

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

Customs Appeal No. 41655 of 2016

(Arising out of Order in Appeal No. 71/2016-TTN (CUS) dated 2.6.2016 passed by the Commissioner of Central Excise (Appeals – II), Trichy)

M/s. Jothi Art Calendars

Old No. 38C, New No. 44/1
Velayutham Road
Sivakasi – 626 123.

Appellant

Vs.

Commissioner of Customs

Custom House
New Harbour Estate
Tuticorin – 628 004.

Respondent

APPEARANCE:

Shri Madan G, Advocate for the Appellant

Shri N. Satyanarayanan, Authorised Representative for the Respondent

CORAM

Hon'ble Shri M. Ajit Kumar, Member (Technical)

FINAL ORDER NO. 40613/2026

Date of Hearing: 27.04.2026

Date of Decision: 27.05.2026

"It can never be forgotten that as the great ocean has only one test, the test of salt, so does justice has one flavour, the flavour of answering to the distress of the people without any discrimination. . . . Not for nothing it has been said that sun rises and sun sets, light and darkness, winter and spring come and go, even the course of time is playful but truth remains and sparkles when justice is done."

- *Hon'ble Supreme Court in Dharam Pal Vs. State of Haryana and Ors., - (2016) 4 SCC 160*

This appeal challenges Order-in-Appeal No. 71/2016-TTN (CUS) dated 02.06.2016 passed by the Commissioner of Customs (Appeals-II), Trichy, (impugned order).

An *aperçu* of the facts.

2. The appellant imported one Mitsubishi Sheet Fed Offset Printing Press under the EPCG Scheme vide Bill of Entry No. 422779 dated 31.10.2007 at concessional duty. Under the EPCG Scheme and Notification No. 97/2004-Cus dated 17.09.2004, the appellant was required to discharge export obligation equal to eight times the duty saved, with 50% to be fulfilled in the first block of six years and the balance in the next two years. The total duty saved was Rs.71,60,400/- . DRI who investigated the matter, alleged that the appellant failed to fulfil 50% of the export obligation during the first block period and did not obtain extension of time from the competent authority. Accordingly, a show cause notice was issued demanding differential duty of Rs.22,17,580/-, being 50% of the duty foregone, under Section 143 of the Customs Act, 1962, along with applicable interest. The adjudicating authority confiscated the imported machine, denied the exemption, confirmed the duty and interest demand, and imposed a penalty of Rs.25,000/-. The Commissioner (Appeals) vide the impugned order, upheld that OIO, leading to the present appeal.

3. Shri Madan G, learned Advocate, appeared for the appellant, and Shri N. Satyanarayanan, learned Authorized Representative, appeared for the respondent.

Submissions made by the appellant

3.1 The learned counsel for the appellant submitted as follows:

A. The appellant imported the printing press under a valid EPCG licence at 5% customs duty, subject to export obligation of eight times the duty saved. The export obligation could not be fully met due to severe market competition and the global economic recession.

B. On being informed by DRI of the shortfall, the appellant paid Rs.10,00,000/- immediately and the balance Rs.12,17,580/- on 08.12.2014, thereby discharging the entire differential duty, which has been appropriated in the OIO. Interest of Rs.23,68,826/- was also paid on 23.12.2015, vide challan No 71293, before issue of OIO.

C. A show cause notice dated 22.05.2015 was issued alleging suppression, followed by the order dated 12.10.2015 confirming the proposals.

D. Mere non-fulfilment of export obligation does not justify confiscation or penalty, particularly where there is no diversion or misuse of the imported capital goods. Reliance was placed on Commissioner of Customs v. Sun Knit Wear Pvt. Ltd. [2012 (278) ELT 165 (Kar.)], Fal Industries Ltd. Vs CC, Chennai [2003 (159) ELT 215 (Tri.-Chennai)] and [2008 (231) ELT 524 (Tri.-Chennai)], P.D. Associates [2023 (8) TMI 560 - CESTAT Kolkata], Yenkey Medico Drugs Pvt. Ltd. [2022 (6) TMI 558 - CESTAT Mumbai], BR Marbled Pvt. Ltd. (Final Order No. 76636/2023 dated 11.09.2023), Global Boards Ltd. [2019 (368) ELT 1113 (Tri.-Mumbai)], Neol Architect Ltd. [2011 (273) ELT 306 (Tri.)], and Dencap Electronics Pvt. Ltd. [2006 (194) ELT 389 (Del.)].

E. It was further argued that where duty and interest are paid, the goods go out of the EPCG scheme, and confiscation, redemption fine, and penalty are unsustainable.

F. Relying on Jaswal Neco Ltd. [2015 (322) ELT 561 (SC)] and South India Corporation Agencies Pvt. Ltd. Vs CC, Trichy [2009 (244) ELT 581 (Tri.-Chennai)], affirmed in 2014 (306) ELT A144 (Mad.), the

appellant contended that penalty is not warranted where there is no deliberate breach or diversion to the domestic tariff area.

G. The appellant also contended that the Commissioner (Appeals) passed a non-speaking order by merely reproducing the original order and dismissing the case law cited by the appellant without proper reasoning, contrary to the principle laid down in Siemens Engineering & Mfg. Co. Ltd. Vs Union of India, AIR 1976 SC 1785.

H. In view of the above, the appellant prays that this Hon'ble Tribunal may set aside the confiscation of goods, fine and penalty and allow the appeal.

Submissions made by the Respondent-Revenue

3.2 Shri N. Satyanarayanan Ld. Authorized Representative, appearing on behalf of Revenue submitted that:

A) The appellant availed concessional duty under the EPCG Scheme and was required to fulfill the prescribed export obligation within the stipulated period under the Foreign Trade Policy and Notification No. 97/2004-Cus.

B) Since the appellant failed to meet the export obligation and did not comply with the timelines for submission of proof or payment of differential duty with interest, they were not entitled to the notification benefit.

C) It was further submitted that this violation rendered the goods liable to confiscation under Section 111(o) of the Customs Act, 1962, and also attracted penalty under Section 112.

D) The plea of adverse market conditions and prior payment of duty with interest was stated to be unacceptable, as the notification conditions were mandatory and had not been complied with.

E) Accordingly, the adjudicating authority was justified in demanding duty foregone with interest, fine, and penalty, and the appeal deserves to be rejected.

Analysis

4. I have heard the parties to the dispute and have perused the appeal memorandum.

5. I find that the appellant imported capital goods under EPCG scheme and could not fulfil the export obligation within the stipulated period. However, the entire differential duty along with applicable interest stands admittedly paid, on the same being pointed out by DRI.

6. The issue for consideration is whether, in such circumstances, confiscation of goods and imposition of penalty are sustainable. It is well settled that upon payment of duty and interest, the appellant exits the EPCG scheme and the goods cannot be held liable to confiscation under Section 111(o). Non-fulfilment of export obligation, in the absence of diversion or misuse, does not ipso facto warrant penal consequences.

7. Considering the inherent uncertainties of business, including adverse market conditions and economic downturn, failure to fulfill export obligation cannot be equated with deliberate violation. Failure in business is not uncommon and cannot be stigmatised. In such cases, a department which prides itself on being a trade facilitator, resorting to harsh measures like confiscation and penalty without any allegation of willful evasion and for merely not fulfilling export obligation is shocking, unwarranted and ought to have been avoided.

8. The Apex Court in **Hindustan Steel Ltd Vs State Of Orissa** [AIR 1970 SUPREME COURT 253, 1970 (1) SCR 753], examined the imposition of penalty on a technical or venial breach of the provisions of a statute and held as under:

“An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. **Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances.**”

(emphasis added)

8. In view of the above and following the settled legal position, the confiscation of goods along with fine and imposition of penalty are set aside. The demand of duty has been discharged with interest as per the Appeal Memorandum and has not been disputed by Revenue, hence no further action survives.

9. Accordingly, the impugned order is partly set aside to the above extent. The appellant is eligible for consequential relief, as per law. The appeal is disposed of accordingly.

(Order pronounced in open court on 27.05.2026)

Sd/-
(**M. AJIT KUMAR**)
Member (Technical)

Rex