
(2023) 11 CESTAT CK 0007

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 40600 Of 2020

M/S. Hyundai Motor India Limited

APPELLANT

Vs

Commissioner Of Customs Chennai-IV Commissionerate

RESPONDENT

Date of Decision : 03-11-2023

Acts Referred:

Citation : (2023) 11 CESTAT CK 0007

Hon'ble Judges : P. Dinesha, Member (J); M. Ajit Kumar, Member (T)

Bench : Division Bench

Advocate : S. Ganesh Aravindh, M. Ambe

Final Decision : Disposed Of

Judgement

P. Dinesha, J

1. This appeal is filed against the Order-in-Original No. 76091 of 2020 dated 18.09.2020 whereby the Commissioner of Customs has ordered the denial of duty exemption availed by the assessee in terms of EPCG Authorisation Licence No. 0430009220 dated 24.11.2010 for the import of capital goods under Notification No. 102/2009 dated 11.09.2009.

2.1 Shri S. Ganesh Aravindh, Ld. Advocate appearing for the assessee, would submit at the outset that the assessee had fulfilled the export obligation prescribed under the above Notification and the certificate of the chartered accountant placed at pages 69 and 70 of the appeal memorandum supports their contention; however, the above Notification does not anywhere mandate the production of EODC by the appropriate authority, but it is only as a matter of convenience that such EODC are obtained and filed before the Customs authorities.

2.2 He also argued that upon fulfilment of the export obligation, they had submitted vide application dated 08.08.2014 along with all relevant documents to the authority, namely, the Additional Director General of Foreign Trade

(ADGFT), Chennai, requesting for issuance of EODC, but however, they did not receive any communication from the said authority. In any case, according to the Ld. Advocate, the certificate issued by their chartered accountant who has clearly certified that the assessee had fulfilled their export obligations, would serve the purpose. To buttress his contention that non-production of EODC as proof of fulfilment of Export Obligation cannot be held against them, he placed reliance on the following orders: -

- i. Commissioner of Customs, Delhi v. Multivac India Pvt. Ltd. [2017 (357) E.L.T. 1148 (Tri. – Del.)]
- ii. Tex Corp Ltd. v. Commissioner of Customs, New Delhi [2017 (358) E.L.T. 971 (Tri. – Del.)]
- iii. Prime Ophthalmic Products P. Ltd. v. Commissioner of Customs, New Delhi [2017 (358) E.L.T. 814 (Tri. – Del.)]

2.3 The Ld. Advocate further submitted that the Commissioner-lower authority has relied upon an unrebutted communication issued by the office of the ADGFT dated 09.09.2020, copy of which was not issued to the assessee for rebuttal or comment and hence, the order of the lower authority cannot be sustained as the same is passed without adhering to the principles of natural justice inasmuch as, the authority has proceeded to rely on a document purportedly issued against the interest of the assessee which was not furnished to the assessee for rebuttal/ explanation. He submitted that issuance of EODC is in the hands of the DGFT officers and the appellant cannot be blamed for inaction on the part of the DGFT, for which he relied on the following orders of various Benches of the CESTAT: -

- i. GLS Film Industries Pvt. Ltd. v. Commissioner of Customs, New Delhi [2015 (315) E.L.T. 475 (Tri. – Del.)]
- ii. Titagarh Wagons Ltd. v. Commissioner of Customs (Port), Kolkata [2015-TIOL-631-CESTAT-KOL]
- iii. Organica Aromatics Pvt. Ltd. v. Commissioner of Customs and Service Tax, Bangalore [2017 (9) TMI 1570 – CESTAT, Bangalore]

3. On the other hand, Shri M. Ambe, Ld. Deputy Commissioner, has relied on the findings in the impugned order. He would also invite our attention to the content of the letter by the ADGFT, Chennai, wherein the said authority has indicated that the assessee had not fulfilled their export obligation, by violating condition No. 6 of Annexure-A and that the assessee's letter dated 08.08.2014 did not contain any documents said to have been submitted, rather the same appears to be meant for general correspondence only.

4. We have heard the rival contentions and perused the order of lower authority, we have gone through the documents placed on record and we have also considered the orders of various benches of the Tribunal relied upon by the assessee during the course of arguments before us.

5. After hearing both sides, we find that the issue to be decided by us is: whether the Commissioner was correct in proceeding to confirm the demand?

6. At the outset, we are of the prima facie view that the impugned order cannot be sustained for the following reasons.

7.1 Firstly, when an application for discharge is submitted before an authority, any shortcomings in such application should be essentially communicated to the applicant alone, thereby seeking clarifications. Admittedly, the appellant's application is dated 08.08.2014. It is not for the authority to persuade the departmental officers as to the liability or otherwise of an applicant to Customs duty, as indicated in the unrebutted communication issued by the Zonal ADGFT, which is also relied upon by the lower authority. This according to us is unsustainable, as the lower authority was required under law to consider all such available materials in a pragmatic way, apply mind to the practical aspects and then pass an order and it goes without saying that such order shall be passed keeping in mind the requirements of law as well as the relevant notification like the Notification No. 102/2009 (supra) in the case on hand, apart from the principles of natural justice. It is certainly not for the ADGFT to declare the applicant's liability to Customs duty, rather it was for the Commissioner to decide that.

7.2 Secondly, the letter referred to in the said communication by the ADGFT dated 09.09.2020, for request of EODC on 08.08.2014, copy of which is placed on record, clearly reveals that the same is the covering letter and all the relevant documents appear to have been enclosed by M/s. Hyundai Motor India Limited and hence, what was the basis for a responsible authority like the ADGFT to issue such a factually incorrect comment is the question that bothers us.

7.3 The Commissioner has further observed that more than nine years had lapsed, but however, has not found fault with the assessee; as the record placed before us speaks that the assessee had claimed to have fulfilled export obligation, filed necessary application with documents with the concerned authority, namely, ADGFT. Admittedly, the ADGFT neither issued certificate nor has issued any communication highlighting the shortcomings, if any, to the appellant from the said application and hence, we do not have any doubts as regards the bona fides of the assessee/appellant before us. Just because the said authority who should have issued communication to the assessee-applicant chose to bias the mind of the adjudicating authority does not ipso facto become sacrosanct, much less, an admissible evidence. Had the assessee defaulted in not approaching the authority in time, then perhaps it was a different aspect altogether, which is not so here. Further, the appellant has also furnished a certificate by its chartered accountant, but unfortunately, the lower authority has not at all bothered to consider or discuss the same in the impugned order, which only points out that the order has been passed in a haste. When no primary evidence is available for various reasons, then there is no bar to consider other evidences like secondary evidences before concluding the proceedings, by the

lower authority.

8. In view of the above discussion, we are of the prima facie view that the appellant should not be taken to task due to a delay caused in the DGFT office to act on their request for redemption of EPCG Licence. The impugned order calls for interference and hence, we set aside the same. We hereby direct the lower authority to await the certificate that may be issued by the authority, namely DGFT, as ruled by co-ordinate Benches of the Tribunal, in the interests of justice.

9. The appeal is disposed of as above.