CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH : AHMEDABAD

REGIONAL BENCH - COURT NO. 3

CUSTOMS Appeal No. 11818 of 2017-DB

[Arising out of Order-in-Original/Appeal No 08-KVSS-08-ADG-ADJ-DRI-MUMBAI-2017-18 dated 05.05.2017 passed by Commissioner of CUSTOMS(AIR-PORT)-MUMBAI-I]

Commissioner of Customs, Mumbai-I .... Appellant
115 Central Ex. Bldg., Maharshi Karve Road,
Churchgate, Mumbai, Maharashtra -400020

VERSUS

Adani Exports Limited .... Respondent
Adani House, Navrangpura,
AHMEDABAD, GUJARAT

WITH

(i) CUSTOMS Appeal No. 11819 of 2017 (Shri Rajesh Adani)
(ii) CUSTOMS Appeal No. 11820 of 2017 (Padmini Polymers Limited)
(iii) CUSTOMS Appeal No. 11821 of 2017 (BSK Minerals Pvt. Limited)
(iv) CUSTOMS Appeal No. 11822 of 2017 (Sharp Time Industries)
(v) CUSTOMS Appeal No. 11823 of 2017 (Intercontinental India)
(vi) CUSTOMS Appeal No. 11824 of 2017 (Rajesh Adani)
(vii) CUSTOMS Appeal No. 11825 of 2017 (Shax Epsilon Pvt. Limited)
(viii) CUSTOMS Appeal No. 11826 of 2017 (Brisk Plastics & Chemicals Ltd)
(ix) CUSTOMS Appeal No. 11827 of 2017 (Virendra Sutaria)
(x) CUSTOMS Appeal No. 11828 of 2017 (Padmani Polymers Limited)
(xi) CUSTOMS Appeal No. 11829 of 2017 (Vivek Nagpal)
(xii) CUSTOMS Appeal No. 11830 of 2017 (Adani Exports Limited)
(xiii) CUSTOMS Appeal No. 11831 of 2017 (Rajesh Adani)
(xiv) CUSTOMS Appeal No. 10799 of 2022 (Inter Continental India)
(xv) CUSTOMS Appeal No. 10800 of 2022 (Shri Rajesh Adani)
(xvi) CUSTOMS Appeal No. 10801 of 2022 (Mr. Samir Vora)
(xvii) CUSTOMS Appeal No. 10802 of 2022 (Seema Jewellers P. Ltd)
(xviii) CUSTOMS Appeal No. 10803 of 2022 (Adani Exports Limited)
(xix) CUSTOMS Appeal No. 10804 of 2022 (Shri Pranav Adani)
(xx) CUSTOMS Appeal No. 10805 of 2022 (Mr. Bhavik Shah)
(xxi) CUSTOMS Appeal No. 10806 of 2022 (Mr. Saurin Shah)
(xxii) CUSTOMS Appeal No. 10807 of 2022 (Suresh Kalidas Soni)
(xxiii) CUSTOMS Appeal No. 10808 of 2022 (Adani Exports Limited)
(xxiv) CUSTOMS Appeal No. 10809 of 2022 (Osian Gems)
(xxv) CUSTOMS Appeal No. 10810 of 2022 (Director M/s. Osian Gems)
(xxvi) CUSTOMS Appeal No. 10811 of 2022 (M/s. Aaryavart Impex Ltd)
(xxvii) CUSTOMS Appeal No. 10812 of 2022 (Narottam Somani)
(xxviii) CUSTOMS Appeal No. 10813 of 2022 (Mr. Suresh Gadhecha)
(xxix) CUSTOMS Appeal No. 10814 of 2022 (Mr. Ritesh Amritlal Jain)
(xxx) CUSTOMS Appeal No. 10815 of 2022 (Saurin Shah)
(xxxi) CUSTOMS Appeal No. 10816 of 2022 (Aditya Corpex Limited)
(xxxii) CUSTOMS Appeal No. 10817 of 2022 (Kewal Bullion Corporation)
(xxxiii) CUSTOMS Appeal No. 10818 of 2022 (Seema Jewellers P. Ltd)
(xxxiv) CUSTOMS Appeal No. 10819 of 2022 (Suresh Kalidas Soni)

(xxxv) CUSTOMS Appeal No. 10820 of 2022 (Shri Rajesh Adani)
(xxxvi)CUSTOMS Appeal No. 10821 of 2022 (Samir Vora)
(xxxvii) CUSTOMS Appeal No. 10822 of 2022 (Bhavik Shah)
(xxxviii) CUSTOMS Appeal No. 10823 of 2022 (Hinduja Exports Ltd)
(xxxix) CUSTOMS Appeal No. 10824 of 2022 (Saurin Shah)
(xxxx) CUSTOMS Appeal No. 10825 of 2022 (Sushil Kewalchand Jain)
(xxxxi) CUSTOMS Appeal No. 10826 of 2022 (Midex Overseas Pvt Ltd)
(xxxxvii) CUSTOMS Appeal No. 10827 of 2022 (Samir Vora)
(xxxxiii) CUSTOMS Appeal No. 10828 of 2022 (Auro Gold Jewellery Pvt Ltd)

[Arising out of Order-in-Original/Appeal No 08-KVSS-08-ADG-ADJ-DRI-MUMBAI-2017-18 dated 05.05.2017 passed by Commissioner of CUSTOMS(AIR-PORT)-MUMBAI-I and Order-in-Original/Appeal No. AHM-CUSTM-000-COM-003-22-23 dated 21.04.2022]

APPEARANCE :

Shri Rajesh R. Kurup, Superintendent (AR) for the Appellant
Shri JC Patel, Shri Paritosh Gupta, Shri Amit Laddha Advocates for the Respondent

CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. RAJU, MEMBER (TECHNICAL)

DATE OF HEARING : 11.12.2023
DATE OF DECISION: 09.04.2024

FINAL ORDER NO. 10798-10841/2024

RAMESH NAIR :

All these Appeals are preferred by the Revenue challenging Order-In-Original No. 08/KVSS(08)ADG(ADJ.)/DRI, MUMBAI/2017-18 dated 05.05.2017 and 11/KVSS(11)ADG(ADJ.)/DRI, MUMBAI/2017-18 dated 21.06.2017, passed by the Additional Director General, D.R.I (Adjudication), Mumbai and Order-in-Original/Appeal No. AHM-CUSTM-000-COM-003-22-23 dated 21.04.2022 passed by Commissioner of CUSTOMS-Ahmedabad. Since issues involved in these appeals are common and arise from same investigation, all the appeals are taken up together for disposal.

2. Brief facts of the case are that intelligence was developed by the officers of DRI that various companies had overvalued their exports of CD ROMS with the intention of fraudulently obtaining excess DEBP/DEEC Credits, which were subsequently utilized for duty free import thereby causing loss of the Customs Duty. Based on the said intelligence, investigations were initiated into the exports of CD ROMS and goods

exported by respondents and other exporters. The Investigations revealed that exports had been overvalued to claim undue export benefits.

3. Investigation further revealed that during the year 1998 & 1999 M/s Adani Exports Ltd. and its Directors had hatched a conspiracy along with M/s Padmini Polymers Ltd. to export junk CDs declared as software at a grossly over invoiced value under DEPB/DEEC scheme to defraud the exchequer and to avail benefits under DEPB/DEEC scheme. The correct FOB value of the CD ROMS exported by M/s. Adani Exports Ltd. were re-determined and the DEPB credit of Rs. 11,92,05,000/- availed on the said fraudulent exports of CD ROMS, DEPB credit of only Rs. 72,22,967/- appeared to be admissible and thereby credit of Rs. 11,13,82,022/- appeared inadmissible. It also appeared that exports of CD ROMS by M/s Intercontinental (India) which is also firm belong to the Adani Group, was also part of the conspiracy hatched by M/s Adani group and M/s Pandmini Polymers Ltd. with an intent to defraud the exchequer by exporting junk/pirated CD ROMS having no commercial value, at a grossly over declared F.O.B value to avail undue excess benefit under DEPB/DEEC scheme. It appeared that as the DEPBs/DEECs were obtained by the mis-declaration of value and by suppression of facts, the consequential duty not paid by respondents and other importers appeared recoverable from them under the provision of Customs Act. Accordingly respondents were issued show cause notices demanding differential duty. Show Cause Notices dated 28.01.2003 in the case of Inter Continental (India)] and 20.03.2003 in the case of Adani Exports Ltd. & its Directors were issued to the Respondent demanding customs duty under Section 28(1) of the Customs Act, 1962 along with interest under Section 28 AB of the Act. The said Show Cause Notices also propose to impose Penalty under Section 112 and 114 of the Act. The said show cause notices also proposed as to why the goods cleared from the port should not be held liable for confiscation under section 111(o) of the act. In adjudication, Ld. Adjudicating authority vide impugned orders dropped the proceedings initiated against respondents. Aggrieved by the said order, revenue preferred these appeal.

4. Shri R.R. Kurup, Ld. Superintendent appearing on behalf the revenue reiterated the grounds of appeals and submits that Ld. Adjudicating authority has not gone into the merits of the case and has observed that

since the impugned goods, which have already passed through litigation stages, and attained finality in the case of M/s Colourtex wherein Hon'ble Apex Court had upheld the order of the Hon'ble CESTAT. Further the adjudicating authority has observed that the findings of the Apex Court, are ultimately binding on him. However it appears that the distinguishing facts as given in the instant matter have not been take into account by adjudicating authority.

5. He also submits that in the instant case DRI has re-determined the value of 26 titles of CD ROMS Exported by M/s. Adani Exports Pvt. Ltd. and 8 titles exported by M/s Intercontinental (India) under DEPB schemes and the export prices of various titles covered in the subject shipping bills exported by the respondents have been proposed to be re-determined on the basis of contemporaneous exports prices for the material period, US Customs Report, Invoices of like goods etc. Apex court vide its order No. 2015(326)ELT A35(SC) dismissed the appeal of the revenue against the CESTAT order 2012(280)ELT 225 (Tri. Ahmd.) wherein the Order-in-Original confirming over-valuation in the case of Colourtex had been set aside on 2 points of the Board's Circulars 69/97-Cus dated 08.12.1997.

(i) Declared FOB was less than 150% of AR-4 price therefore market enquiry not required and,

(ii) Approval of shipping Bills by SIIB indicating knowledge of procedure and value of export.

6. He further submits that in the instant matter revenue is in possession of documentary evidence in the form of invoices of the like goods based on which the contemporaneous price were arrived at. Thus in the instant matter there is variation in the method of re-determination of the value which distinguishes the instant matter with the case decided by the Apex Court.

7. He also submits that the show cause notice dated 20.04.2001 has been issued in this case to M/s Padmini Polymers Ltd. has filed an application before the Settlement Commission admitting overvaluation in the export of CD ROMs in this case.

8. He also argued that the Ld. Adjudicating authority has erred in not taking into accounts the facts on record available in the instant matter and has proceeded on the basis of Apex Court's Judgment referred to supra – facts and circumstances for which are distinguishable.

9. Shri J.C. Patel with Shri Amit Ladhha, learned Advocates appearing on behalf of the respondents submits that the issue involved in the present case is no more *res-integra* in view of the following decisions:

(a) Colourtex v. CC, Kandla reported in 2012 (280) ELT 225 (Tri. Ahmedabad) which was upheld by the Hon'ble Supreme Court as reported in 2015 (326) E.L.T. A35 (S.C.)]
(b) CC, Kandla v. Crown International reported in 2006 (203) ELT 120 (Tri-Mumbai) which was upheld by Hon'ble Supreme Court as reported in 2015 (325) ELT 462 (SC)
(c) Advance Exports v. CC, Kandla reported in 2007 (218) ELT 39 (Tri. Ahmd.) which was upheld by Hon'ble Supreme Court as reported in 2015 (325) ELT 462 (SC).

10. He also submits that the goods exported by the Respondents were the same as those exported by Advance Exports, Crown International and Colourtex and were procured from the same manufacturer and exported at or about the same prices. The Tribunal has in the aforesaid decisions in the case of the said exporters held that there was no overvaluation of the said goods and that the export prices represented the correct transaction value which has been duly realized. The goods exported by the Respondent being the same and the Respondent having also realized the entire export price, the said decisions squarely apply to the Respondent's case. In fact, the Show Cause Notices issued to the Respondents was based on common investigations in respect of export of CD ROMS by various exporters on the basis of which similar Show Cause Notices were issued to the said three exporters and the Show Cause Notices issued to the Respondent itself placed reliance on the investigations pertaining to the said three exporters. The adjudicating authority has therefore, rightly dropped the proceedings against the Respondent by relying on the said decisions of the Tribunal in the case of

Advance Exports, Crown International and Colour Tex, which have been upheld by the Hon'ble Supreme Court.

11. He further submit that the impugned goods i.e. CD ROMS and the method of valuation adopted in the instant case are similar to that which was adopted in the above mentioned decisions and therefore, the issue is no longer res-integra. Ld. Adjudicating authority after placing reliance on the aforesaid orders rightly dropped the charges of show cause notice against the Respondents.

12. He also submits that Ministry of Finance (Department of Revenue) vide Circular No.69/97-Cus dated 08.12.97 also clarified that where the FOB value is within 150% of the manufacturer's price, the same shall be accepted. In the present case, it is an undisputed fact that the FOB value was within the range of/lesser than 150% of manufacturer's price and therefore, the issue is even covered by the above-mentioned Circular dated 08.12.97.

13. He also argued that subsequent to the Show Cause Notice issued by DRI, SCNs dated 17.06.2003 [in the case of Inter Continental (India)] and 09.07.2003 [in the case of Adani Exports Ltd.] show cause notices were also issued by the DGFT whereby it was alleged that on account of overvaluation of exports, excess DEPB credit was issued to the Respondent. The aforesaid Show Cause Notices were dropped by DGFT vide Order-in-Original dated 07.08.2013 and 04.09.2013 and it was held that since the charges of overvaluation does not survive, the allegations of willfulmis-declaration and suppression of facts in respect of overvaluation of export price fails. Accordingly, it was held that DEPB licenses have correctly been issued to the Respondent and they are entitled for DEPB benefits. Thus, when the licensing authority i.e. DGFT has certified that the Respondents are entitled for DEPB benefits then the customs authority cannot deny such benefit accrued to the Respondents. He placed reliance on the following decisions:

(i) Titan Medical Systems Pvt. Ltd. v CC, 2003 (151) ELT 254 (SC);

(ii) Zuari Industries Ltd. vs. Commissioner of C. Ex. & Customs, 2007 (210) E.L.T. 648 (S.C.);

(iii) Vadilal Chemicals Ltd. vs. State of Andhra Pradesh, 2005 (192) E.L.T. 33 (S.C.)

14. He also argued that SCNs in the present case have been issued based on common investigation in respect of exports of CD ROM by various exporters. Thus, when the allegation of over-valuation of exports of CD ROMs have been set aside by Hon'ble CESTAT duly been upheld by Hon'ble Supreme Court as mentioned above, the same has direct bearing on the present case. Hence, in terms of settled law that in case the foundation is removed, the superstructure falls. He placed reliance on the following judgments.

(i) Kalabharti Advertising vs. Hemant Vimalnath Narichania and Ors.- (2010) 9 SCC 437

(ii) Union of India vs. Gujarat Paraffins Pvt. Ltd. -2015 (322) ELT A179 (SC).

15. We have carefully considered the submissions made by both the sides and perused the records of the case.The issue to be determined in these appeals is as to whether the respondents had validly imported the goods by availing excess export promotion benefits i.e. DEBP/DEEC Credits and whether the duty foregone amount is liable to recovered from the respondents. We find that the case of the revenue in the present matter is that respondents have exported the impugned CD ROMS by grossly overvaluing the same thereby availing higher DEPB credit. Thus causing loss to the exchequer of its legitimate revenue. The exported CD ROMS and its valuation is the crux of present matter. We observed that besides the serious allegation against the respondents, DRI has also initiated investigation against several exporters. We find that DRI also carried out investigation against M/s Colurtex. M/s. Colourtex is a merchant manufacturer and was engaged in the business of export of dyes, chemicals and polished diamonds. M/s Colurtex purchased CD ROMs from M/s. Padmini Polymers Ltd., New Delhi at a price of Rs. 600/- to Rs. 615/- per

piece and exported through Kandla Port. On an investigation conducted by DRI, show cause notice was issued seeking to re-determine the value of the CD ROMs exported on the ground that the value which was declared was excessive. The said show cause notice also sought to impose penalties on the partner of the exporter M/s. Colourtex, M/s. Adani Exports Ltd. and M/s. Padmini Polymers Ltd. All the said assessee contested the said show cause notices on merits before the adjudicating authority. The adjudicating authority did not agree with the contentions raised by the said assessees and vide Order-in-Original No. KDL/COMMR/78/2003, dated 26-12-2003 confirmed that M/s. Colourtex had overvalued the CD ROMs exported and coming to such a conclusion re-determined and reduced the FOB value and proportionate DEPB credit, he also ordered for confiscation of the CD ROMs, imposed penalty on M/s. Colourtex, Shri Jariwala, M/s. Adani Exports Ltd. and M/s. Padmini Polymers Ltd. Being aggrieved with the said order assessees preferred appeal before the CESTAT and CESTAT vide its Final Order Nos. A/61-64/2012-WZB/AHD, dated 18-1-2012 observed as under :

> ***"8.*** *The issue involved in this case is whether the main appellant M/s. Colourtex had overvalued the CD ROMs exported by them in order to claim ineligible DEPB benefits. The adjudicating authority has held in the Order-in-Original that it is so by coming to a conclusion which is summarized as under :*
>
> *"That M/s. Colourtex were never in the business of export of CD ROMs or computer related items but the real business was export of dyes, chemicals and polished diamonds and they were entering into business of new products and had not thought over but the profit and loss in such a case of business when it is a case of export of involving crores of rupees and that too from a fresh port as well as through a New Customs House Agent. It is also held by him that appellant M/s. Colourtex were helped in opening of bank account by M/s. Padmini Polymers Ltd. and by M/s. Adani Exports Ltd. He also held that the appellant M/s. Colourtex on receipt of export order from M/s. Wajilam Exports (Singapore) Pvt. Ltd. immediately placed an order of CD ROMs with M/s. Padmini Polymers Ltd. for purchase and export the goods through Custom House Agent whom they have never seen or contacted. It is also recorded that this haste on the part of M/s. Colourtex implies that they have already indulged in conspiracy hatched for defrauding the Government of the Revenue. He has also come to the conclusion that appellant M/s. Colourtex has done so with an intent to facilitate other two persons in hatching conspiracy and he has also held that there was a payment made by the purchasers M/s. Colourtex was beyond the period of 120 days which itself indicates that they were*

waiting for the consideration to be received from Singapore to make the payments to M/s. Padmini Polymers Ltd. and M/s. Padmini Polymers Ltd. kept silence for two and a half months and did not try and recover any interest from the appellant M/s. Colourtex. He has also recorded a finding that appellant M/s. Colourtex has made an excess payment of more than Rs. 53 lakhs to M/s. Padmini Polymers Ltd. which was returned after two and a half months, and M/s. Colourtex did not seek any interest from them. After recording of the above findings, he holds that the price declared by the appellant of Rs. 764/- to Rs. 770/- per CD ROM cannot be accepted as genuine price and he has also held that the appellant had not declared the present marked value of the goods on the shipping bill".

9. *We are unable to accept the reasoning given by the adjudicating authority which is summarized as hereinabove to come to a conclusion that there was an overvaluation of the CD ROMs exported by the appellant. We find that in the replies given to the adjudicating authority, the appellant has very clearly indicated in the reply dated 8-5-2003 that M/s. Padmini Polymers Ltd. had made payment of central excise duty on the CD ROMs sold by them. It is also seen that in the said reply, appellants have categorically stated that they had negotiated with the purchasers in Singapore for the sale of CD ROMs for Rs. 764/- to Rs. 770/- per piece. In the said reply, they had specifically pointed out that the difference, between the purchase price and selling price was not major one and which was their business profit. This specific and categorical submission made by the appellant M/s. Colourtex is not disputed by the adjudicating authority. The adjudicating authority has only gone on the presumption that the appellant had not declared the present market value on the shipping bills. We do not find any provision which requires the declaration to be made by them of the present market value on the shipping bills. In this regard, C.B.E. & C. Circular No. 69/97-Cus., dated 8-12-1997 needs to be read which is as under :*

"Attention is invited to Circular No. 15/97-Cus., dated 3-6-1997. The instructions contained in Para 3, 4, & 5 of the above Circular, in sofar as they relate to verification of the Present Market Value (PMV) under DEPB Scheme, are hereby superseded by the Guidelines in this Circular :-

1. As you are aware para 7.36A of Public Notice No. 10/97 (P.N.) 97-2002 dated 21-5-1997 provides that the amount of Credit entitlement rate, in respect of export products whose DEPB rate 15% or more, shall not exceed 50% of the PMV of the goods.

2. Object of Limiting the amount of Credit Based on the Present Market Value (PMV).

The condition of restricting the credit-amount under DEPB Scheme to 50% of the PMV was prescribed to prevent the exporters from obtaining excessive amount of credit by inflating the FOB price of the export product. It is stated that the FOB value may be higher, as per the contract between the exporter and foreign buyer, (depending on various factors), but the "Present Market Value" of the goods is an index of their local (wholesale/retail) price inclusive of excise duty, Sales tax and other local taxes plus cost of transportation. Accordingly the amount of credit is to be restricted with reference to the domestic price of the product, and not with reference to the FOB price declared on the GR Form/Shipping Bill.

3. Determination of PMV

(i) Manufactures-Exporters

(a) As regards Manufacturers-Exporters who export under AR-4 form, where the AR-4 value is declared as the PMV, the same shall be accepted.

(b) Where the Manufacturer-Exporters declares PMV which is higher than the AR-4 price, (as PMV is inclusive of transportation costs and domestic duties and taxes), the higher PMV declared may be accepted upto 150% of AR-4 value (exclusive of excise duty). Market enquiry may be caused only if PMV is more than 150% of AR-4 price, and exporter does not agree to lower the PMV below the 150% mark.

(c) Where the Maximum Retail Price (MRP) is required to be printed on the products as per the Weights & Measures Act, the MRP indicated on the products may also be accepted as PMV.

(d) For the products for which manufacturers have a Printed Price list, or a Catalogue indicating the local price of the products, the price indicated on the price list/catalogue shall be accepted as PMV.

4. (ii) Merchant Exporters

(a) In the case of export goods purchased from the open market, or from a Manufacturer, the PMV will be accepted on the basis of Guidelines in paras (a) to (b) of para 3(1) ibid.

(b) In case the PMV of the goods can not be determined as per the para above, the exporters may be required to furnish the sale invoice of the Authorised Dealer, or any other evidence to determine the correctness of the PMV declared by the exporters. In such cases evidence of local prices of similar goods may also be accepted as PMV.

5. In any case where PMV declared by the exporter can not be verified with reference to the parameters mentioned above, or is higher than 150% of AR-4 value and Asstt. Commissioner is of the opinion that PMV declared is not acceptable, the exporter shall be given an opportunity to justify the correctness of the PMV declared by issue of a Show

Cause Notice indicating the reasons for reducing the PMV. Before issue of Show Cause Notice concurrence of the concerned Deputy Commissioners must be obtained.

6. Verification of PMV/FOB value through market enquiries should be specifically assigned to the SIIB and not the assessing officer. The enquiry must be completed and final view taken in 30 days.

7. In all case where no Show Cause Notice challenging the declared PMV is issued within 30 days from the date of export, the PMV declared shall be deemed to have been accepted.

8. Under no circumstances will the shipments be stopped/held back for the above purposes."

10. *It can be noted from the above circular that the Board has laid down the guidelines for determination of present market value. We are more concerned with the situation of determination of the present market value which has been clarified in Para 3.b. The said Para 3.b specifically talks about PMV and is up to 150% of AR4 value, no market enquiry requires to be caused but if it is more than 150% of AR4 price, then market enquiry has to be caused. In this case before us, it can be seen from the records that the invoices which were raised by M/s. Padmini Polymers Ltd. were undisputedly for Rs. 600/- to Rs. 615/- per piece of the CD ROMs purchased by the appellant M/s. Colourtex and declared FOB value was Rs. 764/- to Rs. 770/- per piece which is well within the accepted norms of 150% or less, as indicated in the said circular. It is also undisputed that the shipping bills were filed along with all the documents and were accepted by the authorities and were cleared for export after considering the said circular causing the verification by SIIB, on a conclusion there being no case of the value being more than 150% of AR4 value. It is also seen from the above circular and more specifically clause 7, that if the said PMV declared by the exporter cannot be accepted by the Assistant Commissioner then a show cause notice has to be issued to the appellant indicating the reasons for reducing the PMV and market enquiries should be specifically assigned to SIIB. In this case, even this situation does not arise as the Assistant Commissioner or the Deputy Commissioner has not issued any show cause notice to the appellant and the shipping bills were approved by SIIB which indicates that the procedures for export and the value declared was in the knowledge and was in accordance with the circular issued by the Board. We also find that clause 7 of the said circular categorically states that if no show cause notice is issued within thirty days from the date of export, the PMV declared shall be deemed to have been accepted. In the instant case, the show cause notice was issued to the* *appellant almost after a period of three years though after the investigation conducted by the office of the DRI.*

11. *The findings recorded by the adjudicating authority for coming to a conclusion it does not indicate that the appellants' case has been considered by him with reference to the submissions made by them at the time of personal hearings and the replies filed by them. The factual aspect of the purchase of CD ROMs from M/s. Padmini Polymers Ltd. at a price cannot be discarded by the Revenue simply for the reason that the said M/s. Padmini Polymers Ltd. had no domestic sale and even if there is any domestic sale, it was to the tune of just merely 0.5% of the total sales affected by them. It is undisputed that even the 0.5% of domestic sales which were affected by M/s. Padmini Polymers Ltd. were of the value which were the purchase price of M/s. Colourtex. If that be so, the quantum of local sale clearances cannot be determinative factor as to whether the purchase price of M/s. Colourtex of the CD ROMs is incorrect or otherwise.*

12. *Accordingly, in our considered view, the impugned order is unsustainable for all the appellants. Accordingly, the impugned order is set aside and the appeals are allowed.*

16. We also find that the above order of the CESTAT wasalso upheld by the Hon'ble Supreme Court as reported in 2015(326)ELT A35. Similarly, in the matters of Commissioner of Kandla vs. Crown international2006 (203) E.L.T. 120 (Tri. - Mumbai) and in the case of Advance Exports Vs. Commissioner of Customs, Kandla – 2007(218)ELT 39 (Tri. Ahmd.) the disputed identical matter were also decided in favour of the assessees. The said orders of Tribunal also upheld by the Hon'ble Apex court.

17. We find that the disputed matter is well settled in favour of the respondents by the above decisions and Ld. Adjudicating authority correctly observed that once, it is held that the transaction value declared is fair and the exports are genuine, the second allegation that respondents are not eligible for the DEPB entitlements, automatically loses its sanctity. Since the issue is no longer *res integra*, the instant revenue's appeals can not be sustained.

18. We have also gone through the Order dated 04.09.2013 passed by the Joint Director General of Foreign Trade in the matter of respondents. In the said order it was held that DEPB licenses have correctly been issued to the Respondents and they are entitled for DEPB benefits. The department's

appeal does not allege that the licences had been cancelled by the Additional DirectorGeneral of ForeignTrade in the instant case. Clearly, the facts are on record that the DGFT has not cancelled the DEPB credit scrips and same were valid in the eyes of law. The DGFT has still not cancelled or modified the DEPB licences already granted. So it is clear that DGFT does not agree with the contention of the department. We are unable to agree with the allegation of the revenue that the exports have been misdeclared and DEPB scrips have been sought for and obtained fraudulently and imports have been made using invalid DEPB scrips. If it is the case of the department that DEPB scrips are fraudulently obtained by the respondents, It would have been appropriate that the department and customs authorities should have taken steps to get the DEPB scrips cancelled by making reference to the DGFT authorities who issued the scrips. Without taking any such action, to say that the DEPB scrips issued by competent authorities are invalid and fraudulently obtained is not proper and legal. The Hon'ble Bombay High Court in the case of *Pradip Polyfils Pvt. Ltd.*2004 (173) E.L.T. 3 (Bom.) considered the scope of jurisdiction of the customs authorities to question the validity of DEPB licences and held as under:

> *"We have heard Counsel on both the sides. In this case, it is not in dispute that pursuant to the application made by the petitioners seeking benefit of DEPB Schemes in respect of exports of filter plates and accessories made of polypropylene, two DEPB licences were issued by the DGFT in favour of the petitioners. The endorsement made on the licences clearly show that the DEPB licences have been issued against the export of Polypropylene filters Plates and accessories as contained in the shipping bills furnished by the petitioners. The said DEPB licences were required to be forwarded to the Customs for verification of the particulars set out in the shipping bills and necessary endorsement thereon. Under Circular No. 15/97 dated 3-6-1997 the verification by the Customs authorities was restricted to the description, quantity and FOB value of the export product set out in the Shipping Bill. it is not the case of the Customs authorities that there is any discrepancy, quantity and FOB value of the export product. Under the circumstances, when the DEPB licence is issued by the Licensing authorities specifically holding that the Petitioners are entitled to avail the benefit of the DEPB Scheme in respect of Polypropylene filter plates and accessories, the Customs authorities were not justified in rejecting the claim of the Petitioners on the ground that the Articles exported by the Petitioners were not covered under Chapter 39 ITC (HS) classification. Whether an item falls under Chapter 39 of ITC classification or not is for the licensing authorities to*

consider before issuing the licence. Even after the issuance of the licences, the licensing authorities have not taken ant steps to declare that the said licences were wrongly issued. Once the licensing authorities have held that the export product is covered under the DEPB Scheme and have issued the DEPB licence, it is not open to the Customs authorities to hold that the said export product is not covered under the DEPB Scheme and have issued the DEPB licence, it is not open to the Customs authorities to hold that the said export product is not covered under the DEPB Scheme."

19. In these circumstance above, we do not agree with the contention of the department that the scrips are invalid. As valid DEPB scrips have been used for import of the goods by the respondents, we do not find any reason for demand of duty or confiscation of the goods, or imposition of penalties.In the light of this, we hold that no valid grounds have been brought out to interfere with findings of the Ld. Adjudicating authority.

20. In view of the above, we find that there is no infirmity in the impugned orders and they need to be upheld and we do so. The appeals filed by the revenue are dismissed.

(Pronounced in the open court on 09.04.2024)

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)

KL