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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Chennai

Decided On : Apr-08-2010

Judge : The Honourable Ms. Jyoti Balasundaram, Vice President

Appeal No. : Appeal Nos.C/S/104 of 2010, 105 of 2010 & C/133 of 2010, 134 of 2010

Appellant : Dynamatic Technologies Ltd.

Respondent : Commissioner of Customs (Seaport Exports), Chennai

Advocate for Pet/Ap. : Shri R.Janardhanan Pillai, Consultant. Shri C.Dhanasekaran, SDR

Judgement :

For reasons recorded below, I waived predeposit and proceeded to take up the appeals themselves for final hearing with the consent of both sides.

2. In both the cases, duty demands were confirmed for non-production of Export Obligation Discharge Certificate (EODC) as required under the advance licence scheme. In the first case, the appeal against confirmation of demand was rejected on the ground of delay of 28 days beyond the statutory period of limitation prescribed for filing an appeal to Commissioner (Appeals), under the provisions of Section 128 of the Customs Act, 1962. In respect of the other appeal, the lower

appellate authority has upheld the demand on the ground of non-production of EODC from the DGFT.

3. I have heard both sides. As regards Appeal No.C/133/10, I note that the Commissioner (Appeals) has relied upon a note dt. 19.11.09 of the Revenue confirming that the relevant Order-in-Original dt. 29.4.08 was received on 5.5.08 by one Sampath Kumar of M/s.Navrang Shipping Pvt. Ltd. on behalf of the appellants. The assessees were not put on notice regarding the above note and there is no evidence that Navrang Shipping Pvt. Ltd. was authorized by the assessees to receive copies of the communications including orders etc. on behalf of the assessees. I, therefore, hold that in the absence of any material to show that the Order-in-Original was received by the assessees themselves on or before 5.5.08 and in the absence of any material to the effect Navrang Shipping Pvt. Ltd. was authorized to receive the impugned order on behalf of the assessees, I set aside the impugned order upholding the Order-in-Original No.7754/2008 dt. 29.4.2008 and remit the case for fresh decision on merits to the adjudicating authority who shall pass fresh orders after extending reasonable opportunity of hearing to the assessees.

4. As regards the second case, the assessees submit that they had filed documents such as Appendix-18 (Register for maintenance of consumption and stocks of imported raw material/components etc. by the actual users), Central Excise certificate of export completion and bank certificate etc. which, according to them, would be sufficient to establish that they had discharged the export obligation under the relevant advance licences. The impugned order does not reveal that any of these documents have been considered. The appellants have also applied long back for the EODC and are awaiting issue of the same. I, therefore, set aside the impugned order upholding the second Order-in-Original namely OIO No.8055/2008 dt. 30.8.08 and remit the case for fresh decision to the adjudicating authority who shall consider all the documentary evidence on record before determining whether such documents are sufficient for the purpose of holding that the assessees had discharged the export obligation under the advance licences. It is also open to the assessees to produce EODC if obtained from the DGFT before the adjudicating authority. He shall extend reasonable

opportunity to the appellants of being heard in their defence before passing fresh orders.

5. In the result, both the appeals are allowed by way of remand.