

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL,
SOUTH ZONAL BENCH, CHENNAI
COURT HALL No. III**

(1) CUSTOMS APPEAL No. 41479 OF 2019

(Arising out of Order-in-Original No.69637/2019 dt. 21.06.2019 passed by Commissioner of Customs, Chennai-IV, Custom House, No.60, Rajaji Salai, Chennai 600 001)

M/s.Ashok Leyland Limited

... Appellant

No.1, Sardar Patel Road,
Guindy,
Chennai 600 032.

Versus

The Commissioner of Customs, Chennai-IV ... Respondent

No.60, Rajaji Salai,
Custom House,
Chennai 600 001

(2) CUSTOMS APPEAL No. 41486 OF 2019

(Arising out of Order-in-Original No.69637/2019 dt. 21.06.2019 passed by Commissioner of Customs, Chennai-IV, Custom House, No.60, Rajaji Salai, Chennai 600 001)

**M/s.Renault Nissan Automotive
India Private Ltd.**

... Appellant

Plot No.1, SIPCOT Industrial Park,
Oragadam, Mattur (Post),
Kanchipuram District – 602 105

Versus

The Commissioner of Customs, Chennai-IV ... Respondent

No.60, Rajaji Salai,
Custom House,
Chennai 600 001

(3) CUSTOMS APPEAL No. 41530 OF 2019

(Arising out of Order-in-Original No.69637/2019 dt. 21.06.2019 passed by Commissioner of Customs, Chennai-IV, Custom House, No.60, Rajaji Salai, Chennai 600 001)

**M/s.Gestamp Automotive
Chennai Private Limited**

... Appellant

Plot No.B12, SIPCOT Industrial Park, Phase-II,

Vengadu Village, Pillaipakkam Post,
Sriperumbudur Taluk,
Kanchipuram District – 602 105

Versus

The Commissioner of Customs, Chennai-IV ... Respondent

No.60, Rajaji Salai,
Custom House,
Chennai 600 001

(4) CUSTOMS APPEAL No. 41531 OF 2019

(Arising out of Order-in-Original No.69637/2019 dt. 21.06.2019 passed by
Commissioner of Customs, Chennai-IV, Custom House, No.60, Rajaji Salai,
Chennai 600 001)

**M/s.Myoung Shin India
Automotive Private Limited**

... Appellant

No.469/2, Mannur Village, Valarpuram,
Sriperumbudhur,
Kanchipuram District – 602 105.

Versus

The Commissioner of Customs, Chennai-IV ... Respondent

No.60, Rajaji Salai,
Custom House,
Chennai 600 001

(5) CUSTOMS APPEAL No. 41532 OF 2019

(Arising out of Order-in-Original No.69637/2019 dt. 21.06.2019 passed by
Commissioner of Customs, Chennai-IV, Custom House, No.60, Rajaji Salai,
Chennai 600 001)

**M/s.Daejoo Automotive
India Private Limited**

... Appellant

No.134, Kilacherrypanchayettu,
Govindamedu Village, Kilacheri,
Thiruvallur District – 631 402.

Versus

The Commissioner of Customs, Chennai-IV ... Respondent

No.60, Rajaji Salai,
Custom House,
Chennai 600 001

(6) CUSTOMS APPEAL No. 41568 OF 2019

(Arising out of Order-in-Original No.69637/2019 dt. 21.06.2019 passed by Commissioner of Customs, Chennai-IV, Custom House, No.60, Rajaji Salai, Chennai 600 001)

M/s.MS Global India

Automotive Private Limited

... Appellant

Survey No.133 (Part), 134 (Part) & 135 (Part)
SIPCOT Industrial Estate, Oragadam Village,
Singaperumal Koil Road, Mattur (PO),
Sriperumbudur Taluk,
Kanchipuram District – 602 105

Versus

The Commissioner of Customs, Chennai-IV ... Respondent

No.60, Rajaji Salai,
Custom House,
Chennai 600 001

(7) CUSTOMS APPEAL No. 41569 OF 2019

(Arising out of Order-in-Original No.69637/2019 dt. 21.06.2019 passed by Commissioner of Customs, Chennai-IV, Custom House, No.60, Rajaji Salai, Chennai 600 001)

M/s.Magna Automotive India

Private Limited

... Appellant

(formerly known as Cosma International India Pvt. Ltd.)
RNS-11, SIPCOT Industrial Growth Centre, Oragadam,
Vadakupattu, Sriperumbudur,
Kanchipuram District – 602 105

Versus

The Commissioner of Customs, Chennai-IV ... Respondent

No.60, Rajaji Salai,
Custom House,
Chennai 600 001

(8) CUSTOMS APPEAL No. 41570 OF 2019

(Arising out of Order-in-Original No.69637/2019 dt. 21.06.2019 passed by Commissioner of Customs, Chennai-IV, Custom House, No.60, Rajaji Salai, Chennai 600 001)

M/s.Caparo Engineering India Ltd.

... Appellant

T-1, T-2, SIPCOT Industrial Estate,
Sriperumbudur Taluk,
Kanchipuram District – 602 105

Versus

The Commissioner of Customs, Chennai-IV ... Respondent

No.60, Rajaji Salai,
Custom House,
Chennai 600 001

APPEARANCE :

Dr. C. Manickam, Advocate
Mr. K.K. Sekar, Advocate
For the Appellants

Mr. M. Ponnusamy, Special Counsel
Ms. Anandalakshmi Ganeshram, Superintendent (A.R)
For the Respondent

CORAM :

HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

DATE OF HEARING : 14.07.2023

DATE OF DECISION : 02.11.2023

FINAL ORDER Nos.40980-40987/2023

ORDER :

These appeals arise out of a single impugned order. The issue involved in all these appeals being similar and connected they were heard together and are disposed of by this common order.

2. Brief facts are that M/s. Ashok Leyland Nissan Vehicles Ltd. (ALNVL) is a joint venture between M/s Ashok Leyland Ltd. (ALL) and M/s Nissan Motors Co Ltd (NMCL) with a share holding pattern, in the ratio of 51% : 49% to manufacture Passenger Cars / Light Commercial Vehicles (LCV). M/s. ALNVL was incorporated as a Private Limited Company during May, 2008. It does not have any manufacturing facility of its own, and was getting vehicles

manufactured by M/s. Renault Nissan Automotive India Pvt. Ltd, Chennai (M/s RNAIPL) and M/s ALL, Hosur under a Contract Manufacturing arrangement entered into with the said manufacturers. The passenger cars like 'Evalia and 'Stile' were being manufactured at M/s RNAIPL and the LCVs like 'Dost, 'Partner' and 'Mitr' were being manufactured at M/s ALL, Hosur. 'Evalia' models manufactured at M/s RNAIPL were being marketed by M/s. Nissan Motor India Private Limited (M/s.NMIPL) through their dealer network, while 'Stile' model manufactured at M/s RNAIPL and the LCVs manufactured at M/s ALL were being marketed by M/s ALL through their dealer network.

3. Based on intelligence, the Officers of DGCEI-CZU visited the premises of M/s ALNVL and other companies on various dates and caused verification of records/documents. During the course of verification, it was revealed that M/s ALNVL had imported capital goods under the EPCG Scheme at Zero duty / 3% concessional rate of duty and installation certificates had been obtained for installing the said capital goods at nine premises of supporting manufacturers of M/s ALNVL including M/s RNAIPL.

4. The documents and the customs data showed that M/s. ALNVL had imported Capital goods at zero duty / 3% concessional rate of customs duty under the EPCG scheme under the cover of 65 EPCG Licences as under :

a) 14 EPCG Licences valued at around Rs. 75.45 Crore Involving a duty foregone amount of Rs. 18.65 Crore for the manufacture of LCVs, namely, 'Dost', 'Partner' and 'Mitr' at M/s. ALL; and

b) 51 EPCG Licences valued at around Rs. 334 Crore involving a duty foregone amount of Rs. 89.07 Crore for the manufacture of 'Evalia' and 'Stile', at M/s RNAIPL and their supporting manufacturers/vendors.

5. On verification of the 51 EPCG licenses issued to M/s ALNVL by DGFT, it revealed that:

- I) The Licences have been issued for Import of dies, Jigs and checking fixtures etc for manufacture of "Passenger Motor Vehicles (Chassis/fully built - goods/passenger)" falling under ITC HS Code 87033110, 87033119 and also under 87033199 (In some of the licenses);
- II) M/s Renault Nissan Automotive India Pvt Ltd, Oragadam (M/s RNAIPL) and M/s Nissan Motor India Private Limited, Oragadam along with some other companies have been endorsed as supporting manufacturer in respect of all the 51 licenses (The details of the license-wise supporting manufacturers are as per Annexure-B to the SCN).
- III) M/s ALNVL had executed bank guarantees amounting to Rs. 14,35,55,000/- at the time of registration of the 51 EPCG licences with Custom House, Chennai,

6. The analysis of the import and export data, revealed that for the manufacture and export of 'Evalia' and 'Stile' model vehicles, M/s ALNVL had imported capital goods in the form of dies, jigs, checking fixtures etc., under EPCG Scheme vide 108 bills of entry (105 bills of entry through Chennai Seaport (INMAA1) and 3 bills of entry through Chennai Air cargo (INMAA4)) totally valued at Rs 334.18 Crore during the period 2011-13. The said capital goods were imported under 51 EPCG licenses issued during the period 2011 to 2013. Further it is seen that M/s ALNVL had exported 286 'Evalia'/'Stille' vehicles under EPCG Scheme vide 23 shipping bills through M/s NMIPL and M/s. ALL, respectively, totally valued at FOB Rs. 25.79 Crore through various shipments.

7. The investigation revealed a case of violation of the provisions of EPCG licenses on the main ground that M/s.ALNVL had failed to fulfil

the Export obligation. The DGCEI-CZU had registered a case of violation of the provisions of the Export Promotion Capital Goods Scheme (EPCG Scheme, for short) in the import of capital goods for the manufacture of 'Evalia' and Stile Model vehicles by M/s Ashok Leyland Nissan Vehicles Ltd. Subsequently, during February, 2016, the case was transferred to the Directorate of Revenue Intelligence, Chennai Zonal Unit (DRI-CZU) for carrying out further investigation. Documents were verified and statements recorded. During the course of investigation, M/s ALNVL had voluntarily deposited a total amount of Rs 11.92 Crore by submitting demand drafts towards their Customs duty liability for non-fulfilment of Export obligation as detailed in paragraph 11.0 of the SCN.

8. The summary of the violations alleged by department are as under:-

“(i) M/s. ALNVL have failed to achieve the minimum of 50% export obligation in respect of 23 EPCG authorisations, issued in terms of customs notification no. 102/2009 dated 11/09/2009, within the block period of 1st to 4th year. M/s ALNVI, is therefore, liable to pay the proportionate duties of customs along with applicable interest, within 3 months from the expiry of the block of years to the extent of non-fulfilment of export obligation in respect of the said 23 EPCG authorizations.

(ii) Besides, M/s. ALNVL had also indulged in diversion of capital goods to unauthorized premises, imported under nine EPCG authorizations, including the capital goods imported under six out of the 23 EPCG authorizations, for which, the minimum 50% export obligation has not been fulfilled. Therefore, the benefit of Customs Notification no. 102/2009-Cus and 103/2009-Cus both dated 11/09/2009 (as the case may be), is liable to be denied in respect of the goods imported under the nine EPCG authorizations.

(ii) Apart from the above, some of the capital goods imported under 5 of the 23 EPCG authorisations and installed at the premises of M/s RNAIPL, appeared to have been destroyed/consumed by wear and tear and hence were not available in the installed premises. It has also come to light that these capital goods were used in the manufacture of other models of the supporting manufacturer M/s RNAIPL. The non-availability of these impugned capital goods for further production of the goods intended for export contributed to the default of prescribed Export obligation. Hence, the benefit of Customs Notification No. 102/2009-Cus. dated 11/09/2009, is liable to be denied in respect of the non-available capital goods imported under 5 EPCG authorizations.

9. Thus Show Cause Notice dated 15.09.2016 was issued to the appellants proposing to demand differential duty denying the exemption under Notification No. 102/2009 dated 11.09.2009 along with interest, for imposing penalties, for confiscation of goods under Section 111 (d) & 111 (o) of Customs Act 1962 etc. The Show Cause Notices were issued in respect of 51 EPCG licenses. After due process of law the original authority found lapses in regard to 26 EPCG licenses and passed the following :

ORDER

“ 1) In respect of M/s.Ashok Leyland Nissan Vehicles Ltd., Kochar Towers, # 19, Venkatanarayana Road, T. Nagar, Chennai – 600017 for imports in **Sea Customs, Chennai**, I order as below :

(i) I demand customs duty of **₹21,43,78,078/- (Rupees Twenty One Crore, Forty Three Lakh, Seventy Eight Thousand and Seventy Eight only)** as detailed against fourteen licenses in Table-2 at para no.34.1 of this order from M/s Ashok Leyland Nissan/Ashok Leyland Limited under section 143(3) of the Customs Act, 1962 read with Notification no. 102/2009- Customs dated 11/09/2009 and the bonds furnished thereof, for non-fulfilment of export obligation;

(ii) I demand Interest at the rate of 15% from Ashok Leyland Nissan as per Notification No. 102/2009-Customs dated 11.09.2009 on the duty demanded at (1) above from the date of import of the goods;

(iii) the exemption availed under notification no.102/2009-Customs dated 11/09/2009 in respect of the capital goods imported as detailed against three licenses mentioned in Table-3 at para no.374 of this order. I demand customs duty of **₹4,17,93,473/- (Rupees Four Crore, Seventeen Lakh, Ninety-Three Thousand, Four Hundred and Seventy-Three, only)** from Ashok Leyland Nissan/Ashok Leyland under section 143(3) of the Customs Act, 1962 read with notification no. 103/2009- Customs dated 11/09/2009, and the bonds furnished thereof;

(iv) I demand Interest at the rate of 15% from Ashok Leyland Nissan/Ashok Leyland as per Notification No. 103/2009 both dated 11.09.2009 on the duty demanded at (iii) above from the date of import of the goods;

(v) I deny the exemption availed under notification no. 102/2009-Customs dated 11/09/2009 in respect of the capital goods imported as detailed against six licenses mentioned at Table-4 at para no.37.4 of this order. I demand customs duty of **₹10,77,24,468/- (Rupees Ten Crore, Seventy Seven Lakh, Twenty Four Thousand, Four Hundred and Sixty-Eight only)** from Ashok Leyland Nissan/Ashok Leyland Limited under section 143(3) of the Customs Act, 1962 read with notification no. 102/2009-Customs dated 11/09/2009, and the bonds furnished thereof;

(vi) I demand Interest at the rate of 15% from M/s Ashok Leyland Nissan/Ashok Leyland Limited as per Notification No. 102/2009 both dated 11.09.2009 on the duty demanded at (v) above from the date of Import of the goods:

(vii) I deny the exemption availed under notification no. 102/2009- Customs dated 11/09/2009 in respect of the capital goods imported as detailed against three EPCG Licenses mentioned In Table-6 at para no. 39.1 of this order. I demand customs duty of **₹ 71,47,851/- (Rupees Seventy One Lakh, Forty Seven Thousand, Eight Hundred and Fifty One, only)** from M/s Ashok Leyland Nissan/Ashok Leyland Limited under section 143(3) of the Customs Act, 1962 read with notification no. 102/2009- Customs dated 11/09/2009 and the bonds furnished thereof;

(viii) I demand Interest at the rate of 15% from M/s Ashok Leyland Nissan/Ashok Leyland Limited as per Notification No. 102/2009-Customs dated 11.09.2009 on the duty demanded at (vii) above from the date of Import of the goods.

(ix) I order confiscation of the seized capital goods valued at ₹187,98,13,669/- (Rupees One Hundred and Eighty-seven crore, Ninety Eight Lakh, Thirteen Thousand, Six Hundred and Sixty Nine, only) (A.V.) which were Imported by claiming benefit under notification No. 102/2009. Customs dated 11/09/2009, under section 111(d) and 111(0) of the Customs Act, 1962. However I give option for redemption of the said goods U/s 125 of the Customs Act 1962, on payment of redemption fine of **₹ 15,00,00,000/- (Rupees Fifteen Crores Only);**

(x) I order confiscation of the goods other than the seized goods mentioned at (b) above, valued at ₹32,28,71,910/- (Rupees Thirty-Two Crore, Twenty-Eight Lakh, Seventy-One Thousand, Nine Hundred and Ten, only) (A.V.), under section 111(d) and 111(0) of the Customs Act, 1962. However, I give option for redemption of the said goods U/s 125 of the Customs Act 1962, on payment of redemption fine of **₹ 3,00,00,000/- (Rupees Three Crores Only);**

(xi) I Impose a penalty of **₹ 5,00,00,000/-(Rupees Five Crores Only)** on Ashok Leyland Nissan/Ashok Leyland Limited under section 112 (a) of the Customs Act, 1962;

(xii) I order appropriation of an amount of ₹11,92,05,288/- (Rupees Eleven Crore, Ninety Two Lakh, Five Thousand, Two Hundred and Eighty Eight, only) voluntarily deposited by them, towards the duty demanded above; and

(xiii) I order enforcement and adjustment of the bank guarantees executed by them, with the Customs, at the time of registration of the EPCG licenses towards the duty and interest, demanded above.”

2) I impose penalty on the following manufacturers / sub contractors under section 112 (b) of the Customs Act, 1962.

(i) I impose penalty of **₹10,00,000/-(Rupees Ten Lakhs Only)** on M/s Renault Nissan Automotive India Private Limited, Plot No. 1, SIPCOT Industrial Park, Oragadam, Mattur (Post), Sriperumbudur Taluk, Kanchipuram District, Tamilnadu - 602105, for diverting/ non availability of imported capital goods under EPCG

Scheme in the capacity of Supporting Manufacturer for full life period of machines, even before fulfilling the Export Obligation;

(ii) I impose penalty of **₹10,00,000/-(Rupees Ten Lakhs Only)** on M/s Gestamp Automotive Chennai Private Limited, Plot No. B12, SIPCOT Industrial Park, Phase II Vengadu Village, Pillaipakkam Post, Sriperumbudur Taluk, Kanchipuram District, Tamil Nadu-602105, for having installed the diverted premises;

(iii) I impose penalty of **₹10,00,000/-(Rupees Ten Lakhs Only]** on M/s Myoung Shin India Automotive Pvt Ltd. No. 496/2, Mannur Village, Valarapuram, Sriperumbudur, Kanchipuram, Tamil Nadu 602 105, for having diverted the Impugned capital goods Imported under the EPCG Scheme, to an unauthorised premises;

(iv) I Impose penalty of **₹10,00,000/-(Rupees Ten Lakhs Only)** on M/s Daejoo Automotive India Pvt Ltd. No. 134, Kllacherry Pachayettu, Govinda Medu Village, Thiruvallur, for having installed the diverted impugned capital goods Imported under the EPCG Scheme, in an unauthorised premises and subsequently diverting them to another unauthorised premises;

(v) I impose penalty of **₹10,00,000/-(Rupees Ten Lakhs Only)** on M/s MS Global India Automotive Pvt Ltd, Survey No. 133 (Part), 134 (Part) & 135 (Part), SIPCOT Industrial Estate, Oragadam Village, Singaperumal Koll Road, Mattur (PO), Sriperumbudur Taluk, Kanchipuram District, Tamil Nadu-602105, for having Installed the diverted impugned capital goods imported under the EPCG Scheme in an unauthorised premises;

(vi) I impose penalty of **₹10,00,000/-(Rupees Ten Lakhs Only)** on M/s Cosma International India Pvt Ltd, RNS-11, SIPCOT Industrial Growth Centre, Orgadam, Vadakupattu, Sriperumbudur, Kanchipuram, Tamil Nadu 603204, for having diverted the impugned capital goods Imported under the EPCG Scheme to an unauthorised premises; and

(vii) I impose penalty of **₹10,00,000/-(Rupees Ten Lakhs Only)** on M/s Caparo Engineering India Limited, T-1, T-2, SIPCOT Industrial Estate, Sunguvarchatram, Sriperumbudur Taluk, Kanchipuram District, Tamilnadu 602106 for having installed the diverted Impugned capital goods Imported under the EPCG Scheme In an unauthorised premises.

3) In respect of M/s Ashok Leyland Nissan Vehicles Ltd, Kochar Towers, # 19, Venkatanarayana Road, T. Nagar, Chennai-600017 for Imports in Air Customs, Chennai following orders are passed:

(i) I demand customs duty of **₹38,59,980/- (Rupees Thirty Eight Lakh, Fifty Nine Thousand, Nine Hundred and Eighty only)** as detailed against three licenses In Table-2 at para no. 34.1 of this order from M/s Ashok Leyland Nissan/Ashok Leyland Limited under section 143(3) of the Customs Act, 1962 read with Notification no. 102/2009- Customs dated 11/09/2009 and the bonds furnished thereof, for non-fulfillment of export obligation;

(ii) I demand interest at the rate of 15% from M/s Ashok Leyland Nissan/Ashok Leyland Limited as per Notification No. 102/2009 Customs dated 11.09.2009 on the duty demanded at (1) above from the date of Import of the goods;

(iii) I deny the exemption availed under Notification no. 102/2009-Customs dated 11/09/2009 In respect of the capital goods imported as detailed against three Licenses in Table-6 at para no.39.1 of this order. I demand customs duty of **₹12,26,700/- (Rupees Twelve Lakh, Twenty-Six Thousand and Seven Hundred, only)** from M/s Ashok Leyland Nissan/Ashok Leyland Limited under section 143(3) of the Customs Act, 1962 read with notification no. 102/2009- Customs dated 11/09/2009 and the bonds furnished thereof,

(iv) I demand interest at the rate of 15% from M/s Ashok Leyland Limited as per Notification No. 102/2009-Customs dated 11.09.2009 on the duty demanded at (ii) above from the date of import of the goods;

(v) I order confiscation of the seized goods valued at ₹3,11,59,224/- (Rupees Three Crore, Eleven Lakh, Fifty-Nine Thousand, Two Hundred and Twenty-Four, only) (A.V.) under section 111(d) and 111(0) of the Customs Act, 1962. However I give option for redemption of the said goods U/s 125 of the Customs Act 1962, on payment of redemption fine of **₹30,00,000/-(Rupees Thirty Lakhs Only)**

(vi) I order confiscation of the goods other than the seized goods mentioned above, valued at ₹62,82,547/- (Rupees Sixty-Two Lakh, Eighty-Two Thousand, Five Hundred and Forty-Seven, only) (A.V.), under section 111(d) and 111(0) of the Customs Act, 1962. However I give option for redemption of the said goods

U/s 125 of the Customs Act 1962, on payment of redemption fine of **₹6,00,000/-(Rupees Six Lakhs Only);**

(vii) I impose penalty of **₹6,00,000/-(Rupees Six Lakhs Only)** on M/s Ashok Leyland Limited under section 112 (a) of the Customs Act, 1962; and

(viii) I order enforcement and adjustment of the bank guarantees executed by them with Customs at the time of registration of the EPCG licenses, towards the duty and interest, demanded above;

(ix) Nissan Automotive India Private Limited, Plot No. 1, SIPCOT Industrial Park, Oragadam, Mattur (Post), Sriperumbudur Taluk, Kanchipuram District, Tamilnadu - 602105 penalty under section 112 (a) of the Customs Act, 1962, for utilising/non availability of the capital goods Imported under EPCG Scheme in the capacity of Supporting Manufacturer for full life period of machines, even before fulfilling the Export Obligation.

Summary of Duties & Interest (as applicable) Fines & Penalties ordered:

Notice	Duty(₹)	Redemption Fine (₹)	Penalty(₹)
I. Sea Port, Chennai			
M/s Ashok Leyland	21,43,78,078/-	15,00,00,000/-	5,00,00,000/-
	4,17,93,473/-	3,00,00,000/-	
	10,77,24,468/-		
	71,47,851/-		
M/s Renault Nissan	NA	NA	10,00,000/-
M/s Gestamp Automotive Chennai	NA	NA	10,00,000/-
M/s Myoung Shin India Automotive	NA	NA	10,00,000/-
M/s Daejoo Automotive	NA	NA	10,00,000/-
M/s MS Global India Automotive	NA	NA	10,00,000/-
M/s Cosma International	NA	NA	10,00,000/-
M/s CAparo Engineering India	NA	NA	10,00,000/-
II. Air cargo, Chennai			
M/s Ashok Leyland	38,59,980/-	30,00,000/-	6,00,000/-
	12,26,700/-	6,00,000/-	
III.			
M/s Renault Nissan	NA	NA	20,00,000/-

For the Appellant:

10. Learned counsel Dr. C. Manickam appeared and argued for appellant. It is submitted that M/s Ashok Leyland Ltd, headquartered at Chennai, are the second largest manufacturer of Automobile Commercial vehicles in India and exports to overseas countries besides catering to the needs of the Defence Sector of the Government of India and Various State Transport Corporations across the country. A Joint Venture between Ashok Leyland and Nissan Motor, Japan was formed in the year 2008 with a shareholding pattern in the ratio of 51% : 49%. The new legal Joint Venture entity was incorporated as a Private Limited Company in the name and style of "Ashok Leyland Nissan Vehicles Limited " to manufacture light commercial and passenger vehicles besides other automobiles to cater to domestic and international markets. The said Joint Venture company (the appellants herein), subsequently did not have any manufacturing facility in India and hence entered into a Contract Manufacturing Arrangement / Agreement with Renault Nissan Automotive Ltd., Oragadam, Sriperumbudur, Tamil Nadu for manufacture of passenger vehicles in the name of 'Stile', 'Evalia' etc. and with Ashok Leyland Limited for manufacture of commercial vehicles at their Hosur Plant in the name of 'Dost', 'Partner', 'Mitra' etc.

Availing of EPCG Benefits from Ministry of Commerce:

11. It is submitted by the learned counsel that the JV company viz Ashok Leyland Nissan Vehicles Limited, had plans to export their manufactured products in view of the huge overseas market potential that existed for such vehicles at that point of time. As the high end technical specifications of the product would require capital goods which were not available indigenously they had to import. The Company decided to avail the benefits under EPCG Scheme in terms of the Foreign Trade Policy of

the GOI. Accordingly, the company obtained 51 EPCG Authorizations during the period from September 2011 to August 2013 from the Office of the Joint Director General of Foreign Trade, Chennai. As manufacturing has to happen in the factory locations of Renault Nissan and Ashok Leyland, their names were mentioned as supporting manufacturers in the respective licenses.

Initial Compliance of the conditions of EPCG licenses :

12. The imported goods covered under all the licenses and that of supporting manufacturers were installed accordingly. Commercial production commenced and sales/ supplies started including export of goods. Installation certificates were obtained from the prescribed authorities and submitted to the JDGFT, Chennai. The demand for passengers vehicles were bit low. The licensing conditions required submission of installation certificates within 6 months from the date of import and the export obligation had to be fulfilled equivalent to 50% in value during first block of 4 years /6 years and the balance 50% in the second block of 6years/ 8 years as the case may be. While the appellants were able to fulfil the 50% obligation in time for the Commercial vehicles they could not meet the deadline in respect of passenger vehicles, though there had been exports of few quantity of passenger vehicles as well. Further, in few cases, the supporting manufacturers, instead of installing the goods in the premises endorsed in the authorizations, had installed in a different location; which was their own different unit or their sister concern. The supporting manufacturers did not keep the appellants informed about such installation in a different location as they did not know about the compliance requirements. However they had been issued the installation certificates indicating the installation as required. This fact of installation of imported duty free capital goods in a different location or non

fulfilment of 50% of the export obligation in the first block period was not intimated to the JDGFT authorities. In fact, the so called unauthorized premises as alleged in SCN where the capital goods were installed is the premises of the group companies itself.

Investigation by DGCEI and DRI Authorities

13. The DGCEI authorities in the month of September 2015, visited the premises of the JV company (ALNVL- Ashok Leyland Nissan Vehicles Ltd) and also the premises of all the supporting manufacturers whose names were endorsed in the EPCG authorizations and verified the compliance aspects. The DGCEI entertained a doubt that the appellants have not complied with the conditions imposed under the EPCG scheme at all. Subsequently the case was transferred to **DRI**, Chennai Unit as only Customs have the jurisdiction to verify or investigate import related matters.

13.1 On a thorough review of all the 51 EPCG authorizations, they could not find any deviation including procedural ones in respect of 25 EPCG authorizations which pertain to capital goods imported and installed in the premises of Ashok Leyland. However they could identify procedural lapses in the case of 26 EPCG authorizations pertaining to goods imported and installed in the premises of Renault Nissan and their supporting manufacturers.

13.2 It was clarified to the co-noticees by the appellants that the allegations are only procedural in nature and the FTP issued by GOI allows condonation in all such cases and appellants have enough time to approach authorities seeking their permission for such condonation. Appellants also then paid an amount of Rs 11.92 crores during the investigation reserving their right to appeal in case of

demands raised against them at a later point of time. In the mean time Customs also seized certain goods but was released after seeing merits in the plea of the appellant.

Show Cause Notice :

14. The Ld. Counsel submitted that in spite of the submissions made and explanations offered by them, the DRI (Chennai Zone Unit) proceeded to issue a Show Cause Notice dated 15.09.2016 in respect of 26 EPCG Authorizations alleging (i) non-fulfilment of export obligation (ii) Diversion of Capital goods and (iii) non- availability of capital goods. Accordingly, the duty demands were raised in the notice as detailed below :

SI no	Break -up of demand	Amount involved (in Rs)
(i)	Proportionate duty towards non-fulfilment of EO	21,82,38,058
(ii)	Duty in respect of Diverted goods	10,77,24,468
(iii)	Duty in respect of diverted goods including non-fulfilment of EO	4,17,93,473
(iv)	Duty in respect of the unavailable goods	83,74,551

	Total Demand	37,61,30,550

Besides the above duty demand, the notice also sought to impose interest and penalties besides proposal for confiscation of the seized goods and invocation of Bank guarantees executed with customs at the time of import. The notices were sent to seven supporting manufacturers proposing penalties on them for non-compliance at their end.

Merger of the JV Company with Ashok Leyland

15. The Ld. Counsel submitted that, a commercial dispute arose between the JV Partners – viz. Ashok Leyland and Nissan Motor which resulted in dissolution of the JV and acquisition of the rights and liabilities by Ashok Leyland with the existing Nissan through its entity - Ashok Leyland Vehicles Limited (which became a subsidiary of Ashok Leyland). This

development happened on 16.12.2016. Subsequently, the management of Ashok Leyland decided to merge its subsidiary Ashok Leyland Vehicles Limited with Ashok Leyland and this happened through NCLT proceedings on 17.12.2018. The above developments were in public domain and informed to ROC authorities and all the stake holders including the DGFT and Customs. Consequent to such dissolution of JV and new merge, the IE Code, Income Tax PAN and all other statutory documents had to be amended to include ALVL in AL's name. It was informed to all the stake holders that Ashok Leyland will be responsible for all the rights and liabilities of the erstwhile JV company (ALNVL) which later became a subsidiary (ALVL) before getting merged with the parent company Ashok Leyland (AL).

16. After such statutory compliances as required consequent to the merger the appellant approached the EPCG Committee/ Policy Relaxation Committee, New Delhi for Condonation of procedural lapses and extension of Export Obligation fulfilment period.

16.1 The Foreign Trade Policy provides for granting of extension of export obligation period wherever obligation could not be fulfilled on time due to valid reasons and also provides for condoning procedural lapses. The appellants vide letters dated 13.03.2018, 07.5.2018, 19.05.2018, 28.05.2018, 21.6.2018, 25.06.2018, 19.11.2018, and 14.12.2018 requested EPCG Committee for relaxations and also requested the adjudicating authority to keep the adjudication pending till the decision of the **DGFT** committee. The adjudicating authority had given extension of the hearing of the case several times.

Decisions of the EPCG / PRC Committees - DGFT, New Delhi

16.2 The EPCG Committee vide its decision dated 13.02.2019 approved the request and granted extension of export obligation

period in respect of 14 (out of the 26) licenses for two years. This order of extension was subject to payment of compensation fees as prescribed under the FTP and to be regularized by the Review Authority (RA) (JDGFT Chennai). The committee also had gone on record to say that there had been no other issue in respect of these 14 cases except for extension of EO. However, the Committee directed the RA to verify about submission of installation certificates and also that the matter has not been adjudicated by the adjudicating authority.

16.3 In respect of the remaining 12 licenses, the appellant approached the Policy Relaxation Committee (PRC) which again considered the merits of the case and vide their decision dated 02.04.2019, condoned all the procedural irregularities like diversion and installation of capital goods in a location other the one endorsed in the authorization and granted extension of export obligation period unconditionally.

16.4 The Ld. Counsel argued that **DGFT**, Delhi which is the Competent Authority in respect of **FTP**, had seen merits in the request made by appellant and granted extension of export obligation in respect of all the 26 licenses and condoned the procedural lapses in respect of 12 out of the 26 licenses as well. While there had been no directions by the RA for granting the relief in respect of 12 licenses, the conditions imposed in respect of 14 licenses are all generic in nature.

Compliance in terms of the decisions of the EPCG/PRC Committees by the appellants

17. The appellants then complied with the conditions imposed by the EPCG Committee in respect of the 14 authorizations by paying the

composition fee on various dates between 22.05.2019 and 20.06.2019 and submitted the documents evidencing such payments to JDGFT, Chennai (RA) on 26.06.2019.

17.1 The appellants also complied with the provisions of the **FTP** in paying the composition fee for the 12 authorizations and submitted their claims for discharge of EO on 19.01.2021 / 20.01.2021.

Orders passed by the Adjudicating Authority:

17.2 It is submitted that immediately after the merger of ALNVL/ ALVL to AL they had approached the EPCG Committee for extension of export obligation period and also for condonation of procedural lapses. This was done as they were confident of exporting the qualified product since the parent entity (AL) is a pioneer in automobile industry. In fact, in this process, AL was put into a position to fulfil the specific export obligations fixed against the licenses granted to ALNVL besides maintaining their annual average and obligations against their other licenses.

17.3 It normally takes time at DGFT to consolidate various cases of different exporters, collating the same and to place before the committee meetings for discussions and decisions. On account of this, the appellants were seeking adjournment with the adjudicating authority so as to wait till final outcome from DGFT, New Delhi.

17.4 The appellants submitted around 18 letters to the adjudicating authority seeking time and informing the progress of the matter pending before DGFT, New Delhi. The Adjudicating authority had been kind enough to grant time several times considering the merits involved in the case.

17.5 The appellants on 25.03.2019 had submitted before the adjudicating authority that they had obtained order of extension and was in the process of complying with the EPCG Committee's decision once the minutes are cleared and received. Once the PRC committee's decision was released, the same was informed to the adjudicating authority.

17.6 While the appellant was awaiting a final chance to submit documents evidencing compliance of the Committee's decision, to their surprise the adjudicating authority passed the impugned order dated 21.06.2019. In fact, the appellants had paid the composition fee and other fees as per directions of the EPCG Committee for the 14 authorisations on 22.05.2019, 28.05.2019 and 20.06.2019 which is well before the date of passing the impugned order by the adjudicating authority. They were awaiting a date for personal hearing before the adjudicating authority to submit the details of order passed by DGFT Committee and the compliances on their end.

17.7 It is submitted that if only the adjudicating authority had granted a personal hearing they would have made a detailed submission about the decision of Committee meetings and subsequent compliance etc. made by the appellant. In fact DGFT authorities were kind enough to adhere to their decision and advised the appellants to go ahead and complete the EO which the appellants did complete.

18. It is argued by the Ld. Counsel that the Adjudicating Authority had passed the order in haste without considering the facts and the approvals granted by the Competent Authority (i.e DGFT) in this matter. The Adjudicating Authority was very well aware of the decisions of the EPCG Committee and PRC Committee in allowing extension of time for

fulfilling export obligation for two years and condoning all the procedural lapses vis installation of capital goods in places other than the ones endorsed in the authorizations.

18.1 In spite of being aware of these facts, the Adjudicating Authority had proceeded to confirm the entire demands and penalties (not only on the appellants but also on their supporting manufacturers) on the ground that the appellants had not produced evidence complying with the conditions of the FTP for getting such extensions which in fact the appellants had complied well before passing the adjudication order.

18.2 The Ld. Counsel submitted that though there was some delay in compliance of the condition of payment of composite fee, there is literally no delay as the DGFT had not prescribed any time limit for such compliance. The non-availability of the DGFT server had been one of the reasons for the delay besides some hiccups in Banks server too. However, after the order of DGFT on 13.02.2019, the appellant complied the condition before 20.06.2019 itself.

18.3 The Ld. Counsel further submitted that issue of notice and effective hearing are integral part of *quasi-judicial* proceedings. There was no effective hearing of the appellants before passing the order. Though the previous adjudicating authority had adjourned the hearings for approaching the DGFT, the authority who passed the impugned order, simply chose to ignore the decisions of the competent authority (DGFT) and proceeded to pass the *exparte* order without hearing the appellants. The impugned order is in violation of the principles of natural justice.

18.4 The Ld. Counsel submitted that the Adjudicating Authority should have acted in an objective manner to protect the legitimate rights of the

industry which would ensure substantial growth in business and particularly in export matters. The order of the adjudicating authority goes against the principles of ease of doing business and also the against maxim "Taxes and Duties are not to be exported".

18.5 Without prejudice to the above, it is argued that the adjudicating authority had proceeded to confirm the proposal in SCN to confiscate the goods which is patently illegal and unsustainable. The very fact that the competent authority had allowed extension of time for fulfilment of Export Obligation period, and condoned the procedural lapses and that exports had happened based on such approvals of the competent authority, there can be no demand of duties alleging non fulfilment of EO and consequently no demand of duty or interest. For the same reasons there cannot be an order for confiscation, imposition of fine and penalties as well. The order passed by adjudicating authority is illegal and needs to be set aside in toto.

18.6 Further, the demand raised in SCN and the amounts confirmed in the impugned order for the 14 EPCG authorizations pertain to 50% of the EO only since the allegation was only with reference to non fulfilment of EO pertaining to first block. During the visit of the DGCEI and DRI , appellants had enough time to fulfil the balance 50% in terms of the FTP and the Customs notifications as well. The SCN refers to only 50% of non-fulfilment of EO. The appellants state when substantive provisions of the law have been complied with (Exports have happened and precious foreign exchange has been realised), it is incorrect on the part of the adjudicating authority to deny the benefit earned by appellants alleging procedural non-compliance; which in fact has been complied. The reason for passing the impugned order is that appellants failed to inform about the compliance. In fact, appellants had informed about the order

dt.13.02.2019 passed by DGFT extending the time and were taking steps for compliance of payment of composite fee. Meanwhile the adjudicating authority has passed the order in a haste.

19. The Foreign Trade Policy of the GOI and the Hand book of procedures therein (Paragraph 5) provide for extension of time for fulfilment of export obligation, generally ,by default , on application by the exporters by paying a composition fee at a prescribed percentage of the unfulfilled export obligation value in respect of export promotion schemes like EPCG. This time limit is generally two years from the date of expiry of the period of obligation. These powers are now being delegated to the Regional Licensing Authorities (RA). In cases of genuine difficulties faced by the exporters / importers - the FTP by its delegated powers (Para 2 of the FT P) -appoint Competent Authority (Para 9 of the FTP) viz DGFT, New Delhi to consider the grievances of the exporters and importers . This Competent Authority is expected to apply its mind, verify the facts and take a decision on the grievance representation of the Exporters / Importers. Such decisions are deemed to have been taken in public interest.

19.1 The Appellants also submit that it is settled law that as far as FTP is concerned, whenever a question of interpretation of policy or procedural compliance, the decision of the DGFT is final and binding on all Authorities concerning implementation (Para 2.3 of FTP) of the licence. In view of the above position of law, the DGFT having granted extension of EO period to all the licenses concerned and also condoned the procedural infractions, denying the benefit alleging that appellant did not report compliance of conditions imposed by DGFT is too flimsy especially in the circumstances where export obligation have been completed in full within the time granted by the EPCG and PRC Committees.

Present Status: Totally 26 EPCG Authorizations are involved.

20. The Appellants submit that out of the 26, in respect of 12 cases, PRC Committee had allowed extension of EO period for two years and had condoned all procedural issues like installation of goods imported in a different places other than the place which is endorsed in the authorizations. Exports have been completed (100%). Necessary composition fees were paid, applications for grant of EODC's were submitted, and JDGFT, Chennai had granted the EODCs. [Export Obligation Discharge Certificate]

20.1 In respect of the balance 14 cases, the EPCG Committee allowed extension of EO period for two years. However, the EPCG Committee had put a condition that the customs department should not have adjudicated the case. As per the advice by the JDGFT, Chennai who are bound by the decision of the DGFT the appellants completed the exports, paid the composition fees. They then submitted applications with the JDGFT, Chennai for issuance of EODC which is under process.

21. The **DGFT** being the Competent Authority having granted extension of time to fulfil the Export obligation and also condoned the procedural lapses in toto, and the appellants having fulfilled the Export obligation in full in respect of all the 26 cases of Authorizations and obtained EODC in respect of 12 out of the 26, it is prayed that by the Ld. Counsel that impugned Order-in-Original No. 69637/2019 dt 21.06.2019 may be set aside.

22. In addition, the Ld. Counsel for appellants submitted that the SCN is issued by DRI. However, they do not intend to contest the issue whether the SCN issued by DRI is proper and valid. The

appellant has filed affidavit to the effect that they give up the contest on this issue in this appeal before the Tribunal and that they would not be contesting the issue before any other forum in regard to this appeal.

23. On behalf of the Department, learned Special Counsel Sri S. Ponnusamy appeared and argued the matter. The learned Special Counsel adverted to para-7 of the Notification No.102/2003-Cus. dt. 11.09.2009 and submitted that the importers are required to execute the bond binding themselves with all the conditions of the notification as well as for fulfilling export obligation worth FOB value @ six times of the duty foregone amount on the imported goods. In the present case, out of the total export obligation, 50% should be fulfilled within the first block period i.e. for 1st to 4th year from the date of issuance of the EPCG authorisation. Again, as per para-8 of the notification, the importer is required to submit proof of export obligation fulfilled within 30 days from the expiry of each block period from the date of authorization or within such extended time as the Asst. Commissioner / Deputy Commissioner may allow. If the export obligation is not fulfilled for any block, the importer shall within three months from the date of expiry of the said block period pay duties of customs equal to the amount of duty foregone.

24. The Hand Book of Procedure (HBP) 2009-14 was referred to by the learned special counsel to submit that as per the para 5.8 of this HBP, the authorization holders shall fulfil the export obligation over the specified period as per provisions mentioned therein. Para 5.8.3 states that when the export obligation is not fulfilled within the specified period or extended period, the authorization holders shall pay the duties of customs within three months from expiry of block

years. As per para 5.11 only one extension of two year can be granted to first block year period in the case of Zero Duty EPCG scheme. Para 5.7 states that in case of failure to fulfil export obligation or any other condition of authorization, the authorization holder shall be liable for action under FT (D&R) Act, 1992, Orders, Rules made thereunder, provisions of FTP and Customs Act, 1962.

25. In the present case, authorizations were issued from 2011 to April 2012. The 1st block year ended during the April 2016. The importer neither submitted proof of fulfilment of export obligation against 26 EPCG licenses for the first block period within 30 days nor paid customs duty after expiry of 3 months from the date of expiry of block year. The importer during October 2016 to January 2019 vide several letters addressed to Commissioner had several times only sought extension of time to reply to the notice and for postponement of personal hearing on the ground that they were seeking extension to fulfil export obligation. From December 2016 onwards they have been representing the DGFT authorities to consider their request for extension of two years for the first block period which ended during April 2016 and the request was rejected by the EPCG Committee on 20.02.2018, for the reason by which that the matter was under adjudication by Customs.

26. In spite of making repeated representations for review of the order of rejection of the request for extension, however, on 13.02.2019 the DGFT authority had granted extension of 2 years in respect of 14 license subject to certain conditions. One of the conditions was that the adjudication proceedings should not have been completed by the Customs. Ld. Special counsel argued that

even after getting approval for extension in respect of 14 licenses on 13.02.2019 and for another 12 licenses on 02.04.2019, the importer / appellant did not furnish any evidence to prove fulfilment of export obligation. In other words, even after exhausting 7 years from the date of licenses for the first block period they have not fulfilled export obligation. In letter dt. 25.03.2019 while informing the decision of DGFT authority they have only requested the adjudicating authority more time for complying with the conditions imposed by EPCG Committee for granting extension of time and have not furnished any information regarding the fulfilment of export obligation.

27. The adjudicating authority has passed the impugned order on 21.06.2019 on the ground that the condition for fulfilment of export obligation has ended in March / April 2016 itself. Assuming but not admitting that the extension granted for two years is valid and can be taken into account by customs, the appellants should have submitted the proof of export obligation in regard to 26 licenses within 30 days from March / April 2018. The appellant has no evidence in this regard. The Appellants therefore are bound to pay the duty within 3 months from the relevant date i.e before end of July 2018. The duty foregone has not been paid by them.

28. There is no error committed by the adjudicating authority in passing the impugned order.

29. The contention of the appellant that the original authority should have granted them more time to submit the compliance of DGFT orders was countered by the Special Counsel by putting forward the argument that more than one year had lapsed from the relevant date of July 2018. There is no merit in submitting that the original

authority ought to have waited for complying with the conditions of the orders of DGFT in regard to extension of the license. It is asserted by the learned special counsel that on the date of passing of the Order-in-Original, the appellant had violated the substantial condition of the notification and therefore the demand, interest and penalties confirmed in the order along with order of confiscation is valid and sustainable.

30. When exemption of duty is granted subject to the condition, it is not sufficient that there is substantial compliance. The export obligation should have been fulfilled within the time limit. As per para 5.11 of the HBP (EXIM Policy 2009-14) no further extension was possible for the first block year as one extension of 2 years can be given by the DGFT in case of Zero Duty EPCG scheme. The argument of learned counsel for the appellant that the adjudicating authority did not wait for implementation of the (extension) orders granted by the DGFT is without any basis.

31. The decision in the case of *CCE Vs Harichand Shri Gopal* - 2010 (11) TMI 13 (SC) was relied by the learned counsel to argue that when there is no compliance of the substantial condition, the delay cannot be condoned. In the case of *Mangalore Chemicals Vs Deputy Commissioner* - 1991 (55) ELT 437 (SC) the Hon'ble Supreme Court had held that distinction has to be made between procedural condition of a technical nature and the substantive condition. Non-observance of the former is condonable while that of the latter is not condonable as likely to facilitate commission of fraud and introduce administrative inconvenience. Learned special counsel prayed that the appeals may be dismissed.

32. Heard both sides.

33. The issues that arises for consideration are —

(i) whether the demand of duty alleging violation of conditions of notification 102/2009-Cus. dt. 11.09.2009 and notification 103/2009-Cus. dt. 11.09.2009 are sustainable or not.

(ii) whether the demand of interest is sustainable or not.

(iii) whether the denial of exemption availed under notification 102/2009-Cus. dt. 11.09.2009 in respect of capital goods imported as per EPCG licenses is sustainable or not.

(iv) whether the order for confiscation of the goods and imposition of Redemption fine is legal and proper.

(v) whether the penalties imposed are sustainable or not.

33.1 On the basis of the SCN, the three issues framed by the adjudicating authority as seen in para 32.1 of the impugned order is as below :

(i) Non-fulfilment of 50% EO in first block period for 23 EPCG licenses.

(ii) Diversion of capital goods to premises other than those indicated in the EPCG licenses in the case of a EPCG licenses and

(iii) Non-availability of certain capital goods imported against 5 EPCG licenses.

33.2 The details of the license and the issues above are given in the Table I of para 32.3 of the order which is as below :

Table : 1

S.No.	EPCG Authorisation No.	Import Notification	EO fulfilled	Not	Goods Diversion	Goods Available	Not
1.	0430010336	102/2009				✓	
2.	0430010337	102/2009				✓	
3.	0430010440	102/2009	✓			✓	
4.	0430010441	102/2009	✓			✓	
5.	0430010442	102/2009	✓			✓	
6.	0430010495	102/2009	✓				
7.	0430010607	102/2009	✓				
8.	0430010683	102/2009	✓				
9.	0430010755	102/2009	✓				
10.	0430010806	102/2009	✓				
11.	0430010837	102/2009	✓				
12.	0430010851	102/2009	✓				
13.	0430010916	102/2009	✓				
14.	0430010917	102/2009	✓				
15.	0430010918	102/2009	✓		✓		
16.	0430010919	102/2009	✓				
17.	0430010928	102/2009	✓				
18.	0430010929	102/2009	✓				
19.	0430010931	102/2009	✓		✓		
20.	0430010932	102/2009	✓				
21.	0430010939	102/2009	✓		✓		
22.	0430010946	102/2009	✓		✓		
23.	0430010988	102/2009	✓		✓		
24.	0430010989	102/2009	✓		✓		
25.	0430010990	102/2009	✓				
26.	0430011130	103/2009			✓		
27.	0430011131	103/2009			✓		
28.	0430011132	103/2009			✓		

33.3 The Ld. Counsel for appellant has explained that due to demerger of JV, its’ further merger and due to bad market conditions there was some difficulty in fulfilling the export obligation within the time period. The FTP provides for condonation of such lapses and extension of time for fulfilment of EO. However, due to dissolution of earlier JV and constitution (merger) of the new entity the appellants had to get the statutory documents amended before ROC, Income Tax Pan, Customs IEC, DGFT etc. amended accordingly to make an application seeking extension of time.

33.4 From the records, we find that the EPCG Committee vide its decision dated 13.02.2019 had approved the request of appellants

and granted extension of time for fulfilment of obligation for a period of two years in respect of 14 EPCG licenses subject to certain conditions. For the remaining 12 EPCG licenses, the Policy Relaxation Committee vide its' decision dated 02.04.2019 has condoned all the procedural irregularities like diversions and installation of capital goods in other locations, unconditionally. It is submitted by the Ld. Counsel that appellant has fulfilled the Export Obligations of all EPCG licenses and they are awaiting the issuance of EODC from the DGFT, which is kept pending because of this litigation.

33.5 The adjudicating authority has in fact taken note of the decision passed by the EPCG Committee on 13.02.2019 (for 14 licenses) and the decision passed by Policy Relaxation Committee on 02.04.2019 (for 12 licenses). However, she has proceeded to pass the order on 21.06.2019 without giving the appellants a reasonable time to report the compliance of the conditions.

33.6 As per the order passed by EPCG Committee on 13.02.2009, the period for fulfilment of EO is extended by two years on fulfilment of two conditions: Firstly, on payment of composition fee of 2% on the duty saved amount. Secondly, the adjudication is not completed.

33.7 On 25.03.2019, the appellants had submitted a letter before the adjudicating authority informing the order passed by EPCG Committee on 13.02.2019 and requesting for time as they had to get copy of the minutes for complying with the conditions. The appellants made the compliance in respect of 14 licenses by paying the composition fee on various dates between 22.05.2019 and 20.06.2019 and submitted the documents of compliance before JDGFT, Chennai, (RA) on 26.06.2019.

33.8 The adjudicating authority was well aware of all these facts. The appellants had issued letters dt. 13.03.2018, 07.05.2018,

19.05.2018, 28.05.2018, 2.106.2018, 25.06.2018, 19.11.2018 and 14.12.2018 to the DGFT Committees requesting to consider the extension of period. They also made request to inform the Customs authorities so as to keep the adjudication pending. The relevant part of letter dt. 21.06.2018 reads as under :

“Respected Sir,

This has reference to our representations on the subject and our latest letter requesting for a personal hearing to consider our case for extension of export obligation period and regularization of other alleged procedural irregularities.

We have informed the Commissioner of Customs. (Chennai IV) who is adjudicating the issue that our request is under consideration by DGFT, New Delhi and had sought time.

Customs authorities required a confirmation from the Office of the DGFT, to the effect that the issue is under consideration.

We will be much obliged if our request is considered and a letter js sent to Commissioner of Customs (Chennai-IV), Custom House, Chennai.”

33.9 The SCN is dated 15.09.2016. The adjudication was kept pending on the repeated requests made by appellants that they were taking steps with the DGFT authorities. The decision was passed by DGFT authorities approving the extension of time and condoning lapses in February and April 2019 as stated above. The adjudicating authority has been in a hurry to pass the adjudication order so as to deny to the appellants the benefits of the order passed by EPCG Committee. In para 35.1 the adjudicating authority has extracted the copy of the order passed by EPCG Committee on 13.2.2019. In para 36.3 it is observed by the adjudicating authority that the appellant has not produced EODC for the 14 licenses for which EOP (Extension of Period) is unconditionally granted. The discussions of adjudicating authority is as under :

“36.3 Ashok Leyland Nissan claimed in their letter dated 25.3.2019 that they have applied for various relaxations in respect of 26 EPCG licenses. But from the Minutes of Meeting dated 13.2.2019 of EPCG Committee, it is evident that the EOP extension was granted to 14 licenses with the condition that RA shall verify the installation certificates and also status of adjudication. No EODC (Export Obligation Discharge Certificate) is issued by the RA with respect to the 14 licenses for which EOP is conditionally granted. As per evidence available, no installation certificates with respect to the 14 licenses were submitted. No proof of any submission made to RA in this respect is adduced by Ashok Leyland Nissan. Hence, I find that though EOP is extended by the EPCG Committee. RA had not ratified extension on examination of installation certificates. The extension of EOP has not attained validity and hence the conditions of notifications with respect to fulfilment of EO and submission of installation certificates remained intact for said 14 licenses also.”

33.10 The findings of the adjudicating authority is that though the period has been extended by two years, there is no evidence furnished by appellants about the compliance of the conditions for granting extension and also for fulfilment of EO. This view does not find favour with us, as the order has been passed without waiting for a reasonable period after coming to know of the decisions passed by the EPCG and Policy Relaxation Committees.

33.11 The Ld. Special Counsel, Sri Ponnusamy appearing for the department has vehemently argued that as on the date of passing the order, there was no evidence before the adjudicating authority for compliance of the conditions and therefore there is no error in completing the adjudication. Another argument put forward by the Ld. Counsel is that, the extension of two years has to be computed from the year 2016 which is the end of first block period. In that case even if extended, the EO cannot be considered as fulfilled as the appellants have fulfilled EO much later only.

33.12 We have given careful consideration to the arguments of the Special Counsel. For better appreciation, the relevant part of the decision of the EPCG Committee passed on 13.02.2019 is as under :

Sl.No.	Firm's Name and Numbers	EPCG Authorisation No.	Subject	Decision of the EPCG Committee
13.	M/s.Ahok Leyland Vehicles Limited (Formerly Ashok Leyland Nissan Vehicles Limited0 01/36/218/245/AM-17/EPCG-I	26 EPCG authorisations	(i) Permission for shifting of capital goods in respect of 26 Authorisations to the premises of M/s.Ashok Leyland Ltd. M/s.Ashok Leyland Vehicles Ltd. (ii) The earlier installation of the Capital goods covered from Serial No.18 to 26 may be condoned and regularized, however, at this stage all the capital goods covered from Serial No.1 to 26 may be allowed to be shifted to the premises as mentioned above; (iii) That extension in EOP for 2 years may be granted for all the 26 Authorisations for fulfilment of EO.	8. In view of the above, the Committee after deliberations was of the opinion that as far as 14 EPCG authorisations bearing numbers 0430010495 dated 15.11.2011; 0430010607 dated 13.12.2011; 0430010683 dated 03.01.2012; 17.01.2012; 03.02.2012; 09.02.2012; 02.03.2012; 02.03.2012; 0430010755 dated 02.03.2012; 0430010806 dated 0430010837 0430010851 14.02.2012; 0430010916 dated 0430010917 0430010919 dated dated 0430010929 dated dated 0430010928 dated 06.03.2012; dated 06.03.2012; 0430010932 dated 07.03.2012 and 0430010990 dated 19.03.2012 where the goods were installed at the premises duly endorsed on the authorisations and the request is for only extension of the export obligation period to fulfil the export obligation, there is merit in the request of the party to allow them such extension. On the other requests, the Committee decided not to take any decision at this stage as the of authorisations involved issues other than the extension in export obligation period also. 9. The Committee, therefore, decided to recommend to DG for relaxation under Para 2.58 of FTP 2015-20 to allow: (a) extension of block-wise EOP in respect of fourteen EPCG authorisations mentioned above subject to payment of 2%% composition fee on the duty saved amount in proportion to the shortfall at the end of first block in terms of the provisions of Para 5.8.3 of HBP 2009-14. (b) extension of EOP for two years in respect of fourteen EPCG authorisations mentioned above on payment of composition fee equal to 2% of proportionate duty saved amount on the unfulfilled export obligation for each year of extension sought in terms of provisions contained in

				Para 5.11 of HBP 2009-14. (c) This shall be subject to payment of composition fee of Rs. 5000/-against each authorisation for delay in applying. Further, RA to verify that these authorisations have not been adjudicated upon by the concerned customs authority and the party_has submitted the installation certificate from jurisdictional Central Excise Authority (from Chartered Engineer in case the party is not registered with Central Excise Authority). This has the approval of DG.
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33.13 The SCN has been issued in 2016 alleging the non-fulfilment of 50% EO, and diversion of capital goods. The appellants were informing the adjudicating authority about the steps taken for getting extensions of time. Further on 25.03.2019, they submitted letter to the adjudicating authority informing that they are in the process of complying with the conditions of the EPCG Committee’s decision. This being so, it was incumbent upon the adjudicating authority to give the appellants reasonable time to comply with the conditions and should not have passed the order in a hurried manner even without grant of personal hearing. The EPCG Committee had not prescribed any time limit for compliance of the conditions. The assessee is then supposed to comply within a reasonable time. The assessee has been diligent to comply within a time period of about three months. These authorizations / EPCG licenses are issued as part of Foreign Trade Policy for export benefits so as to earn foreign exchange for the country. The DGFT and Customs have to act hand in hand to give effect to the object of issuing such beneficial schemes. It should not be a tug of war so as to drive the assessee from pillar to post and

getting their resources tied up in litigations. We therefore find that the changed circumstances as to the extension of period and compliance has to be taken into consideration.

33.14 The EPCG Committee has not stated any time period to comply with the conditions. There is no mention in the order of EPCG Committee that the extension of two years is to be applied retrospectively. When there is no specific mention of such event in the decision of EPCG Committee, the extension has to be construed as intended in the decision itself, which is nothing but extension of time by two years to fulfil their export obligation.

34. The adjudicating authority has imposed penalty on the supporting manufacturers viz. M/s.Renault Nissan, M/s.Gestamp Automotive Chennai, M/s.Myung Shin India Automotive, M/s.Daejoo Automotive, M/s.Global India Automotive, M/s. Magna Automotive, M/s.Caparo Engineering India on the ground of installation of imported capital goods in other premises. The competent authority vide decision dt. 02.04.2019 has condoned the infraction and regularized the installation. Hence we are of the view that the penalties imposed on these appellants cannot sustain and requires to be set aside. Ordered accordingly. The appeals filed by them viz., C/41486/2019, C/41530/2019, C/41531/2019, C/41532/2019, C/41568/2019, C/41569/2019, C/41570/2019 are allowed.

35. After appreciating the facts and evidence placed before us, we are of the view that the order passed by adjudicating authority without considering the relaxations, compliance and fulfilment of export obligations so as to confirm the duty demand, confiscation and imposition of penalties on M/s.Ashok Leyland, the main appellant, requires reconsideration. We therefore are of the opinion that the matter requires to be remanded to the adjudicating authority who is

directed to consider the decisions passed by the Committees, the compliances made by the appellants and the fulfilment of export obligations and pass fresh order preferably within 3 months from the date of receipt of this order.

36. In the result, the impugned order is set aside in entirety. The appeal C/41479/2019 is allowed by remand to the adjudicating authority.

(Order pronounced in the open court on 02.11.2023)

sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

sd/-
(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

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