

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

REGIONAL BENCH – COURT NO. I

Customs Appeal No. 40309 of 2023

(Arising out of Order-in-Original No.TUT-CUSTOM-PRV-COM-20/2023, dated 13.03.2023 passed by the
Commissioner of Customs, Custom House, New Harbour Estate, Tuticorin 628 004)

M/s. MKS Shipping Agencies Pvt. Ltd.
26 C/1A Kamaraj Nagar
Tuticorin 628 008

.....Appellant

Versus

Commissioner of Customs
Custom House
New Harbour Estate
Tuticorin 628 004

...Respondent

APPEARANCE:

Shri K S Murugan, Authorised Signatory/Director for the Appellant
Shri N. Satyanarayana, Authorised Representative for the Respondent

Customs Appeal No. 40310 of 2023

(Arising out of Order-in-Original No.TUT-CUSTOM-PRV-COM-20/2023, dated 13.03.2023 passed by the
Commissioner of Customs, Custom House, New Harbour Estate, Tuticorin 628 004)

M/s. Green Port Shipping Agencies
26 E/ 7 A Kamaraj Nagar
Tuticorin 628 008

.....Appellant

Versus

Commissioner of Customs
Custom House
New Harbour Estate
Tuticorin 628 004

...Respondent

APPEARANCE:

Shri K S Murugan, Authorised Signatory/Director for the Appellant
Shri N. Satyanarayana, Authorised Representative for the Respondent

Customs Appeal No. 40311 of 2023

(Arising out of Order-in-Original No.TUT-CUSTOM-PRV-COM-20/2023, dated 13.03.2023 passed by the
Commissioner of Customs, Custom House, New Harbour Estate, Tuticorin 628 004)

Mr. K.S.Murugan
26 C/1A Kamaraj Nagar
Tuticorin 628 008

.....Appellant

Versus

Commissioner of Customs
Custom House
New Harbour Estate
Tuticorin 628 004

...Respondent

APPEARANCE:

Shri K S Murugan, Party in Person for the Appellant
Shri N. Satyanarayana, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. AJAYAN T.V, MEMBER (JUDICIAL)

FINAL ORDER Nos.41493-41495/2025

DATE OF HEARING: 17.12.2025
DATE OF DECISION: 17.12.2025

Per Mr. Ajayan T.V.

Since these three appeals are inter-connected and arising out of the same impugned order in original they are being heard together and are disposed of by this common order.

2. Brief facts are that M/s. Gaunir Impex Pvt. Ltd. , an importer of fabrics, as well as the appellants herein, pursuant to a DRI investigation, were issued an SCN dated 23.08.2012 whereby M/s. Gaunir Impex Pvt Ltd was required to show cause as to why the classification of fabrics imported by them under BE No.3176142 dated 11.04.2011 should not be redetermined and the exemption availed under notification no. 26/2000 (Cus) dated 01.03.2000 for the goods covered under B.E.No.3176142 and BE No.3177255, both dated 11.04.2011, should not be denied and the duty quantified demanded with proposals for confiscation of the goods seized as well as proposals for imposition of penalties. It was alleged therein that Shri. Murugan K.S. had abetted the said acts of the importer by facilitating exports of Chinese origin polyester knitted fabrics through his firm M/s. Green Port Shipping Agencies and by undertaking customs clearance of the imported goods through his CHA firm M/s. M. K. Shipping Agencies Pvt Ltd, thereby rendering himself and both the firms liable for penalties and the said appellants were required to show cause as to why penalties should not be imposed on them for the offences alleged against them. After due process of law, the Adjudicating Authority vide Order-in-Original TUT-CUSTOM-PRV-COM-20/2023 dated 13.03.2023 confirmed the proposals in the SCN demanding duty, penalties etc on M/s. Gaunir Impex Pvt Ltd as well as penalties on the appellants herein under provisions of Section 112 as specified therein. Aggrieved, the appellants herein, having preferred these appeals are before this Tribunal.

3. Shri K S Murugan, appearing in person for himself and representing on behalf of the other two appellants submitted that the impugned order in original which was the subject matter of the Customs Appeal No.40302 and 40303 of 2023 preferred by the main importer M/s. Gaunir Impex Pvt Ltd and Mr. Niren C. Ajmera, was already decided by Final Order No.40398 – 40399 / 2025 dated 27.03.2025 where by the impugned order was set aside and the appeals were allowed on limitation. He further submitted that since the order has been set aside on limitation, there does not arise any necessity to render any findings on merits and places reliance on the Final Order No.41425/2025 dated 04.12.2025 of this Tribunal rendered in the case of M/s. Jocil Ltd v. Commissioner of Customs. He prays that the appeals be allowed.
4. Smt. O.M.Reena, the Ld. Authorised Representative, appearing for the Respondent has agreed that the order in original impugned in the present appeals has already been set aside by Final Order No.40398 – 40399 of 2025 dated 27.03.2025 on limitation.
5. This Tribunal finds that, as rightly contended by Shri KS Murugan, a Division Bench of the Chennai bench of this Tribunal has in the **Final Order No.40398 – 40399 / 2025 dated 27.03.2025 while deciding the Customs Appeal No.40303 of 2023 preferred by M/s. Gaunir Impex Pvt Ltd along with Customs Appeal No.40302 of 2023 preferred by Mr. Niren C Ajmera, arising out of Order in Original TUT-CUSTOM-PRV-COM-20/2023 DATED 13.03.2023** passed by the Commissioner of Customs, Custom House, Tuticorin, has rendered a finding that Revenue did not satisfy the tests laid down by the Hon'ble Apex Court in Nizam Sugar Factory and other cases insofar as the invoking of the larger period of limitation is concerned and therefore the impugned order is set aside and the appeals are allowed on limitation. The relevant portions of the said decision are as under:

“4. From the records / documents placed on record, we find that the D.R.I accordingly issued SCN under Section 28 and 124 of the Customs Act, 1962 (dt. 23.08.2012) to (1) M/s.Gaunir Impex Pvt. Ltd. (2) Shri Niren Champaklal Ajmera (3) M/s.Green Port Shipping Agencies (4) M/s.MKS Shipping Agencies Pvt. Ltd. and (5) Shri Murugan K.S.

5. From the text of the above SCN, we find references to very same Bills of Entry, it appears that there was a request for re-test by Shri Niren Ajmera for which samples were drawn and sent to Textile Committee, Chennai, the outcome of which is as per the Table at para-3 of the SCN. The Authority has referred that in respect of test reports by 2 different authorities retesting was done through Central Revenue Control Lab (CRCL), New Delhi whose report dt. 26.07.2012 is placed at Annexure III. Apart from this, we find references to 13 Shipping Bills / 13 Bills of Entry, statements of Murugan, P. Prabakar Soundararaj, Manager of All India Chamber of Commerce and Industries, Tuticorin and that of Shri Niren Ajmera and finally it was proposed (i) to reclassify the Fabric in question as RITC 54079200 in respect of one Bill of Entry No. 3176142 (ii) deny exemption under Notification No.26/2000 (*supra*) for the Bills of Entry Nos.3176142, 3177255 and raise consequential demand under Section 28 (4) *ibid.* (iii) as to why fabrics seized (Bills of Entry No.3176142 and 3177255) should not be confiscated under Section 111 (o) *ibid* apart from penalty under Section 112 (a) (ii) *ibid* and under Section 114A *ibid.* The Director, Shri Niren Champaklal Ajmera was put on notice as to why penalty should not be imposed on him under Section 112(a) (ii) and Section 114AA *ibid.*

6. M/s.GPSA, Tuticorin was put on notice as to why penalty should not be imposed under Section 112 (a) (ii) *ibid* and M/s.MKS Shipping Agencies, Tuticorin under Section 112 (b) (ii) and Shri Murugan K.S., Partner of GPSA under Section 112 and 114AA *ibid.*

7. From the record, we do not see any Adjudication Order insofar as even the above SCNs are concerned, but however, vide another SCN dt. 11.01.2013 issued under Section 28 and 124 *ibid*, the Commissioner of Customs based on the very same allegations, proposed reclassification of the Fabric imported under 11 Bills of Entry mentioned in **TABLE-A** of the said notice as RITC 54079200, denial of exemption claimed under Notification No.26/2000 [*supra*], duty demand in respect of the same Bills of Entry, the appropriation of amount paid towards above demand, proposing confiscation of goods covered under the above 11 Bills of Entry under Section 111 (o) and penalty under Section 112 (a) (ii) and 114A *ibid* in respect of M/s.Gaunir Impex and in respect of the Director, Shri Niren Ajmera, M/s.GPSA, M/s.MKS Shipping Agencies, and Shri Murugan.K.S., proposals were repeated as in the other SCN. Interestingly, at para 43 of the above SCN, the Commissioner had given a period of 30 days for reply to be filed by the noticees.

8. From the documents and also from the impugned order, we find that the Adjudicating Authority has acknowledged and also captured, in brief, the contentions of all the notices from para-42 onwards of the OIO and in the findings at paragraph 43.1, the observation of the Adjudicating Authority reads as under :

"43.1 Two Show Cause Notices one dated-23.08.2012 was issued by ADG, DRI, CZU, Chennai in file C.No.VIII/48/51/2011- DRI TTN for Two Bills of Entry No.3176142 and 3177255 both dated-11.04.2011 and other one was issued by the Commissioner of Customs, Custom House, Tuticorin vide C.No.VIII/10/72/2011-Adjn. Dated 11.01.2013 for Eleven (11) Bills of Entry for the past clearances as detailed in Annexure-A of the SCN. The issue is same in both the SCNs, the only difference is period of Bills of Entry. Based on the similar issue in both the SCNs, I have taken up both the Show Cause Notices together for adjudication."

From the above, there is clearly an admission as to the issuance of SCNs dt. 23.08.2012 and 11.01.2013, although for different Bills of Entry, there is no deniable of the fact that all the samples were tested and the Chemical Examiner's reports are available in respect of the goods covered in all these Bills of Entry. In this regard, the observation in the DN dt.03.05.2011 [*supra*] at paragraph 2.8 is most relevant wherein the Revenue through the Authority has relied on Circular No.23/2004 [*supra*] which clarifies that the test reports would be valid for a period of 6 months.

9. The cumulative reading of all the SCNs as duly acknowledged are at para 43.1 of the OIO clearly indicates that the Revenue was aware of the alleged modus operandi, the test reports were also used in all the SCNs, which clearly forbids the Revenue from claiming unearthing of new fact for issuance of a SCN by invoking the larger period of limitation. At this juncture, we deem it appropriate to refer to the following decisions of the Hon'ble Apex Court which are relied upon by the appellant :

- (1) P & B Pharmaceuticals (P) Ltd. Vs CCE**
2003 (153) ELT 14 (SC)
- (2) ECE industries Vs CCE New Delhi**
2004 (164) ELT 236 (SC)
- (3) Hyderabad Polymers Vs CCE Hyderabad**
2004 (166) ELT 151 (SC)

(4) Nizam Sugar Factory Vs CCE, A.P.

2006 (197) ELT 465 (SC)

(5) Commissioner of Customs, Calcutta Vs G.C Jain

2011 (269) ELT 307 (SC)

The ratio in **Nizam Sugar Factory** [*supra*] following various other decisions of the Hon'ble Apex Court itself, reads as under :-

"9. Allegation of suppression of facts against the appellant cannot be sustained. When the first SCN was issued all the relevant facts were in the knowledge of the authorities. Later on, while issuing the second and third show cause notices the same/similar facts could not be taken as suppression of facts on the part of the assessee as these facts were already in the knowledge of the authorities. We agree with the view taken in the aforesaid judgments and respectfully following the same, hold that there was no suppression of facts on the part of the assessee/appellant."

10. *Per contra*, it is the case of the Revenue through the Ld. Commissioner / A.R that the above contention of the appellant is not tenable since the extended period was invoked for misdeclaring the country of origin of the exported goods with fraudulent country of origin certificate and in this regard, he has placed reliance on **Munjil Showa Ltd. Vs CC & C.EX., Delhi** - 2022 (382) ELT 145 (SC) wherein, according to the Ld. Commissioner, it is held that fraud vitiates everything and department is justified in invoking extended period of limitation.

11. It was further submitted by the Commissioner that the arguments of the appellant with regard to the withdrawal of the demand notice dated 03.05.2011 ostensibly issued alleging misclassification could not be withdrawn, is not tenable since new facts had emerged in the investigation conducted by DRI wherein, fraudulent imports and modus operandi came to the light. Insofar as the arguments as to not providing opportunity to cross examine is concerned, the same was contended to be proper and justified by the Commissioner, by referring to the findings at para 49(vii) of the Order-in-Original.

12. We have very meticulously considered the arguments of the rival parties in the context of the facts as brought out in all the show cause notices and the contentions of the rival parties. The arguments and counter arguments with regard to the issuance of demand notice dated 03.05.2011 and the withdrawal of the same could be examined from a

different angle; we have already extracted in the earlier paragraphs of this order that *vide* Order-in-Original dated 28.02.2012, the Commissioner of Customs had ordered the extension of period of limitation by six months as proposed in the SCN and accordingly, in strict compliance thereto, Department did issue another SCN under Section 28 and 124 of the Customs Act. There is no dispute that the said notice is issued just before the expiry of six months. The time limit extended by the Commissioner having been honoured, the only course available was to adjudicate at least this second SCN, but however, the issuance of another show cause notice after the extended six months period, by violating the Commissioner's OIO has been questioned since this SCN is apparently issued by invoking the extended period of limitation. The arguments of the appellant is that the extension provided by the Order-in-Original [*supra*] was for issuing SCN and nothing else and once the SCN having been issued, the Revenue could not have assumed jurisdiction once again, that too after the expiry of permitted six months by treating directions in the said OIO as an endless permission, which is not permissible under the Statute. This even we cannot accept since the said notice which came to be adjudicated per impugned Order-in-Original was issued clearly after the artificially permitted extension of time and hence, the very foundation itself is not proper.

13. Though arguments were advanced on merits as well, we do not find it necessary to get into the same since we are satisfied that the Revenue did not satisfy the tests laid down by the Hon'ble Apex Court in **Nizam Sugar Factory** [*supra*] and other cases insofar as the invoking of the larger period of limitation is concerned.

14. We therefore set aside the impugned order and allow the appeals on limitation."

6. This Tribunal finds that since the Division Bench has already set aside the Order in Original impugned in the present appeals, by the aforesaid Final Order, on limitation, nothing survives for decision in these Appeals as these Appeals too are to be allowed on limitation following the binding Division Bench order aforesaid. The reliance placed by Shri. K.S. Murugan on the **Final Order No.41425/2025 dated 04.12.2025 of this Tribunal rendered in the case of M/s. Jocil Ltd v. Commissioner of Customs** is also appropriate as this Tribunal has held therein that once it is held in favour of the appellant on limitation, it would be outside the jurisdiction of

the Tribunal to enter into the merits of the dispute as per the dicta of Higher Judicial Fora as cited therein.

7. In view of the discussions above, since the Order in Original impugned in the appeals herein, is already found set aside as noticed above, this Tribunal holds that the present appeals are also liable to be allowed. Ordered accordingly.

The appeals are allowed with consequential relief (s) in law, if any.

(Order dictated and pronounced in open court)

(AJAYAN T.V.)
Member (Judicial)

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