General of Foreign Trade (DGFT) in relation to similar contravention by M/s Bharat Forge Ltd that was held as legal and proper by the Tribunal in *AG Enterprise v. Commissioner of Customs (Preventive), Jamnagar [2014 (308) ELT 418 (Tri-Ahmd)]* and affirmed by the Hon'ble Supreme Court, as well as in several other cases.

4. Learned Authorised Representative drew our attention to the relevant provisions of the Foreign Trade Policy (FTP) as well as notification no. 104/2009-Customs dated 14th September 2009 governing the operation of the impugned scheme therein. Our attention was also drawn to communication from the office of the appellant-Commissioner intimating that the appeal had been filed in the facts and circumstances as prevailing at the time of review and that, though the material relied upon therein had since become dated, the empowered Committee was not vested with the authority to withdraw appeals.

5. Learned Counsel placed before us communication dated 13th June 2018 issued from F No. 01/61/180/49/AM14/PC-3 of

Government of India in Department of Commerce (Policy Section of Directorate General of Foreign Trade (DGFT)] withdrawing the clarification relied upon by the original authority and, based on which, this appeal had been filed. It was also pointed out by him that similar detriment in order of Commissioner of Customs (Export), Mumbai[2], had, in *GE T & D India Ltd v. Commissioner of Customs (Export), Mumbai*, been set aside by order[3] of the Tribunal on appeal of the importer.

6. On examination of the facts and circumstances as narrated *supra*, we find that the clarification relied upon by the original authority has, since, been substituted by an entirely different stand on the part of Directorate General of Foreign Trade (DGFT). Accordingly, the basis for the present appeal is no longer tenable.

7. Therefore, we dismiss the appeal and uphold the impugned order.

(Operative Part of the Order Pronounced in the open court on 14th March 2023)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*

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[2] [order-in-original no. 19/2018-19/RCP/CC (X) dated 27th September 2018]
[3][final order no. C 8/8723/2021 dated 13th December 2021 in customs appeal no. 85261 of 2019]