

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, CHENNAI**

REGIONAL BENCH - COURT NO. III

CUSTOMS APPEAL No. 40206 of 2021

[Arising out of Order-in-Original TUT-CUSTOM-PRV-COM-009-20-21 dated 16.12.2020 passed by Commissioner of Customs, Tuticorin]

M/s.Sri Angallamman Knit Fabrics

No.1, Town Extension 4th Street,
Sheriff Colony,
Tirupur 641 604.

Appellant

Vs.

The Commissioner of Customs

Custom House,
New Harbour Estate,
Tuticorin 628 004.

Respondent

WITH

CUSTOMS APPEAL No. 40207 of 2021

[Arising out of Order-in-Original TUT-CUSTOM-PRV-COM-009-20-21 dated 16.12.2020 passed by Commissioner of Customs, Tuticorin]

M/s.Rithvikk Garments

No.5/262, Semmettu Thottam,
Sultanpet, Mangalam Road,
Tirupur 641 604.

Appellant

Vs.

The Commissioner of Customs

Custom House,
New Harbour Estate.
Tuticorin 628 004.

Respondent

APPEARANCE:

Shri S. Periasamy, Consultant for the Appellant
Shri Vikas Jhajharia, AC (AR) for the Respondent

CORAM :

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)

Date of Hearing: 12.07.2021
Date of Pronouncement: 15.07.2021

FINAL ORDER No. 41682-41683 / 2021

Both these appeals arise out of a common impugned order and therefore were heard together and are disposed by this common order. In these appeals, the department alleges misuse of EPCG licence scheme and use of false and incorrect documents for export of garments as third party exporter.

2. M/s. Rithvikk Garments (appellant in Customs Appeal No.40207/2021) manufactured 'knitted Girls Pyjama' using the 'knitted fabrics' manufactured by M/s. Sri Angallamman Knit Fabrics (appellant in Customs Appeal No.40206/2021) who manufactured the said knitted fabrics by using the capital goods imported under EPCG Licence No.3230021861 dated 18.02.2015. Appellant viz. M/s.Rithvikk Garments as third party exporter, filed Shipping Bill dated 03.12.2019 in Custom House, Tuticorin for export of 28908 sets of Knitted Girls Pyjama after endorsing the EPCG license as above pertaining to M/s.Sri Angallamman Knit Fabrics. Noticing certain discrepancies, they were asked by the officers to produce the invoice raised for the goods exported by EPCG licence. The appellants produced one invoice No.470 dated 11.10.2019 raised by M/s. Sri

Angallamman Knit Fabrics showing an amount of Rs.1,82,120/-. The value of the goods declared in the shipping bill was Rs.51,71,747/-. On the apprehension that the EPCG license is misused, the officers seized the goods under mahazar dated 09.12.2019. The goods were later released to appellants for export on executing bond. Statements were recorded and investigation was conducted by SIIB, Custom House, Tuticorin. It appeared to the department that M/s.Rithvikk Garments had overvalued the invoice with intention to avail undue drawback benefit and also that they had endorsed the EPCG license of M/s. Sri Angallamman Knit Fabrics on the Shipping Bill so as to help M/s. Sri Angallamman Knit Fabrics for completion of export obligation without actual receipt of goods manufactured by using the capital goods imported by Sri Angallamman Knit Fabrics in terms of the Notification No.22/2013-Cus. dt. 18.04.2013. Show cause notice was issued to both the appellants and after due process of law the original authority held that as there was attempt for improper export the goods were liable for confiscation. In lieu of confiscation redemption fine of Rs.7,50,000/- was imposed under Section 125 of the Customs Act, 1962. Penalty of R.1 lakh was imposed on M/s.Rithvikk Garments under Section 114AA of Customs Act ibid as well as penalty of Rs.3 lakhs was imposed on M/s.Sri Angallamman Knit Fabrics under Section 117 of the said Act. Aggrieved by such order, the appellants are now before the Tribunal.

3.1 Ld. Consultant Shri R. Periasamy appeared for the appellants and argued the matter. He submitted that M/s. Sri Angallamman Knit Fabrics was issued EPCG Licence No.3230021861 dated 18.02.2015 by DGFT. As per this licence, they have to fulfill the obligation of export of goods manufactured using the capital goods imported by them. The said licence / notification also allows export through a third party exporter. M/s. Sri Angallamman Knit Fabrics and M/s.Rithvikk Garments had entered into an agreement dated 26.08.2019 wherein it was mutually agreed for giving effect to the EPCG licence conditions and for execution of export orders of garments under job work manufacture. One of the allegations raised by the department is that the appellant has not fulfilled export obligation in respect of the EPCG licence. Ld. Consultant adverted to the EPCG licence and submitted that the period of validity of the said licence is six years and before completion of six years the department has issued the show cause notice alleging that the appellant has not fulfilled the export obligation. The export obligation fulfillment certificate has to be issued by the DGFT. The appellant/licence holder has to furnish necessary documents before the DGFT authorities to obtain EO fulfillment certificate. However, before completion of validity period of licence, the Customs authorities has prematurely concluded that M/s. Sri Angallamman Knit Fabrics has not fulfilled export obligation which is factually wrong. All the documents evidencing export of the job work done by licence holder in the pre-production stage of export goods in the nature of job work

agreement, job work manufacturer challans and the bank statements are produced by the appellants. Appellant submitted that the EPCG licence of Sri Angallamman Knit Fabrics was endorsed on the shipping bill filed by Rithvikk Garments on the basis of DGFT Policy Circular No.22/2015-20 dt. 29.03.2019 wherein it has been clearly mentioned that the actual payment realized through the normal banking channel from the third party exporter's account to the licence holder's account will be accounted for export obligation vide para-5 of the said circular.

3.2 With regard to the allegation of overvaluation of the cargo, it is explained by the Ld. Consultant that both the appellants in their statements given before the Customs officers have explained the reason why an amount of only Rs.1,82,120/- was only shown in invoice No.470 dt. 11.10.2019. The appellant M/s.Rithvikk Garments purchased cotton yarn which was given to M/s. Sri Angallamman Knit Fabrics who manufactured knitted fabrics using the imported capital goods. Thus, Sri Angallamman Knit Fabrics acted as a job worker for M/s.Rithvikk Garments. The knitted fabrics were sent to Rithvikk Garments who, after job works like dying, compacting, ironing etc., manufactured garments in their factory. These garments were exported as per the export order by shipping bill filed by M/s.Rithvikk Garments. Since job work-manufacture was done by Sri Angallamman Knit Fabrics (licence holder) using imported capital goods, the details of licence was endorsed on the shipping bill as per the direction of their Consultant. However, when the customs officers asked

them to produce the necessary invoice they produced one invoice No.470 dt. 11.10.2019 showing Rs.1,82,120/-. The said amount was only job work charges paid to M/s. Sri Angallamman Knit Fabrics. He adverted to various documents and submitted that the agreement as well as all these documents would establish the manufacture of goods using the imported capital goods. There was no conscious attempt on the part of appellant in indulging overvaluation of the export goods. It was the first time they had filed the shipping bill endorsing the said EPCG licence and that they were not aware of the proceedings. Appellants have furnished all the detailed invoices to the officers who have not considered such evidence and has merely relied upon one invoice produced by them at the initial stage. He prayed that the appeals may be allowed.

4. Ld. A.R Shri Vikas Jhajharia appeared and argued for the department. He supported the findings in the impugned order. Ld. A.R submitted that if the department had not checked the details of the invoices by overvaluing the export goods, the appellants would be able to get ineligible benefit of drawback, IGST refund etc. So also, they have not fulfilled export obligation as per EPCG licence. Therefore the impugned order does not require any interference.

5. Heard both sides.

6. The first and foremost question to be decided is whether the allegation that the appellants have not fulfilled export obligation is sustainable or not. On perusal of EPCG licence it is seen that it is issued in 2015 by DGFT and the period for completion of the export obligation is six years. Show cause notice has been issued on 18.11.2020. The contention of the appellant that SCN alleging non-fulfilment of export obligation is premature is therefore not without merits.

7. The second allegation is with regard to overvaluation of the export goods in the shipping bills. During the investigations, statements were recorded from the appellants. Statement of Shri R. Karthikeyan, Proprietor of M/s.Rithvikk Garments recorded on 9.12.2019 is reproduced as below :

“16. Shri R.Karthikeyan, Proprietor of M/s.Rithvikk Garments in his statement dated 09.12.2019 has stated that *“they purchased the raw material, i.e. cotton yarn from the local market and gave the same to M/s Angallamman Knit Fabrics for the manufacture of Knitted Fabrics as a job work. They sent the same to various other job works for further manufacturing process like dyeing, compacting, etc. After receipt of dyed fabrics from the job worker, they manufactured ready-made garments by cutting, sewing, checking, ironing and packing at their factory premises; that this is the first shipping bill they filed under EPCG scheme and they do not have much idea about the scheme; that the tax invoice No.470 dated 11.10.2019 issued by M/s.Angallamman Knit Fabrics is not related to the value of the whole Knitted Pyjama set but for the services of removing contamination in the fabrics; that they accept their mistake of sending this invoice to the customs broker M/s.Seaman Transport who in turn produced the same to the customs officers at the time of clearance; that M/s.Angallamman Knit Fabrics are not manufacturing any type of garments as they have manufacturing facility only for the knitted*

fabrics; that it is a mistake done by M/s.Angallamman Knit Fabrics who did not mention in the tax invoice No.470 dated 11.10.2019 that the rate of Rs.6/- set is the charge for the removal of contamination in yarn”;

8. So also, Shri A. Chinnaswamy, Proprietor of Sri Angallamman Knit Fabrics has stated that Invoice No.470 dt. 11.10.2019 was raised for job work charges and not for supply of finished goods. The appellant has produced various challans as proof of supply of yarn by Rithvikk Garments to Sri Angallamman Knit Fabrics. So also there are several invoices produced to show that M/s.Sri Angallamman Knit Fabrics was job work-manufacturer and was using the imported goods for manufacture of knitted fabrics which was later made into knitted garments by Rithvikk Garments. From the conditions of the EPCG licence, it is also seen that licence holder may discharge the export obligation by way of direct exports as well as through third party exports. In the event of third party exports, name of the third party exporter, name of the EPCG licence holder, licence number and date should be noted on the shipping bill. Thus, it cannot be said that merely by exporting the goods through third party exporter/Rithvikk Garments, the licence holder (Sri Angallamman Knit Fabrics) has violated the conditions of the EPCG licence. Over and above all these facts, it has to be noted that since there is enough time for completion of export obligation and also for submitting necessary documents before the DGFT, the show cause notices issued by the department alleging various violations, in my view, cannot sustain. Though department alleges that Rithvikk Garments has

fabricated the documents and has committed offence under Section 114AA, the department has not been able to establish these allegations. The value of the goods declared by M/s.Rithvikk Garments in the shipping bill has been held to be overvalued merely on the basis of job work invoice raised by M/s. Angallamman Knit Fabrics. There is no evidence to show that appellant M/s.Rithwikk Garments had intentionally made any false endorsements on the shipping bill. Had there been any dishonest intention, the appellants would not have produced such invoice showing lesser amount before the Customs officers. From the statements of both the appellants, it is clear that it is the first time they have endorsed shipping bills with this EPCG licence.

9. For these reasons, I hold that confiscation of the export goods cannot sustain and it is hereby set aside. On the basis of discussions above, I hold that penalty imposed on both the appellants is unwarranted. The impugned order is set aside. Appeals are allowed with consequential relief, if any, as per law.

(Pronounced in open Court on 15.07.2021)

(SULEKHA BEEVI C.S.)
Member (Judicial)