CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 85725 OF 2023

[Arising out of Order-in-Original No: 87/2022-23/Commr/NS-II/CAC/JNCH dated 02nd February 2023 passed by Commissioner of Customs (NS-II), Nhava Sheva, Raigad.]

Sunrise Industries India Ltd
Block No 30, Village: Garadhia, Jarod-Samlaya Road
Savli, Vadodara, Gujarat-391 520. … ***Appellant***

versus

Commissioner of Customs (NS-II)
Jawaharlal Nehru Customs House, Nhava Sheva
Tal: Uran, Dist: Raigad - 400707 ***…Respondent***

APPEARANCE:

Shri Paritosh Gupta, Advocate for the appellant

Shri Deepak Sharma, 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: 85344/2024

DATE OF HEARING:	17/01/2024
DATE OF DECISION:	19/03/2024

PER: C J MATHEW

This appeal of M/s Sunrise Industries India Ltd lies against denial of exemption, availed by them upon furnishing two authorisations dated 21st September 2012 and 3rd December 2012 as prescribed in notification no. 102/2009-Customs dated 11th September 2009 for import of goods covered by bills of entry no. 8247479/17.10.2012 and no. 8765339/14.12.2012, with concurrent recovery of duty foregone of ₹ 4,60,15,779/-, under section 28 of Customs Act, 1962, along with interest under section 28AB of Customs Act, 1962, and confiscation of the impugned goods valued at ₹ 17,69,92,673/- under section 111(o) of Customs Act, 1962 subject to option for redemption on payment of fine of ₹4,42,48,168/- in exercise of section 125 of Customs Act, 1962 and penalty of like amount under section 114A of Customs Act, 1962.

2. Admittedly, the imported goods were not installed after clearance but were stored in original condition pending acquisition of land for setting up of facility for manufacture of ‘polymer products’ in pursuance of memorandum of understanding dated 12th January 2011 with Government of Gujarat. It would appear that the land acquisition efforts were impacted for one reason or the other and the appellant had sought extension of time from the licensing authority for installation which was considered favourably by the competent authority for completion by 31st December 2016. In the meanwhile, the appellant claims to have fulfilled the prescribed export obligation within half of the time set out in the scheme *i.e.* 19th February 2016

following which, and after such extension, application was made before the licensing authority on 26th September 2019 for issue of export obligation discharge certification (EODC).

3. After acquisition of land and installation of the imported goods, letters were addressed to the licensing authority for issue of the said certificate that had, till yet, not been responded to. It was claimed that the heavy rainfall, and consequent water logging, of June 2021 had compelled the appellant to move the capital goods to another location under challan dated 16th June 2021 even before the competent authority, under the Foreign Trade Policy, disallowed the exports as in pursuance of obligation from capital goods having to be used for production. The proceedings leading to the impugned order were initiated for non-installation of the capital goods and consequent non-fulfilment of post-importation condition.

4. Learned Counsel for the appellant submits that the impugned order has merely reiterated the obligations without considering the submissions made by the appellant. It is further submitted that the adjudicating authority had not ascertained the claim of export obligation having been fulfilled and, instead, appears to have relied entirely upon the non-issue of discharge certificate as trigger for demand of duty and other detriment. It is also contended that the time-limit for the installation of the capital goods having been

extended by the Policy Relaxation Committee (PRC), it was only fair and just for customs authorities to push back the period for fulfilment of export obligation and to ascertain compliance thereof. It is also submitted that the adjudicating authority had not assigned any reason for not considering the extension granted by the Policy Relaxation Committee.

5. Learned Authorised Representative submitted that the adjudicating authority was bound by the terms of the notification, against which the goods had been allowed to be imported free of duty, without any dilution. It is his contention that the 'capital goods' had not been installed within the prescribed time period and that the export obligation could not, therefore, have been fulfilled.

6. It is on record that the 'capital goods' were found to have been installed at premises other than that indicated in the licensing documents. It was held in the impugned order that, though the rent agreement for the said premises had been produced, documents evidencing shift of the 'capital goods' was neither available nor furnished by the appellant. The imports had been permitted, and duty had been foregone, subject to condition that 'export obligation' would be completed within six years. It is also on record that the licensing authority had extended the time-period for effecting the installation which, in effect, re-scheduled the date by which the export obligation

would have to be fulfilled.

7. It is clear from the records that the export obligation discharge certification (EODC) could not have been issued during the pendency of installation of the imported capital goods. There is nothing available on record to indicate that, after such installation, as claimed by the appellant in application for relaxation of time for fulfillment had been preferred, exports had been undertaken. It would also appear to us that the deferment of time for installation does not, of itself, re-schedule the deadline for completion of export obligation. The imports had been effected in October 2012 and December 2012 with post-import fulfilment of the export obligation by 2018.

8. In the facts and circumstances of fulfilment of export obligation not having been evinced and the stipulated deadline prescribed in the authorisations not adhered to, the confirmation of duty liability, equal to the duty foregone, would appear to be reasonable. However, there is no finding on the entitlement for depreciation in proportion to the export performance established from the records. This would have a bearing on the other consequences under Customs Act, 1962. The rectification of that want requires that the impugned order be set aside and matter remanded back to the original authority for fresh decision after consideration of the facts and circumstances including evidence of exports undertaken by deployment of the said capital goods that

may be furnished by the appellant herein.

9. Accordingly, the appeal is disposed off by way of remand.

(Order pronounced in the open court on 19/03/2024)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*