CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>ALLAHABAD</u>

REGIONAL BENCH - COURT No.II

Customs Appeal No.70455 of 2022

(Arising out of Order-in-Appeal No.NOI-CUS-000-APP-92-2022-23 dated 01/07/2022 passed by Commissioner (Appeals) Central Goods & Services Tax, Noida)

M/s Anand Triplex Board Pvt. Ltd., ...Appellant

(E 181 (First Floor), Greater Kailash Part II,
New Delhi-110048)

VERSUS

Commissioner of Customs, Noida ....Respondent

(ICD-Loni, Chirori-Banthala Road, Ghaziabad)

<u>APPEARANCE:</u>

Shri Atul Gupta, Advocate for the Appellant
Shri Abhishek Mukherjee, Authorised Representative for the Respondent

CORAM: HON'BLE MR. P.A. AUGUSTIAN, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.70312/2026

DATE OF HEARING : 30 July, 2026
DATE OF DECISION : 30 July, 2026

<u>SANJIV SRIVASTAVA:</u>

This appeal is directed against order in appeal No NOI-CUS-000-APP-92-22-23 DATED 01.07.2022 OF THE Commissioner (Appeals) Central Goods & Service Tax, Noida. By the impugned order, Order-in Original No.26/JC/ICD Loni/2021 dated 15.04.2021 Joint Commissioner of Customs, ICD Loni, Ghaziabad, Noida Customs Commissionerate has been modified as follows:

"15. In view of the foregoing, in partial modification of the impugned OIO, I hereby order for reduction of Redemption fine from Rs. 67,11,600.00 to Rs. 31,43,250/- and penalty

under Section 112(a) from Rs. 3,35,58,000/- to Rs. 8,20,734/-."

1.2 By Order-in Original No. 26/JC/ICD Loni/2021 dated 15.04.2021 following was held:

"ORDER

1. *I hereby confiscate goods imported as per EPCG License No.0530159455 dated 10.10.2012 of Rs.3,35,58,000/- (Rupee Three Crores Thirty Five Lakhs Fifty Eight Thousand only) under Section 111 (o) of the Customs Act, 1962 for alleged violations as discussed above.*
2. *I hereby redeem confiscated goods on payment of redemption fine of Rs.67,11,600/- under the provisions of Section 125 (1) of the Customs Act, 1962. Noticee is also directed to pay in addition, assessed Customs duty and any other charges payable in respect of goods as per the provisions of Section 125(2) of Customs Act, 1962.*
3. *I hereby order for recovery of Duty foregone amounting to Rs.90,60,660/-(Rupee Ninety Lakhs Sixty Thousand Six Hundred Sixty Six only) along with applicable interest. I also appropriate amount of Rs.13,60,000/-already encashed by the department from Bank Guarantee as discussed above.*
4. *I also impose a Penalty of Rs.3,35,58,000/- on Importer under Section 112 (a) of the Customs Act, 1962.*
5. *I also order to Enforce Bond no 2000365709 dated furnished by the importer for recovery of duty, interest, penalty and redemption fine, if the above is not complied with.*

The Importer is directed to pay the same henceforth."

2.1 Appellant had obtained exemption from payment of duty against clearance of goods in terms of Notification No.102/2009-Customs dated 11.09.2009 of the Government of India, Ministry of Finance against EPCG License No.0530159455 dated 10.10.2012.

2.2 They executed a bond on 12.10.2012 along with Bank Guarantee No.2534ILG002412 dated 16.10.2012 of

Rs.13,60,000/- of M/s Punjab National Bank, E.K. Road, Meerut, under which he had undertaken to fulfill the conditions of the Bond, EPCG License and relevant customs Notification at the time of registration of the license at ICD, Loni.

2.3 Appellant has imported goods of CIF value Rs.3,35,58,000/- involving Customs duty amounting to Rs.90,60,660/- (Rupee Ninety Lakhs Sixty Thousand Six Hundred Sixty Six only) under the said EPCG License in terms of the said Notification. As per said Notification, the importer was required to produce proof of fulfillment of export obligation within the period (six years) as prescribed in the said notification but he failed to do so.

2.4 Thus appellant was liable to pay duty foregone amounting to Rs.90,60,660/- (Rupee Ninety Lakhs Sixty Thousand Six Hundred Sixty Six only) on the said imported goods along with interest at the applicable rate on the imported goods in terms of the conditions of said notification read with the conditions of license and the Bond executed by the importer read with Section 143 of the Customs Act, 1962. It was also on record that the imported goods had not been used for intended purpose for which exemption from payment of duty was claimed, therefore, the aforesaid goods are liable for confiscation under Section 111(o) of the Customs Act, 1962 and this act of importer has rendered him for penal action under Section 112 (a) of the Customs Act, 1962.

2.5 As appellant has not submitted EODC within stipulated time and no EODC issued by the concerned DGFT office as verified from official DGFT website, the Bank Guarantee No.2534ILG002312 dated 13.10.2012 of Rs.57,000/- had been enchased by the Customs Department from Bank vide Demand Draft No.038945 dated 28.04.2020.

2.6 A show cause notice dated 17.09.2020 was issued to the appellant asking them to show cause as to why:

(i) The CIF value of imported goods as per license of Rs.3,35,58,000/- (Rupee Three Crores Thirty Five Lakhs

Fifty Eight Thousand only), should not be held liable for confiscation under Section 111 (o) of the Customs Act, 1962 read with conditions of Bond executed in terms of Section 143 of the Customs Act, 1962 read with Notification No.102/2009-Customs dated 11.09.2009 read with conditions of EPCG License.

(ii) *Duty foregone amount of* Rs.90,60,660/- (Rupee Ninety Lakhs Sixty Thousand Six Hundred Sixty Six only) *alongwith applicable interest (from the date of clearance of goods to the date of payment of duty) should not be recovered in terms of conditions of Bond executed in terms of Section 143 of the Customs Act, 1962 read with Notification No.102/2009-Customs dated 11.09.2009 read with conditions of EPCG License, As the amount of Rs.13,60,000/- has already been encashed by the department from Bank Guarantee submitted by the importer, why the same should not be appropriated against duty demanded.*

(iii) *Penalty should not be imposed on the importer under Section 112 (a) of the Customs Act, 1962*

(iv) *Bond furnished by the importer should not be enforced for recovery of duty, interest, penalty and redemption fine, if any.*

2.7 The show cause notice was adjudicated as per the order in original referred in para 1.2 above.

2.8 Aggrieved appellant filed an appeal before the Commissioner (Appeal) which has been disposed of by the impugned order referred in para 1 above.

2.9 Aggrieved appellant has filed this appeal.

3.1 We have heard Shri Atul Gupta, Advocate for the appellant and Shri Abhishek Mukherjee, Authorized Representative for the revenue.

3.2 Arguing for the appellant learned Counsel submits,-

- As the capital goods were not released on provisional assessment, and no bond was executed to make available such goods subsequently, and such goods were never seized and released on bond, therefore, such goods are not available with the department, and accordingly, the same cannot be confiscated. As held by the Hon'ble CESTAT in the matter of Asia Motor Work vs. Commissioner of Customs, 2020 (371) ELT 729.

- Further, the non-observance of the condition of the notification has been sanctioned by the proper officer (DGFT), therefore, capital goods cannot be held to be liable for confiscation. Only DGFT could have sanctioned the non-observance of the condition of the notification.

- Since, the duty and interest has already been paid after the appellant could not fulfil the export obligation due to bona fide reasons and license has also been regularized on payment of duty and interest, therefore, goods cannot be confiscated. The Appellant was having option to pay duty along interest on failure to fulfill the export obligation, and accordingly, on payment of duty along with interest, the condition of notification is fulfilled. For the delay in payment of duty after expiry of the export obligation period, the appellant has already compensated the delay by paying the huge amount of interest at a very high rate of interest. It was never the intention of the appellant to not fulfill the export obligation and only due to adverse condition of market, export could not take place. Even the SCN has not alleged any such wrong intention on the part of the Appellant.

- The penalty cannot be imposed because the clauses (i) to (v) under Section 112 (a) have not been specified in the show cause notice and such clauses are applicable to different situations. Any imposition of penalty in such case would be in violation of the principles of natural justice. It seems from the orders impugned that the adjudicating authority initially imposed penalty under clause (i) and the first appellate authority confirmed the penalty under clause (ii) of section 112(a). Neither the Adjudicating Authority nor the Appellate Authority indicated under which particular clause such penalty has been imposed.

- The Hon'ble Supreme Court in the matter of Jaswal Neco Ltd. Versus Commissioner of Customs, Visakhapatnam 2015 (322) E.L.T. 561 (S.C.) that in case of failure to fulfil the export obligation in a bona fide case, no penalty is imposable.

- The show cause notice merely alleged that the duty foregone under the notification has not been paid and there were no allegation that duty was evaded. That is for the reason that the appellant was bound to pay the duty in terms of the bond. Further, such notification as well as the FTP/EXIM contemplate a business situation where an importer may fail to fulfill the obligation to export the goods so manufactured from the imported capital goods and accordingly, it provides for regularization of such EPCG license on payment of duty foregone along with interest, and accordingly, in the facts of the present case, there was no allegation in the show cause notice that appellant was having any mala fide intention not to export the goods manufactured by using the capital goods. Once no such allegation exists in the SCN, penalty cannot be imposed under Section 112(a)(ii). Therefore, for this reason also, penalty is not imposable. Further, even before the issuance of the show cause notice, bank guarantee was encashed. Further, the payment of duty along interest was always secured by way of bond, accordingly, the question of evasion of duty does not arise.

- Further, the appellate authority clearly noted that the value of goods imported is less than the value of imported goods noted in the adjudication order and accordingly held that the corresponding duty involved is also lesser and in terms of such lesser amount of duty, penalty has been computed and imposed by the First Appellate Authority. Accordingly, the demand of duty would also have been reduced along with reduction in interest demand, and the amount deposited in excess of duty demand and interest would have been refunded. Accordingly, the amount lying deposited in excess may be ordered to be refunded.

3.3 Authorized representative re-iterated the findings recorded in the impugned order.

4.1 We have considered the impugned order along with the submissions made in appeal and during the course of arguments.

4.2 Order in original records as follows:

"7. M/s Anand Triplex Board Limited, 9th K.M., Meerut Mawana Road, Village Saini, District Meerut did not appear for personal hearing, when fixed, as per schedule. However, they submitted a reply dated 13.01.2021 wherein they submitted that their company had approached DGFT, New Delhi for conversion of EPCG license issued for Zero duty EPCG Scheme to Concessional 3% EPCG Scheme. They also submitted that they have also requested for extension of Export obligation period for two years on 09.11.2020. They requested to keep the matter pending for decision in view of above matter pending before Regional authority.

Discussion & Findings:-

8. I have carefully gone through the contents of SCN, Noticee's reply and other documents/records related to the case. The issues before me to decide are

(i) Confiscation of goods imported as per license of CIF value Rs.3,35,58,000/- (Rupee Three Crores Thirty Five Lakhs Fifty Eight Thousand only) under Section 111 (o) of the Customs Act, 1962.

(ii) Recovery of Duty foregone.

(iii) Imposition of Penalty on Importer under Section 112 (a) of the Customs Act, 1962

(iv) Enforcement of Bond furnished by the importer.

9. The issue before me is in respect of denial of exemption by the Customs department on non compliance of obligations prescribed under Notification No.102/2009-

Customs dated 11.09.2009 of the Government of India, Ministry of Finance against EPCG License No.0530159454 dated 10.10.2012.

10. In the present case, the importer has imported goods involving Customs duty amounting to Rs.90,60,660/- (Rupee Ninety Lakhs Sixty Thousand Six Hundred Sixty Six only) under the said EPCG License in terms of the above said Notification and as per para (2) of the said notification conditions have been prescribed to be fulfilled by the importer for availing such exemption. I find that in the Show cause Notice it has been alleged that importer was required to produce proof of fulfillment of export obligation within the period as prescribed in the said notification in the form of Export Obligation Discharge Certificate (EODC). I find that there was acceptance of default at the end of the Importer in their reply dated 09.11.2020 wherein they further added that that they have applied before DGFT, New Delhi for conversion of EPCG license issued for Zero duty EPCG Scheme to Concessional 3% EPCG Scheme. They also submitted that they have also requested for extension of Export obligation period for two years on 09.11.2020 and requested to keep the matter pending for decision in view of above matter pending before Regional authority. This indicates that allegation in the Show Cause notice is correct.

Hon'ble Supreme Court of India, in the case of Commissioner of Customs (Prev), Mumbai v. M. Ambalal & Co., as reported in 2010 (260) ELT 487, has held as under:

> *"10. It is settled law that the notification has to be read as a whole. If any of the conditions laid down in the notification is not fulfilled, the party is not entitled to the benefit of that notification. The rule regarding exemptions is that exemptions should generally be strictly interpreted but beneficial exemptions having their purpose as encouragement*

> *or promotion of certain activities should be liberally interpreted. This composite rule is not stated in any particular judgment in so many words. In fact, majority of judgements emphasize that exemptions are to be strictly interpreted while some of them insist that exemptions in fiscal Statutes are to be liberally interpreted giving an apparent impression that they are contradictory to each other. But this is only apparent. A close scrutiny will reveal that there is no real contradiction amongst the judgments at all. The synthesis of the views is quite clearly that the general rule is strict interpretation while special rule in the case of beneficial and promotional exemption is liberal interpretation. The two go very well with each other because they relate to two different sets of circumstances."*

In view of above, I am of the view that a Notification has to be strictly interpreted and followed in the right context. Further, since the importer failed to bring on record that the imported goods were used for intended purpose in order to avail claim of exemption from payment of Customs duty, the intention of the Govt. to grant such exemption to such importers fails, and therefore, the importer is liable to pay the amount of duty foregone of Rs.3,79,350/- (Rupee Three Lakhs Seventy Nine Thousand Three Hundred Fifty only) on the said imported goods along with interest at the applicable rate. The department has rightly encashed the Bank Guarantee No.2534ILG002412 dated 16.10.2012 of Rs.13,60,000/-.

Under these circumstances, the aforesaid goods are also liable for confiscation under Section 111 (o) of the Customs Act, 1962. Section 111(o) of Customs Act, 1962 reads as under:-

Section 111. Confiscation of improperly imported goods, etc. The following goods brought from a place outside India shall be liable to confiscation:-

(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer; 3[(p) any notified goods in relation to which any provisions of Chapter IVA or of any rule made under this Act for carrying out the purposes of that Chapter have been contravened.]

In view of above, such act of omission in respect of the imported goods, liable for confiscation under Section 111, committed by importer has made themselves liable to be penalized under Section 112(a) of the Customs Act, 1962."

4.3 Impugned order records the findings as follows:

4. After carefully examining the facts and documents on records, I find that in the present case appellant had imported certain capital goods under EPCG License dated 10.10.2012 and they had to fulfil export obligation before 10.10.2018 i.e. within 06 years from the date of issuance of such authorization which they have admittedly failed to do. It is the case of the appellant since they have deposited the duty in question along with interest, act of the department to consider these goods liable for confiscation under Section 111(o) of the Customs Act as well as imposition of penalty under Section 112(a) of the Act, thereof is not justified. It is also the argument of appellant that since the goods in question have already been released for home consumption these goods cannot be confiscated at the later stage and that since no mens-rea in the present case has been proved, penalty under Section 112(a) cannot be imposed.

5. Before proceeding further, I would like to summarize the relevant dates in the subject matter:

(i)	*Date of issuance of authorization*	*: 10.10.2012*
(ii)	*Date of Bill of Entry*	*: 23.10.2012*

(iii)	*Last date to fulfill export obligation*	*: 10.10.2018*
(iv)	*Date of issuing show cause notice*	*: 17.09.2020*
(v)	*Date on which appellant approached DGFT (as per appeal memo)*	*: 09.11.2020*
(vi)	*Date of passing impugned OIO*	*: 15.04.2021*
(vii)	*Date of deposit of duty with interest (as per appeal memo)*	*: 29.06.2021 & 23.07.2021*

6. The aforesaid chronology of events shows that in the present case, though the last date to fulfill export obligation expired on 10.10.2018, still the appellant failed to discharge their duty liabilities along with interest on the EPCG License as required under the conditions of the said EPCG license for more than two years. Not only that appellant approached DGFT to regularize the said delay after a delay of more than 02 years and that too only after issuance of show cause notice. The aforesaid chronology of events also shows that the duty along with applicable interest has also been paid by the appellant only after issuance of impugned OIO.

7. Having observed so, I now take the issues raised by the appellant one by one. As far as confiscation of the goods is concerned, argument of the appellant is that under Notification No. 102/2009 read with FTP 2009-2014, under EPCG authorization an importer has to option either to fulfil the export obligation or on failure to do so pay duty along with applicable interest. Since in the present case they have discharged their duty liabilities along with interest they have fulfilled the conditions of Notification No. 160/92. Accordingly, no violation of law and procedure is done by them and consequently the goods are not liable to confiscation under Section 111(0) of the Act. I find this argument of the appellant devoid of merit and without any legal footing.. Demand of duty and confiscation of the goods are two totally different aspects under the Customs law. Demand of duty arises on importation of the goods *and if goods have been imported at a concessional rate of duty subject to fulfilment of certain conditions and such conditions are violated, then the duty concession would not be available at all. In the present case there is no dispute that the demand of duty has arisen under the Notification itself in terms of the bond executed by the appellant at the time of importation of the goods. On the other hand Confiscation of the goods arise under Section 111 of the Customs Act. Section 111(o) under which the goods have been confiscated by the adjudicating authority reads as follows:*

> *"111. Confiscation of improperly imported goods etc. The following goods brought from a place outside India shall be liable to confiscation:-*
>
> *(o) "Any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer."*

8. In the present case I find that the goods were imported availing a concessional rate of duty on the condition that the goods will be put to use for manufacture and export of certain products up to certain value within a specified period. However, the appellant has failed to fulfil the condition laid down in the relevant notification by not exporting the goods of required value within the stipulated period. Therefore, I find that the appellant, from the very moment when the time limit to fulfil the conditions expired, became in-eligible for the concessional rate of duty and the duty liability had to be discharged in full without availing the benefit of the exemption. Furthermore, once the importer (appellant) failed to fulfil the conditions of the said notification under which the goods in question were imported by him renders the goods in question liable to confiscation under the provisions of

Section 111(0) as the liability to confiscation or fine is for violation of the conditions of the importation. I also observe that the duty liability has arisen towards import of the goods and the goods have been confiscated for violating the terms and conditions of importation.

9. As far as argument of the appellant that since the goods in question already stands cleared for home consumption, confiscation cannot be ordered is concerned, I find that goods in were released to the appellant at the time of importation under a bond executed by them. The release of the goods was thus provisional. Therefore, when the assessment is finalized subsequently, even if the goods are not available for confiscation, redemption fine in lieu of confiscation has been rightly imposed by the adjudicating authority.Therefore, I find no infirmity or illegality in the confiscation of the goods in question and imposition of redemption fine thereof by the adjudicating authority.

10 Now coming to the imposition of penalty on the appellant under Section 112(a) is concerned, appellant has stated that since no mensrea was there, penalty can not be imposed upon them under Section 112(a) of the Act. In this regard, as chronicled supra, I find that the appellant failed to deposit the duty and interest thereof on their own even after expiry of more than 2 years of the stipulated time limit. Appellant approached the DGFT for extending time limit and (or) regularizing the delay only after issuance of show cause notice and duty in question was deposited by them only after confirmation of demand vide impugned OIO. This conduct of the appellant shows that they had no intention to deposit the duty liability and interest on their own and it is only when the department started the ball rolling, left with no option, appellant deposit the said duty along with interest when the said demand was confirmed vide impugned OIO. Therefore on the basis of above facts mens-rea on the part of the *appellant to evade payment of duty gets established and no relief be granted to the appellant on this count.*

11. Having observed so, since the goods have already been held liable to confiscation, the liability to penalty arises automatically under Section 112 of the Customs Act. Penalty is an action on the importer while the duty and fine are on the goods. In the instant case the appellant imported the goods subject to a condition that he would fulfil the export obligation which obligation he failed to fulfil. Therefore, the goods became liable to confiscation under Section 111(o). Since the goods are liable to confiscation under Section 111(o), penalty under Section 112(a) has rightly been imposed by the adjudicating authority and I found no illegality or infirmity in the act of adjudicating authority to impose penalty in the present case.

12. However, the said Section 112(a) mandates that in the case of dutiable goods, other than prohibited goods, the amount of penalty that can be imposed should not exceed ten percent of the customs duty sought to be evaded or five thousand rupees, whichever is higher.

13. In the present case, it is a fact on record that the goods in question are not prohibited, therefore, in the present case maximum penalty which can be imposed can not exceed ten percent of the customs duty involved. In the present case, appellant has submitted that the goods in question were having an assessable value of Rs. 3,14,32,500/- as evident from the impugned BOE and not Rs. 3,35,58,000/- as mentioned in the OIO. Further, the duty on said value of Rs. 3,14,32,500/- works out as Rs. 82,07,341.00. Accordingly, I find that in the present case penalty imposable in the present case works out as Rs. 8,20,734.00

14. Similarly as far as imposition of redemption fine is concerned, I find that the adjudicating authority has imposed R.F of Rs. 67,11,600/- which works out to be in *excess of 20% of the total value of the imported goods. Imposition of such hefty redemption fine can not be justified in the circumstances of the case and interest of justice would be met if the said redemption fine is reduced to Rs. 31,43,250/-."*

4.4 We observe that Bank Guarantee in the present case was en-cashed before the issuance of the show cause notice. Appellant has after the issuance of show cause notice approached the DGFT for

- conversion of EPCG license issued for Zero duty EPCG Scheme to Concessional 3% EPCG Scheme;
- extension of Export obligation period for two years to 09.11.2020;
- Regularization of the imports made against the payment of duty forgone along with interest.

Adjudicating authority without waiting for any response from the DGFT on the request made proceeded to adjudicate the matter. Before the Commissioner (Appeal) appellant have produced the Final Duty Regularization Letter dated 26.09.2022, however Commissioner (Appeal) after taking cognizance of the said letter proceeded to uphold the confiscation, redemption fine and penalty imposed upon the appellant, though he modified the quantum of redemption fine and penalties imposed.

4.5 We find that imports made by the appellant against EPCG Authorization No 05301959454 dated 10.10.2012 were regularized by the DGFT. The "Final Duty Paid Regularization Letter" dated 04.01.2022 which was issued by DGFT is reproduced below:

GOVERNMENT OF INDIA
MINISTRY OF COMMERCE & INDUSTRY
DEPARTMENT F COMMERCE
OFFICE OF THE ADDITIONAL DIRCTOR GENERAL OF FOREIGN TRADE (CLA), A-WING,
INDRAPRASTHA BHAWAN, I.P. ESTATE, NEW DELHI-110002.

FILE NO. 05/34/21/0863/AM13 |1421210/05/01/2022 DATED: 09.10.2012

FINAL DUTY PAID REGULARIZATION LETTER

TO

M/S ANAND TRIPLEX BOARD LIMITED
52-MAUSAM VIHAR,
DELHI-110051.

SUB: Payment of Customs Duty with Interest against EPCG Authorization No. 0530159455 dated 10.10.2012 for regularization and Closer of the case.

With reference to your letter dated 15.09.2021, I write to inform you that on the basis of Duty and Interest amount of Rs.1,22,70,660.00 (Customs Duty for Rs.14,69,373.29 with interest of Rs.10,801,285.71) for regularization of the case paid by you against the excess duty amount utilized consequent upon shortfall in achievement of stipulated Export Obligation. The case is regularized as a bonafide default in terms of Para 5.14 of H.B. of procedure. Accordingly, this case stands redeemed and closed.

Customs may please verify the Customs Duty and Interest paid by firm before clearing the Bond/BG

Place:New Delhi
Date:04.01.2022

(RAJIV BHARGAVA)
Foreign Trade Development Officer

Issued From File No. 05/34/165/00426/AM22 Dated: 15.09.2021

Copy forwarded to The Commissioner of Customs, EPCG Cell, (INLON6) ICD Loni, **with the request to verify T.R. Challlan no.1 dt. 03.07.2021 .for Rs.77,00,660.00 and Challlan no.1 dt. 22.07.2021 .for Rs.1,15,70,000.00 submitted (copy attached) before releasing BG/LUT.**

1481399
06/01/2022

Paid Customs Duty+ Interest for Rs.7,70,060.00 vide T.R. Challan no.1 dt. 03.07.2021 and Rs.1,15,70,000.00 vide T.R. Challan no.1 dt.22.07.2021Total Rs.1,22,70,660.00.

Encl: Copy of T.R. Challan

Place:New Delhi
Date:04.01.2022

(RAJIV BHARGAVA)
Foreign Trade Development Officer

4.6 Thus the issue for consideration in the present appeal is whether in view of the Final Duty Paid Regularization Letter dated 04.01.2022, the order for confiscation of goods and penalties imposed under Section 112 (a) is justified. In the case of Rajdarbar Heritage Venture Limited [FINAL ORDER NO.

51005/2026 dated 01.06.2026 in Customs Appeal No. 50378 of 2021] Delhi Bench has observed as follows:

> *33. This issue was also examined by this Tribunal in Taurus Novelties. The Tribunal held that when the bank guarantee had been realised before issuance of the show cause notice, then the prayer for setting aside the redemption fine, penalty interest is justified. The relevant portions of the order are reproduced below:*
>
> > *"The appellants are aggrieved insofar as the Order of confiscation of the imported machineries, which were not utilised for the manufacture of goods for export of the same in terms of EPCG licence. The Redemption Fine is Rs. 20,00,000/-. However, before the issue of Show Cause Notice, the Bank Guarantees, which had been furnished to safeguard the duties, have been appropriated to an extent of Rs. 1,04,94,086/- and deposited by TR-6 challan dated 30-11-2000. The Show Cause Notice dated 15-1-2001, was issued thereafter. It is the contention of the appellant that in a circumstance, where the appellants have not violated any of the terms of the licence and the industry could not be established due to loss of export orders and fall in the foreign market, they are not required to pay the redemption fine, penalties and interest. The penalties imposed on the Company and the Directors is being sought to be waived in the matter along with interest and redemption fine. In this regard, the learned Counsel relied on the following judgment wherein the Tribunal has set aside the Redemption Fine and Penalty on the ground that the violation of the licence was due to unavoidable and extenuating circumstances. The Tribunal set aside the redemption fine and penalty also on the ground that the Bank Guarantees had been encashed and duty had been released. The Larger Bench has also taken*

a view that when the duty has been paid even before the issue of Show Cause Notice, then the penalty and interest is not leviable as held in the case of CCE, Delhi-III v. Machino Montell (I) Ltd. [2004 (168) E.L.T. 466 (T-LB) = 2004 (62) RLT 709 (CESTAT-LB)]. The judgments relied by the Counsel for non-imposition of penalty and redemption fine and interest are as follows:

(i) Meirs Pharma (India) Pvt. Ltd. v. CC, Chennai - 2004 (167) E.L.T 53 (Tri. - Chennai)

(ii) Dyna Lamps & Glass Works Ltd. v. CCE, Chennai - 2003 (157) E.L.T. 73 (Tri. - Chennai)

(iii) Fal Industries Ltd. v. CC, Chennai - 2003 (159) E.L.T. 215 (T) = 2002 (53) RLT 86 (CEGAT-Chennai)]

(iv) Philips (India) Ltd. v. CCE, Mumbai - 2001 (137) E.L.T. 697 (Tri. -Mumbai)

(v) Metropoli Overseas Ltd. v. CC, Bangalore - 2003 (154) E.L.T. 86 (Tri. - Kolkata)

(vi) CCE, Mangalore v. Shree Krishna Pipe industries - 2004 (165) E.L.T. 508 (Kar.) = 2004 (61) RLT 17 (Karnataka)

2. The learned SDR reiterated the departmental view.

3. On a careful consideration of the submissions, we notice that the appellants had imported capital goods under concessional rate of duty under EPCG Notification No. 110/95, dated 5-6-1995. But, they could not set up the industry to fulfil the export obligation due to total collapse of Korean economy and hence could not procure the order for manufacture and export of ceramic goods. The value of Korean company fell drastically and affected the appellants' project. As they could not get the support from the Korean collaboration for buy back of production and due to stiff competition from Chinese *competitors, the factory could not be established for commercial production and export of goods. The appellants, due to these factors, approached the Commissioner and requested him to permit them to encash the Bank Guarantee and deposit these amounts due to the department. The same was granted and the amounts were deposited by TR-6 Challan on 30-11-2000. The same has been appropriated in the impugned order. The Show Cause Notice alleging violation of the Notification under Section 124 of Customs Act was issued on 15-1-2001. In terms of the adjudication order, the machineries were confiscated and granted redemption under fine of Rs. 20,00,000/- besides a penalty on the Company of Rs. 20,00,000/- and penalty of Rs. 5,00,000/- each on the Managing Director and the Executive Director. The question in this appeal is as to whether the goods can be confiscated and redemption fine imposed besides penalties and interest. In a like situation, the Tribunal, in the citations referred to by the Counsel, has held that confiscation cannot be ordered in a circumstance when the export obligation became an impossibility. Further it has been held that when the Bank Guarantee has been realized before the issue of Show Cause Notice, then in such a circumstance, the redemption fine, penalty and interest is not imposable. We have perused these judgments and find that the appellants' prayer for setting aside the redemption fine, penalty and interest, in terms of these judgments, is justified. The ratio of the judgments clearly applies to the facts and circumstances of this case. Respectfully following the same, the impugned order, confiscating the machinery and imposing redemption fine and penalty on the Company and the Directors including the levy* *of interest, is set aside by allowing the appeal." (emphasis supplied)*

34. In B R Marbles, the order passed by the Commissioner (Appeals) setting aside the order imposing penalty and demanding interest from the respondent was assailed by the department. The respondent had obtained EPCG authorisation to import duty free capital goods for mining of marbles and for exporting the same. It was, however, unable to fulfil the exports obligation for reasons beyond the control of the respondent. A demand noticed was served on the respondent seeking to recover duty foregone after the expiry of the obligation period. The Tribunal upheld the order passed by the Commissioner (Appeals) for waiver of interest and penalty as the principal amount towards duty had been paid. The relevant observations are:

> *"5. xxxxxxxx. The fact that the respondents could not discharge their export obligation and hence failed to meet the export commitments leading to nonissue of the EODC is understandably beyond the control of the respondent. It is also on record that the respondent did approach the department to permit them to make the payment of duty foregone in terms of the EPCG Licence issued, in installments and waive the requirement/imposition of interest and penalty as was proposed in the show cause notice. It is on record that the respondent has paid the total duty due in terms of the EPCG in two installments Rs.18,00000/- (Rupees Eighteen lakh only) before filing of the appeal before the Commissioner (Appeals) and the balance amount of Rs. 9,396/- (Rupees Nine thousand three hundred ninety six only) on 2nd November 2017, pursuant to the order passed by learned Commissioner (Appeals).*
>
> *6. The compelling circumstances beyond their control pointed out by the respondents, have been admitted*

> *by the authorities. Therefore, no blame or aspersions can be cast on the respondents that they had malicious intent to defraud the revenue. This argument of the revenue is rejected summarily. We also note that this is not the first time that any importer has not been able to fulfill the export obligation for reasons beyond his control. Thus in the wake of global economic crisis in Asia and particularly so in Southeast Asia, this Tribunal in the case of Sanghi Industries Ltd. Vs. CC (Export Promotion), Mumbai 2010 (259) ELT 223 (Tri.- Bang), had set aside the penalty interest and fine imposed where export obligation under the EPCG Licence could not be fulfilled by the importer due to global economic crisis. Likewise, in the case of Taurus Novelties Ltd. vs. C.C. Bangalore 2004 (173) ELT 100 (Tri.- BNG) , wherein the importers had not met the export obligation cast upon them, due to collapse of the Korean economy and therefore, could not procure the requisite orders and export the Ceramic goods manufactured, this Tribunal had allowed the plea for waiver of redemption fine, penalty as well as interest. We also note that the revenue has totally failed to establish any aspect of mens rea on part of the respondent. The ratio of the aforesaid case laws is thus squarely applicable to the present matter." (emphasis supplied)*

35. The aforesaid decisions hold that if a person who has obtained EPCG authorisation for the purpose of importing duty free capital goods is unable to fulfill the export obligation for good and valid reasons, then levy of interest and imposition of penalty can be waived. In the present case paragraph 4 of the Notification also deals with such a situation. 36. As noticed above, the appellant is not disputing the confirmation of demand and is only challenging the levy of interest and imposition of penalty. Demand of interest has been confirmed by the Additional

Director General not under section 28AA of the Customs Act but under the provisions of the Notification and the bond executed by the appellant. Once interest is charged under the provisions of a contract, then section 56 of the Contract Act would come into play. The Bombay High Court in Customs and Central Excise Settlement Commission examined this issue at length and this Tribunal in Taurus Noveltiesand B R Marbles also held that interest could not be levied and penalty could not be imposed if the fulfillment of export obligation became an impossibility.

37. It is not possible to accept the contention advanced by the learned authorised representative appearing for the department that the aforesaid three decisions cited by the appellant will not apply to the facts and circumstances of the case. The decisions deal with situation where the export obligation could not met because of impossibility. In the present case, also the export obligation could not be met because the goods imported and the premises of the hotel were auctioned. The appellant, therefore, could not have fulfilled the export obligation within the period prescribed in the first block. The bona fides of the appellant are also clear as the appellant did carry out some exports through group companies to the extent of 50% which was permissible under the Notification. The appellant had requested for grant of 100% obligation, but this plea was rejected.

38. The decision of the Delhi High Court in DSJ Communicationswill not come to the aid of the department as this decision was rendered in respect of EPCG Licence that was issued in 1995 when there was no provision in the Notification for waiver of export obligation on account of force majeure or other unforeseen circumstances. A finding was also recorded that the capital goods were always in the possession of the assessee for more than 14 years and the assessee had not made efforts to export the *goods even after obtaining extension of the export obligation.*

39. In the present case, as noticed above, paragraph 4 that was inserted by Notification dated 21.05.2007 provides for waiver of export obligation because of force majeure or for other unforeseen circumstances. The appellant also had lost possession and control of the imported goods. The group company, however, had also made exports of other goods amounting to USD 25,14,072/-.

40. In such circumstances, and more particularly when the bank guarantee for payment of customs duty had already been encashed by the department much before the issuance of the show cause notice, interest could not have been levied upon the appellant for violation of the terms of the Notification as the appellant failed to meet the export obligation. This view find support from the three decisions referred to above in Union of India, Taurus Novelties and B R Marbles.

41. Penalty has been levied upon the appellant under section 112(a)(a) of the Customs Act for the reason that the goods were held liable to confiscation under section 111(a) of the Customs Act. The Additional Director General held no mens rea was required for imposition of penalty under section 112(a) of the Customs Act.

42. Apart from the fact that penalty could not have been imposed upon the appellant under section 112(a) of the Customs Act because of the aforesaid three decisions relied upon by learned counsel for the appellant, even otherwise mens rea is required for imposition of penalty as was held by this Tribunal in Meirs Pharma (India) Pvt. Ltd. vs. Commissioner of Customs, Chennai [2004 (167) E.L.T. 53 (Tri.-Chennai)]. The relevant portion of the decision is reproduced below:

> *"7. So far as the confiscation of the goods and imposition of penalty is concerned, it is settled law that mens rea is a necessary requirement for imposition of penalty under Section 112 of the Customs Act, 1962. We have noted above that in the instant case, there was sincere efforts on the part of the appellants to fulfil the export obligations but the circumstances were beyond their control and they could not fulfil the export obligations in spite of their best efforts. It is not the case of the Department that appellants have made any deliberate attempt to avail of the benefit of Notification. The machinery was in fact installed at the factory, as noted by the adjudicating authority, in Para 4 of the impugned order. Production of the goods was also started some time in March, 1994 and they could only meet the export obligation to the extent of 1.5% only. There is no material to doubt their bona fides." (emphasis supplied)*

43. The confiscation of goods under section 111(o) of the Customs Act cannot also be justified as the appellant had reasons beyond his control for not fulfilling the terms of the Notification. Once the goods are not held liable to confiscation, penalty under section 112(a) of the Customs Act cannot be imposed.

44. Thus, for all the reasons stated above, the confiscation of goods under section 111(o) of the Customs Act is set aside. The levy of interest upon the appellant under the terms of the bond and the imposition of penalty upon the appellant under section 112(a) of the Customs Act are also set aside. The appellant has not contested the confirmation of demand of customs duty in terms of the Notification and, therefore, the confirmation of demand of customs duty is upheld. The order passed by the Additional Director General is, accordingly, set aside to the extent indicated above and the appeal is allowed to this extent.

4.7 In the case of Vedanta Limited [FINAL ORDER No.40139/2026 dated 23.01.2026 in Customs Appeal No.40306 of 2020] Chennai Bench has observed as follows:

> *"15. In the back drop of the ratio in Greatship (India) Ltd. (supra), we proceed to analyze the issue in the case on hand and we deem it appropriate to reproduce the text of the said conditions (of Notification Nos.96/2009-Cus. and 99/2009-Cus.) herein below for better appreciation of the dispute:*
>
> > *"that the export obligation as specified in the said authorization (both in value and quantity terms) is discharged within the period specified in the said authorization or within such extended period as maybe granted by the Regional Authority by exporting resultant products, manufactured in India which are specified in the said authorization and in respect of which facility under rule 18 or sub-rule (2) of rule 19 of the Central Excise Rules, 2002 has not been availed."*
>
> *16. A perusal of the above condition makes it clear that the EO required to be fulfilled by a license holder is the one which is specified in the Advance Authorization issued by the DGFT, be it in terms of quantity or value or both. In other words, a license holder is required to fulfill only that EO which is specified by the DGFT and the fulfillment of which is acknowledged by the DGFT by issuance of EODC. This is also evident from the definition of 'Export Obligation' under para 9.27 of the FTP (2009-2014), which defines it to mean "obligation to export product or products covered by Authorization or permission in terms of quantity, value or both, as may be prescribed or specified by Regional or competent authority."*
>
> *17. The regularization of bona fide default by the DGFT in terms of Para 4.28 (FTP 2009-2014) / Para 4.49 (FTP 2015- 2020) has the effect of the EO having been revised and restated. It cannot be disputed that fixing the*

quantum of EO under the Advance Authorizations, which are the subject matter of the dispute, was the prerogative of the DGFT alone. The fulfillment of EO in terms of quantity and value having been accepted by the DGFT in the present case, the Customs Commissioner was wrong in holding that there was a violation of conditions No. (viii) and (ix) of Notification Nos. 96/2009-Cus. and 99/2009-Cus. on the part of the Appellant. It is also difficult to countenance that the reasoning of the Respondent to the effect that EO for the purposes of Customs could be different for the purposes of licensing authority, especially when the clause relating to fulfillment of EO in the Customs notification envisages fulfillment of EO with reference to the quantity and value as per the Advance Authorization. In fact, the FTP also allows clubbing of Authorizations for fulfillment of EO, even though the Notification is silent on the same.

18. It is nobody's case that where the Advance Authorizations are clubbed, the fulfilment of EO against an individual Authorization can be separately examined by the Customs authorities and demands be raised in cases where there is a short fall in fulfilment of EO on a standalone basis, which otherwise stood fulfilled as a consequence of clubbing of Authorizations. When the condition relating to fulfillment of EO in the Customs Notification is with reference to what has been specified in the Advance Authorization, the said condition in the Customs Notification is to be read in the text and context of the provisions of the FTP read with HBP, and not in its isolation.

19. In view of the fact of the DGFT having regularized the shortfall on Appellant's part in fulfillment of the EO in respect of the Authorizations in terms of para 4.28 of HBP (2009-2014) / 4.49 of HBP (2015-2020) and also redeemed all the three Authorizations by way of issuance of the EODCs in terms of para 4.49 (b) of HBP (2015-

2020), the demand of Customs Duty on the ground that EO as contemplated under condition Nos. (viii) and (ix) of Notification Nos. 96/2009-Cus and 99/2009-Cus, does not survive. It is useful at this juncture, to refer to and rely on the decision of Apex Court in Titan Medical Systems Pvt. Ltd. vs. Collector of Customs, New Delhi [(2002 (11) TMI 108 = 2003 (151) ELT 254 (SC)] and the Apex Court has held at para 13, as under:

> *" ---*
>
> *13. As regards the contention that the appellants were not entitled to the benefit of the exemption notification as they had misrepresented to the licensing authority, it was fairly admitted that there was no requirement, for issuance of a licence, that an applicant set out the quantity or value of the indigenous components which would be used in the manufacture. Undoubtedly, while applying for a licence, the appellants set out the components they would use and their value. However, the value was only an estimate. It is not the respondents' case that the components were not used. The only case is that the value which had been indicated in the application was very large whereas what was actually spent was a paltry amount. To be noted that the licensing authority having taken no steps to cancel the licence. The licensing authority have not claimed that there was any misrepresentation. Once an advance licence was issued and not questioned by the licensing authority, the Customs authorities cannot refuse exemption on an allegation that there was misrepresentation. If there was any misrepresentation, it was for the licensing authority to take steps in that behalf. …."*

20. In Autolite (India) Ltd. Vs Union of India [2003 (157) ELT 13 (Bom.)], the Hon'ble High Court of Bombay had held that:

"7. Having heard the Counsel on both the sides, we are of the opinion that the Customs authorities below were not justified in refusing to allow the duty free clearance of the goods on the ground that die steel imported by the petitioner is capital goods and capital goods did not fall within the scope of the Notification No. 116/1988. Admittedly, under the advance licence issued, the petitioner was entitled for duty free import of die steel as a material required in the manufacture of export product. Once the Licensing Authority has accepted that die steel is a material required in the manufacture of the export product, it is not open to the Customs Authorities to go behind the licence and deny duty free clearance of the goods. The exemption Notification No. 116/1988, dated 30th March, 1988 specifically states that the materials that are required to be imported for the purpose of manufacture of resultant products shall include such items as are imported into India against the advance licence for subsequent exportation. In the instant case, the licence specifically states that the petitioner is entitled to import die steel as a material required for the manufacture of resultant products. The Apex Court in the case of Titan Medical Systems Pvt. Ltd. v. Collector of Customs reported in 2003 (151) E.L.T. 254 (S.C.) has held that once an advance licence is issued and not questioned by the licensing authority, the Customs authorities cannot refuse exemption on an allegations that there was any misrepresentation. In the present case also, the licensing authorities have not found fault with the statement of the petitioner that the die steel is a material required in the manufacture of resultant product and have granted advance licence to the petitioner. Assuming that the licensing authorities have wrongly accepted the statement of the petitioner, so long as the

> *licence is valid and subsisting the import of materials set out in the advance licence are liable to be cleared duty free, under Notification No. 116 of 1988 and the Customs authorities cannot deny duty free clearance of the materials set out in the licence. It is open to the Customs authorities to sit in appeal and hold that the licensing authorities have erroneously endorsed advance licence to permit import of die steel as a material required in the manufacture of the resultant product. In this view of the matter, we are of the opinion that the impugned orders passed by the Customs authorities below cannot be sustained."*

The higher courts have consistently upheld the individuality and jurisdiction of the authorities, viz. DGFT and the DOR and have ruled that the authority or powers of Customs officers can never prevail over DGFT insofar as schemes floated for the benefit of Indian entrepreneurs in import/export activities, which are in consonance with the applicable FTPs. The higher courts have even recognised that it is the licensing authority viz. DGFT that can look into the aspect of fulfilment or otherwise of the particular scheme and no one else; if the Customs department feels aggrieved or feels non-fulfilment of any conditions of such schemes, they could at best bring the same to the notice of DGFT and request for re-consideration as to the satisfaction or otherwise and nothing beyond this. We are therefore bound to follow the dictum as enunciated in the above decisions.

21. A Co-ordinate Bench in the case of Hindustan Lever Limited vs. CC (EP) Mumbai [2012 (281) ELT 241 (Tri Mum)] has followed the ratio in Titan Medicals [supra] and has held as under:

" -- 6.3 The next issue for consideration is whether once the licensing authority certified that export obligation has been fulfilled whether such certification is final and binding on the Customs authorities? This issue came before this

Tribunal in the case of Navjyothi International v. Commissioner of Customs, Chennai, cited supra. In that case the Revenue sought to deny the benefit of Customs duty exemption under Notification No. 30/97-Cus., dated 1-4-1997 and 51/2000-Cus., dated 27-4-2000 under DEEC scheme wherein the importer had undertaken imports under seven quantity based advance licences issued by the DGFT and had fulfilled the export obligation. This Tribunal in that case held as follows: "With regard to licence conditions, the licensing authority has certified full discharge of export obligation by the appellants. The adjudicating authority under the Foreign Trade (D&R) Act has found no violation of licence conditions on their part and its order has been accepted by the Revenue. Hence the Revenue cannot be seen to be critical of that order, nor can the DR be heard to argue against it. It goes without saying that the case law cited by Id. SDR cannot improve the Revenue's case or plight. The Revenue's allegation was that the appellants had violated conditions (vii) and (viii) of Notification 30/97 and similar conditions of Notification 51/2000. But, in this regard, the DGFT's order has taken the wind out of the Revenue's sails. In the result, the charge of breach of conditions of the Customs Notification does not survive." An identical view was held by this Tribunal in the case of Bharath Steel Corporation v. Commissioner of Customs, Chennai, and Ashok Enterprises v. Commissioner of Customs, Chennai supra. A similar issue came up for consideration before Tribunal in the case of Kukar Sons (Indo-French) Exports Ltd. v. Commissioner of Customs, Jaipur. In that case the Revenue alleged violation of conditions of Notification No. 204/92-Cus. by the appellants as they failed to realise the sale proceeds of exported goods. The DGFT, which is the competent authority in the matter of advance licences, had already redeemed the bank guarantee and legal undertaking furnished by the appellants after considering the fulfilment of export obligation by the assessee. The Tribunal held as *follows : "Once a bank guarantee and legal undertaking has been redeemed by the competent authority and no action is being taken by the competent authority, therefore, we find this finding is not sustainable in view of the decision of the Hon'ble Supreme Court in the case of Titan Medical Systems Pvt. Ltd. (supra). The Hon'ble Supreme Court held that once an advance licence was issued and not questioned by the licensing authority, the Custom authorities cannot refuse exemption on an allegation that there was any misrepresentation. If there was any misrepresentation, it was for the licensing authority to take steps in that behalf." The ratio decidendi laid down in the above judgments applies to the facts of the present case. In the instant case also, the licensing authority has accepted the fulfilment of export obligation and have issued export obligation discharge certificates and have discharged the appellants from any further obligation. That being the position, the Customs authorities cannot deny the benefit of Customs duty exemption under the notifications governing the advance licensing scheme. If at all they felt that the appellant had violated any of the terms and conditions of the licences, they should have referred the matter to the licensing authority for appropriate action rather than taking action suo motu.*

22. Further, a Co-ordinate Bench has in the case of Goldfinch Hotels Pvt. Ltd. vs. CC (ACC & Exports) Mumbai [2015 (328) ELT 282 (Tri.-Mumbai)] has held that Customs authorities cannot deny benefit of exemption by adopting an interpretation of the FTP different from what is being applied by the Licensing authority. This has been rendered by applying the ratio laid down by the Apex Court in the case of Vadilal Chemicals Ltd. Vs State of Andhra Pradesh - 2005 (192) E.L.T. 33 (S.C.), relevant extract of the observations of the Tribunal are reproduced herein below:

" --- 25. It is settled law as held by the Hon'ble Supreme Court in Vadilal Chemicals Ltd. o. State of Andhra Pradesh, 2005 (192) E.L.T. 33 (S.C.) that the State, which is represented by the Departments, can only speak with one voice. The Hon'ble Supreme Court observed thus –

> *"23. There is another reason why the action of the DCCT cannot be upheld. The primary facts relating to the processes undertaken by the appellant at its unit were known to the Department of Industries and Commerce and the DCCT. The only question was what was the proper conclusion to be drawn from these. The Department of Industries and Commerce which was responsible for the issuance of the 1993 G.O. accepted the appellant as an eligible industry for the benefits. Apart from the fact that it can be assumed that the Department of Industries was in the best position to construe its own order, we can also assume that in framing the scheme and granting eligibility to the appellant all the Departments of the State Government involved in the process had been duly consulted. The State, which is represented by the Departments, can only speak with one voice. Having regard to the language of the 1993 G.O. it was the view expressed by the Department of Industries which must be taken to be that voice."*

We find that in the case in hand different yardsticks are being applied by two different wings of the Central Government. The Central Government through Ministry of Commerce has notified the Foreign Trade Policy under the provisions of FTDR Act, 1992, which confers the right of beneficial exemption from payment of Customs duty on *fulfilment of conditions mentioned therein, and upon following the procedure published by way of Public Notice in the Handbook of Procedure Neither any condition imposed either in the Foreign Trade Policy or the Handbook of Procedure has been violated by the appellant, nor have any proceedings been initiated against the appellant under the provisions of FTDR Act, 1992. On the other hand another wing of the Central Government through Ministry of Finance, Department of Revenue, seeks to deny the benefit of the exemption by adopting a different interpretation of the provisions of the Policy or on the basis of the Notifications issued under the provisions of the Customs Act, 1962. It is seen that the Ministry of Commerce which was responsible for the issuance of the Foreign Trade Policy was in the best position to construe its own provisions, Public Notices and the Policy Circulars. It is to be presumed that while formulating the Foreign Trade Policy even the Departments of Revenue must have been duly consulted. Therefore, with regard to the language used in Para 2.4 of the Foreign Trade Policy, it is the view expressed by the Ministry of Commerce, which must be taken to be that voice. Para 2.4 of the FTP reads thus –*

> *"Procedure.*
>
> *2.4 DGFT may, specify procedure to be followed for an exporter or importer or by any licensing or any other competent authority for purpose of implementing provisions of FT (D&R) Act, the Rules and the Orders made thereunder and FTP. Such procedures shall be published by means of a Public Notice, and may, in like manner, be amended from time to time."*

It is evident from the above provision of the FTP issued by Central Government by way of a Notification in the Official Gazette, that an exporter or importer or any licensing or any other competent authority (which shall necessarily include the officers of Ministry of Finance/Customs Authorities), would be bound by the procedure specified by DGFT for implementing the provisions of FT (DER) Act, the Rules, the Orders made thereunder and FTP, published by means of a Public Notice. Thus all procedural aspects whether or not notified by the Ministry of Finance, if contrary to what is specified in Public Notice/Handbook of Procedure, would give way to those specified in the Public Notice. The obvious reason for such a provision in the FTP is that the benefits conferred and promised under the FTP issued under FTDR Act cannot be denied either in view of the absence of any Notification or any contrary or ambiguous Notification or Circular issued under the Customs Act, 1962. If the Central Government in its wisdom introduces a beneficial scheme or provision under the FTDR Act, the benefit of such legislation are to be made available by another Department of Central Government namely the Customs Department for which purpose Notifications and Circulars are issued under the Customs Act, 1962. Neither such Notifications and Circulars can be interpreted to take away the benefit which is otherwise available under the FTP and HBP, nor any further clarification or instructions may be insisted by the Customs Department, when the provisions of the FTP and HBP mandate grant of such benefit. In M Far Hotels Limited v. Union of India, 2011(270) E.L.T. 158 (Ker. HC), despite there being absence of any Notification under the Customs Act to confer the benefit of duty credit otherwise *permissible as per the DGFT, the Hon'ble Kerala High Court was pleased to observe that –*

> *"3. During the pendency of this writ petition, the Director General of Foreign Trade has issued Exts. P17 and P18 clarifying the position, as a result of which, the petitioner is entitled to get duty credit in respect of the goods imported under Exts. P9 to P15 referred to above. In view of this clarification, the petitioner is also entitled to avail of the benefit of the duty credit certified under Exts. P5 to P5(d) and P6 licence as well.*
>
> *4. In the light of Exts. P17 and P18 clarifications issued by the Director General of Foreign Trade, this writ petition is disposed of clarifying that the petitioner will be entitled to duty credit for the goods imported under Exts. P9 to P15 and the Bank guarantees furnished by the petitioner will be returned. It is also declared that the petitioner will be entitled to the benefit of the balance amount of duty credit certified under Exts. P5 to P5(d) and Ext. P6 licence as well.*
>
> *5. True, the Counsel for the department raised an objection that in the absence of a notification issued by the Customs as a consequence of Exts. P17 and P18, the benefit cannot be claimed at this stage. However, having regard to the fact that the Government of India have issued Exts. P17 and P18, do not think it will be reasonable to require the petitioner to wait until any notification is issued by the Customs Department to get the benefit. Therefore, there is no substance in this objection."*

23. The undisputed fact that EODC is an evidence of fulfillment of EO for all purposes, has been acknowledged and accepted by the CBIC through its Circular No.16/2017-Cus dated 02.05.2017, wherein the Board itself has clarified that any recovery proceedings is to be initiated only if the Assessee fails to submit the EODCs, clearly implying that in case the Assessee submits EODCs, it is to be accepted that the EO stood fulfilled and no proceedings ought to be initiated against such Assessee. The impugned proceedings are contrary to the clarifications issued by the CBIC and thus, the demand so raised is untenable on this count also.

24. In the light of the above factual matrices of the case on hand, we find that the reliance placed by the Commissioner on the judgment of the Hon'ble Supreme Court in the case of Sheshank Sea Foods Pvt. Ltd. Vs. Union of India - 1996 (88) ELT 626 (SC)] is misplaced as the same inapplicable to the facts of the present case. It is settled law that a judgment is a precedent basis of the facts presented therein. Sheshank Sea Foods Pvt. Ltd. (supra) was a case where the Assessee had challenged the right of the Customs to investigate or conduct search and seizure, on the ground that only DGFT had the power to do so, which is not the case at hand. There is no dispute in the instant case that Customs could have examined whether or not the EO as contemplated under condition Nos. (viii) and (ix) of Notifications No.96/2009-Cus and 99/2009-Cus had been complied with or not. The dispute is whether the Customs can take a different view on the condition relating to fulfillment of EO to that of DGFT, especially when the said condition itself provides that what is to be fulfilled is the EO, as specified by the DGFT in the Advance Authorization. The reliance therefore, placed on Sheshank Sea Foods Pvt. Ltd. (supra) does not further the case of the Respondent."

4.8 In view of the above decisions of the Delhi and Chennai bench and taking note of the fact that imports made by the appellant against the EPCG License granted by the DGFT have been regularized by the DGFT, we do not find any merits in the impugned order upholding the confiscation of the imported goods and the penalties imposed upon the appellant under Section 112 (a) of Customs Act, 1962.

4.9 Appellant has not challenged the confirmation of duty demanded along with interest. In fact it was only after taking the note of the duty paid along with the interest; DGFT has regularized the imports made. However as observed by the Commissioner (Appeal) in his order the value of the imported goods would be assessed value of goods as per the Bill of entry and duty forgone will be accordingly as determined therein and not the licence value.

5.1 Appeal is allowed.

(Operative part of the order pronounced in open court)

(P.A. AUGUSTIAN)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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