

**IN THE CUSTOMS, EXCISE & SERVICE TAX  
APPELLATE TRIBUNAL, CHENNAI**

**Excise Appeal No.40120 of 2022**

(Arising out of Order in Appeal No. 46/2021 dated 13.12.2021 passed by the  
Commissioner of GS & Central Excise (Appeals), Coimbatore & Madurai)

**M/s. Beach Minerals Company**

BMC House, 32/2, Halls Road  
Egmore, Chennai – 600 008.

**Appellant**

Vs.

**Commissioner of GST & Central Excise**

Central Revenue Building  
No. 4, Lal Bahadur Shastri Road  
Bibikulam, Madurai – 625 002.

**Respondent**

**APPEARANCE:**

Shri A.K. Jayaraj, Advocate for the Appellant  
Shri Harendra Singh Pal, AC (AR) for the Respondent

**CORAM**

**Hon'ble Shri M. Ajit Kumar, Member (Technical)**

Final Order No. 40701/2023

Date of Hearing : 14.08.2023

Date of Decision: 21.08.2023

This appeal is filed by M/s. Beach Minerals Company against Order in Appeal No. 46/2021 dated 13.12.2021 passed by the Commissioner (Appeals), Madurai.

2. The facts of the case are that M/s. Beach Minerals Company, Muthiapuram, Tuticorin, which is an 100% EOU, were holders of LOP/Green card valid up to 6.10.2014 for manufacture of garnet, ilmenite, rutile and zircon. However, their LOP/Green card along with bonded warehouse license and in-bond manufacture sanction order were found to have not been extended after its expiry on 06.10.2014.

They were hence issued a Show Cause Notice (SCN) dated 04.10.2019 demanding an amount of Rs.34,88,133/- being the duty forgone on capital goods, packing material and finished / semi-finished goods under the provisions of Central Excise Act, 1944. After due process of law, the learned Adjudicating Authority has vide Order in Original (OIO) No. 4/2020 dated 8.12.2020 confirmed the demand with interest and imposed penalty. Aggrieved by the said order, the appellant approached the Commissioner (Appeals) who after examining the matter while upholding the demand of duty along with interest set aside the invocation of extended period of limitation since the demand was issued by virtue of B-17 bond. He has also set aside the penalty imposed. Aggrieved, the appellant has assailed the impugned order before this Tribunal.

3. No cross-objections have been filed by the respondent-department.

4. Shri A.K. Jayaraj, learned counsel appeared for the appellant and Shri Harendra Singh Pal, learned AC (AR) appeared for the Revenue.

5. Shri A.K. Jayaraja, learned counsel has stated that it has been admitted in the Show Cause Notice and the Order in Original that even prior to the expiry of their LOP/Green card, they had applied for extension to the Development Commissioner, MEPZ, Chennai (herein after referred to as D.C.). After their initial application on 23.8.2014, they were in continuous correspondence with the D.C. vide their letters dated 20.10.2014, 1.11.2014, 11.2.2015, 17.3.2015, 5.6.2015, 10.9.20215 and 9.12.2015. MEPZ, Chennai has called for certain clarification vide their letter dated 27.11.2015. In the meantime, due to circumstances beyond their control, whereby both State

Government and Central Government had not approved new mining lease from the year 2000, the appellant was forced to opt out of the EOU scheme and had hence requested the D.C. for issuing an in-principle approval for exit from EOU vide their letter dated 22.3.2017. Also they had vide their letter dated 1.3.2019 requested permission from MEPZ for debonding of capital goods. However, the D.C. issued an in-principle exit order on 17.12.2019 and extended it up to 16.12.2021. Meanwhile, the jurisdictional Assistant Commissioner of Central Excise, Tuticorin issued a SCN to them on 4.10.2019 and without waiting for their request to MEPZ first for extension of the green card / LOP and subsequently for exit from EOU to crystalize, has gone ahead and confirmed the duty of Rs.34,88,133/- along with interest and also imposed a penalty vide OIO dated 8.12.2020. They could not get full relief before the Commissioner (Appeals) who has confirmed the demand and interest and only dropped the penalty vide Order in Appeal dated 13.12.2021 (impugned order). He hence prayed that since the matter has been finalized without taking their submissions into consideration and without any fault on their part, the duty liability has to be re-worked out and the OIO set aside. Further as per the decision in Arihant Spinning Mills [ 2017 (348) ELT 336 (Tri. Chan.)], Ginni Filament Ltd. [ 2015 (327) ELT 537 (Tri. Del.)] and CBEC Circular No. 8/2004-Cus dated 28.1.2004 in F. No. 305/185/2003-FTT, the liability to pay duty on the part of the appellant arises only on 16.12.2021, i.e. the day on which the principle exit order issued by the D.C. expires. He submits that the appellants are prepared to pay duty on the finished goods manufactured and raw material available in stock which was not cleared after the amount is reworked out, taking into

consideration the depreciation of goods, the fact that the packing material have become obsolete and are to be destroyed etc. They were not able to proceed further in the matter due to the pending appellate proceedings. They hence prayed suitable orders may be passed in the matter.

6. Heard the learned AR Shri Harendra Singh Pal for Revenue. He has reiterated the points given in the impugned order.

7. I find that the issue before me falls on a short compass i.e. that the impugned order was passed without taking into consideration the request made by the appellant to the D.C. for extension of LOP/Green Card. Subsequently, due to operation of law, mining operation have been banned and they were forced to exit from the EOU operations. Their application for the same has since been obtained and the in-principle exit order dated 17.12.2019 has been extended up to 16.12.2021. Hence duties need to be determined afresh.

8. I find that the issue of Show Cause Notice dated 04.10.2019 to the appellant appears premature and issued before the appellants request to the D.C. had been finalised. However, it is also noticed that the LOP/Green card was valid only up to 6.10.2014 and the department had issued the SCN after five years since its expiry giving sufficient time for the D,C.'s office in coming to a decision in the matter. I find that the Show Cause Notice does not contain any allegations of a blameworthy act by the appellant except his license was not renewed by the D.C. A person who sets out to do business is at times caught in circumstances beyond his control. It is for the department's concerned to ensure that such bonafide assessee are facilitated and not subjected to needless quasi-judicial proceedings which involve a penalty. To have

a setback in business is not a punishable offence. Each situation has to be examined on its merit and hardship should not be caused to a compliant assessee just because a provision in law enables the discretionary imposition of penalties.

8.1 I find that the SCN has been issued invoking the B-17 bond executed by the appellant. Hence, although the action of the Commissioner (Appeals) in setting aside the penalty was right, he should also have asked the adjudicating authority to examine the duty liability in terms of the exit order given by the D.C. This is in line with Board's Circular No. 12/2008 dated 24.7.2008 issued from F. No. DGEP/FTP/13/2008-EOU & G&J and Circular No. 21/95 dated 10.3.1995 (F. No. 307/29/91-FTT) wherein it was stated that demand of duty can be confirmed only after a definite conclusion regarding the non-fulfilment of export obligation is arrived at by the Development Commissioner. Delays in receiving final permission must be taken up by the jurisdiction Customs / Central Excise authorities with the Development Commissioner / Director STP so that the matter is not delayed. The appellant has showed his willingness to pay the duty as per the normal process of debonding at the time of exit from EOU scheme. Hence, I feel that in the light of the development the matter needs to be remanded to the adjudicating authority to examine the facts and decide all the issues raised by the appellant regarding depreciation, destruction of obsolete goods etc. and arrive at the duty payable along with interest, afresh.

9. Having regard to the facts and circumstances discussed above, I set aside the impugned order and remand the matter back to the learned Adjudicating Authority to decide afresh the issues relating to

the demand for duty and interest only, after considering any written request from the appellant and hearing him in the matter, based on the in-principle exit order given by the D.C. and further developments in the matter if any. The appeal is disposed of accordingly.

(Pronounced in open court on 21.08.2023)

**(M. AJIT KUMAR)**  
Member (Technical)

Rex