CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>MUMBAI</u>

REGIONAL BENCH - COURT NO. 01

Customs Appeal No. 89431 Of 2018

(Arising out of Order-in-Original No.04/2018-19/Commr/NS-IV/JNCH dated 11.04.2018 passed by Commissioner of Customs (NS-IV), JNCH, Nhava Sheva)

M/s Veena Industries Ltd. **.....Appellant**
Gat No.312/4, Nanekarwadi, Chakan, Pune,
Maharashtra – 410 501.

VERSUS

Commissioner of Customs, Nhava Sheva-IV **.....Respondent**
Jawaharlal Nehru Custom House, Nhava Sheva,
Tal. Uran, Dist. Raigad, Maharashtra – 400 707.

<u>Appearance:</u>

Shri Kaustubh D. Khairnar , Advocate for the Appellant
Shri D.S. Maan, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/87453/2023

Date of Hearing: 21.12.2023
Date of Decision: 21.12.2023

PER : S.K. MOHANTY

Heard both sides and perused the records.

2. Appellant herein had availed the duty exemption for clearance of goods in terms of Notification No.97/2004-Cus dated 17.09.2004 against the EPCG Licence No. 3130002188 dated 03.01.2017. For availment of duty exemption provided under the said notification,

the appellant had executed the requisite bond before the Customs department, undertaking therein for fulfilment of the condition itemized in the said Notification. However, the appellant failed to achieve the export obligation and as a result, the department initiated show cause proceedings against the appellant, seeking for confirmation of the duty demand along with interest and for imposition of penalty. The matter arising out of the show cause notice dated 30.08.2017 was adjudicated by the learned Commissioner of Customs, Nhava Sheva, vide the impugned order dated 11.04.2018, wherein the proposals made in the show cause notice were confirmed.

3. The appellant has stated that the export obligations as provided under the Notification No. 97/2004-Cus. dated 17.09.2004 were achieved by the appellant and they had applied for issuance of the Export Obligation Discharge Certificate (EODC) before the concerned authorities on 17.10.2015. It was further contended that the EODC was issued in favour of the appellant on 02.12.2021. Since, the EODC was issued by the competent authority in respect of the exports made under the EPGC license dated 03.01.2007, the appellant should be entitled for the duty exemption provided under the Notification dated 17.09.2004. On perusal of the case records, we find that in respect of the application filed for issuance of the EODC (filed on 17.10.2015), requisite certificate for the appellant having been discharged the export obligations was issued by the office of DGFT, Pune vide File. No. 31/36/165/00538/AM16 on 02.12.2021. Since, the said certificate was issued belatedly, after adjudication of the present dispute, we are of the view that the present matter should be remanded to the original authority for

verification of the EODC certificate issued by the office of the DGFT and thereafter to allow the benefit of duty exemption provided under the Notification dated 17.09.2004.

4. Therefore, by setting aside the impugned order, the matter is remanded to the original authority for *denovo* adjudication with regard to the issue of entitlement of the duty exemption provided under the Notification dated 17.09.2004. Needless to say that opportunity of personal hearing should be granted by the original authority before deciding issue afresh.

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

(Dictated and pronounced in the open court)

(S.K. Mohanty)
Member(Judicial)

(M.M. Parthiban)
Member (Technical)

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