Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO. 02

CUSTOMS Appeal No. 10378 of 2023

[Arising Out Of AHM-CUSTM-000-COM-032-22-23 Dated- 17/02/2023 passed by the Commissioner of Customs, Ahmedabad)

RUP EXPORTS **.....Appellant**
Office Of 3 Ratnajyoti Industrial
Estate Irla Gauthan Road
Vile Parle West, Mumbai,
Maharashtra-400056

VERSUS

Commissioner of Customs-Ahmedabad **.....Respondent**
Custom House, Near All India Radio
Navrangpura, Ahmedabad-380009

APPEARANCE:
Shri. J.C Patel, Advocate for the Appellant
Shri. Sanjay Kumar, Superintendent (AR) for the Respondent

CORAM:
HON'BLE MR. R.MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE MR. SATENDRA VIKRAM SINGH, MEMBER (TECHNICAL)

Final Order No. 10191 /2025

DATE OF HEARING:17.03.2025
DATE OF DECISION:17.03.2025

R. MURALIDHAR

The appellant is a merchant exporter who has undertaken export of “Exercise Note Books” supplied to them by M/s. Print Zone claiming to be manufacturer of the goods holding EPCG license. The appellants exported the said goods under proper Shipping Bills showing the details of EPCG Licence and realised the proceeds thereon. The Revenue undertook investigation at the end of M/s. Print Zone and found that they did not have the manufacturing facility and they were outsourcing the Manufacture of "Exercise Notebooks" from M/S Snehraj Notebook Industries, Ahmedabad. In EPCG License issued to M/s. Print Zone, the name of M/S Snehraj Notebook Industries was not mentioned as supporting manufacturer. In view of these findings, which came to light after investigation at the end of M/s. Print Zone, the show cause notice was issued to the appellant holding that they have contravened the provisions of Section 113(i) of the Customs Act, 1962. After due course, the adjudicating authority has confiscated the goods under Section 113 (i) of the Customs Act, 1962 and gave them the option to redeem the same on payment of Redemption Fine of Rs. 14,00,000/-. A penalty of Rs. 7,00,000/- under Section 114 (iii) and Rs. 3,50,000/- under Section 114AA and Rs. 1,00,000/- under Section 117 of the Customs Act, 1962 has also been imposed on the appellant. Being aggrieved, the appellant is before the Tribunal.

2. The Learned Advocate appearing on behalf of the appellant submits that the provisions of Section 113(i) are not at all attracted to the facts of the present case. Section 113 (i) reads as under :-

> *"SECTION 113. Confiscation of goods attempted to be improperly exported, etc. - The following export goods shall be liable to confiscation:-*
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> *(i) any goods entered for exportation which do not correspond in respect of value or in any material particular with the entry made under this Act or in the case of baggage with the declaration made under section 77;"*

2.1 He relies on the case law of NORTHERN PLASTIC LTD VS. COLLECTOR OF CUSTOMS & CENTRAL EXCISE-1998 (101) ELT 549 (S.C) wherein, it has been held that only certain specific instances can be taken as contravention of provision of Section 111(m) of the Customs Act, 1962 which pertains to import of goods. This Section is pari materia to Section 113(i) towards export of goods. He further submits that goods were not available for confiscation and relies on the case law of CCE & ST-Hyderabad-II Vs. G.M.K PRODUCTS PVT.LTD-2020 (373) ELT 692 (Tri-Hyd.). In this case, it has been held that when the goods are not available for confiscation, they cannot be confiscated and redemption fine cannot be imposed. He submits that the Revenue has no specific evidence to show that the appellant has played any role in the transactions of M/s. Print Zone. Therefore, the impugned order is not legally sustainable and prays that the same may be set aside.

3. The Learned AR reiterates the finds of the adjudicating authority. He submits that the appellant has not shown due diligence in verifying as to whether M/s. Print Zone had that manufacturing capacity or not. The appellants were aware that the goods were being manufactured by M/s. Snehraj Notenook Industries and which were being sent to the appellant for onward exports. These facts show that the appellant had abetted in contravention by the EPCG licence holder M/s. Print Zone. Accordingly, he justifies confiscation of the seized goods, redemption fine and the penalty imposed on the appellant.

4. Heard both the sides and pursued the appeal papers and written submissions made by both the sides.

5. We find from the records that the EPCG licence holder was M/s. Print Zone and we are given to understand that against the penalties imposed and duty confirmed on Print Zone, no further appeal was filed by them. In the present case, the EPCG licence holder is Print Zone who has definitely contravened the provisions by not disclosing the details of supporting manufacturer. We further find that the appellant has exported the goods under proper Shipping Bills and they have also realised the export proceeds.

There is no allegation from the Revenue's side that the exports have not taken place or realization has not come back to the appellant. In such a case, we do not find that the appellant could be fastened with any allegation towards contravention of Section 113 (i) of the Customs Act, 1962.

5.1 On this issue, the Hon'ble Supreme Court in the cited case law of NORTHERN PLASTIC LTD (cited supra) has held as under:-

> *"This reasoning of the Collector and CEGAT is clearly erroneous and misconceived. The charge of misdeclaration of goods was based upon Section 111(m) of the Customs Act. According to the said provision the goods brought from a place outside India are liable to confiscation if the goods "do not correspond in respect of value or in any other particular with the entry made under this Act." Therefore, if the description of the imported goods given to the customs authorities does not correspond in respect of value or in any other particular including its description as mentioned in the Entry made under the Act, then only they can be said to have been misdeclared and, therefore liable to confiscation. The words "Entry" in the context of the facts of this case meant an Entry made in the Bill of Entry. Therefore, before holding that the goods were misdeclared the authorities were required to come to the conclusion that the imported goods did not correspond in respect of value or in any other particular with the description and the value of the goods as stated in the Bill of Entry. In the Bill of Entry the imported goods were described as Cinematographic Colour Films (Unexposed) Positive. The size of the goods was also mentioned in the Bill of Entry. There was no dispute in respect of correct valuation of the goods or any other particular except its description as Cinematographic Colour Films. Since the proceedings were initiated for the purpose of confiscation the burden was on the Department to show that the goods imported were not Cinemalegraphic Colour Films but were Photographic Colour Films only."*
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> *"Merely because the appellant claimed that it was entitled to exemptions in respect of customs duty under exemption Notification No. 52/86 as amended by 157/88 and because there was a separate exemption notification in respect of colour jumbo films, <u>it cannot be said that the declaration made in the Bill of Entry did not correspond with "any other particular" of the imported goods. Whether the appellant was entitled to the benefit of exemption under the said notification or not was a matter of belief of the appellant and not a matter of any other particular' with respect to the goods</u>. It is also relevant to note that the appellant's earlier consignment bearing the same description, same classification and identical claim for exemptions was cleared by the Delhi Customs House in the previous year. The Collector and CEGAT were, therefore, clearly in error in holding that by claiming benefit of exemptions under notifications which really did not apply to the imported goods, <u>the appellant had intentionally tried to evade proper payment of customs duty."</u>*

6. In respect of confiscation of the goods, we find that the goods are already exported and hence, they are not available physically for confiscation. The ratio of cited case law of G.M.K PRODUCTS PVT.LTD squarely apply to the facts of the present case. Consequently, confiscation of the exported goods is not justified and so also the Redemption fine imposed. As there is not contravention on the part of M/s. Rup Exports, they are not liable to penalty under Section 114 (iii) 114AA & 117 of the Customs Act, 1962.

7. In view of the foregoing, we set aside the impugned order in respect of the appellant M/s. Rup Exports and allow the appeal. The appellant would be eligible for consequential relief, if any, as per law.

(Dictated and pronounced in the open court)

(R.MURALIDHAR)
MEMBER (JUDICIAL)

(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)

Prachi