

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

REGIONAL BENCH - COURT No. III

Customs Appeal No. 41159 of 2014

(Arising out of Order-in-Original No.23954/2014 dated 31.01.2014 passed by Commissioner of Customs, Custom House, No.60, Rajaji Salai, Chennai 600 001)

Commissioner of Customs, Chennai II (Import Commissionerate), Custom House, No.60, Rajaji Salai, Chennai 600 001.	 Appellant
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VERSUS

M/s.Shakthi Knitting Ltd. No.1, 3 rd Street, Padmanabha Nagar, Adyar, Chennai 600 020.	... Respondent
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WITH

**(II) Customs Appeal No.41160 of 2014
(Commissioner of Customs, Chennai II (Import) Vs
P.R. Sundaravadivelu, Chairman/Director)**

**(III) Customs Appeal No.41161 of 2014
(Commissioner of Customs, Chennai II (Import) Vs
P. Vijayakumar, Former Director)**

**(IV) Customs Appeal No.41162 of 2014 (CC
Chennai II (Import) Vs S. Vasanth Kumar, Joint
Managing Director)**

**(V) Customs Appeal No.41163 of 2014 (CC
Chennai II (Import) Vs S.K.Vivekananda, Managing
Director)**

(Arising out of Order-in-Original No.23954/2014 dated 31.01.2014 passed by Commissioner of Customs, Custom House, No.60, Rajaji Salai, Chennai 600 001)

APPEARANCE :

Shri Sanjay Kakkar, Authorized Representative for the Appellant
Shri N. Muralikumar, Senior Advocate for the Respondent

CORAM :

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)

FINAL ORDER Nos.40591-40595/2025

DATE OF HEARING : 11.04.2025
DATE OF DECISION : 09.06.2025

Per: Shri P. Dinesha

After hearing both sides, we find that these appeals are arising out of common impugned Order-in-Original and hence, all the appeals were heard together and are being disposed of by this common order.

2. These appeals are filed by the Revenue against the common impugned Order-in-Original No. 23954/2014 dated 31.01.2014 passed by Commissioner of Customs (Seaport-Export), Chennai.

3. The brief facts could be gathered from the OIO are that on specific intelligence that M/s.Sakthi Knitting Limited, Chennai were misusing the Target Plus Scheme ('TPS' for short) by utilizing the license obtained under TPS against

export of Ready Made garments for import of plastic granules which allegedly did not have any broad nexus with primary product exported by them, DRI, Chennai Zonal Unit conducted investigation. Revenue felt that since the Notification No.32/2005-Cus. dated 08.04.2005 issued by the CBEC applies to the Target Plus Licence (duty credit Certificate) issued under the TPS based on the incremental growth in exports made; in terms of para 3 of the said Notification, the goods imported against a duty credit certificate issued under TPS shall not be transferred or sold, where the goods are imported by a merchant exporter having supporting manufacturers whose name and address are specified on the said licence, the said goods may be utilized by the said supporting manufacturers. Further, as per the Circular No.21/2007-Cus. dated 08.05.2007 issued by the CBEC, the holder of the certificate issued under TPS is permitted to import under TPS and get the same processed into possible resultant products only if the same has a 'broad nexus' with the product group as an input in the export product and is required to be used as an input in the product exported for which TPS benefit is sought.

4. There was a follow-up action during which it appears that statements of several persons were recorded during investigation. Paragraph 8 of the Order-in-Original reveals a reference being made by DRI, Chennai to the JDGFT, Chennai highlighting the discrepancies/inconsistencies in the export figures disclosed by the Assessee-Respondent herein. It was pointed out the deliberate mis-representation of export figures in Appendix 17D and the Annexures thereto, with a further request for urgent remedial action in the form of cancelling or modifying the license issued to the importer-Assessee. The same para reveals the fact that the JDGFT however, did not accept the above request of the investigating agency and in response to their letter, it was affirmed that the **'duty credit under Target Plus Scheme was issued correctly as per the Foreign Trade Policy'**.

5. From paragraph 9 of the OIO we find the reasons attributed by the Revenue for issuing SCN. In response thereto it appears that the noticee filed its reply, participated in the personal hearing and it also appears that the assessee also requested for the Relied Upon Documents (RUD) in the SCN. In the written submissions filed by them, it appears that they denied the allegations levelled against them in the

notice and justified their availing of the benefit of TPS. They also appear to have relied on a few judicial decisions in their support. After considering the explanation filed by the assessee and after hearing their representative, the Commissioner of Customs, vide Order-in-Original No. 23954/2014 dated 31.01.2014 has felt it proper and accordingly dropped all the proceedings contemplated in the SCN. In the impugned order, the Commissioner has observed that the contention of the assessee that PP/PE granules imported by them were valid import required for the manufacture of export items to be correct and hence the same was accepted. Insofar as the allegation of lack of 'Broad Nexus' between the imported PP/PE granules and export product, the Authority has referred to The Hand-Book of Procedure [**HBP**] which defines 'Broad Nexus' and in this regard has further referred to the decision of Delhi High Court in the case of **Union of India & Others Vs Indian Exports Grievance Forum & Anr.** - 2013 (290) ELT 481 (Del.) wherein the Hon'ble Court has quashed (i) para 3.2.5 of the HBP, (ii) Circular No.21/2007-CUS dated 08.05.2007; and (iii) Public Notice No.9/2007 dated 21.06.2007. From a conjoint reading of the above ruling and the clarification issued by DGFT, the Commissioner has observed further that

General Policy for packing material would apply to all the product groups including Textile Group. The same is reproduced for convenience:

Para 24(v). "General Policy for Packing Material" will apply to all the product groups including "Textile" group. Para 1(b) of the policy clearly provides input norms for manufacture of packing materials. It says: Raw materials to be used for the manufacture of packing materials.... on net +5% wastage'. As polybags are manufactured using PP/PE granules and the item of import is covered by the SION norms and 'broad nexus' between the imported goods and export product group is clearly established as per the discussion in para 24 above. Therefore, I hold that the items of import i.e. PP/PE granules had 'broad nexus' with the export product."

6. Insofar as the second issue as to whether the goods imported are for their own use or for the use of supporting manufacturer as declared in Appendix 17D of the Policy, a reference is made to the Exemption Notification No. 32/2005 and particularly condition No.3 which states that goods shall neither be sold or transferred. In this regard, the Commissioner has held that the TPS is a Post-Export Reward Scheme where no export obligation is stipulated for the resultant product to be made out of inputs imported under the scheme. Goods imported under TPS were with actual user condition and non-transferable, the actual user is defined under para 9.4 of the FTP. The goods imported

under TPS license have to be converted into a resultant product to fulfil the actual user condition. In this regard. It is a fact borne in the SCN and the reply thereto, that the assessee had taken Central Excise Registration for manufacturer of jumbo bags and manufactured jumbo bags, which was cleared on payment of duty. They had engaged a few local manufacturers as job workers for intermediate conversion of imported plastic granules into fabrics; the policy itself recognizes the fact that the actual user would mean a person utilizing the imported goods for manufacturing in their own industrial unit or manufacturing for his own use in another unit, including a job unit and thus, using job workers for conversion is not a violation of the condition that the imported goods were not for their own use. Reference has also been drawn to the SCN which itself reveals that the granules that were imported were sent to manufacturing units and the assessee had obtained Central Excise Registration, they also paid Central Excise Duty and sold jumbo bags to the job workers.

7. It is against this order that the present appeal has been filed before us. We have heard at length Shri Sanjay Kakkar, learned Dy. Commissioner for the Appellant –

Revenue and Shri Murali Kumar learned Senior Advocate for the respondent.

8. The contentions of the Sri Sanjay Kakkar are as below:

(i) There is no nexus, leave apart a broad nexus between the products exported (readymade garments) with the products imported using the Target Plus Licence viz. plastic granules. The pre-import declaration for obtaining the Target plus scrip and compliance of the post-import conditions both stand wholesomely defied.

(ii) The Adjudicating Authority failed to notice that the imported item fell in a product group different from the product group in which the exported items fell as declared in the Aayat-Niryaat Form (Appendix-17D) as also the SION. This amounted to a clear violation of the Foreign Trade Policy, and hence the Customs Notification - 32/2005, which is issued with a clear reference to para 3.7 of the said Policy.

(iii) The Adjudicating Authority failed to notice the difference between the final product manufactured using the PP granules viz. Jumbo bags, was different from 'knitted garments' - the product manufactured and stated as exported by the licensee while obtaining the Target Plus licence.

(iv) The reference to Customs Notification - 12/2012 dated 17.03.2012 by the Adjudicating Authority to grant benefit to the respondent fails since there is a perceptible difference between printed 'polybags' and 'jumbo bags', which are categorized as "Flexible Intermediate Bulk Containers" (FIBCs).

(v) The Adjudicating authority failed to notice that no supporting manufacturer was declared to DGFT while obtaining the Licence and thus, no supporting manufacturer was mentioned on the Licence. This was a clear case of diversion of goods, violating the FTP as well as the governing Customs Notification. The respondent never claimed any movement of goods for job-work either.

(vi) The above violations are accepted in Statements recorded under Section 108 of the Customs Act, recorded from various Directors of the respondent-company.

He would then pray for setting aside the impugned order and allow the Appeals.

9. *Per contra* Id. Senior Advocate would contend that at the outset, the submissions of the Department Representative are clearly beyond the scope of both SCN as well as OIO. He would contend that the reliance of the

representative on Notification No.21/2002 is clearly misplaced since, Hon'ble Bombay High Court in the case of **Essel Mining and Industries Ltd. Vs Union of India** – 2011 (270) ELT 308 (Bom.) has quashed the same. He would further argue that the reliance on Notification 32/2005 is clearly in violation of principles of natural justice since neither in the Show Cause Notice nor in the Grounds of Appeal has the Revenue contended that the assessee had violated the said Notification and hence, reference to the Notification being made for the first time at the Appellate stage as it amounts to introducing new facts, which is not permissible.

10. In this regard, our attention was drawn to the specific observations of the Hon'ble Delhi High Court *supra* as well as Hon'ble Bombay High Court *supra* and it is further contended that the courts in these cases have categorically and consistently held that it is beyond the power, jurisdiction and Authority of the DGFT to restrict the scope of post-export incentive. With regard to the Broad Nexus theory, reliance was again placed on these two judgements, to highlight that the courts have clearly held in favour of the taxpayer.

Insofar as the judgements/orders relied upon by the learned Departmental Representative, it was argued that the above orders/judgements were not relating to TPS but relating to advance license and hence, the same were not applicable.

11. He would thus conclude his arguments by highlighting that the TP import license of the respondent dated 22.06.2006 was issued much prior to the date of later Circular 21/2007 [dated 08.05.2007] which also stands quashed and hence, the department could not have relied on these circulars which have been quashed, to deny the accrued right of the respondent. Ld. Senior Counsel thus prayed for dismissal of the Appeals.

12. We have carefully heard the rival contentions and we have carefully perused the synopsis/written submissions filed by both the parties; we have also carefully considered the binding decisions of courts referred to before us. After hearing both sides, we find that the only issue to be decided is, "whether the impugned OIO is correct in extending the benefit of TPS scheme to the Assessee-Respondent?"

13. In the backdrop of the facts as explained by the rival parties which have been extracted/reproduced in the earlier

paragraphs, we find that a similar issue has been considered by this Bench in the case of **CC (Airport & Aircargo), Chennai Vs Sunstar Overseas Ltd.** vide Final Order No.40524/2025 dt. 08.05.2025 [read with corrigendum dt. 27.05.2025 in Customs Appeal No.61/2009] and after following the very same decisions *supra*, we have held that the assessee/importers therein has been correctly given the benefit of TPS and the consequent dropping of the proposed proceedings by issuing SCN has been held to be in order. Relevant observations are as under :

"The Target Plus Scheme was formulated in Chapter 3 of the FTP for 2004-09; the Scheme came to be discontinued in 2006. Paragraph 3.7.1 of the same provides that the object of the scheme was to accelerate growth in exports by rewarding star export houses who have achieved a quantum growth in exports. Para 3.7.6 of the FTP permitted the utilization of the duty credit by effecting imports. The TPS is thus an additional incentive given to accelerate the growth of exports, FTP is referable to the provisions of Section 4 and 5 of the FTDR.

14.1 The Explanation to the Notification defines the term "goods" as follows :-

"goods" means any inputs, capital goods including spares, office equipment, professional equipment, office furniture and agricultural products listed in Chapters 1 to 24 of the First Schedule to said Customs Tariff Act as may be notified by DGFT from time to time, which are freely importable under the Foreign Trade Policy.

14.2 Further, the take away from the decisions of Hon'ble Delhi High Court in **Union of India Vs Indian Exporters**

Grievance Forum (supra) and the Hon'ble Bombay High Court in **Essel Mining & Industries Ltd.** (supra) is as follows :

- (i) Para (3.7.6.) of the FTP, by itself, does not indicate that the imported goods should constitute inputs in the goods exported. It is not possible to read para (3.7.6.) restrictively. (Delhi HC)
- (ii) Given the objective of providing an incentive to exporters, para (3.7.6.) of the FTP can reasonably be interpreted to require an exporter to show that the goods imported should have broad nexus with reference to any product group of the exported groups within the overall value of the entitlement certificate. The word 'nexus' obviously refers to a larger group of similar goods and not the very exported goods itself. (Delhi HC)
- (iii) Reading paragraph (3.7.6.) of the FTP, it is evident that an eligible exporter is entitled to utilize duty credit in the import of any inputs, provided (i) they are freely importable and (ii) they are imported by importers for their own use. Para (3.7.6.) does not stipulate that the goods which are imported must be inputs for the manufacture of the export product in relation to which the benefit of the TPS is claimed. What para (3.7.6.) requires is that the goods which are imported by the eligible exporter must be inputs and the inputs must be imported

“for their own use”, meaning thereby the use of the importer himself. (Bombay HC).

- (iv) Para (3.7.6.) on its plain construction does not incorporate a requirement that the goods which are imported as inputs must find physical incorporation in the export products in relation to which the benefit of the TPS is claimed. In fact, even para (3.2.5.) of the Handbook of Procedures, which spells out the meaning of the broad nexus requirement, does not impose such a condition. (Bombay HC).

15. What emerges from the above rulings wherein para 3.7.6 of FTP in question has been interpreted to the effect that the policy provisions do not restrictively require the assessee to prove that the goods imported by them were usable in the very products which were exported by them for TPS certificates.

16. From a cumulative reading of both paras of FTP, the reference ‘product groups’ has been liberally interpreted by the constitutional courts in the case of in **Union of India Vs Indian Exporters Grievance Forum** - 2013 (290) ELT 481 (Del.) and in **Essel Mining & Industries Ltd. Vs Union of India** - 2011 (270) ELT 308 (Bom.). The same however, would cover a situation, like the present case on hand, is to be considered. PP granules were imported which were converted into plastic bags/inner layers of bags that were claimed to have been used as a ‘packing material’ for Rice that was exported. So, ‘a pound of flesh’ could never be without ‘a drop of blood’ and hence, there is a possibility that the PP granules would belong to the genus, if not the species. Hence, we have to accept the reasoning given in the impugned order that the packing materials used for packing the export product were mentioned in the Shipping Bills for the year 2004-05, which were also furnished before the Adjudicating Authority. Based on an overall analysis, the Original Authority has come to the conclusion that the twin conditions have been fulfilled by the assessee and that there was no material on record suggesting the violation of those twin conditions. Even before us, the

Revenue has not placed any supporting evidence in this regard, other than trying to build their case on mere arguments.

17. In view of the above, we do not find any lacunae in the impugned order and hence, we do not find any reasons to interfere with the same."

14. The additional point which also weighs in favour of the respondent-assessee as per para-8 of OIO, reading as under :

"During the course of investigation, a reference was made by DRI, Chennai to the Zonal Joint Director General of Foreign Trade, Chennai vide letter dated 31.03.2009 wherein the discrepancies/inconsistencies in the export figures were explained in detail and in view of the same and in view of the deliberate misrepresentation of export figures in the Appendix 17D and the annexures thereto, it was requested that urgent necessary remedial action may be taken and the license may be cancelled/modified. The same was followed up by addressing another letter dt. 22.02.2010 on similar lines to the Director General of Foreign Trade, New Delhi. Vide Order in F.No.04/79/72/132/AM06 dated 09.04.2010 passed by the Joint Director General of Foreign Trade, it was held that the duty credit under Target Plus Scheme has been issued correctly as per the Foreign Trade Policy."

The fact that the very DGFT to whom reference was made by the Revenue to cancel/modify the license has itself accepted that the benefit has been correctly granted to the assessee-importer which indicates that the Issuing Authority was completely satisfied with the fact of the fulfilment of the conditions under TPS *vis-a-vis* FTP and hence, the Revenue cannot have any grievance. Moreover, we also find from the

impugned order that at para 21, the Commissioner has appreciated the pleadings of the assessee about the very Department granting exemptions vide Notification 12/2012-Cus dated 17.03.2012 to the printed polybags for use in packing of readymade garments by exporters registered with Apparel Export Promotion Council (APEC) and that exemption so granted would clearly endorse that the polybags were products used in the manufacture and packing of readymade garments.

15. In the light of the above, we are of the clear view that the findings of the Original Authority are correct and hence, the impugned Order-in-Original does not call for any interference. We therefore dismiss the Appeal No. **C/41159/2014.**

16. Insofar as other Appeal Nos. **C/41160/2014, C/41161/2014, C/41162/2014 & C/41163/2014** are concerned, they are only against the dropping of penalties but since we find that there was no error in extending the benefit of TPS to the main respondent-assessee, hence the penalties as imposed on the office bearers like Chairman/Director, Former Director and Joint Managing

Director & Managing Director would not arise. Hence, the Original Authority is correct in not imposing any penalty on these respondents. Resultantly, these appeals also deserve to be dismissed which we hereby do.

All the five appeals filed by Revenue are dismissed.

(Order pronounced in open court on 09.06.2025)

(M. AJIT KUMAR)
Member (Technical)

(P. DINESHA)
Member (Judicial)