CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH

Customs Appeal No. 86452 of 2014

(Arising out of Order-in-Appeal No. 196 (Gr-VIIG)/2014 (JNCH)/EXP-16 dated 31.01.2014 passed by the Commissioner of Customs (Appeals), Mumbai II)

M/s. Wirecom(India) Pvt Ltd …..**Appellant**
27/39 Sethi Industrial Estate,
10-E, Suren Road,
Andheri East, Mumbai

Vs.

Commissioner of Custom, Nhava Sheva …..**Respondent**
JNCH, Nhava Sheva, Tal-Uran,

APPEARANCE:

Shri Pankaj Pai, Consultant for the appellant
Shri D S Mann, DC (AR) for the respondent

CORAM: **Hon'ble Mr C J Mathew, Member (Technical)**
Hon'ble Mr Ajay Sharma, Member (Judicial)

FINAL ORDER No: 86807/2024

DATE OF HEARING : 01.07.2024
DATE OF DECISION : 06.11.2024

PER: C J MATHEW

This appeal of Wirecom (India) Pvt Ltd lies against order[1] of Commissioner of Customs (Appeals)-Mumbai II with limited plea on behalf of appellant that two lower authorities had prematurely decided

[1] order-in-appeal no. 196 (Gr-VIIG)/2014 (JNCH)/EXP-16 dated 31st January 2014

a purportedly protective demand despite there being no cause for urgency. It is their contention that the ambiguities that led to the notice has since been clarified in their favour.

2. The appellant had imported three sets of ‘spring former & spring coiling machine’ valued at ₹ 45,28,335/- against bill of entry no.947208/09.01.2004 and, owing to being in possession of licence no. 0330004394/25.09.2003, had availed the benefit of notification no. 55/03-Cus dated 1st April 2003 to restrict payment of duty to ₹2,26,416.70 with ₹ 15,48,691/- foregone thereby. The conditions for the concession in the notification, as well as the scheme in the Foreign Trade Policy (FTP) required offset of duty so saved to the extent of FOB value of exports eight times thereof within an eight-year period and also stipulated that installation certificate be submitted within six months of import besides information on block-wise fulfilment of export obligation. In the absence of any further communication of compliance by the importer, proceedings were initiated on 31st March 2012 against them after expiry of the period for fulfilment of export obligation for recovery of the duty foregone and for confiscation of the goods under section 111(o) of Customs Act, 1962 with consequent imposition of penalty under section 112 of Customs Act, 1962.

3. It appears from the records that the appellant had not participated in the proceedings before the original authority leading to

the proposal in the show-cause notice being accepted in *toto*. On appeal before the first appellate authority, it was pleaded that some portion of export obligations had been fulfilled by them and that they had sought regularisation, by adjustment of the block period, from licensing authority. It was submitted that these pleadings had gone unheeded leading to upholding of the order of the adjudicating authority in appeal.

4. Learned Consultant for appellant submitted that since the decision of the first appellate authority, the Director General of Foreign Trade (DGFT) had issued 'regularisation letter' on 6th February 2015 directing confirmation of differential duty paid by them amounting to ₹ 12,20,369/- as having been paid before release of the bond. It was his contention that, in the light of such regularisation, confiscation of goods and imposition of penalty is improper.

5. We have heard Learned Authorised Representative who submitted that the proceedings had been rightly initiated following failure to submit 'installation certificate' and fulfilment of block-wise export obligation at prescribed intervals. It was contended that the appellant had sought regularisation only after the matter had been adjudicated upon indicating that the regularisation had come too late. He submitted that their intention to avoid discharge of duty liability was apparent.

6. From perusal of the records and submissions, it is apparent that appellant had not fulfilled the export obligation contracted by them at the time of import. It is apparent that the export obligation period had since expired. It is also further on record that the licensing authority had regularised the failure to fulfil the condition in the licence by ordering recovery of differential duty and interest as specified. Taking note of the compliance thereby, the licencing authority had sought confirmation from the customs authorities which is allegedly not on record.

7. The purpose of such schemes is to enable export maximising and acknowledges that failure to fulfil obligation may have much to do with business realities. In such cases, the remedy offered by Foreign Trade Policy (FTP) which, while taking time for processing, should have been awaited until culmination of exchanges between the licensing authority and the customs authorities.

8. That the appellant had not been heard by the original authority and that the circumstances had since changed is a cause for pause and suffice for us to hold that the issue requires examination by the original authority. In these circumstances, it would be appropriate to set aside the impugned order and remand the matter back to the original authority to ascertain compliance in accordance with the specification contained in the communication of the licensing

authority and for any action under section 111 and 112 to be taken only upon consideration of such regularisation, if any.

9. Appeal is allowed by way of remand to the original authority.

(Order pronounced in open court on 06.11.2024)

(Ajay Sharma)
Member (Judicial)

(C J Mathew)
Member (Technical)

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