CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

REGIONAL BENCH – COURT NO. I

Customs Appeal No. 40648 of 2017

(C/CROSS/40445/2017)

(Arising out of Order-in-Original No.50984/2016, dated 28.10.2016 passed by the Commissioner of Customs, Custom House, Chennai 600 001)

Commissioner of Customs **...Appellant**
Commissionerate IV
Custom House, No.60, Rajaji Salai,
Chennai 600 001

Versus

M/s. Hyundai Motor India Limited **.....Respondent**
H-1 SIPCOT Industrial Park
Irungattukottai
Sriperunbudur Taluk
Kancheepuram District 602 117

APPEARANCE:

Ms. Anandalakshmi Ganeshram, Authorised Representative for the Appellant
Mr. T. Viswanathan, Advocate for the Respondent
Mr. D. Santhana Gopalan, Advocate for the Respondent
Mr. S Ganesh Arvindh, Advocate for the Respondent

CORAM :

HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V, MEMBER (JUDICIAL)

FINAL ORDER No.41473/2025

DATE OF HEARING: 19.08.2025
DATE OF DECISION:16.12.2025

Per Ajayan T.V.

Revenue is the appellant herein and is challenging the Order in Original No.50984/2016, dated 28.10.2016 (impugned order). The Respondent has also filed a cross objection as captioned above.

2. The brief facts, as discernible from the appeal records are that the Respondent, who is stated to be engaged in the manufacture of motor vehicles, in the course of its business, has imported various capital goods under the Export Promotion Capital Goods (EPCG) Scheme during the

period 07.02.2007 to 28.05.2013. Capital goods imported under EPCG Scheme are exempted under various notifications such as Notification No.55/2003 Cus. dated 01.04.2003, 97/2004 – Cus. dated 17.09.2004, 64/2008 – Cus. dated 09.05.2008, 136/2008 Cus. dated 24.12.2008, 102/2009 Cus. dated 11.09.2009 and 22/2013 – Cus. dated 18.04.2003.

3. In the course of an investigation conducted by the Directorate of Revenue Intelligence, Chennai, the premises of the Respondent's Vendor Development, Purchase and Traffic and Customs Department were searched and statement were recorded from the Respondent's personnel. It appears that the Respondent had imported capital goods by availing benefit of concessional rate of duty under EPCG Scheme, in terms of the Customs Notifications mentioned above. The benefits were available subject to fulfilment of certain conditions (pre-import and post-import) as laid down in the respective notifications. It appears that the imported capital goods have been diverted to the vendor's premises that are not authorised for installation in the condition list attached to the EPCG authorisation on the strength of which the imports were made.

4. Earlier, in 1999, the DRI had initiated an investigation into the exemption claimed for capital goods imported by the Respondent under 7 EPCG authorisations under the Notification No.29/97-Cus dated 01-4-1997, entertaining a view that the imported goods had been diverted to unauthorised premises. This led to a Show Cause Notice dated 26.11.1999 being issued to the Respondent. Upon adjudication of the Show Cause Notice, the Chief Commissioner of Customs, vide Order in Original No.S-8/CAU/Chennai (SEA-C) / AG / 137 / 1999 dated 31.10.2000, dropped the proceedings based on the following findings.

a) When shifting of the imported goods is approved by the competent authority viz.. Committee of Secretaries, the decision shall be deemed to be Policy decision of the Government.

b) The practice of the Respondent in seeking post-facto approvals for shifting the capital goods to job workers' premises was only a procedural violation.

c) In the EPCG Committee, there is a member from the Department of Revenue and hence. the committee's decision equally binds the customs department.

d) When two substantial conditions of the exemption notifications viz., (1) completion of export obligation and (2) non-alienation of the capital goods are satisfied, duty exemption cannot be denied for procedural violations.

The Respondent states that the order has not been appealed against and has attained finality.

5. The investigations in the current proceedings pertain to 53 EPCG authorisations stated to be issued during the period 02.12.2007 to 28.03.2013, of which, 45 authorisations were registered with Chennai Sea Port and the remaining 8 were registered with Chennai Air Cargo Commissionerate. Investigations in the present proceedings culminated in the issuance of a Show Cause Notice dated 06.06.2015 to the Respondent demanding differential duty along with applicable interest, invoking the extended period of limitation, alleging liability to confiscation, proposals for confiscation and proposals for imposition of penalties under Sec. 112 / 114 A and also under Sec. 114 AA. Consequent to the reply filed by the Respondent contesting the allegations, after due process of law, the Adjudicating Authority passed the following order.

"37. Accordingly, I pass the following order.

ORDER

A IN RESPECT OF IMPORTS THROUGH SEAPORT

(i) I confirm the duty demand of Rs.2,94,363/- (Rupees Two Lakhs Ninety Four Thousand Three Hundred and Sixty Three only) on the goods imported by M/s. HMIL vide Bill of Entry No. 436678 dt. 04.11.2007 under EPCG license no 430004769 dt 16.03.2007 and found in use with the vendor, M/s. Ragam Metal India P Ltd. under Sec 28(2) along with interest under Sec. 28AB of the Customs Act, 1962;

(ii). I confiscate the impugned goods valued at Rs.5,73,50,976/- found in the premises of the 16 vendors (mentioned at Para 34.1), (for which no approvals have yet been obtained from DGFT) under Sec. 111(0) of the Customs Act, 1962. However, I give an option to M/s. HMIL to redeem the same under Sec. 125 (1) of the Customs Act, 1962 on a payment of fine of Rs. 10,00,000/- (Rupees Ten Lakhs only).

(iii). I also impose a penalty of Rs.3,00,000/- (Rupees Three Lakhs only) and Rs.2,00,000/-(Rupees Two Lakhs only) on M/s HMIL each

under Sec. 112 (a) and 112 (b) of the Customs Act, 1962, respectively.

(iv). I drop the charges levelled in the SCN in respect of the remaining vendors and corresponding licenses where post-facto approval have been obtained from DGFT.

(v) I impose a penalty of Rs. 1,00,000/- (Rupees One Lakh only) each under Sec. 112 (a) and 112 (b) of the Customs Act, 1962, respectively on Shri Ajay Saxena presently the General Manager, Traffic and Customs Department of M/s HMIL and Rs.50,000/- (Rupees Fifty Thousand only) each under Sec. 112 (a) and 112 (b) of the Customs Act, 1962, respectively on Shri B. Suriya Narayanan, Deputy General Manager (Part Development) of M/s HMIL.

(vi). I do not impose any penalty on the 134 vendors of M/s HMIL, the noticees figuring at S.Nos. from 5 to 138 of the SCN.

B IN RESPECT OF IMPORTS THROUGH AIR CARGO COMMISSIONERATE

In view of the findings at Para 35.4, I drop all the charges levelled in the subject SCN for the imports made by M/s. HMIL through the Air Cargo Commissionerate."

6. The Revenue has thus preferred this appeal stating that the impugned order is not legal and proper.

7. Heard Ms. Anandalakshmi Ganeshram, Authorise Representative appearing for the appellant and Mr. T. Viswanathan, Ld. Advocate along with Mr. D. Santhana Gopalan, Ld. Advocate and Shri S Ganesh Arvindh, Ld. Advocate appearing for the Respondent.

8. Ms. Anandalakshmi Ganeshram, Ld. AR, reiterating the grounds of appeal, submits as under.

   a. The Adjudicating Authority has found that in respect of 16 vendors, the Respondent had not got post facto approval from DGFT and also ordered confiscation of these capital goods diverted and installed at unauthorised premises, under Section 111 (o) of the Customs Act, 1962, with an option to redeem the goods on payment of redemption fine of Rs.10.0 lakhs. Yet, the Adjudicating Authority has confirmed the duty demand only in respect of goods imported and transferred to one vendor out of the 16 and dropped the duty demand in respect of the remaining 15 vendors. Having found the violation under the

EPCG scheme due to diversion of the capital goods to unauthorised premises, the same violation amounts to non- compliance of the conditions of relevant notifications and ought to have resulted in denial of the notification benefit. Therefore, the dropping of the duty demand, contrary to the findings that the goods were liable to confiscation and imposition of penalty is not legally correct.

b. In respect of cases where post facto approval has been obtained from DGFT, the adjudicating Authority has erred in dropping the duty demand holding that the violation is merely procedural and only a violation substantial in nature would constitute the violation of the notification. However, the customs notification does not make a distinction between the procedural and substantial conditions to be complied with.

c. The argument that the capital goods were shifted under intimation to central excise authorities is evidence that they knew the provisions of the customs notification and the EPCG policy. When the importer has complied with such provisions of properly documenting the movement of capital goods, there is no justification for having not requested DGFT to include the respective Tier I / Tier II suppliers as supporting manufacturers well in advance of such movement.

d. Even if the capital goods were moved under Central Excise Challans the relevant customs notification only provides for installation of capital goods in the premises of supporting manufacturers approved by the DGFT/RA and lack of prior approval indicates breach of condition of the notification and for the above reasons warrant that the capital goods be liable for confiscation under section 111(o) and the Respondent liable to penalty under Section 112.

e. Penalty on the Respondent under Section 114 A is warranted keeping in mind that several leave and license agreements that were unearthed during the investigation which were entered into after the receipt of imported capital goods under delivery challans. Investigation, including the statements of the stamp vendors revealed that the said leave and license agreements, though entered into after the commencement of investigation by DRI, has been back dated to appear as though such agreements were already in force as on the date of verification at the respective premises by DRI. Such leave and license agreements were fabricated as an after thought in

an attempt to justify movement of capital goods from one premises to the other. Thus, both the Respondent and the respective supporting manufacturers at whose premises the capital goods were found to be installed appear to be liable for penalties under Sec. 114 AA, for knowingly submitting documents that they knew to be false.

f. Sec. 112 A does not require *mens rea* and penalty can be imposed even once it is established that the act which renders the goods liable to confiscation has occurred. That supporting manufacturers whose name were initially endorsed on the EPCG authorisation have documented the movement of the goods to other supporting manufactures indicates that for such movement without the approval of DGFT they are liable to penalty under section 112 *ibid*.

g. The employees of the Respondent with the exception of Shri. Mukundarajan (on account of being deceased) are liable for penalty under Section 112 and 114AA of the Customs Act, 1962.

9. The Ld. Counsel Shri T Viswanathan appearing for the Respondent contended that the departmental appeal is liable to be rejected and the impugned order merits to be upheld and submitted as under:

a) The DGFT and the EPCG Committee have granted post facto approval and permitted inclusion of job workers premises as the place of installation of the imported capital goods, for 40 out of 53 EPCG Authorizations in three meetings held on 15.07.2010, 24.08.2011 and 15.05.2014 and the same was approved by the DGFT vide Letters F.No.01/36/218/134/AM-10/EPCG-1-351, dated 13.08.2010, F.No.01/36/218/104/AM-12/EPCG-1/323 dated 06.09.2011 and F.No.01/36/218/197/AM-14/EPCG-1/122 dated 03.06.2014. In all these meetings, representatives from the Department of Revenue were present. These Committee meetings have all been simultaneously/subsequently approved by the DGFT.

b) Based on the same, the demand of differential duty has been dropped in the Impugned Order. These minutes and letters are available at pages 124 to 167 of the Cross Objections filed by the Respondent. Such post facto approval means amendment to the EPCG Authorisations, to include the job workers' premises as the place of installation of capital goods. Such post facto approval or

amendment will date back to the date of the respective EPCG Authorizations.

c) On the question of whether approval granted by Committees (Norms Committee, Policy Relaxation Committee or EPCG Committee) functioning under the DGFT would bind the Revenue Department or not, the Courts and Tribunals have held in favour of the assessee in the following decisions:

i. Bhilwara Spinners Ltd. v. Union of India, 2011 (267) E.LT. 49 (Bom.)

ii. Dewas Soya Ltd. v. Union of India, 2009 (235) E.LT. 821 (Del) affirmed by the Delhi High Court in Union of India v. Dewas Soya Ltd, 2011 (270) E.LT. 17 (Del)

iii. M/s. Ashok Leyland limited & Ors. v. CC, 2023 (12) TMI 8 - CESTAT CHENNAI

iv. Regency Ceramics Ltd. v. CC, 2018 (363) E.L.T. 293 (Tri. - Chennai)

v. Indian Seamless Metal Tubes Ltd. v. CCE, 2017 (348) E.LT. 577 (Tri. - Mumbai)

vi. CC v. Tata Motors Ltd., Final Order No. 76715/2017 dated 23.08.2017 passed by CESTAT Kolkata in Appeal No. 76394/2016

vii. M/s. Bhilwara Spinners Ltd. v. CC, 2014 (11) TMI 816-CESTAT MUMBAI

viii. M/s. Tata Steel & Ors. v. CC, 2023 (10) TMI 1516-CESTAT KOLKATA

ix. Pierre Colsun Inc. v. CC, 2004 (177) E.L.T. 898 (Tri. - Bang)

x. CC v. DSQ Industries Ltd. 2011 (269) E.L.T. 286 (Tri. - Chennai)

xi. Thiagarajar Mills Ltd. v. CC, 1999 (111) E.L.T. 288 (Tribunal)

xii. Marico Ltd. v. CC, 2019 (369) E.L.T. 1175 (Tri. Mumbai)

xiii. Stone India Ltd. v. CC , 2019 (369) E.L.T. 1119 (Tri. - Kolkata)

The ratio in the afore-mentioned decisions is that Notifications have been issued to implement the various schemes under the Foreign Trade Policy and therefore, any decision the Committees under the Foreign Trade Policy would bind the Customs Department. Further the power exercised by the DGFT were sanctioned under the Foreign Trade Policy.

d) In the present case it is not in dispute that the imported goods are covered by EPCG authorisation and majority of the capital goods have been installed in the Respondent's premises with 33% of the capital goods out of the total authorisation installed in job worker premises. More than 200% of export obligation has been achieved in respect of all the EPCG authorisation issued to the Respondent during the relevant period, including those in dispute, as noted in the Committee Meeting Minutes and in para 32.1.9 of the impugned order. These capital goods have been used in the manufacture of finished goods exported out of India.

e) Similar issues were previously decided in favour of the Respondent vide the order in original no.73/2000 – CAU dated 25.10.2000. While adjudicating the earlier notice dated 26.11.1999 proposing to demand duty in respect of 7 EPCG authorisation obtained by the Respondent on the same allegation of installation of imported capital goods in job workers premises in whose names were not endorsed in the EPCG authorisations. The impugned order has followed the previous order and rightly held that a different stand cannot be taken in the matter.

f) The procedural irregularity of moving the capital goods to the job worker premises has been regularised by the EPCG Committee and therefore no duty is payable. The transaction between the vendors and the Respondent being nature of job work transactions can be viewed as where the parties have followed the procedure envisaged in Rule 6 of Cenvat Credit Rules 2017.

g) The capital goods imported under the EPCG Scheme is subject to actual user condition. Actual user means an actual user who may be either industrial or non-industrial and the actual user (industrial) means a person who utilises imported goods for manufacturing in his own industrial unit or manufacturing for his own use in another unit including a jobbing unit. Therefore, the use of the capital goods by the job worker in the jobbing unit where they have undertaken the job work does not violate the actual user condition. Once installing the capital goods in the job worker premises, does not violate the foreign trade policy, it does not violate the conditions of the Customs notification.

h) When the capital goods have been used by the job worker for the benefit of the EPCG Authorisation Holder for further manufacture of automobile components or for job work of goods sent by the EPCG Authorisation holder, it is in fact use (or constructive use) of the capital goods by the authorisation holder himself. It is not diversion of the capital goods. Diversion means to not put to use by or on behalf of the authorisation holder. In the present case, the imported capital goods have either been used by the Respondent or by the job workers on behalf of the Respondent. Therefore, going by the letter and spirit of the EPCG Scheme, there is no violation of the FTP or the Customs Notifications.

i) The decision of Supreme Court in ***U.P. Avas Evam Vikas Parishad and Anr. v. Friends Coop. Housing Society Ltd. and Anr. [1995] Supp. 3 SCC 456 (at para 7)*** is relied on to contend that the exemption could not be denied in view of the permission granted on ex post facto basis

j) Approvals and Permissions granted by the Department /DGFT/EPCG Committee/Policy Relaxation Committee are retrospective and date back to the original Licence /Authorization. Reliance in this regard is placed on the following decisions:

   i. CCE v. M.P.V. & Engg. Industries, 2003 (153) E.L.T. 485 (S.C.)
   ii. Marmo Classic v. CC, 2013 (290) E.LT. 439 (Tri. Mumbai)
   iii. Condor Footwear Ltd. v. CC, 2019 (367) E.L.T. 653 (Tri. - Ahmd.)
   iv. Larsen & Toubro Limited v. CC, 2024 (12) TMI 367-CESTAT AHMEDABAD
   v. Reliance Industries Ltd. v. CCE, 2014 (311) E.L.T. 401 (Tri. - Ahmd.)

k) In view of the above, the Impugned Order passed by the Ld. Commissioner must be upheld and the appeal filed by the Department is liable to be dismissed.

l) That extended period of imitation is not invokable and hence duty cannot be demanded in respect of 13 EPCG authorisations involving 16 Vendors in respect of whom post facto approval has not been obtained, given that the Adjudicating Authority in the impugned order has held that penalty cannot be imposed under Section 114 A since there is no such evidence of evasion by way of collusion, mis-

statement or suppression of facts etc and since the ingredients to invoke extended period of limitation and for imposing penalty under Section 114A of the Act are identical, extended period of limitation could not have been invoked. Reliance is placed on the decisions in CC Vs. MMK Jewellers, 2008 (225) ELT 3 (SC) and Indo Rama Synthetics (I) Ltd. Vs. CC and CCE, 2021 (378) ELT 446 (Tri. – Mumbai) to contend that the extended period of limitation cannot be invoked when there is a specific finding that there has been no wilful misstatement or suppression of facts.

m) that penalties are not imposable under Section 112 and 114 AA. The appeal filed by the department does not state as to which particulars or declarations made by the Respondent were false or incorrect and therefore penalty is not imposable under Section 114 AA of the Act on the Respondent. Penalty is not imposable on the employees of the Respondent since no differential duty is payable.

n) Penalty is also not to be imposed on the employees since the department has not filed separate appeals against the employees as required under Rule 6 A of the CESTAT procedure Rule and therefore the impugned order in so far as it pertains to the employees of the company must be treated to have attained finality. Reliance is placed on the decisions in CC v. Chokhani Silk Mills Pvt. Ltd., 2013 (290) E.L.T. 710 (Tri. - Mumbai), CC v. Gautam Adani, 2014 (309) E.L.T. 324 (Tri. - Ahmd.),Mohan Govindasami Andal Alagar v. CC(A), 2021 (377) E.L.T. 29 (Ker.) and CCE v. Arihant Micro Computers Pvt. Ltd., 2006 (4) S.T.R. 518 (Tri. - Chennai) affirmed by the Hon'ble Madras High Court in 2009 (237) E.L.T. 663 (Mad.).

o) Likewise, since the department has not filed separate appeals against the vendors in respect of whom the impugned order has dropped the proposal to impose penalties, as required under Rule 6 A (2) of the CESTAT procedure Rules 1982. The impugned order must be held to have finality to that extent.

p) The letter from DRI requesting DGFT not to issue any EODC or not to permit any amendments to the licenses issued to the Respondent may be directed to be withdrawn as illegal.

10. The Ld. Counsel submits that the Order in Original impugned by the Department may be upheld and the Appeal filed by the Department dismissed and the DRI/Customs Department be directed to withdraw their request to DGFT to not issue any EODCs or amendments to the EPCG Authorisations.

11. We have heard the rival submissions, carefully perused the appeal records and the case laws submitted.

12. The issues that arise for our determination are whether the non-inclusion of vendors/non endorsement of vendors in the EPCG licences are violations of conditions of the notification substantive enough to merit a demand of duties foregone on the Respondent and to attract consequential penal and confiscatory liabilities over and above that has been determined in the impugned order.

13. To ascertain the same, on scrutiny of the order in the light of the applicable FTP provisions and the relevant notifications, we find that in para 31 of the impugned order, which is not seen controverted in the grounds of Appeal, the Adjudicating Authority has distilled the conditions common to the notifications governing the EPCG scheme during the relevant period, which are seen listed as under:

    a) Name and address of the supporting manufacturer is required to be endorsed on the Authorisation.
    b) The importer is required to submit an installation certificate of the imported capital goods from jurisdictional Deputy Commissioner of Central Excise or Assistant Commissioner of Central Excise that the capital goods are installed at the factory of the supporting manufacturer.
    c) Further the importer and the supporting manufacturer are required to execute a bond jointly/severally binding themselves to
    d) fulfill the export obligation failing which to pay the duty involved along with interest.

    It is thereafter held that as per para 5.3/5.4 of the FTP for the relevant period, the import of the capital goods under the EPCG Scheme shall be subject to the Actual User Condition till the export obligation is completed.

14. Finding thus, the Adjudicating Authority has gone on to examine the requirement of endorsement of the supporting manufacturers in the corresponding authorisations. Examining the validity of the allegation that the capital goods have been moved to the premises of the vendors without valid endorsements/issue of amendment sheets in the respective licences, it has been found that in respect of ten vendors, the names were already endorsed in eight EPCG licences prior to issue of the subject notice and furnishing details of these licences, it has been held that the demand of duty in respect of these cases do not survive on merits. Thereafter, taking cognizance of the requests dated 22.02.2010, 17.08.2011 and 07.05.2014 of the Respondent for post facto recognition of vendors by the EPCG Committee as well as the reply thereto and tabulating the number of vendors/licences involved in the subject SCN for which post facto recognition/approval has been granted by the EPCG Committee, the adjudicating authority has providing details of these vendors gone on to hold that since the names and addresses of these vendors are already mentioned in the licences by way of issue of amendment sheet, the allegations in the SCN don't survive. After examining the worksheet issued along with the SCN the Adjudicating Authority has furnished details of 9 vendors in respect of whom the SCN has been wrongly issued and has held that only 125 vendors are involved in the SCN. It is pertinent that none of these factual findings in paragraphs 32.1.1 to 32.1.4 have been controverted in the grounds of appeal.

15. The Adjudicating Authority has thereafter proceeded to examine whether the post facto approval obtained from DGFT in regularising the shifting of the goods imported under the EPCG scheme to the premises of the vendors who were not endorsed in the licences at the start of the investigation can be considered as sufficient fulfilment of the requirements of the conditions of the relevant EPCG notifications/EXIM policy and after noting the submissions of the Respondent on the peculiar nature of the automobile industry and the practical impossibility of carrying out all the manufacturing activities by the Respondent in its own premises as well as the various time consuming factors that go into the selection of the vendors, the adjudicating authority has gone on to record the decisions of the EPCG Committee on various dates. Recording the

decisions of the EPCG Committee dated 15.07.2010, 24.08.2011 and the meeting held on 15.04.2014 the decision in respect of which was communicated on 13.06.2014, the adjudicating authority has rendered his findings as under:

" 32.1.8. It is not the case that DGFT was not aware of the lapses of the noticee and it is seen from the reply that nothing was suppressed from the EPCG Committee. It was brought out in the SCN itself that Zonal JDGFT, Chennai was requested not to entertain any application for issuance of EODC/amendments to any of their existing licences, in order to maintain status quo till the completion of the investigation and to prevent M/s. HMIL from obtaining amendments/certificates to suit their needs, which would derail the investigation. It is seen that the noticee themselves have approached the EPCG Committee at different times for post facto approval and for inclusion of the supporting manufacturers in their EPCG licences and the EPCG Committee has accorded permission.

32.1.9. I find from the conditions of the notifications governing the EPCG scheme, relevant provisions of the policy and the decision of the EPCG Committee that the main purpose of the scheme is to ensure fulfilment of the export obligation and in case of non-fulfilment of the same to recover the duty foregone with interest. The conditions of endorsement of the vendors name, installation certificate etc. are all mechanisms aimed to ensure that the substantial condition of export obligation is fulfilled. The EPCG Committee has observed that when the substantial condition of export obligation has been fulfilled, the alleged violation of obtaining prior permission before installation of the machinery in the premises of the vendors is only a technical lapse and has accorded post-facto permission. I find that thee EPCG Committee being the competent authority has ratified the inclusion of vendors by way of according post facto approval and the importer has not suppressed the very same issues which has been raised in the subject show cause notice before the EPCG Committee and therefore, there is all the more reason for accepting the contentions of the importer. Hence I hold that the condition of obtaining endorsement of the vendors in the licence is substantially complied with by way of obtaining post facto approval from the EPCG Committee of DGFT in the case of 116 vendors out of 125 vendors."

16. The Adjudicating Authority has also taken cognizance of the fact that DGFT had advised the Regional Licensing Authority to take action to endorse the name of the supporting manufacturers in the respective authorisations taking into account the locations as verified by DRI and after taking note of the Respondent's contention that after expiry of the 30 days prescribed period in CBEC Circular No.14/2008-Cus dated 26.09.2008 for issuance of installation certificate upon application, the installation certificates shall be deemed to have been granted; the Adjudicating Authority has held that it will be proper for the jurisdictional central excise authorities to issue the installation certificates as requested and that the noncompliance on this account during pendency of proceedings will not invite penal action for the facts stated supra therein.

17. It is pertinent to note that there is no dispute in the SCN that, though the capital goods have been moved from vendor in Tier-I level down to Tier-II or even to Tier-III, the impugned capital goods were sold or transferred or disposed of in any manner not permitted under the FTP or under the customs notifications.

18. Thus, the EPCG Committee, after evidently considering factors such as the large turnover, investment, export potential and peculiar nature of the Automobile Industry and the submissions of the Respondent in this regard, in spite of the request of DRI has gone on to accord post facto approval for the inclusion of the supporting manufacturers in the Respondent's EPCG licence.

19. We find that the Export Import Policy is framed by the Central Government under Section 5 of the Foreign Trade (Development and Regulation) Act, 1992 as amended. The Central Government appoints DGFT as per the provisions of Section 6 of the aforesaid FTDR Act in order to carry out the purposes of this Act. There cannot be any dispute that DGFT is responsible for carrying out the policy. Thus, when DGFT has accorded such post facto approval, it evidently cements the Respondent's contention that the substantial conditions of the EPCG Scheme are that the export obligation is completed and the capital goods satisfy the actual user condition till such time of completion of export obligation. The

remaining conditions of the notifications are only guardrails to ensure the compliance of the main condition of fulfilment of the export obligation.

20. It is seen that in the decision in ***Bhilwara Spinners Ltd v UOI, 2011 (267) ELT 49 (Bom)***, the Hon'ble High Court has held that once the licensing authority has found that the licence conditions have been fulfilled, it would not be open to the customs authorities to contend that the imports under the licence are contrary to law and take action against the licence holder. At this juncture, it is also profitable to notice the observations of a coordinate bench of this Tribunal in the decision in ***Goldfinch Hotels Pvt Ltd v. Commr of Cus. (Acc & Exports),Mumbai, 2015 (328) ELT 282 (Tri-Mumbai)***, wherein it has been stated as under:

> "25. It is settled law as held by the Hon'ble Supreme Court in *Vadilal Chemicals Ltd. v. State of Andhra Pradesh*, 2005 (192) E.L.T. 33 (S.C.) that the State, which is represented by the Departments, can only speak with one voice. The Hon'ble Supreme Court observed thus -
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> > "23. There is another reason why the action of the DCCT cannot be upheld. The primary facts relating to the processes undertaken by the appellant at its unit were known to the Department of Industries and Commerce and the DCCT. The only question was what was the proper conclusion to be drawn from these. ***The Department of Industries and Commerce which was responsible for the issuance of the 1993 G.O. accepted the appellant as an eligible industry for the benefits. Apart from the fact that it can be assumed that the Department of Industries was in the best position to construe its own order, we can also assume that in framing the scheme and granting eligibility to the appellant all the Departments of the State Government involved in the process had been duly consulted. The State, which is represented by the Departments, can only speak with one voice. Having regard to the language of the 1993 G.O. it was the view expressed by the Department of Industries which must be taken to be that voice.***"

We find that in the case in hand different yardsticks are being applied by two different wings of the Central Government. The Central Government through Ministry of Commerce has notified the Foreign Trade Policy under the provisions of FTDR Act, 1992, which confers the right of beneficial exemption from payment of Customs duty on fulfilment of conditions mentioned therein, and upon following the

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

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

It is evident from the above provision of the FTP issued by Central Government by way of a Notification in the Official Gazette, that an exporter or importer or any licensing or any other competent authority (which shall necessarily include the officers of Ministry of Finance/Customs Authorities), would be bound by the procedure specified by DGFT for implementing the provisions of FT (D&R) Act, the Rules, the Orders made thereunder and FTP, published by means of a Public Notice. Thus all procedural aspects whether or not notified by the Ministry of Finance, if contrary to what is specified in Public Notice/Handbook of Procedure, would give way to those specified in the Public Notice. The obvious reason for such a provision in the FTP is that the benefits conferred and promised under the FTP issued under FTDR Act cannot be denied either in view of the absence of any Notification or any contrary or ambiguous Notification or Circular issued under the Customs Act, 1962. **If the Central Government in its wisdom introduces a beneficial scheme or provision under the FTDR Act, the benefit of such legislation are to be made available by another Department of Central Government namely the Customs Department for which purpose Notifications and Circulars are issued under the Customs Act, 1962. Neither such Notifications and Circulars can be interpreted to**

take away the benefit which is otherwise available under the FTP and HBP, nor any further clarification or instructions may be insisted by the Customs Department, when the provisions of the FTP and HBP mandate grant of such benefit. In *M Far Hotels Limited v. Union of India*, 2011 (270) E.L.T. 158 (Ker. HC), despite there being absence of any Notification under the Customs Act to confer the benefit of duty credit otherwise permissible as per the DGFT, the Hon'ble Kerala High Court was pleased to observe that -

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

21. We are therefore of the considered view that the Adjudicating Authority, upon finding that in the subject case there is no allegation of non-fulfilment of export obligation and further the Respondent has stated that they have fulfilled the export obligation and have applied to the RLAs for EODC and all the impugned capital goods continue to remain in rightful ownership of the Respondent despite being installed in various vendor's premises; has thereafter rightly held that when there is no allegation about non-fulfilment of the two substantial conditions of the Notifications/EPCG Scheme viz., completion of the export obligation and non-alienation of the capital goods, the demand for duty cannot be legally sustained. We find the reliance placed by the Respondent on the decisions ***in Dewas Soya Ltd v UOI, 2009 (235) ELT 821*** maintained in *Union of India v. Dewas Soya Limited - 2011 (270) E.L.T. A39 (S.C.)* and ***Ashok Leyland Ltd v Commissioner of Customs, Chennai IV,***

2023 (12) TMI 8-CESTAT CHENNAI, Regency Ceramics Ltd v CC, 2018 (363) ELT 293 (Tri-Chennai), appropriate in this context.

22. Furthermore, the Adjudicating Authority has also taken cognizance of the fact that on an earlier occasion, when the identical issue was raised by DRI in respect of 7 EPCG Licences, and in which instances too the Respondent had approached the EPCG Committee who had permitted post-facto approval for endorsing the names of the supporting manufacturers in the EPCG Licences, the then Chief Commissioner of Customs vide his order dated 25.10.2000 has, interalia, held that the major objective is exports and non-alienation of imported goods is only a means to ensure reaching of this objective, that being the authors of the scheme, the Licensing Authorities have every right to condone or regularise post facto any procedural violation as has been done in that case and further that to hold a view to the contrary, will be an attempt to frustrate the scheme itself. The Adjudicating Authority has found that the Chief Commissioner had dropped the proceedings in that case and also noted that the order of the Chief Commissioner has been accepted by the Department. The Adjudicating Authority has further found that in the instant case the documentary evidence submitted by the Respondent regarding the movement of goods is under proper excise procedure and therefore it cannot be said that the removals/shiftings were clandestine in nature. It was further found by the Adjudicating Authority that when the Department has accepted the decision of the DGFT that endorsement of the names of the supporting manufacturers could be ratified by expost facto sanction and such ratification would cure the initial violation of the condition of the EPCG Notification, he could not take a different stand in the instant case since the DGFT- EPCG Committee has permitted the ex-post facto amendment of the EPCG licences to include the name of various vendors.

23. We also notice that as regards the cases where post-facto approvals have not been obtained by the Respondent, the Adjudicating Authority upon finding that the time limit in the licences to comply with the substantive conditions of fulfilment of the export obligation having not expired and further taking note of the fact that the Respondent has produced evidence of having submitted the proof of completion of export obligation

before the Regional Licensing Authority has held that it is premature to make demands in respect of the capital goods in the premises of the 12 vendors as listed in the impugned order. Out of the four vendors where the Respondent has failed to obtain approval for the correct premises and where the goods were found to be in use , in respect of one vendor pertaining to the EPCG License No.430004769 dated 16.03.2007 finding that the export obligation period having expired, the adjudicating authority has held the duty demand sustainable. In respect of capital goods valued at Rs.5,73,50,978/- imported under the licences and available at the time of investigation in the premises of 16 vendors which were not authorised in those licences the adjudicating authority has finding that no prohibition is involved in respect of the goods in issue held that Section 111(d) is not applicable but nevertheless found them liable for confiscation under Section 111(o) and had given the Respondent an opportunity to redeem the goods on payment of redemption fine of Rupees ten lakhs only under Section 125 of the Customs Act which was found to be sufficient to meet the ends of justice.

24. We find that penalties have also been imposed by the adjudicating authority in this regard under Section 112 on the Respondent and two of its employees which have been paid up to secure closure to the issue. Further the employees have not preferred any appeal against the penalties imposed. We find that the adjudicating authority has rightly refrained from imposing penalties on the vendors and other employees against whom the SCN has sought imposition of penalty and has provided adequate justification in the impugned order. That apart, it is noticed that SCN itself in para 127.4 states that in order to find out the role of the person/employee of the Respondent and to pinpoint the penal and liability of the Respondent/its employees it is necessary that all the persons who were at the helm of affairs at that point in time need to be examined before drawing a conclusion. Hence further action is not possible at this stage. When the inconclusiveness of the investigation is stated thus, there does not arise a question of imposing penalties on the employees. As regards the allegations in the SCN regarding alleged collusion of the Respondent with the vendors pertaining to leave and licence agreement, we find that the SCN itself, apart from a bland statement about a detailed study undertaken and observation that it is not a prudent business on the

part of the Respondent, has not elaborated on the details of the said study.

25. We are therefore of the firm opinion that the Adjudicating Authority has rightly rendered a categorical finding that the SCN has not brought out clearly any case of the Respondent making any intentional declaration/statement/document which is false or incorrect in any material particular under the Act and has rightly refrained from imposing penalty on the Respondent under Section 114AA. That apart, we also notice that the Department has not preferred any separate appeals against the vendors as well as the employees on whom the Adjudicating Authority has refrained from imposing penalty, as was required under the CESTAT (Procedure) Rules, 1982.

26. In the cross objections the Respondent has taken a plea against invoking of the extended period of limitation. We find that in the instant case the Respondent is stated to have cleared the goods under Bond. In such cases of clearance under Bond, when the Respondent fails to obtain the Export Obligation Discharge Certificate from the DGFT, the Department can issue the SCN at that point in time as the Respondent is bound by the terms of the obligation under the Bond which is live and hence the said contention is without merits. As regards the plea of the respondent that the DRI may be directed to withdraw their request to DGFT, we find that the Hon'ble Gujarat High Court, in ***Krishna Trading Co v ADGFT, 2016 (336) ELT 449 (Guj)*** has, holding the DGFT authorities as independent authorities constituted under the FTDR Act, 1992, exhorted them to decide the applications of the petitioners therein independently without in any manner being swayed by any instructions issued by DRI. We also notice that by granting expost facto approval, the DGFT Authorities have shown that they are not influenced or bound by the requests/instructions of DRI. Therefore, we do not find any necessity for any directions in this regard from our end.

27. In the wake of our discussions above appreciating the facts and circumstances as well as the position in law, we do not find any palpable error in the order impugned that would warrant our intervention. We find that in the imposition of penalties and fines too the adjudicating authority

has exercised his discretion judiciously. Given that the adjudicating authority has passed a well-reasoned order that warrants no interference, we uphold the impugned order in original *in toto*. The cross objections are also disposed of in the above terms.

The appeal preferred by the Revenue is dismissed as devoid of merits. The Respondent is entitled to consequential relief(s) in law, if any.

(Order pronounced in open court on 16.12.2025)

(AJAYAN T.V.)
MEMBER (JUDICIAL)

(M. AJIT KUMAR)
MEMBER (TECHNICAL)

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