CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE

REGIONAL BENCH - COURT NO. 3

Customs Appeal No. 20216 of 2014

[Arising out of Order-in-Appeal Nos. 26 & 27/2013-Cus dated 24.10.2013 passed by the Commissioner of Central Excise, Customs & Service Tax (Appeals), Cochin]

Star India Private Limited
Asianet Complex
Puliyarakonam P.O
Trivandrum - 695 573 ....**Appellant(s)**

VERSUS

Commissioner of Customs (Preventive), Cochin
5th Floor, Catholic Centre
Broadway, Ernakulam – 682 031 ....**Respondent(s)**

WITH

Customs Appeal No. 20217 of 2014

[Arising out of Order-in-Appeal Nos. 26 & 27/2013-Cus dated 24.10.2013 passed by the Commissioner of Central Excise, Customs & Service Tax (Appeals), Cochin]

Mathews Cheriyan
'Sims' Cottage,
Thiruvampady P.O
Alappuzha – 688 002 ....**Appellant(s)**

VERSUS

Commissioner of Custom, Cochin
Custom House, Cochin
Kerala – 682 009. .... **Respondent(s)**

APPEARANCE:

Ms. Purvi Asati with Ms. Shradha Pandey, Advocates for the Appellants
Mr. Maneesh Akhoury, Assistant Commissioner (AR) for the Respondent

CORAM:

Hon'ble Pullela Nageswara Rao, Member (Technical)

<u>Final Order Nos. 22065-22066 /2025</u>

Date of Hearing: 26.06.2025
Date of Decision: 24.12.2025

Per: Pullela Nageswara Rao

These 2(two) appeals are filed against the Orders-in-Appeal No. 26&27/2013-Cus dated 24.10.2013 passed by Commissioner of Central Excise, Customs & Service Tax (Appeals), Cochin.

2. The brief facts are M/s. Star lite, the Appellant a broadcasting service provider imported 2000 pieces each of "Digital Set Top Boxes" (DSTBs) and "White Smart Cards" (WSCs) vide Bill of Entry No. 333636 dated 31.01.2008 and Bill of Entry No. 333774 dated 11.02.2008, respectively and claimed benefit of Notification No. 92/2004-Cus dated 10.09.2004 issued under "Served from India Scheme" (SFIS). The goods imported were to be used for broadcasting the Kannada TV Channel 'Suvarna' after conversion to a Pay-Channel and were to be installed at the premises of the cable operators in different locations of the country for the purpose of decrypting the encrypted signals from the pay channel, the ownership of the goods remains with the Appellant and is not transferred to the cable operators. The appellant submitted Installation Certificates (IC) dated 04.03.2008 issued by the Chartered Engineer in respect of the impugned goods. The Superintendent of Customs, Cochin, sought clarification vide letter dated 27.08.2008 regarding the usage of the impugned goods. The Appellant vide their letter dated 03.09.2008 clarified that the DSTBs and WSCs were kept in their Thiruvananthapuram studio and have not been installed. Consequently on 15.09.2008 and on 03.10.2008 the imported goods (DSTBs) and (WSCs), respectively were seized under Section 110 of the Customs Act, 1962 on the ground that they have not been installed within 6(six) months from the date of import as per condition no. (iii) of Notification No. 92/2004-Cus dated 10.09.2004 and restraint orders were issued to the Appellants as it was not feasible to move the seized goods.

3. On 14.10.2008 Appellant requested for provisional release of the seized / restrained goods after payment of entire differential duty of Rs. 28,07,123/- along with interest of Rs. 76,385/- in respect of "Digital Set Top Boxes" (DSTBs) and differential duty of Rs. 1,78,362/- along

with interest of Rs. 17,519/- in respect of "White Smart Cards (WSCs), respectively. On 04.11.2008 Appellant provided the bond and on 16.12.2008 the seized / restrained goods were released provisionally. As per the submissions of the appellant on 19.12.2008, out of 2000 numbers of imported goods, 1512 number of goods were installed for receiving signals of the Telugu channel 'Sitara' as well as for internal testing and that the remaining 488 numbers of imported goods could not be used or installed due to outdated technology. A Show Cause Notice No. VIII/10/08/2008 ('SCN') dated 20.01.2009 was issued to the Appellant proposing confiscation of the imported goods under Section 111(o) of the Customs Act and imposition of penalties under Section 112(a) and Section 114AA of the Customs Act on the ground that the Appellant did not install the impugned goods within 6(six) months and did not seek for an extension of the installation period as per the condition no. (iii) of Notification No. 92/2004-Cus dated 10.09.2004. The SCN also alleged that the installation certificate had been obtained fraudulently by the Appellant for availing the benefit of Notification No. 92/2004-Cus dated 10.09.2004. The SCN also proposed to impose penalty of Rs. 1,00,000/- on the Chartered Engineer Mr. Mathews Cheriyan under Section 114AA of the Customs Act. A detailed reply dated 16.03.2009 was submitted by the appellant in response to the show cause notice (SCN) stating that they had not violated any condition with respect to the conditions specified in Para 3.6.4 of the Foreign Trade Policy (FTP). The Joint Commissioner rejected the submissions of the Appellant and passed Order-in-Original No. 5/2009 dated 25.06.2009, holding that the imported goods (i.e. DSTBs and WSCs) are liable for confiscation under Section 111(o) of the Customs Act, 1962 along with the imposition of penalty of Rs. 9,86,487/- under Section 112(a)(ii) and Rs. 5,00,000/- under Section 114AA of the Customs Act, 1962. The Order-in-Original dated 25.06.2009 was passed on the basis of findings that the Appellant has admitted that the imported goods have not been installed in accordance with the condition no. (iii) of Notification No. 92/2004-Cus dated 10.09.2004 and no extension was sought as well. Thereafter, a letter

dated 16.07.2009 was filed by the Appellant before the Deputy Commissioner (Customs), seeking extension of time for installation and use of the imported goods

4. Aggrieved by the Order-in-Original dated 25.06.2009, the Appellant filed an appeal before Commissioner (Appeals) and submitted an Affidavit dated 12.09.2013, stating that the Appellant had installed a major portion of the imported goods under dispute and out of the 2000 pieces of DSTBs and WSCs, 1512 (of each) have been installed and put to use from 19.12.2008 onwards and the remaining 488 pieces have become obsolete due to change in technology and therefore cannot be put to use. The Commissioner (Appeals) passed the Order-in-Appeal No. 26 & 27/ 2013-Cus dated 24.10.2013 ('impugned order') upholding the Order-in-Original dated 25.06.2009 on the ground that the imported goods have not been installed in accordance with the condition no. (iii) of Notification No. 92/2004-Cus dated 10.09.2004. Further, penalty of Rs. 1,00,000/- has also been confirmed against the Chartered Engineer Mr. Mathews Cheriyan under Section 114AA of the Customs Act. Aggrieved by the order of Commissioner (Appeals) the appellant filled this appeal before the Tribunal.

5. Learned counsel for the appellant during the hearing submits that; the foreign exchange earnings entitled the Appellant to avail the benefits of a scheme under the Foreign Trade Policy (FTP) known as "Served from India Scheme" (SFIS) vide Notification No. 92/2004-Cus dated 10.09.2004. As per Para 3.6.4 of the Foreign Trade Policy (FTP) 2004-2009, service providers earning foreign exchange are allowed to import capital goods including office equipment and spares duty free equivalent to 10% of free foreign exchange earned by them; the Appellant has availed this exemption at the time of import, the details of which have been duly stated in the respective Bills of entry; it is an undisputed fact that the goods imported by the Appellant are Capital Goods, which are eligible for the above exemption.

6. Learned counsel further submits that; during the relevant period, the Appellant imported 24 types of capital goods and installed 22 of those capital goods within the six-month time frame as prescribed; only

the impugned 2(two) goods i.e. DSTBs and WSCs were not installed within 6 (six) months from the date of import due to reasons beyond the control of the Appellant as the conversion of the Kannada television channel to a Pay channel could not be done and was delayed; the Appellant has correctly availed the exemption benefit in terms of Notification No. 92/2004-Cus with respect to the imported goods; Notification No. 92/2004-Cus provides for the exemption from whole of the duty of customs leviable under First Schedule of the Customs Tariff Act (CTA), 1975 and whole of additional duty leviable under Section 3 of the Customs Tariff Act (CTA), 1975 to service providers on import of capital goods including spares, office equipment, professional equipment, office furniture and consumables having relation to the service sector business of the service providers; the Appellant being a broadcasting service provider, imported goods like DSTB and WSC to decrypt encrypted Pay-Channel signals, which is required for broadcasting of channels; further, the above exemption is available on fulfilment of various conditions as mentioned in Notification No. 92/2004-Cus dated 10.09.2004; in the present case, the fulfilment of these conditions (except condition No. (iii)) has not been disputed by the Department; condition no. (iii) of Notification No. 92/2004-Cus dated 10.09.2004 requires for a submission of a certificate issued either by the Assistant Commissioner of Customs or Deputy Commissioner of Customs having jurisdiction over the importer's factory or premises or an independent Chartered Engineer, confirming the installation and use of the imported goods in the importer's factory or premises within a period of 6(six) months from the date of imports or within such period as may be extended by the Assistant Commissioner of Customs or Deputy Commissioner of Customs; it is a settled position of law that *"Lex Non Cogit Ad Impossibila*" or that 'the law does not compel a man to do that which is impossible as held in State of Rajasthan Vs. Shamsher Singh, 1985 AIR 1082 and in M/s. Raj Traders Vs. CC, Mumbai, [2023 (1) TMI 395 - CESTAT MUMBAI]; further, in a similar situation with reference to the movable capital goods (such as motor vehicles, etc.) wherein the goods are of nature that they can

never be installed for the purpose of their use. In those situations, it has been consistently held that the fulfilment of condition no. (iii) in those cases becomes impossible and thus, the said condition becomes inapplicable. In this regard as per Para 9.12 of the Foreign Trade Policy (FTP) it has been stated that the requirement of 'installation certificate is not applicable to moveable capital goods if imported under SFIS scheme as clarified in DGFT Circular No. 26/2009-14 dated 17.03.2010. The DGFT circular clarifies that the requirement shall not be applicable to the movable capital assets / goods which would not be installed / located at one single point. The relevant portion of the DGFT circular is extracted as under:

> *"Thus, the requirement of 'installation certificate' cannot be insisted upon, for such moveable capital assets/goods. Customs Authorities are accordingly not to insist on the 'installation certificate' for moveable capital assets/goods, if imported under the SFIS scheme.*
>
> *3. This clarification regarding non-requirement of installation certificate shall also apply to EPCG for Service Providers wherein import of moveable capital goods is permitted"*

7. The learned counsel placed reliance on the following cases wherein the condition for production of an installation certificate has been held as inapplicable to movable capital goods on the basis of the above-mentioned DGFT Circular:

> *a. Narang International Hotels vs. CC (Export), JNCH, Nhava Sheva, [2017 (347) E.L.T. 680 (Tri-Mumbai)].*
> *b. Goldfinch Hotels Pvt Ltd. vs. CC (ACC & Exports), Mumbai, [2015 (328) E.L.T. 282 (Tri-Mumbai)] upheld in The Commissioner of Customs vs. Goldfinch Hotels Pvt. Ltd., [2017 (2) TMI 296-Bombay HC]*
> *c. EIH Associated Hotels Ltd. vs. CC(E), Nhava Sheva, [2020 (374) E.L.T. 807 (Tri. Mumbai)].*

8. The learned counsel submits that; in view of the above submissions, condition no. (iii) is an impossible condition to be fulfilled

in the present case and thus is not applicable. Accordingly, the Appellant is eligible for the exemption benefit under the said Notification No. 92/2004-Cus dated 10.9.2004.

9. The learned counsel made further reference to the provisions of Cenvat Credit Rules, 2004, which allows the availment of CENVAT credit on capital goods wherein the goods are required to be installed at multiple locations other than the manufacturer's premises. In this regard. reliance is placed on the following decisions wherein it has been held that the companies remain eligible for the CENVAT credit on capital goods notwithstanding the installation of such goods at the premises of operator's rather than the manufacturer's own facility.

a. *M/s UFO Moviez India Ltd. vs. Commissioner of Service Tax-VI, Mumbai, [2018 (11) G.S.T.L. 391 (Tri. - Mumbai)] affirmed by the Hon'ble Supreme Court -[2022 (61) G.S.T.L. 4 (S.C.]);*

b. CCE vs. Cestat Chennai, [2015 (323) E.L.T. 290 (Mad.)].

10. The learned counsel further submits that; the Appellant has not sold the impugned goods to any other person and there is no dispute to this effect in the present case; the Department has accepted the fact that even during the investigation, the impugned goods were found in the premises of the Appellant in packed condition; the purpose of the said condition no. (iii) to Notification No.92/2004-Cus which prescribes for production of an installation certificate, is to ensure that the capital goods have not been diverted to any other entity and is used by the importer only; this is evident from the decision of the Hon'ble CESTAT in Sham Nijhawan Vs. Principal Commissioner, (Customs) Preventive, [2020-TIOL-952-CESTAT-DEL] , wherein it has held that,

> *"12. We find that the basic purpose of capital goods to have installed at the given address is to ensure that the capital goods which have been imported under EPCG licence on a concessional customs duty are not diverted from the place of manufacturing."*

11. The learned counsel submits that; in the present case, the imported goods have not been diverted or sold to some other person and thus, the purpose of the said condition of the notification has been

fulfilled, and it has not been violated; since the impugned imported goods are to be installed at the premises of the cable operators in different locations of the country, it is impossible to get installation certificates from all those cable operators; it is also pertinent to mention that since the installation of the imported goods is not possible within the importer's premises in the present case, the six-month time period will not be applicable to the Appellant; hence, the impossibility attached to the interpretation of condition no. (iii) of Notification No. 92/2004-Cus would render condition no. (iii) inapplicable and thus, the Appellant is entitled to the exemption benefit under Notification No. 92/2004-Cus.

12. The learned counsel further submits that; 1512 number of imported goods have been already installed in December 2008 and the delay in the said installation is merely a procedural lapse; without prejudice to the above submissions, the Appellant has already installed more than 75% of the goods (i.e. 1512 number of imported goods) from December 2008 onwards; mere delay in installation of those goods is no ground to deny the exemption, especially when the same is on account of genuine reasons, not attributable to the Appellant's act as held in the case of Bholanath Industries Vs. CCE Allahabad, 2013 (295) E.L.T. 49 (Tri. Del.). Thus, the substantive benefit of the exemption under the Notification cannot be denied to the Appellant.; further the Appellant, vide letter dated 16.07.2009 has sought for extension of time for installation and use of the imported goods as an abundant precaution.

13. The learned counsel submits that; in view of the above, since 1512 number of goods have already been installed, no redemption fine and penalty with respect to the same is imposable; further, with respect to the remaining 488 number of goods which could not be installed, it is prayed that the same could not be installed due to delay in conversion of the free channel into a pay channel for the purpose of broadcasting the same; The said delay was due to reasons beyond the control of the Appellant and therefore, the redemption fine and penalty imposed with respect to the same be waived off or a reduced redemption fine and penalty be imposed. Reliance in this regard is placed on the case of

M/s. Class India Private Limited Vs. Additional Commissioner of Customs, 2025 (6) TMI 272 - CESTAT BANGALORE.

14. The learned counsel submits that; redemption fine is not imposable since it has not violated any provision of the Foreign Trade Policy and therefore, the imported goods are not liable for confiscation in terms of Section 111(o) of the Customs Act; further, the Appellant has complied with all the conditions of the Notification which are applicable to the goods in question; the non-observance of condition no. (iii) of the aforesaid notification cannot be a ground for confiscation as the said condition is not applicable to goods which are not meant to be installed in the importer's factory or premises; therefore, Section 111(o) cannot be invoked on the ground of non- observance of the said condition.

15. The learned counsel submits that without prejudice, the Appellant had already paid the entire differential duty with interest even before the issuance of the show cause notice. Therefore, the Hon'ble Tribunal may be pleased to treat the payment of duty at merit rate by the Appellant as opting out of the framework of the exemption notification. Hence, the invocation of Section 111 (o) is not sustainable. Reliance is placed on the following cases in this regard:

(a) Royal Embroders Pvt Ltd Vs CC Chennai-2008 (221) E.L.T. 446

(b) Rajyalakshmi Labs Ltd Vs CCEx & Cus Hyderabad 2007 (208) ELT 398

Thus, the redemption fine under Section 125 of the Customs Act is also not imposable.

16. The learned counsel submits that; imposition of penalties is not sustainable; perusal of Section 112(a) shows that for imposition of penalty therein, it is a condition precedent that the imported goods be held liable for confiscation under Section 111 of the Customs Act, 1962; As submitted in the grounds supra, when the imported goods are not liable for confiscation under Section 111(o) of the Customs Act, 1962, penalty under Section 112(a) is not imposable; the Appellants have

substantially complied with Notification No. 92/2004-Cus by importing 24 types of capital goods and installing 22 of them within the prescribed six-month period, which establishes their bona fides; with respect to the remaining goods, it is submitted that the delay in installing 1,512 items was purely procedural in nature, while 488 items became obsolete due to technological advancements; in light of these circumstances, the penalty and redemption fine should be reduced, accordingly.

17. The learned counsel submits that; penalty is not leviable under Section 114AA of Customs Act, 1962; Section 114AA can be invoked in cases involving malafide intention to evade duty; the appellant installed 22 goods within the six-month time frame as prescribed; only the 2(two) impugned goods were not installed within 6(six) months from the date of import due to reasons beyond the control of the company; in the instant case, the installation certificate was issued by the Chartered Engineer(CE) on the basis of the trust and reputation of the appellant that the imported goods would be installed within six months; the appellant has subsequently installed more than 75% of the goods in dispute till date; thus, the issuance of the installation certificate was only on foresight and trust; thus, penalty is not imposable on the basis of bona fides of the appellant; penalty not to be imposed on individual who have no personal benefit; the Chartered Engineer has only carried out his activities in the normal course of business; neither the Show Cause Notice, nor the impugned order has given a finding that the Chartered Engineer had personally benefitted from the alleged contravention of the appellant; thus, he was under a bona fide belief and no mala fides can be attributed to him; penalty should not be imposed on individuals unless it is proved that they have benefitted personally from the alleged offence; thus, the imposition of personal penalty on the Appellant is liable to be set aside. Reliance in this regard is also placed on the recent judgement of M/s. Class India Private Limited Vs. Additional Commissioner of Customs, [2025 (6) TMI 272 - CESTAT BANGALORE] which held that the penalty imposed under Section 114AA ought to be set aside.

18. Learned Authorised Representative (AR) for the Revenue reiterated the findings of the Commissioner (Appeals) in the impugned order.

19. Heard both sides and perused the records.

20. The issue involved in this case is with regard to the import of goods viz., Digital Set Top Boxes (DSTBs 2000 Nos.) and White Smart Cards (WSCs 2000 Nos.) with benefit under Notification No. 92/2004-Cus dated 10.09.2004. I find that as per condition no.(iii) of the said notification the importer has to submit an installation certificate within 6(six) months to the effect that the imported goods have been installed in the importer's premises or factory. I find that the appellant had submitted the installation certificate issued by the Chartered Engineer dated 04.03.2008. On inquiry by the department as regards to the installation of the impugned goods the appellant had submitted that the goods are kept in their Thiruvananthapuram Studio and that they have not been installed. Subsequently, the department seized/ restrained the impugned imported goods. The appellant paid the appropriate duty both on the 2000 Nos. of Digital Set Top Boxes (DSTBs) and the 2000 Nos. White Smart Cards (WSCs) and requested the Department for provisional release of the goods which was allowed on execution of appropriate bond. Thereafter show cause notice was issued for non-installation of the goods and on Adjudication a redemption fine of Rs. 10,00,000/- was imposed under section 125, on the goods, penalty of Rs. 9,86,487/- under section 112(a) and penalty of Rs.5,00,000/- under section 114AA of the Customs Act, 1962 was imposed on the appellant. Further a penalty of Rs. 1,00,000/- was imposed on Mr. Mathews Cheriyan, Chartered Engineer. The appellant vehemently argued that the condition no. (iii) of the Notification No. 92/2004-Cus dated 10.09.2004 cannot be fulfilled in the facts and circumstances of the case and the nature of the imports and therefore the condition is not applicable in their case. I find that in this case the goods have been imported for the purpose of installation at the different cable operators premises by the appellant and on such installation the appellant is required to submit the installation certificate issued by jurisdictional

Assistant Commissioner/Deputy Commissioner or Chartered Engineer. I find in this case the appellant had submitted the Chartered Engineer certificate to the affect the goods have been installed and on enquiry/investigation by the department it was found that the impugned imported goods have not been installed and were still lying in the appellant's Thiruvananthapuram studio. Further, appellant has filed a letter before the Deputy Commissioner on 16.07.2009 seeking extension of time for installation of the impugned imported goods. I also find that the appellant has filed an Affidavit before Commissioner (Appeals) on 12.09.2013 that on 19.12.2008, 1512 number of goods out of the 2000 Nos. of imported goods, both Digital Set Top Boxes (DSTBs) and White Smart Cards (WSCs) have been installed for the purpose of decrypting encrypting of Telugu pay channel 'Sitara'.

21. I find in this case the appellant had imported the goods for purpose of decrypting and encrypting signals for the pay channel 'Kaveri' which did not fructify and department had initiated proceedings for non-fulfilment of condition no. (iii) of Notification No. 92/2004-Cus dated 10.09.2004 and the demands were confirmed and redemption fine and penalties were imposed by the Adjudicating Authority and confirmed by the Appellate Authority. The appellant has filed an affidavit before the Appellate Authority on 12.09.2013 that they had installed the DSTBs and WSCs for the purpose of another Telugu pay channel 'Sitara', however they could only install 1512 Digital Set Top Boxes along with White Smart Cards leaving remaining 488 Digital Set Top Boxes and White Smart Cards uninstalled which as per the appellant could not be installed because of outdated technology. The appellant had relied on various case laws cited supra with regard to the impossibility to fulfil condition no.(iii) of the notification, the DGFT Circular No. 26/2009-14 dated 17.03.2010 to the effect that installation certificate need not be insisted in case of movable capital assets/goods, if they are imported under SFIS scheme. Further the appellant had contended that the imported goods are not diverted for any other purpose and that for the reasons mentioned in their submissions the imported goods could not be installed in time and Notification No.

92/2004-Cus dated 10.09.2004 permits the Assistant Commissioner/ Deputy Commissioner to extend the time period for installation.

22. I find that in this case the appellant had submitted the installation certificate to the effect that they have installed the impugned imported goods and on inquiry / investigation it was found that the goods were still lying in their Thiruvananthapuram studio. Therefore, I find that the installation certificate submitted by the appellant is not proper and the appellant was liable for action under the Customs Act, 1962 for this misdemeanour. However, I find that in this case the appellant had paid the appropriate duty on all the 2000 Nos. of DSTBs and WSCs along with the interest before issue of show cause notice. The learned counsel stated to treat the payment of duty at merit rate by the Appellant as opting out of the framework of the exemption notification. In the facts and circumstances of the case I find that the impugned order, as regards confirmation of redemption fine on the goods under section 111(o), imposition of penalties on the appellant under section 112(a)(ii) and under Section 114AA and on the Chartered Engineer under section 114AA of the Customs Act, 1994 are tenable. However, I find that the quantum of redemption fine and the penalties imposed can be considered for reduction. Accordingly, the redemption fine of Rs. 10,00,000/- imposed under section 125 of the Customs Act, 1962 is reduced to Rs. 1,00,000/-, penalty on the appellant under section 112(a)(ii) is reduced to Rs. 1,50,000/-, penalty under section 114AA is reduced to Rs. 1,00,000/-. Further the penalty imposed on Mr. Mathews Cheriyan under section 114AA is reduced to Rs. 25,000/-.

23. Accordingly, the impugned order is modified and disposed in the above terms with consequential relief, if any, as per law.

(Order was pronounced in open court on 24.12.2025.)

(Pullela Nageswara Rao)
Member (Technical)

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