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

REGIONAL BENCH- COURT NO. 02

Excise Appeal No. 10896 of 2015

[Arising out of OIA-RAJ-EXCUS-000-APP-271-273-14-15 dated 27/02/2015 passed by the Commissioner of Central Excise-RAJKOT]

Bhavin R Shah **.....Appellant**
C/O, M/S, Western Impex, Plot No. 11. Survey No. 221,
Jamnagar, Gujarat

VERSUS

C.C.E. & S.T.-RAJKOT **.....Respondent**
Central Excise Bhavan,
Race Course Ring Road...Income Tax Office,
Rajkot, Gujarat-360001

WITH

Excise Appeal No. 11036 of 2015

[Arising out of OIA-RAJ-EXCUS-000-APP-271-273-14-15 dated 27/02/2015 passed by the Commissioner of Central Excise-RAJKOT]

Western Impex **.....Appellant**
Plot No. 11, Survey No. 221,
Village : Lakhabavad, Jamnagar,
Gujarat

VERSUS

C.C.E. & S.T.-RAJKOT **.....Respondent**
Central Excise Bhavan,
Race Course Ring Road...Income Tax Office,
Rajkot, Gujarat-360001

AND

Customs Appeal No. 11037 of 2015

[Arising out of OIA-RAJ-EXCUS-000-APP-271-273-14-15 dated 27/02/2015 passed by the Commissioner of Central Excise, CUSTOMS (Adjudication)-RAJKOT]

Western Impex **.....Appellant**
Plot No. 11, Survey No. 221,
Village : Lakhabavad, Jamnagar,
Gujarat

VERSUS

C.C.E. & S.T.-RAJKOT **.....Respondent**
Central Excise Bhavan,
Race Course Ring Road...Income Tax Office,
Rajkot, Gujarat-360001

APPEARANCE:
Shri.Manish Jain, Advocate for the Appellant
Ms. Himanshu Nachane, Superintendent (AR) for the Respondent

CORAM: HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)

Final Order No. 11080-11082/2025

DATE OF HEARING:12.11.2025
DATE OF DECISION:20.11.2025

SOMESH ARORA

The appeal before us is by the appellant manufacturer operating in SEZ environment. The appellant has submitted in this matter as follows:-

1.1 M/s. Western Impex *(hereinafter referred to as* ***"Appellant)*** engaged in the manufacturing of brass electrical parts, brass sanitary parts, etc., is working as a '100% Export Oriented Unit' and has been issued a letter of permission (LOP) by the Development Commissioner, Kandla Special Economic Zone for the above purpose. During the conduct of its business, the Appellant engaged with Shri Anand Patel of Jamnagar and, through him, facilitated the export of various consignments. However, consignment ARE-1 No. 003/EOU/WI/2009-10 dated 07.04.2009, containing Brass Sanitary Fitting weighing 9828 Kgs, were returned to their factory and therefore deparment in absence of proof of export was of the view that the same were not exported. It is the case of the department that goods cleared for export have been diverted in the local market, and therefore the Appellant has contravened relevant provisions of the Central Excise Act/Rules/Notifications, etc., and hence is liable for payment of excise duties.

1.2 Consequently, the Impugned Order dated 27.02.2015, has confirmed the demand for Central Excise duty amounting to Rs. 6,12,156/- under Section 11A (4) read with Section 3 of the Central Excise Act. Penalty amounting to Rs. 6,12,156/- under Section 11AC of the Central Excise Act. Furthermore, the Impugned Order also confirms that the Custom Duty amounting to Rs. 3,02,302/- is under Section 28(4) read with Section 72 of the Customs Act, and the Penalty amounting to Rs. 3,02,302/- is under Section 114A of the Customs Act.

1.3 The appellant submits that they clearly informed the department about export of goods and return prior to the export of said goods. In fact permission was granted by the department for warehousing in the factory. The same was recorded in the excise returns of the appellants. Thus, demand is barred by limitation in the present case.

2. The impugned order is based on erroneous findings, and is unsustainable in law. The export consignment of subject ARE-1 no. 003/EOU/WI/2009-10 dated 07.04.2009 were indeed received back in their factory premises (as established with documentary evidences) and hence allegation of diverting the said goods in local market is nothing but self serving in nature and untenable.

2.1 Without prejudice to above, the appellant submitted that the impugned order is unsustainable in law in as much as the same is based on erroneous findings. In Para 7 of the impugned order Ld. Commissioner Appeals has dis-regarded the statutory documents of the appellants, lorry receipt evidencing transportation of goods and letter of superintendent evidencing return of goods. It is submitted that the said documents are sufficient to establish that the said goods were submitted back in the factory of the appellants. Thus impugned order is liable to be set aside on this ground itself as there is no dispute that goods were received back in the factory of the appellants.

2.2 In this regard, the appellant refer to para 7.1.2 and 7.1.3 of the impugned order, wherein, the learned commissioner appeals had rejected the claim of the appellant about return back of the subject export consignment only on the basis of statement of Shri Bhavin R. Shah, recorded on 23.08.2009.

2.3 The appellant submitted that the learned Commissioner Appeals completely brushed aside other documentary evidences like correspondence with the department about return back of the subject export consignment, lorry receipt for transportation of goods from Nava Sheva to Jamnagar, statutory record of finished goods of the appellant etc. which established that the subject consignment was indeed received back in the factory premises of the appellant. It is submitted that in para 7.1.4, Ld. Commissioner appeals has relied upon letter dated 20.08.2009 of JRS and it is contended that no copy of intimation was filed before department. It is further concluded that the said goods were diverted in the local market. It is submitted that mere not filing the intimation cannot lead to conclusion that goods were diverted in the local market when on facts the statutory documents shows receipt of goods in the factory of the appellants. The appellant submit that the above action of the learned appellate Authority ,about relying upon only the statement of the Bhavin R Shah in the matter and completely disregarding other 'documentary evidences' in the matter, as discussed hereinabove, is untenable in law and hence the impugned order is unsustainable in law being based on erroneous findings.

3. The impugned order, based on assumptions and presumptions and irrelevant investigation, is unsustainable in law.

3.1 The appellant submitted that the impugned order is unsustainable in law since the same is based on assumptions and presumptions and also irrelevant investigation, as far as present appellant is concerned.

3.2 The appellant submitted that investigation in the present matter, which culminated in issuance of the impugned order, started on the intelligence that M/s. Harsh International and M/s. Indu Overseas Pvt. Ltd., EOU units based at Jamnagar, were engaged in exporting their goods by inflating the weight of export consignment to wrongly claim fulfilment of their export obligation; that these two units were clandestinely removing/selling imported duty free raw material in domestic market; that one Shri Anand Patel of Jamnagar was managing these affairs and was acting on behalf of these two EOU units. The appellant submit that since they also had some export related business transactions with said Shri Anand Patel, an inquiry was also initiated against them and statements of various persons like partner of appellant, said Shri Anand Patel, Shri Nitin Dineshbhai Singala, Shri Jai Singh Taware and Shri Ketan Bhanusali etc. were recorded.

3.3 The appellant submit that neither their partner nor any of these persons, anywhere, confessed that the appellant was engaged in any mala-fide activities. As a matter of fact, the main person accused in the investigation i.e. Shri Anand Patel himself stated that 'only M/s. Indu Overseas and M/s. Harsh International agreed to implement the above practice by under quoting the weight and mis-declaring the export cargo'.

4. To the contrary, in respect of export consignment of ARE-1 no. 003/EOU/WI/2009-10 dated 07.04.2009, Shri Anand Patel, in his statement, stated that 'with regard to said export consignment of M/s. Western Impex, Shri Jai Singh didn't complete the export formalities and gave him any export documents therefore the said goods were not exported, though genuine'.

5. The appellant further submitted that it is also an admitted fact that

material of said export consignment of ARE-1 no. 003/EOU/WI/2009-10 dated 07.04.2009 were returned back to their factory and hence the allegation of diverting the said goods in local market is nothing but self serving in nature and based on assumptions and presumptions and therefore untenable in law.

6. In view of above facts and submissions, the appellant submitted that the impugned order is unsustainable in law since the same is based on assumptions and presumptions and also irrelevant investigation, as far as present appellant is concerned.

7. The impugned order, confirming recovery of central excise duties of Rs. 6,12,156/-, is unsustainable in law.

7.1 The appellant submitted that the impugned order, confirming recovery of central excise duty of Rs. 6,12,156/-, is unsustainable in law, as discussed hereunder; The appellant submit that, in the present case, duty demand has been confirmed on the allegation that goods cleared for export have been diverted in the local market and therefore the appellant have contravened relevant provisions of Central Excise Act/Rules/Notifications etc. and hence liable for payment of excise duties.

7.2 The appellant submitted that above allegation of diversion of export goods in the local market is untenable in law in view of the fact that the consignment of subject ARE- 1 was duly received back by the appellant in their factory premises and duly recorded in relevant records . The appellant submit that it is settled legal position that once export consignment, removed without payment of duty, is returned back in the factory premises, central excise duties cannot be demanded on such goods.

8. The appellant refer to and rely upon following judicial pronouncements in support of above submissions;

- Evershine Rubber Industries V/s. CCE, Kolkata-I 2005 (186) ELT 599 (Tri-Kolkata)
- Maruti Udyog Limited V/s. CCE, Delhi-III 2004 (171) ELT 488 (Tri-Del.)
- CCE & C, Bhubaneswar-1 V/s. Birla Tyres 2004 (169) ELT 300 (Tri - Kolkata)
- La Mansion Granites Ltd. V/s. CCE, Hyderabad 2003 (157) ELT 115 (Tri-Bang)

9. The appellant also referred to CBEC's central excise manual, wherein, at para 2.1 of part V of chapter 7, re-entry of the goods, cleared for export under bond but not actually exported, has been permitted with prior approval of jurisdictional authorities and proper recording in relevant records. In the present case, the appellant have followed the said instructions, truly and fully, and therefore the impugned order, proposing duty demand on such goods, is untenable in law.

10. The impugned order, confirming recovery of custom duty of Rs. 1,01,302/, is unsustainable in law.

10.1 The appellant submitted that the impugned order, confirming recovery of custom duties of Rs. 3,03,302, is unsustainable in law. The appellant submitted that, in the present case, customs duty demand has been confirmed on the allegation that goods cleared for export have been diverted in the local market and, hence, imported duty free goods used in manufacturing of such diverted goods are liable to custom duties, in view of relevant provisions of exemption notification/Customs Act.

10.2 The appellant submitted that above allegation of diversion of export goods in the local market is untenable in law in view of the fact that the consignment of subject ARE-1 was duly received back by the appellant in their factory premises and duly recorded in relevant records and therefore, the impugned order, confirming custom duty demand, is unsustainable in law.

11. The appellant also submitted that, admittedly, imported duty free raw material has been used in manufacturing of their final products and, it is settled law that once duty free imported raw materials have been used by an EOU in manufacturing of final products, custom duties cannot be demanded on such duty free imported raw materials and therefore, the impugned order, confirming custom duty demand, is unsustainable in law.

12. The appellant referred to and relied upon following judicial pronouncements in support of above submissions;

- Dupont Synthetics Pvt. Ltd. V/s. CCE, Surat-2010 (259) ELT 408 (Tri-Ahmd.)
- CCE, Surat Vs. Mudra Testurising Pvt. Ltd 2009 (235) ELT 674 (Tri-Ahmd.)
- Sarla Polyester Lad. Vis. CCE, Surat-11 2008 (222) ELT 376 (Tri. Ahmd.)
- CCE & C. Surat Vis. Amitex Silk Mills P. Lad 2007 (216) ELT 589 (Tri. Alimd.)

13 In view of above facts and submissions duly supported with judicial pronouncements, the appellant say and submit that the impugned order, confirming recovery of custom duty of Rs. 3,03,302/-, is unsustainable in law.

14. The impugned order, confirming recovery of interest under Central Excise and Customs provisions, is unsustainable in law,

14.1 The appellant say and submit that the impugned order, confirming recovery of interest under Central Excise and Customs provisions, is unsustainable in law since duty demand under Central Excise and Customs provisions itself is untenable in law, as discussed hereinabove.

15. The impugned order, imposing penalties under Central Excise and Customs provisions, is unsustainable in law.

15.1 The appellant submitted that the impugned order, imposing penalties under Central Excise and Customs provisions, is unsustainable in law since duty demand under Central Excise and Customs provisions itself is untenable in law, as discussed hereinabove. The appellant further submitted that imposing penalty for failure to carry out the statutory obligation is the result of quasi criminal proceedings and penalty would not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of dishonest conduct or acted in conscious disregard of its obligation [Supreme Court in the matter of Hindustan Steel vs. State of Orissa 1978 (2) ELT (J159)], which is not the case here.

16. On the other hand, the Authorized representative of the Department relies on various testimonial evidences and also reiterates the finding of the lower authority to justify the demand and imposition of penalty. AR also drew attention to the points in Order-In-Original at point of A to D as also observation made by the Original Authority.

> *"a) Intimation with regard to cancellation of ARE-1 No. 3/09-10 dated 7.4.2009 is made by the Noticee on 18.8.2009.*
>
> *b) Statement of Noticee no. 2 was recorded and investigation in the case. was carried out on 23.8.2009 wherein he stated that he had sent the goods covered under ARE1 07.04.2009 to clearing agent M/s.Geeta International, JNPT, Mumbai WI/EXP/003/2009-10 dated through Shri Anand Patel for export to M/s B-Link Building Material LLC, Dubai, U.A.E, after several telephonic reminders Shri Anand Patel had not send them the proof of export, neither the receipt acknowledged by the buyers. On the above basis he stated that the consigaments were not yet exported from India and the present location of the consignment cannot be*

submitted as no intimation has been received by him from Shri Anand Patel.

c) Officials of DRI has visited the factory premises on 23.8.2009 and recorded his statement u/s 108 of Customs Act 1962 and Noticee no. 2 categorically stated on reply to Q. No. 3 that the goods covered under ARE 1 Nos 3/08-09 is diverted in the open local market and he is willing to pay the applicable duty leviable thereon.

d) Officials of DRI had recorded the statement of Anand C Patel on 25.8.2009 and recorded his statement u/s 108 of Customs Act 1962 and he was not in a position to locate / status of the cargo.

In view of the above observations at a to dit is revealed that Noticce just to escape duty Hability, confiscation of goods and penalties has filed an intimation for cancellation of 9828 kgs of sanitary fittings declared under ARE-1 No. 3/09-10 dated 7.4.2009 before the jurisdictional range supdt on 18.8.2009 which is not actual and correct as investigation team during the visit of the factory premises of Noticee on 23.8.2009 (i.e. the date of factory visit is after the date of intimation for cancellation of said ARE-1 wiith goods) has no where stated that the goods have already been received on 18.8.2009 and on the contrary he has deposed u/s 108 of Customs Act on 23.8.2009 that the goods under questions are sold in the open market and accordingly he paid the duty on the same on 23.8.2009.

Exhibit C wherein intimation for cancellation of 9828 kgs of sanitary fittings declared under ARE-1 No. 3/09-10 dated 7.4.2009 is made on 18.8.2009 is after through, manipulated and not actual based on my above observations."

17. It was further submitted by the AR as follows:

17.1 That the statement of Shri Bhavin Ratilal Shah, Partner of Western was recorded wherein he, inter alia, stated that Western was a partnership firm and working under 100% EOU since 2001 and he was looking after all the works related to the production and sales of Western; that the goods covered under ARE1 WI/EXP/003/2009-10 dtd. 07.04.2009 were exported to M/s B-Link Building Material LLC, Dubai, U.A.E through consignee M/s Golden Elephant Trading LLC. Dubai, UAE owned by Shri Anand C Patel, was of Brass Sanitary Parts collectively weighing 9828.000 Kgs (net weight). It was cleared from their factory on 07.04.2009 transported to JNPT, Mumbai under L.R. No. 1441 dtd. 07.04.2009 of JMN Road Link, Jamnagar. Four other consignments were also exported by Shri Anand C Patel. However, goods covered under ARE1 WI/EXP/003/2009-10 dtd. 07.04.2009 was not yet exported, as they had not received the proof of export, and that Shri Anand C Patel was not contactable, it would have been possible that Shri Anand C Patel might have diverted the said goods in the local market; that every time, vehicles for transport were arranged by Shri Anand C Patel.

17.2 Likewise statement of Shri Anand C Patel was recorded wherein he interalia stated that he used to place orders for brass parts from 100% EOUs of Jamnagar, he came in contact with Shri Jai singh through M/s Ami Clearing & Forwarding, Mumbai, Jai singh advised him to send 5% to 10% less goods of the actual declared weight with the consent of EOUs; that jai singh did not complete the export formalities in respect of goods covered under ARE1 WI/EXP/003/2009-10 dtd. 07.04.2009 to be exported by Western and did not give any export documents, therefore the said goods were not exported, though genuine.

17.3 Thus, it was concluded that 9828.00 Kgs of Brass Sanitary fittings valued at Rs.30,26,728/- having Central Excise Duty forgone of Rs. 6,12,156/- shown to have been removed for export by Western, had been removed/sold illicitly into the local market without the cover of any duty paying documents/invoices, without payment of duty leviable thereon and without following the procedures as laid down under 100% EOU scheme. The goods have been removed in clandestine manner with an intention to evade payment of appropriate duty. So far as demand of Customs duty on 12:25 MT of imported raw material used in manufacture of 9828 Kgs of finished goods was concemed, it was clear that the appellant in connivance with Shri Bhavin R Shah and Shri Anand C Patel had fraudulently attempted to show clearance of 9828 Kgs of finished Goods for export under the said ARE-1.

However, these goods were diverted to local market without following the terms of Not. No. 42/2001-CE (NT) dtd. 26.06.2001.

17.4 The said raw materials were allowed to be imported duty free for specific purpose, however, these raw materials did not comply with the provisions of the Customs Act, 1962 and provisions of EXIM Policy and Foreign Trade Policy Accordingly, the duty free raw materials utilized for manufacture and clearance of the goods covered under the said ARE-1s were also liable for confiscation under Section 111(0) of the Customs Act, 1962. Hence, SCN dtd. 10.02.2012 was issued by Joint Director, DRI, AZU, Ahmedabad which was adjudicated by Addi Commr., Customs & CE, Rajkot confirming the said demand in the SCN

18. In rejoinder point wise grounds were taken relied by the party by indicating case law on different proposition as follows:-

Central Excise Duty cannot be demanded once the export consignment, removed without payment of duty, is returned back in the factory premises.

- Maruti Udyog Limited V/s. CCE, Delhi-III-2004 (171) ELT 488 (Tri-Del)
- Affirmed in CCE, Delhi-II Maruti Udyog-2010 (253) ELT 22 (Punjab & Haryana High Court)
- Evershine Rubber Industries V/s. CCE, Kolkata-I-2005 (186) ELT 599 (Tri-Kolkata)

Customs Duty cannot be demanded on the raw materials used in the manufacturing of the finished goods.

- Commissioner of Central Excise, Surat-I vs. Cupro Recyline Pvt. Ltd. 2016 (335) ELT 753 (Tri.-Ahmd)
- Maintained in Commissioner v. Cupro Recyline Pvt. Ltd. - 2016 (335) E.L.T. A218 (S.C.)]
- Abubakar Ismail Kapadia vs. Commr. of C. Ex. & Service Tax, Surat-I. 2019 (369) E.L.T. 1003 (Tri. Ahmd.)

- Marshal Power and Telecon (Ind.) Ltd Vs. C.C.E., Puducherry 2018 (359) E.L.T. 66 (Tri. - Chennai)
- Sarla Polyester Ltd. vs. Commissioner of C. Ex., Surat-II, 2008 (222) ELT 376 (Tri.-Ahmd)

Extended period of five years for raising demand is not invocable

- Commr. C. EX. & Cus,, Vadodara-II Vs. Jetex Carburetors Pvt. Ltd., 2015 (319) E.L.T. 487 (Guj.)
- Raychem RPG Ltd Vs CCE 2022 (1) Centax 14 (SC)

19. This Court has considered the adversarial arguments in the matter. It finds that the Learned Advocate has drawn attention of this Court to various intimations that were given to the field office based on which the goods were allowed to return back. These are by way of request for cancellation dated 18th August, 2009 available at page 19 reproduced below:-

An ISO 9001:2000 Certified Company

ANNEXURE-C

WESTERN IMPEX

Mfg & Exporters Non Ferrous Metal Components

19

Plot No. 11, Survey No. 221/P-231, 234, Vill: Lakhatsawal, Post Khodiyar Colony, Jamnagar-361 006 Gujarat, INDIA
tel +91-288 2880024 fax +91-288-2880025
www.westernimpex.com | Email westernimpex@rediffmail.com

18 August 2009

To,
The Superintendent of Central Excise
AR-SSBY
Laxmi-Nivas, 3, Mangal Bag
Gurudwara Road,
Jamnagar

Sub: Application for Cancel ARE-1 No. 003/EOU/WI/2009-10

Respected Sir,

We have sent goods by ARE-1 No. 003/EOU/WI/2009-10 Dt. 07-04-09 for Export from JNPT Port but after sending goods buyer has intimate not to shipped goods (Letter Attached)

Now the buyer party has also cancel the order and so, now we wish to cancel above ARE-1 & in this goods in our warehouse kindly Permit us to re warehouse the goods in our premises, We will enter this finished goods in our Part III of (Finished Goods Register)

Copy of ARE-1 attached herewith Kindly permit us

Thanking you

For Western Impex

Partner

19.1 It was duly acknowledged by M C Sampat, Superintendent as it is exhibited at Page 20.

20

OFFICE OF THE SUPERINTENDENT OF CENTRAL EXCISE,
A.R. - S.S.B.Y., "LAXMI NIWAS", 3, MANGAL BAUG, GURUDWARA ROAD,
JAMNAGAR 361 008 PH: 0288 - 2664397

No. ARSSBY/ARE-1/2009-10 Date: 21/08/2009

To,
M/s. Western Impex,
Village: Lakhabavad,
JAMNAGAR.

Gentleman,

Sub: Application of Cancel ARE-1 No. 03/EOU/WI/2009-10:- Matter req.

Please refer to your letter no nil dated 18.08.2009 requesting for Cancellation of ARE-1 NO. 03/EOU/WI/2009-10 dated 07.04.2009 and return of goods thereof.

In this context, you are permitted to bring back the goods cleared under above mentioned ARE-I subject to condition that the goods should returned in its original packing alongwith with original ARE 1 No.03 and responsibility to establish the identity of the goods at any point of time lies with you. An intimation should be given in advance to this office prior to arrival of the goods giving details of the mode of transport etc.

Yours faithfully,

(M C SAMPAT)
Superintendent

20. Department has doubted these documents despite the same being on the official pad of the office superintendent of Central Excise and supported by inward movement of goods and has rather on the basis that the said documentary evidence commended that same could not have been true as is evident from the conclusion arrived at by the original authority. The same has been termed as an "after thought" by the original authority. However,

there has been no attempt to record statements of the concerned Superintendent, check whether the same was actually received by someone in the Office of Superintendent, Central Excise and as to who permitted the goods to return on the face of letter dated 18th August, 2009 and whether M C Sampat had compromised his official position in issuing the letter and whether the same was forged? The same has been termed by the original authority as an afterthought without adducing evidence not realising that the department's own records were involved and forgery of the same would have been serious offense. Unless the documents as exhibited above, are proved to be incorrect by tangible evidence, same cannot be assumed to be incorrect simply to justify latter dated statements taken by the department. This is more so, as the documentary evidence produced involved a Gazetted Officer of the department who was on the loop in issuing the same. The fact is that goods in the instant case were not exported which position is agreed upon by the department. Stock variance has also not been reported by the department.

20.1 Department is of the view that the goods were diverted and therefore duty has to be paid and also goods become offending. The evidence produced and taken cognizance of by the original authority clearly indicates that the goods returned and ARE-1 was cancelled. The documentary version if was doubted then the department should have at least recorded statements of Superintendent to establish that the same was forged or was given by a compromised official. None of the same is present in this case. Documentary evidence cannot simply be brushed aside on the basis of assumption and presumption and the use of expression "after thought". It is not even brought on record by the AR, as to whether the stock position available with the appellants exhibited any discrepancy to indicate that the stock was at variance despite cancellation of ARE-1 and return of goods. It is also not brought on record as to whom the goods were sold. Investigation has been haphazard in a half hearted manner. It is not even indicated that the goods were returned or were not cleared at any time later by the appellant. If the stock had actually been sold and goods not brought back, the variance would have existed in the statutory records vis-a-vis the actual stock position.

21. In view of the foregoing, department has not been able to prove this stage. In this regard that the decision of Abubakar Ismail Kapadia vs. Commr. of C. Ex. & Service Tax, Surat-I as reported in 2019 (369) ELT 1003 (Tri. Ahmd.) in somewhat similar situation is close to the factual matrix in this matter and being rather on the better footing, as in the instant case the appellant has been able to produce evidences to the effect that he sought cancellation of ARE-1 and return of the goods covered by it and same was permitted back of his unit. Para 7 of the aforesaid order of the DB of this Tribunal is relevant for this purpose:-

> *"7. Heard both the sides and perused the records. We find that the appellant has produced the re-warehousing certificate from the consignee. The jurisdictional range authorities of consignee has reported that the records are not traceable as well as the diaries of the Superintendent and Inspector administering the consignee are also not traceable. That the records has been taken by the investigation wing of the department. The verification report given by the jurisdictional authority of the consignee is thus inconclusive and on that basis it cannot be assumed that the goods did not reach consignee. Further the authorities at consignee's end also informed that the Range Superintendent has countersigned 415 Nos. of AR-3s pertaining to consignee M/s. Asharani which infact has to be considered that the consignee were procuring goods from other EOUs also. If the re-warehousing certificate does not bear the name of the officer, the same should have been investigated. The adjudicating authority and the Appellate authority has interpreted the communication by the jurisdictional authority of consignee as evidence of non-receipt of goods by M/s. Asharani and held that the re-warehousing certificates submitted by the appellant are fake. We are of the view that such approach is incorrect. Once the re-warehousing certificates have been produced by the consignor, the same has to be considered as genuine unless any evidence of non-receipt of goods by the consignee is reported. Only for the reason that the diaries of the Superintendent or the Inspector having jurisdiction over the consignee M/s. Asharani Garments are not available with the department or the records are with the investigative team of the department or that the re-warehousing certificate does not bear the name of the concerned*

> *Superintendent, the re-warehousing certificates cannot be considered as fake. The Revenue has to show from their own records or from the investigation at the consignee's end that the goods did not reach the consignee. Since the department has made the allegation of non-re-warehousing of the goods at the consignee's factory, it has to prove the same by substantial evidence and it cannot be made on assumption. It has to be shown as if the goods were not warehoused then where were the same diverted. In present case there is no evidence of diversion of goods. The appellant has submitted the lorry receipt and the payment details to support the contention of clearance of goods to M/s. Asharani Garments. It is also not the allegation that the goods were not consigned by the appellant. The non-attending of summons by the owner as he was on Haj and the same was communicated by his son cannot lead to inference that the appellant deliberately did not appear to attend the summons. Therefore in the given set of facts and in absence of any adverse evidence, it cannot be said that the goods did not reach the consignee or were not warehoused. We thus hold that the demands are not sustainable."*

22. In view of the foregoing, the duty demand and penalty etc., cannot be sustained. Appeals are therefore allowed with consequential relief.

(Pronounced in the open court on 20.11.2025)

(SOMESH ARORA)
MEMBER (JUDICIAL)

Prachi