CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH - COURT NO. 01

Customs Appeal No. 86524 of 2017

(Arising out of Order-in-Appeal No. MUM-CUSTM-SXP-188/2016-17 dated 30.03.2017 passed by Principal Commissioner of Customs (Appeals), NCH, Mumbai Zone-I)

M/s. Leena Denim Limited .....**Appellant**
2nd Floor, Lakshdeep Building, 5th Gulmohar Cross
JVDP Scheme, Juhu, Mumbai – 400 004.

VERSUS

Commissioner of Customs (Export), Mumbai .....Respondent
New Customs House, Ballard Estate,
Mumbai – 400 001.

Appearance:

Shri Anil Mishra, Advocate for the Appellant

Shri Deepak Sharma, 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/85829/2024

Date of Hearing: 20.08.2024
Date of Decision: 20.08.2024

PER : S. K. MOHANTY

Briefly stated, the facts of the case are that the appellants herein are the manufacturer/exporter of readymade garments. The appellants were issued with the EPCG license for import of various machineries required for manufacture of the readymade garments. The machinery imported by the appellant under EPCG license were initially installed at their factory located in Mumbai Apollo Industrial Estate and subsequently, during the period December 2000 were shifted to another location at Western Industrial Co-operative Estate Ltd. opp. SEEPZ, Andheri East, Mumbai due to labour unrest. Later on the said machineries were shifted to their own Chennai factory for the required purpose i.e. installation of the machines and manufacture of the readymade garments. Shifting of the machineries to different locations were objected to by the Department on the ground that the conditions of the Notification No. 29/97 dated 01.04.1997 were not fulfilled. Further, the department had also objected that after the lapse of more than six years, the machineries were installed by the appellants and for such purpose no extension was obtained from the Customs department. Furthermore, it has also been alleged by the department that instead of Assistant Commissioner/Deputy Commissioner, the installation certificate was signed by the Superintendent of Central Excise and as such, the condition No.6 of the notification dated 01.04.1997 has been violated. On the basis of such allegation, show cause proceedings were initiated against appellants which culminated into the adjudication order dated 30.01.2015, wherein the original authority had confirmed duty demand of Rs.30,01,626/-; confiscated the goods, with option to redeem the same on payment of redemption fine of Rs.7,00,000/-; and imposed penalty of Rs.30,01,626/- on the appellants. On appeal against the said adjudication order dated 31.01.2015, the learned Commissioner of Customs (Appeals), Mumbai-I vide impugned order dated 30.03.2017 has upheld confirmation of the adjudged demands and rejected the appeal filed by the appellants. Feeling aggrieved with the impugned order dated 30.03.2017, the appellants have preferred this appeal before the Tribunal.

2. Heard both sides and examined the case records.

3. We find that installation of the machineries at the Chennai factory of the appellants were duly approved by the Foreign Trade Development officer in the office of the Director General of Foreign Trade (DGFT). Since, the DGFT is the competent authority to issue the EPCG License and upon appreciation of the case that the machineries were shifted to the other factory at Chennai, they had issued the certificate in acknowledging such shifting of the machinery. Fulfilment of the condition of EPCG

License has to be looked into by the DGFT authority, who had issued the certificate to the appellants. Since, such authority had not raised any objection for shifting of the machinery, the said fact cannot be questioned by the Customs authority inasmuch as the licensing authority is the responsible authorities for the purpose of any changes to be made with regard to the EPCG License. We also find that for non-compliance of the requirement contained in the Notification No. 29/97 dated 01.04.1997, the authorities below have denied the benefit claimed by the appellant under the EPCG License. Since, the authorities both under the DGFT as well as Customs have certified that the appellants had exported the goods as per such license and issued the Export Obligation Discharge Certificate (EODC), for procedural infraction, the benefit provided under the licensing policy cannot be denied to appellant. In view of the fact that the appellants had achieved the mandatory requirement of export obligation, the rest of their infraction are merely procedural in nature and the substantive rights conferred on the appellants for availment of the benefit under EPCG License cannot be whittled down for such minor procedural infraction.

4. In view of the above, we do not find any merits in the impugned order, insofar as it has upheld confirmation of the adjudged demands on the appellants. Therefore, the impugned order is set aside and the appeal is allowed in the favour of the appellants.

(Dictated and pronounced in the open court)

(S. K. Mohanty)
Member (Judicial)

(M. M. Parthiban)
Member (Technical)

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