

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

REGIONAL BENCH – COURT No. III

1. Customs Appeal No. 42158 of 2016

(Arising out of Order-in-Original No. 14/2016 dated 12.08.2016 passed by Commissioner of Customs, Custom House, Tuticorin – 628 004)

M/s. Alamelu Balaji Spinning Mills Pvt. Ltd.

Uthupalayam,
Kanjapalli Post,
Annur – 641 653.

...Appellant

Versus

Commissioner of Customs

Tuticorin Commissionerate,
Custom House,
Tuticorin – 628 004.

...Respondent

With

2. Customs Appeal No. 42010/2016 (Mr. R. Saravanan)
3. Customs Appeal No. 42011/2016 (Mr. S. Kishore)
4. Customs Appeal No. 42050/2016 (Mr. R. Saravanan)
5. Customs Appeal No. 42051/2016 (Mr. S. Kishore)
6. Customs Appeal No. 42157/2016 (M/s. Kaytee Corporation Pvt. Ltd.)
7. Customs Appeal No. 42159/2016 (Mr. R.V. Sathish Kumar)
8. Customs Appeal No. 42161/2016 (M/s. Shri Ramalinga Mills Ltd.)
9. Customs Appeal No. 42164/2016 (M/s. Damodhar Industries Ltd.)
10. Customs Appeal No. 42177/2016 (M/s. Nagereeka Exports Ltd.)
11. Customs Appeal No. 42181/2016 (M/s. Gainup Industries Pvt. Ltd.)
12. Customs Appeal No. 42182/2016 (M/s. Anangoor Textile Mills Pvt. Ltd.)
13. Customs Appeal No. 42256/2016 (M/s. Avaneetha Textile Mills Pvt. Ltd.)
14. Customs Appeal No. 42362/2016 (M/s. P.V. Spinning Mills Pvt. Ltd.)
15. Customs Appeal No. 42421/2016 (M/s. Art Yarn Exports India Private Ltd.)
16. Customs Appeal No. 40525/2018 (Mr. K.P. Karunamoorthy, Director, P.V. Spinning Mills India P. Ltd.)

APPEARANCE:

For the Appellants : Mr. S. Renganathan, Advocate (For Sl.Nos. 1-5, 7, 8, 14&16)
Mr. A.K. Jayaraj, Advocate (For Sl.Nos. 11&12)
Mr. M.N. Bharathi, Advocate (For Sl.Nos. 6, 10&13)
Ms. M.B. Divya, Advocate (For Sl.Nos. 9&15)

For the Respondent : Mr. Anoop Singh, Authorised Representative

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER Nos. 40635-40650 / 2026

DATE OF HEARING : 08.12.2025
DATE OF DECISION : 29.05.2026

Per Mr. VASA SESHAGIRI RAO

The present batch of sixteen appeals arises out of two separate Orders-in-Original, namely Order-in-Original No.13/2016 dated 04.08.2016 issued on 11.08.2016 in the case of M/s. P.V. Spinning Mills India (P) Ltd. ("PVSM") and Order-in-Original No.14/2016 dated 12.08.2016 in the case of M/s. Alamelu Balaji Spinning Mills (P) Ltd. ("ABSM"), both passed by the Commissioner of Customs, Tuticorin and hereinafter referred to as "Impugned Order No.1" and "Impugned Order No.2" respectively. The proceedings in both matters arise out of common investigations conducted by the Directorate of Revenue Intelligence alleging fraudulent discharge of export obligations under the EPCG Scheme through use of third-party shipping bills obtained from unrelated exporters on commission basis. The investigations alleged that the EPCG licence holders, after availing concessional duty benefit under Notifications No.97/2004-Cus. and 103/2009-Cus. against various EPCG licences issued by JDGFT, Coimbatore, projected exports of unrelated third-party exporters before DGFT for obtaining Export Obligation Discharge Certificates (EODCs), though the exports allegedly lacked nexus with the imported/procured

capital goods. It was further alleged that EPCG endorsements were subsequently inserted in quadruplicate EP copies of shipping bills though such endorsements were absent in the Original, Duplicate and Triplicate Customs copies filed at the time of export.

1.2 In Impugned Order No.1 relating to PVSM, the adjudicating authority denied EPCG benefits, rejected the EODCs, confirmed customs and central excise duty demands together with applicable interest, ordered confiscation of imported and indigenously procured capital goods and imposed penalties upon the EPCG licence holder, its Directors, consultants and various third-party exporters and associated persons. Similarly, in Impugned Order No.2 relating to ABSM, the adjudicating authority held that export obligations under three EPCG licences had been shown as fulfilled through unrelated third-party exports lacking nexus with the imported capital goods and consequently confirmed differential customs duty with interest, ordered confiscation of capital goods with option for redemption on payment of fine and imposed penalties upon the importer, its Directors, consultants and connected third-party exporters/persons.

The details of the EPCG Licences and the duty foregone in respect of PVSM is as in the table below: -

Sl. No.	EPCG Licence No. & Date	Bill of Entry No. & Date	Assessable Value (Rs.)	Duty Involved (Rs.)
1	3230009062 dated 09.02.2007	B/E No.406911 dated 08.03.2007	1,97,76,558	44,98,355
2	3230014306 dated 19.01.2010	B/E No.533 dated 27.07.2010	89,04,842	15,89,605
3	3230016822 dated 01.06.2011	B/E No.3754772 dated 10.06.2011	1,00,36,723	17,91,658
4	3230018441 dated 26.10.2012	B/E No.9754084 dated 03.04.2013	1,09,01,596	21,55,681
TOTAL			4,96,25,719	1,00,35,299

The details of the EPCG Licences and the duty foregone in respect of ABSM is as in the table below: -

Sl. No.	EPCG Licence No. & Date	Bill of Entry No. & Date	Assessable Value (Rs.)	Duty Involved (Rs.)
1	3230009745 dated 10.05.2007	B/E No.411479 dated 24.05.2007	1,68,71,464	43,64,076
		B/E No.411479 dated 24.05.2007	46,63,170	12,06,204
		B/E No.414601 dated 10.07.2007	2,38,49,607	61,69,084
		B/E No.434086 dated 07.04.2008	1,23,26,840	32,00,837
2	3230018335 dated 24.09.2012	B/E No.8216624 dated 15.10.2012	1,59,28,589	36,25,742
3	3230016048 dated 21.12.2010	B/E No.2670707 dated 29.01.2011	1,05,05,490	18,75,338
		B/E No.2670711 dated 29.01.2011	1,05,05,490	18,75,338
TOTAL			9,59,50,650	2,23,16,619

2. Since all the appeals arise out of interconnected investigations involving substantially similar allegations, common evidentiary materials, overlapping parties and identical issues relating to third-party exports for fulfillment of EPCG export obligations, all the appeals are taken up together and are disposed of by this common order. The details of the sixteen appeals and the demands involved are tabulated below: -

S. No.	Customs Appeal No.	Appellant	Respondent
1	42010 of 2016	R. Saravanan	Commissioner of Customs, Tuticorin
2	42011 of 2016	S. Kishore	Commissioner of Customs, Tuticorin
3	42050 of 2016	R. Saravanan	Commissioner of Customs, Tuticorin
4	42051 of 2016	S. Kishore	Commissioner of Customs, Tuticorin
5	42157 of 2016	Kaytee Corporation Pvt. Ltd.	Commissioner of Customs, Tuticorin
6	42158 of 2016	Alamelu Balaji Spinning Mills Pvt. Ltd.	Commissioner of Customs, Tuticorin
7	42159 of 2016	R. V. Sathish Kumar	Commissioner of Customs, Tuticorin
8	42161 of 2016	Shri Ramalinga Mills Ltd.	Commissioner of Customs, Tuticorin
9	42164 of 2016	Damodhar Industries Ltd.	Commissioner of Customs, Tuticorin
10	42177 of 2016	Nagareeka Exports Ltd.	Commissioner of Customs, Tuticorin
11	42181 of 2016	Gainup Industries Pvt. Ltd.	Commissioner of Customs, Tuticorin
12	42182 of 2016	Anangoor Textile Mills Pvt. Ltd.	Commissioner of Customs,

S. No.	Customs Appeal No.	Appellant	Respondent
			Tuticorin
13	42256 of 2016	Avaneetha Textiles Pvt. Ltd.	Commissioner of Customs, Tuticorin
14	42362 of 2016	P.V. Spinning Mills Pvt. Ltd.	Commissioner of Customs, Tuticorin
15	42421 of 2016	Art Yarn Exports India Private Ltd.	Commissioner of Customs, Tuticorin
16	40525 of 2018	K.P. Karunamoorthy, Director, P.V. Spinning Mills India Pvt. Ltd.	Commissioner of Customs, Tuticorin

3. The Ld. Advocate Shri S. Ranganathan appeared on behalf of the Appellant Sl.Nos. 1-4,6-8,14,16, Shri A.K.Jayaraj, Advocate on behalf of Sl.Nos. 11 and 12, Shri M.N. Bharathi Advocate for Sl.Nos. 5, 10 and 13 and M.B.Divya, Advocate for Sl.Nos. 9 and 15 and advanced detailed submissions in support of their respective Appeals and the Ld. Authorized Representative Shri Anoop Singh appeared for the Revenue and defended the Impugned Order.

4. The Ld. Senior Counsel and Learned Advocates appearing for the respective appellants advanced elaborate submissions assailing the impugned orders both on facts and in law. The principal submissions urged on behalf of the appellants, importers, Directors, consultants, Chartered Accountant and third-party exporters are summarised as follows: -

4.1 It was contended that the entire foundation of the impugned proceedings stands vitiated in view of the subsequent adjudication orders passed by the Joint Director General of Foreign Trade, Coimbatore under the Foreign Trade (Development and Regulation) Act, 1992, wherein the competent DGFT authority, after considering the very same allegations relating to third-party exports, EPCG endorsements and fulfillment of export obligations, categorically held that the Export Obligation Discharge Certificates (EODCs) issued in favour of Appellant No.14 and Appellant No.6 were valid and that the export obligations stood duly fulfilled. It was submitted that the DGFT proceedings specifically examined the issue of third-party exports, the alleged ambiguity in Para 9.62 of the FTP and the corresponding Customs Notifications and ultimately condoned the procedural lapses, if any, while upholding the validity of the EODCs.

4.2 The appellants further submitted that the DGFT authorities, being the statutory licensing authorities administering the EPCG Scheme under the Foreign Trade Policy, alone possess jurisdiction to determine fulfillment of export obligation and validity of EPCG authorisations and EODCs. Once the licensing authority itself reaffirmed the EODCs in adjudication proceedings, Customs authorities

could not sit in appeal over such determination and independently deny EPCG benefits on the very same facts. Reliance was placed on various judicial precedents to contend that Customs authorities are bound by the decision of the licensing authority on fulfillment of export obligation till such licences or EODCs are cancelled or suspended in accordance with law.

4.3 It was further argued that third-party exports are specifically recognised and permitted under Para 9.62 of the Foreign Trade Policy and the corresponding EPCG framework. The appellants submitted that the shipping bills expressly contained endorsements such as "Third Party Export" together with EPCG licence particulars and were processed through the EDI system under Customs supervision. According to the appellants, there was no clandestine export, suppression or fabrication and all exports were made through regular banking channels with realization of export proceeds and issuance of Bank Realisation Certificates (BRCs).

4.4 The appellants contended that the allegation regarding absence of nexus between the imported capital goods and the exported products is legally misconceived since the EPCG Scheme operates substantially on fulfillment

of export obligation in value terms and does not require strict one-to-one co-relation between individual capital goods and specific export consignments. It was submitted that the alleged "nexus" requirement was subsequently clarified/amended in policy and that during the relevant period there existed ambiguity regarding the scope of third-party exports under the EPCG Scheme, which fact itself was recognised by the DGFT adjudicating authority while upholding the EODCs.

4.5 The third-party exporters separately contended that they were independent manufacturers/exporters engaged in manufacture and export of cotton yarn, polyester yarn and blended yarn and had acted only as third-party exporters in the ordinary course of trade. According to them, the exports were genuine physical exports made against valid export orders and the only benefit availed by them was the All-Industry Rate (AIR) drawback otherwise admissible to the exporter. It was argued that the shipping bills clearly disclosed the EPCG authorisation details of the EPCG licence holders and therefore there was neither concealment nor any fraudulent intention attributable to the third-party exporters.

4.6 The third-party exporters further submitted that they were neither importers of capital goods nor beneficiaries

of the customs duty exemption availed under the EPCG Scheme and had no role in obtaining EPCG licences or EODCs. According to them, copies of shipping bills and BRCs were supplied to the EPCG licence holders only for the purpose of redemption of EPCG licences as per prevailing trade practice. It was therefore argued that penalties imposed upon such exporters under Sections 112(a) and 114AA of the Customs Act, 1962 were wholly unsustainable in the absence of any evidence establishing mens rea, deliberate misdeclaration or conscious involvement in evasion of customs duty.

4.7 The Chartered Accountant Shri R. Saravanan submitted that he had merely certified ANF forms and Appendix declarations after completion of exports in his professional capacity and had no role whatsoever either in import of capital goods or in export operations. Similarly, Shri S. Kishore contended that he was only a consultant dealing with DGFT matters and that no material existed to establish any conscious involvement on his part in the alleged violation of the EPCG Scheme. Both of them contended that once the DGFT authorities themselves had upheld the validity of the EODCs, penalties imposed upon them under Sections 112(a) and 114AA were legally unsustainable.

4.8 It was also contended by several appellants that no penalty under Section 112(a) had even been imposed upon some of the principal EPCG licence holders in the impugned orders and therefore imposition of penalties upon third-party exporters, consultants and professionals for alleged abetment was itself inconsistent and legally untenable. Reliance was also placed upon various judicial precedents including decisions relating to binding effect of DGFT adjudication, validity of licences till cancellation, and the limited jurisdiction of Customs authorities in matters concerning fulfillment of export obligation under the EPCG Scheme.

5. The Ld. Authorized Representative contended that the investigation clearly established that shipping bills were procured on commission basis and that exports had no linkage with the imported capital goods. Statements recorded under Section 108 allegedly revealed that commission was paid for obtaining shipping bills.

5.1 It was argued that EODCs were obtained on the basis of misrepresentation and that Customs authorities are not bound by DGFT's decision if fraud is involved. The Revenue further submitted that Section 28 proceedings and

confiscation under Section 111(o) are independent of DGFT adjudication.

5.2 The Department contended that EPCG exemption is conditional and strict compliance is mandatory. Since the exports were not genuinely connected to manufacturing using the imported machinery, the benefit was rightly denied.

6. We have carefully heard the submissions advanced by both sides, examined the appeal records in detail, considered the statutory provisions, and the case Laws cited.

7. Upon consideration, the following issues arise for determination: -

- i. Whether rejection of EODCs and denial of EPCG benefits on the ground of alleged absence of nexus and invalidity of third-party exports is legally sustainable
- ii. Whether imposition of penalties under Sections 112(a) and 114AA upon the main importers, Directors and third-party exporters, Chartered Accountant, brokers and intermediaries is legally sustainable? and,

- iii. Whether confiscation under Section 111(o) and redemption fine under Section 125 are legally sustainable in the facts of the present case?

Issue No. (i) : Whether rejection of EODCs and denial of EPCG benefits on the ground of alleged absence of nexus and invalidity of third-party exports is legally sustainable

9. At the outset, we note that the Central issue in the present batch of appeals pertains to the legality of rejection of the Export Obligation Discharge Certificates ("EODCs"), denial of EPCG benefits and the Department's interpretation regarding third-party exports and nexus under Notification No.97/2004-Cus. and the Foreign Trade Policy. We further note that the duty demands, confiscation, redemption fine and penalties imposed in the impugned orders are substantially consequential to and founded upon the findings relating to invalidity of the third-party exports and alleged non-fulfilment of export obligation. Accordingly, since the principal controversy in the present batch of appeals relates to the validity of the EODCs, permissibility of third-party exports and fulfillment of export obligation under the EPCG Scheme, the issues concerning differential duty demand, confiscation, redemption fine and penalties would necessarily depend upon and be governed by the findings ultimately arrived at on the said foundational issues, apart from the independent aspects examined hereinbelow.

10. We find that the EPCG Scheme is a statutory export promotion scheme framed under Chapter 5 of the Foreign Trade Policy issued in exercise of powers conferred under Section 5 of the Foreign Trade (Development and Regulation) Act, 1992 and administered by the Directorate General of Foreign Trade (DGFT) as the designated licensing authority under Section 6 of the said Act. Under the scheme of the FTDR Act, the FTP and the Handbook of Procedures, the DGFT is empowered to issue EPCG authorisations, prescribe export obligation conditions, interpret policy provisions and certify fulfillment of export obligation through issuance of Export Obligation Discharge Certificates (EODCs). We further note that Para 2.3 of the FTP specifically confers authority upon DGFT to interpret the Policy and Procedures and such interpretation is binding on the field formations. Notification No.97/2004-Cus. dated 17.09.2004 itself adopts and incorporates the FTP framework by specifically defining "Foreign Trade Policy" and "Licensing Authority" with reference to the FTDR Act and DGFT. We therefore find considerable force in the contention of the appellants that the FTP, Handbook of Procedures and the exemption notification form part of an integrated statutory scheme governing EPCG imports and discharge of export obligation

and consequently cannot be read in isolation from one another.

11. We observe that Notification No. 97/2004-Cus. dated 17.09.2004 itself incorporates and adopts the Foreign Trade Policy framework. The notification expressly defines "Licensing Authority" as the DGFT appointed under Section 6 of the FTDR Act and further defines "Foreign Trade Policy" as the policy notified under the FTDR Act. The notification also provides that export obligation may be fulfilled, inter alia, "through third party exports made by an exporter or manufacturer on behalf of the licence holder by exporting the same product and in such cases, inter alia the shipping bills shall indicate the name of both the third party and the licence holder." We therefore find that the Customs notification itself recognises and incorporates the concept of third-party exports as a legally permissible mode of discharge of export obligation.

12. We further note that Para 9.62 of the FTP, as it existed during the relevant period prior to 01.04.2015, defined "Third Party Exports" to mean exports made by an exporter or manufacturer on behalf of another exporter. The records also reveal that DGFT Policy Circular No.16/2002-2007 dated 24.12.2002 clarified that third-party exports

were intended to facilitate manufacturer exporters who may not directly undertake exports and may utilise merchant exporters as marketing channels. We also note that subsequent amendment introducing Para 5.10(d) in the HBP and DGFT Policy Circular No.3/2015-20 dated 02.09.2015 specifically clarified that the amended conditions relating to third-party exports would apply prospectively from 01.04.2015 onwards and that the earlier regime prevailing prior thereto would continue to govern earlier exports.

13. In the case of M/s. Alamelu Balaji Spinning Mills Pvt. Ltd. (ABSM), the investigations alleged that the EPCG licence holder, instead of directly effecting exports corresponding to the export obligation under the EPCG licences, operated through an organized network of EPCG consultants, DGFT intermediaries, brokers, Chartered Accountant and third-party exporters for arranging shipping bills carrying EPCG endorsements in favour of ABSM and thereafter utilizing such exports before DGFT authorities for obtaining Export Obligation Discharge Certificates (EODCs). According to the Department, Shri S. Kishore of M/s. Nandhishiv Impex Pvt. Ltd., Tirupur functioned as the principal EPCG consultant coordinating procurement of EPCG licences, preparation of EODC applications, collection of shipping bills and liaison with DGFT authorities. Shri V.

Nandhakumar, Proprietor of M/s. Jaana Exim Consultancy, Tirunelveli, was alleged to have acted as an intermediary/broker for arranging shipping bills from exporters against payment of commission, while Shri R. Saravanan, Chartered Accountant, Tirupur, was alleged to have issued ANF-5B certificates and Appendix-26A declarations for submission before DGFT authorities. The third-party exporters/manufacturer exporters identified in the proceedings included M/s. Gainup Industries India Pvt. Ltd., Dindigul, M/s. Sri Ramalinga Mills Ltd., Aruppukottai, M/s. Avaneetha Textiles Pvt. Ltd., Coimbatore, M/s. Sal Tex, M/s. Kikari Exports Pvt. Ltd., M/s. Art Yarn Exports (India) Pvt. Ltd. and M/s. S.A. Anandan Spinning Mills Pvt. Ltd., who were alleged to have either exported goods on behalf of ABSM or permitted utilization of their shipping bills carrying EPCG endorsements for discharge of export obligation under the EPCG Scheme.

14. Similarly, in the case of M/s. P.V. Spinning Mills India (P) Ltd. (PVSM), the investigations alleged that the EPCG licence holder discharged export obligation through consultants, intermediaries and third-party exporters instead of through direct exports effected by the licence holder itself. Shri S. Kishore of M/s. Nandhishiv Impex Pvt. Ltd. was again alleged to have functioned as the principal EPCG consultant

coordinating EPCG documentation, procurement of shipping bills and EODC applications before DGFT authorities, while Shri R. Saravanan, Chartered Accountant, Tirupur, was alleged to have certified ANF-5B statements and Appendix-26A declarations submitted in support of EODC claims. The third-party exporters/manufacturer exporters identified in the PVSM proceedings included M/s. Pratik Hosiery Pvt. Ltd., Tirupur, M/s. Dravid Knits Pvt. Ltd., Tirupur, M/s. Annur Sri Sivasakthi Cotton Mills Pvt. Ltd., Annur, M/s. Nagreeka Exports Ltd., Mumbai, M/s. Damodar Industries Ltd., Mumbai, M/s. Sutlej Textiles & Industries Ltd., Mumbai and M/s. Kay Tee Corporation Pvt. Ltd., Mumbai. According to the Department, these entities either permitted utilization of their shipping bills or acted through merchant exporters/intermediaries for facilitating discharge of export obligation by PVSM under the EPCG Scheme, leading to initiation of proceedings not only against the EPCG licence holders/importers but also against the consultants, intermediaries, merchant exporters, manufacturer exporters and the Chartered Accountant under Sections 112(a) and 114AA of the Customs Act, 1962.

15. We find considerable force in the contention of the appellants that substantial ambiguity existed during the relevant period regarding the exact procedural requirements

governing third-party exports under the EPCG Scheme. We note that even the DGFT appellate authority, while restoring the EODCs, recorded that the adjudicating authority had failed to consider the Minutes of the high-level meeting dated 18.06.2015 held between DGFT, senior DRI officers and trade representatives and had also failed to consider DGFT Policy Circular No.3/2015-20 dated 02.09.2015. The records further disclose that the DGFT authorities themselves subsequently reviewed the issue and regularised the EODCs after considering the policy ambiguity and the absence of double benefit.

16. We note that in the present case, upon receipt of communications and investigation reports from the Directorate of Revenue Intelligence alleging irregular fulfillment of export obligation through third-party exports, the jurisdictional DGFT authorities initially proceeded to suspend/cancel the Export Obligation Discharge Certificates (EODCs) already issued to the EPCG licence holders. However, against such adverse orders, the appellants preferred statutory appeals under Section 15 of the FTDR Act before the DGFT Appellate Authority. We find from the records that the Appellate Authority, after examining the FTP provisions, Handbook of Procedures, Trade Notice No.2 dated 25.11.2014, Minutes of the meeting dated 18.06.2015

involving DGFT and DRI officials and the subsequent DGFT Policy Circular No.3/2015-20 dated 02.09.2015, set aside the earlier orders and restored the EODCs by holding that the exports were admissible under the FTP/HBP framework prevailing during the relevant period. Pursuant thereto, the jurisdictional JDGFT authorities at Coimbatore/Madurai restored/revalidated the EODCs in favour of the appellants. We further observe that the DGFT Appellate Authority specifically noted that though proceedings under the FTDR Act and Customs Act may operate independently, the issue relating to fulfillment of export obligation and validity of EODCs stood governed by the FTP framework administered by DGFT. We find that the said appellate orders restoring the EODCs have not been set aside by any superior forum and therefore continue to hold the field.

17. We find that though the Department alleged that EPCG/third-party export endorsements were subsequently inserted in certain manual shipping bills and were absent in the Original, Duplicate and Triplicate Customs copies at the time of export, the said allegation does not ultimately withstand scrutiny on the basis of the materials available on record. The DGFT authorities, while adjudicating the very same allegations under the FTDR Act, examined the issue in detail and took note of the communications received from

the Deputy Commissioner of Customs, CFS, Chettipalayam as well as the prevailing uncertainty regarding third-party export procedures, ultimately concluding that the dispute substantially arose out of procedural ambiguity and interpretation of third-party export provisions rather than deliberate fabrication of export documents. We further find that despite serious allegations of manipulation, the Department has not produced before us the alleged Original, Duplicate and Triplicate Customs copies of the shipping bills or any comparative analysis thereof vis-à-vis the EP copies for independent verification. The allegation therefore substantially rests only upon statements recorded under Section 108 of the Customs Act from certain brokers/intermediaries without corresponding documentary corroboration. In the absence of primary documentary evidence substantiating deliberate fabrication of shipping bills, particularly when the exports themselves are admitted to be genuine exports processed through Customs channels with realization of foreign exchange, the broad allegation of fraud and suppression cannot be sustained merely on the basis of uncorroborated statements.¹⁷ We find that the expression "same products capable of being manufactured" occurring in the notification assumes significance and lends support to the appellants' contention that the EPCG Scheme substantially operates on product identity and value-based

export obligation rather than strict one-to-one co-relation between a particular imported machine and a specific export consignment.

18. The proceedings in both matters (IMPUGNED ORDERS) emanate from investigations conducted by the Directorate of Revenue Intelligence alleging fraudulent discharge of export obligations under the EPCG Scheme through use of third-party shipping bills obtained from unrelated exporters on commission basis. The investigations principally proceeded on the premise that the exports counted towards fulfillment of export obligation were not manufactured using the imported capital goods and therefore lacked nexus with the EPCG authorisations. It was further alleged that EPCG endorsements were subsequently inserted in the quadruplicate EP copies of certain shipping bills though such endorsements were absent in the Original, Duplicate and Triplicate Customs copies filed at the time of export. However, the records of the DGFT adjudication proceedings themselves reveal that the exports relied upon by the appellants were genuine physical exports, foreign exchange realization was not disputed and there was no allegation of diversion, clandestine disposal or misuse of the imported capital goods.

19. We also find that the Customs Notification itself adopts a broad and liberal framework regarding discharge of export obligation. Clause 4 of the Explanation to Notification No.97/2004-Cus. permits fulfillment of export obligation not only through direct manufacture using imported capital goods, but also by: -

- i. export of same products capable of being manufactured with the use of such capital goods;
- ii. export of same products manufactured in different units of the licence holder; and
- iii. third-party exports made on behalf of the licence holder.

20. The DGFT adjudicating authority also took note of several significant aspects emerging against the investigation theory. It was specifically recorded that the imported capital goods were admittedly installed in the factories of the EPCG licence holders, that the units were established manufacturing concerns having substantial turnover and employment generation, and that no case of overvaluation, undervaluation or diversion of machinery had been reported by any agency. The DGFT proceedings further recorded that substantial ambiguity and confusion existed during the relevant period regarding the scope and procedure governing third-party exports under Para 9.62 of

the FTP and the corresponding Handbook provisions. The adjudicating authority also noticed that even the Department of Revenue Circular No.120/95-Cus. dated 23.11.1995 permitted liberal consideration of past third-party exports even where all procedural conditions were not strictly fulfilled. It was further observed that the ambiguity was subsequently clarified only through Trade Notice No.2 dated 25.11.2014 issued by the Regional Authority, Coimbatore and later incorporated prospectively into Para 5.10(d) of HBP 2015-20.

21. A careful examination of the above EPCG licences, Bills of Entry, shipping bills relied upon for discharge of export obligation and the corresponding EODCs reveals a highly significant factual aspect. In both the impugned proceedings, all the foundational events relating to import of capital goods under EPCG licences, utilization of third-party shipping bills for discharge of export obligation and issuance of EODCs by the jurisdictional JDGFT authorities had already occurred much prior to the policy changes and procedural amendments introduced in the Handbook of Procedures with effect from 01.04.2015 and the subsequent DGFT Policy Circular No.3/2015-20 dated 02.09.2015. The EPCG licences themselves were issued during the period 2007 to 2012; the Bills of Entry relate to

imports effected between 2007 and 2013; the shipping bills relied upon for export obligation discharge pertain to the corresponding earlier export periods; and significantly, the EODCs themselves were issued between 21.11.2012 and 16.05.2014 by the competent JDGFT authorities after accepting the exports claimed towards fulfillment of export obligation. Thus, the entire EPCG transactions, exports and EODC proceedings stood substantially concluded much prior to the later policy clarifications and procedural restructuring introduced in the post-2015 FTP/HBP regime. We therefore find considerable force in the appellants' contention that the Department could not retrospectively apply the subsequently introduced procedural conditions, interpretational standards or documentary requirements governing third-party exports to invalidate EPCG discharge already accepted and regularized under the earlier policy framework prevailing during the relevant period which can be seen from the below table: -

(A) Impugned Order No.13/2016 – M/s. P.V. Spinning Mills India (P) Ltd. (PVSM)

Sl. No.	EPCG Licence No. & Date	Bill of Entry No. & Date	Third Party Exporters / Shipping Bills Relied Upon	EODC Details
1	EPCG Licence No.3230009062 dated 09.02.2007	B/E No.406911 dated 08.03.2007	1 Shipping Bill of M/s Nagreeka Exports Ltd., Mumbai and 11 Shipping Bills of M/s Damodar Industries Ltd., Mumbai	EODC obtained on 08.05.2014
2	EPCG Licence	B/E No.533	Shipping Bills of M/s	EODC

Sl. No.	EPCG Licence No. & Date	Bill of Entry No. & Date	Third Party Exporters / Shipping Bills Relied Upon	EODC Details
	No.3230014306 dated 19.01.2010	dated 27.10.2010	Nagreeka Exports Ltd. (7), M/s Damodar Industries Ltd. (4), M/s Keytee Corporation Pvt. Ltd. (2) and M/s Sutlej Textiles & Industries Ltd. (1)	obtained on 05.09.2013
3	EPCG Licence No.3230016822 dated 01.06.2011	B/E No.3754772 dated 10.06.2011	9 Shipping Bills of M/s Damodar Industries Ltd.	EODC obtained on 08.05.2014
4	EPCG Licence No.3230018441 dated 26.10.2012	B/E No.9754084 dated 03.04.2013	9 EDI Shipping Bills of M/s Annur Sri Sivasakthi Cotton Mills Pvt. Ltd.	EODC obtained on 31.01.2014

(B) Impugned Order No.14/2016 – M/s. Alamelu Balaji

Spinning Mills (P) Ltd. (ABSM)

Sl. No.	EPCG Licence No. & Date	Bill of Entry No. & Date	No. of Shipping Bills Used	Third Party Exporters Relied Upon	EODC Number & Date
1	EPCG Licence No.3230009745 dated 10.05.2007	B/E No.411479 dated 24.05.2007; B/E No.414601 dated 10.07.2007; B/E No.434086 dated 07.04.2008	43 Shipping Bills	M/s Gainup Industries India Pvt. Ltd., Dindigul and others	F.No.32/21/021/00251/AM08 dated 16.05.2014
2	EPCG Licence No.3230016048 dated 21.12.2010	B/E No.2670707 dated 29.01.2011; B/E No.2670711 dated 29.01.2011	8 Shipping Bills	M/s Sri Ramalinga Mills Ltd., Aruppukottai	F.No.32/21/021/01409/AM11 dated 21.11.2012

Sl. No.	EPCG Licence No. & Date	Bill Entry No. & Date	No. of Shipping Bills Used	Third Party Exporters Relied Upon	EODC Number & Date
3	EPCG Licence No.3230018335 dated 24.09.2012	B/E No.8216624 dated 15.10.2012	4 Shipping Bills	M/s Avaneetha Textiles Pvt. Ltd., Coimbatore	F.No.32/21/021/00553/AM13 dated 14.03.2014

22. We find that the principal allegation of the Revenue is that the exported goods covered under the third-party shipping bills lacked nexus with the imported capital goods and that the exports were not manufactured by the appellant itself. We note, however, that the EPCG Scheme framed under Chapter 5 of the Foreign Trade Policy is fundamentally a value-based export promotion scheme intended to augment export capacity by permitting import of capital goods at concessional duty subject to fulfillment of prescribed export obligation. We observe that neither the Foreign Trade Policy nor Notification No.97/2004-Cus. dated 17.09.2004 mandates a rigid one-to-one physical co-relation between a particular imported capital goods and each individual export consignment. On the contrary, Clause 4(c) of the Notification expressly recognises fulfillment of export obligation through third-party exports made on behalf of the licence holder, subject to endorsement in the shipping bills.

23. We note that Para 9.62 of the FTP defined “Third Party Exports” to mean exports made by an exporter or manufacturer on behalf of another exporter and specifically contemplated that the shipping bills should indicate the names of both the manufacturer exporter and the third-party exporter. We further note that Para 5.7.1 of the Handbook of Procedures permitted EPCG authorisation holders to export either directly or through third parties and only required endorsement of EPCG authorisation number and date in the shipping bills proposed for discharge of export obligation.

24. We also note that Para 9.62 of the Handbook of Procedures, as it existed during the relevant period, defined “Third-party exports” to mean exports made by an exporter or manufacturer on behalf of another exporter and required export documents such as shipping bills to indicate the names of both the manufacturer exporter/manufacturer and the third-party exporter. The records further show that the appellants produced shipping bills containing the names of the EPCG licence holders together with EPCG licence particulars, which fact has not been disputed even in the impugned orders.

25. We further note that the Department placed considerable reliance upon the declarations prescribed for

obtaining EODC in cases involving third-party exports. The declaration required to be furnished by the EPCG licence holder stated: -

"We hereby undertake that the goods exported by the third-party readymade garments are goods manufactured by us vide the capital goods imported by EPCG Lic No..... and no double benefits of EPCG are claimed for the shipment effected under the license."

Similarly, the No Objection Certificate/declaration required from the third-party exporter stated: -

"We hereby undertake/declare that the exports shown towards fulfillment of EO against EPCG Lic No..... are manufactured by the CGs imported under the said Licenses".

26. According to the Revenue, the aforesaid declarations demonstrate that the third-party exports relied upon for discharge of export obligation were required to be manufactured using the capital goods imported under the EPCG licences and therefore exports of unrelated third-party manufacturers could not be counted towards fulfillment of export obligation. However, we find that the very existence of subsequent policy clarifications, Trade Notices, DGFT Circulars and the Minutes dated 18.06.2015 relied upon by the appellants themselves demonstrates that substantial ambiguity prevailed during the relevant period regarding the precise scope and interpretation of such declarations vis-à-vis Para 9.62 of the FTP and clause 4(c) of Notification No.97/2004-Cus. We further note that the DGFT authorities

themselves ultimately regularised and restored the EODCs after considering the said policy ambiguity and the absence of double benefits.

27. We further note that the records do not disclose any allegation that the exports themselves were fictitious or that the export consignments never moved out of the country. The shipping bills were admittedly processed through the Customs EDI system, Let Export Orders were granted by the jurisdictional Customs officers and export proceeds were realized through banking channels. We also note that no proceedings were initiated alleging overvaluation of exports, fake remittances or circular movement of funds. The dispute therefore substantially revolves around the interpretation of nexus requirements under the EPCG Scheme and the permissibility of third-party exports rather than non-existence of exports themselves.

28. We further find from the records that a high-level meeting was convened on 18.06.2015 involving representatives of SIMA, SISPA, Chambers of Commerce, DGFT authorities and Shri John Joseph, Additional Director General, DRI specifically to deliberate upon issues relating to third-party exports under the EPCG Scheme. The Minutes of the meeting reveal that considerable concern existed within

the trade regarding investigations initiated on the basis of differing interpretations of third-party export provisions under the earlier FTP regime.

29. Significantly, the Minutes recorded the statement of the Additional Director General, DRI that investigative action was ordinarily intended only in cases where capital goods were not installed or where forged shipping bills/documents were used for obtaining export obligation discharge. The Minutes also acknowledged that many exporters were genuine manufacturing concerns and that coercive action should not disrupt ongoing industrial production and export activities.

30. The Minutes further reveal that the participants specifically deliberated upon the ambiguity prevailing prior to insertion of Para 5.10(d) in the Handbook of Procedures and also considered Trade Notice No.2 dated 25.11.2014 issued by the Regional Authority, Coimbatore. It was also noted that the revised procedural requirements introduced subsequently could not automatically invalidate exports already effected under the earlier regime.

30. We also note that Para 5.10(d) of the Handbook of Procedures, which was introduced subsequently,

prescribed elaborate requirements such as agreements between manufacturer and third-party exporter, ARE-1 documents, transport documents, disclaimer certificates and financial trail documentation. The very introduction of these detailed procedural conditions prospectively indicates that the earlier regime governing third-party exports lacked comparable procedural clarity.

31. We find considerable force in the contention of the appellants that the subsequent insertion of detailed procedural safeguards itself demonstrates that prior to 01.04.2015 the policy position governing third-party exports was not free from doubt. We further note that DGFT Policy Circular No.3/2015-20 dated 02.09.2015 itself clarified that exports effected prior to 01.04.2015 would continue to be governed by the earlier policy regime.

32. We therefore find that the Department cannot retrospectively apply the subsequently introduced procedural conditions and clarifications to invalidate exports effected during the earlier FTP period when the governing provisions admittedly remained susceptible to varying interpretations.

33. We also find that the DGFT appellate authority, while restoring the EODCs, specifically examined the

allegations relating to third-party exports, EPCG endorsements and nexus between exports and capital goods. The DGFT authorities ultimately concluded that the exports could not be rejected merely because the exports were routed through third-party exporters, particularly when the exports were genuine, the shipping bills contained EPCG particulars and no double benefit was established.

34. We note that the Tribunal in *Hy-Grade Pellets Ltd. v. Commissioner of Customs, Chennai, 2014 (303) E.L.T. 549 (Tri.-Chennai)*, observed that once the DGFT authorities release an assessee from export obligation, continuation of parallel proceedings by Customs on the same issue would result in uncertainty and virtual “double jeopardy” in administration of export promotion schemes. We further note that the said decision was specifically relied upon by the DGFT Appellate Authority while restoring the EODCs in the present case after considering the DRI objections, policy ambiguity and trade representations.

35. We therefore find that the restoration and validation of EODCs by the competent DGFT authorities after full consideration of the DRI allegations materially weakens the very foundation of the impugned orders insofar as they

proceed on the assumption that the exports were inherently ineligible for EPCG discharge.

36. We note that in *Titan Medical Systems Pvt. Ltd. v. Commissioner of Customs, 2003 (151) E.L.T. 254 (S.C.)*, the Hon'ble Supreme Court held that where an advance licence issued by the licensing authority had not been questioned or cancelled by the DGFT authorities, Customs authorities could not independently refuse exemption benefits by questioning the licence itself. The Court observed that any allegation of misrepresentation in obtaining the licence must first be examined by the licensing authority under the FTDR framework.

37. We further note that the Coordinate Bench in *Bestech Hospitalities Pvt. Ltd. v. Commissioner of Customs (Preventive), New Delhi, 2025 (8) TMI 509 (CESTAT New Delhi)*, after considering *Titan Medical Systems Pvt. Ltd.*, reiterated that once EODCs issued by DGFT continue to subsist, Customs authorities cannot proceed as though the export obligation itself remained unfulfilled.

38. We also note that in *Commissioner of Customs v. Reliance Industries Ltd., 2015 (326) E.L.T. 29 (S.C.)*, the Hon'ble Supreme Court emphasised harmonious construction

between statutes administered by different authorities functioning within an integrated regulatory framework. We find that the principle assumes considerable significance in the context of EPCG administration where the FTDR Act, FTP, Handbook of Procedures and Customs notifications operate in conjunction with one another.

39. We further note that in *Kothari Filaments v. Commissioner of Customs, 2009 (233) E.L.T. 289 (S.C.)*, the Hon'ble Supreme Court held that once the licensing authority regularises or validates the licence position, Customs authorities cannot deny exemption benefits on the same grounds absent independent evidence of fraud or deliberate misrepresentation.

40. We also note that the Hon'ble Delhi High Court in *Designco v. Union of India & Ors., W.P.(C) 14477/2022 & connected matters*, decided on 22.11.2024, observed that Customs authorities cannot ignore or override instruments issued under the FTDR Act unless such instruments are first invalidated by the competent DGFT authority and cautioned against parallel jurisdictional determinations by different authorities over the same export promotion benefits.

41. We further note that the Chennai Bench of this Tribunal in *M/s. Sree Koppammal Cotton Spinning Mills Pvt. Ltd. v. Commissioner of Customs, Tuticorin*, reported in 2026 (4) TMI 1806 - CESTAT Chennai, while examining substantially similar allegations relating to third-party exports under Notification No.97/2004-Cus., observed that the EPCG Scheme substantially operates on value-based export obligation and that the expression "same products capable of being manufactured" occurring in the Notification materially weakens the Department's rigid one-to-one nexus theory. The Coordinate Bench further took note of the ambiguity prevailing prior to 01.04.2015 regarding third-party exports, the subsequent DGFT clarifications and Policy Circular No.3/2015-20 dated 02.09.2015, and held that genuine third-party exports could not automatically be invalidated merely because the exports were not directly manufactured by the EPCG licence holder itself. We also note that the said decision of the Chennai Bench of this Tribunal, rendered on substantially similar facts and involving the same EPCG framework and DRI allegations, is binding upon us in the absence of any contrary decision placed before us.

42. Having regard to the integrated statutory framework comprising the FTDR Act, the Foreign Trade Policy, the Handbook of Procedures and Notification

No.97/2004-Cus., we find that the determination regarding fulfillment of export obligation and validity of EODCs primarily falls within the statutory domain of the DGFT authorities functioning under the FTDR Act. We note that the EODCs initially withdrawn by the DGFT authorities during the course of DRI investigation were subsequently restored in appellate proceedings after detailed consideration of the FTP provisions, third-party export mechanism, DGFT Policy Circular No.3/2015-20 dated 02.09.2015 and the minutes of the high-level meeting held between DGFT, DRI and trade representatives. The said adjudicatory determination by the competent licensing authority continues to remain operative and has not been set aside by any superior forum. We further note that the exports covered under the shipping bills are admitted physical exports processed through Customs channels and there is no allegation of diversion, clandestine removal, non-realization of export proceeds or misuse/non-installation of capital goods. The controversy essentially revolves around interpretation of the scope and permissibility of third-party exports under the EPCG framework during the relevant period prior to 01.04.2015, an area in which even the DGFT authorities themselves acknowledged substantial ambiguity and thereafter issued clarificatory amendments and policy circulars prospectively.

43. We also find that the legal position emerging from the decisions of the Hon'ble Supreme Court in *Titan Medical Systems Pvt. Ltd. v. CC*, 2003 (151) ELT 254 (SC), *Kothari Filaments v. CC*, 2009 (233) ELT 289 (SC), *CC v. Reliance Industries Ltd.*, 2015 (326) ELT 29 (SC) and *Sheshank Sea Foods Pvt. Ltd. v. Union of India*, 1996 (88) ELT 626 (SC), read with the decisions of the Hon'ble High Courts and the Coordinate Bench decisions of this Tribunal including *Hy-Grade Pellets Ltd. v. CC*, 2004 (171) ELT 177 (Tri.-Del.) and *M/s. Sree Koppammal Cotton Spinning Mills Pvt. Ltd. v. Commissioner of Customs, Tuticorin*, 2026 (4) TMI 1806 - CESTAT Chennai, consistently recognizes that while Customs authorities may examine compliance with exemption notification conditions, they cannot ignore or effectively sit in appeal over subsisting determinations of the competent DGFT authorities in the absence of clear and independently established fraud supported by cogent evidence. In the facts of the present case, the allegation of fraud itself remains unsubstantiated for want of primary documentary evidence and rests substantially on uncorroborated statements and interpretational assumptions relating to third-party exports. Consequently, applying the aforesaid binding statutory framework and judicial precedents, we hold that the, the rejection of EODCs, denial of EPCG benefits, confirmation of duty demands and all

consequential actions founded upon such rejection are liable to be set aside.

Issue No. (ii): Whether penalties imposed upon the appellants are sustainable

44. We note that the core controversy in the present batch of appeals concerns the validity of the EODCs, permissibility of third-party exports and fulfillment of export obligation under the EPCG Scheme. Having already held in the preceding paragraphs that the rejection of EODCs and denial of EPCG benefits by the Customs authorities are legally unsustainable in view of the binding statutory framework under the FTDR Act, the subsisting adjudicatory orders passed by the competent DGFT authorities restoring the EODCs, the admitted genuineness of exports and the absence of any conclusive evidence establishing fraud or deliberate fabrication of export documents, the very basis for confirmation of differential customs duty against the EPCG licence holders stands substantially eroded. Once the principal demand of differential duty itself becomes unsustainable, the consequential actions flowing therefrom, namely confiscation of capital goods, imposition of redemption fine and penalties upon the EPCG licence holders, consultants, intermediaries, Chartered Accountant and third-party exporters, stand on considerably weakened footing and therefore require independent and careful examination in the

light of the settled legal principles governing confiscation and penal liability under the Customs Act, 1962.

45. We find that the penalties imposed in the impugned orders arise principally under Sections 112(a), 114A and 114AA of the Customs Act, 1962 on the allegation that the appellants fraudulently utilized third-party exports for discharge of export obligation under the EPCG Scheme. We note at the outset that the controversy in the present case substantially revolves around interpretation and scope of third-party exports under the EPCG framework prevailing prior to 01.04.2015 and not around any allegation of fictitious exports, forged shipping bills or clandestine diversion of imported capital goods.

46. We find from the records that the EPCG licence holders/importers had imported capital goods under valid EPCG authorisations issued by DGFT and installed the same in their manufacturing units. There is no allegation in the impugned orders regarding under-valuation, misdeclaration, non-installation, diversion or clandestine disposal of the imported machinery. The dispute commenced only at the post-export stage when the DRI took the view that exports made through third-party exporters could not be accepted for discharge of export obligation unless the exported goods

were physically manufactured by using the imported capital goods themselves.

47. We note that the role attributed to the EPCG licence holders/importers is essentially that they relied upon third-party shipping bills for fulfillment of export obligation and submitted the same before DGFT for obtaining EODCs. However, we find that such shipping bills admittedly carried endorsement of the EPCG licence numbers and names of the licence holders as contemplated under clause 4(c) of Notification No.97/2004-Cus. The exports were processed by Customs and the Department has not alleged that the exports themselves were fictitious or that foreign exchange proceeds were not realized.

48. We further find that the manufacturer exporters and merchant exporters, namely the third-party exporters whose shipping bills were relied upon, were actual exporters of cotton yarn and related products. The case of the Department itself is that the goods were exported by such third-party exporters and that the shipping bills were subsequently utilized by the EPCG licence holders for claiming export obligation discharge. Thus, even according to the Revenue, the exports themselves were genuine exports and not fabricated or non-existent consignments.

49. We note that the merchant exporters functioned essentially as export facilitators or marketing entities procuring export orders and effecting exports through shipping bills in their names. Significantly, DGFT Policy Circular No.16/2002-2007 dated 24.12.2002 itself clarified that third-party exports are intended to service manufacturer exporters who may not be able to export directly and that the third party effectively acts as a marketing wing in the export transaction. Thus, the very policy framework recognized participation of merchant exporters in third-party export transactions.

50. We further find that the manufacturer exporters whose goods were exported through the merchant exporters were not strangers to the export transactions.. The dispute therefore is not about non-existent exports but about the legal permissibility of utilizing such exports for discharge of export obligation under the EPCG licences.

51. We also note that the role attributed to the consultants/licence brokers, including Shri Kishore and connected intermediaries, is that they coordinated procurement of shipping bills, compilation of export documents and liaison with exporters and DGFT authorities. The Revenue alleges payment of commission for arranging

such shipping bills. However, we find that procurement of export documents or coordination of third-party exports, by itself, does not automatically establish fabrication or falsification of Customs documents unless it is independently shown that the exports were non-genuine or that forged documents were knowingly created and utilized.

52. As regards the Chartered Accountant, we note that the allegation is that certificates in Form ANF-5B and Appendix-26A were issued without complete verification of ledger accounts and production records. However, we find that mere certification based on documents produced by the licence holder, in the absence of evidence of deliberate falsification or active conspiracy, cannot by itself attract penal liability under Sections 112(a) or 114AA. No material has been brought on record to establish that the Chartered Accountant fabricated export documents or knowingly certified fictitious exports.

53. We find considerable force in the appellants' contention that substantial ambiguity existed during the relevant period regarding the exact procedural and substantive requirements governing third-party exports under the EPCG Scheme. The records of the DGFT proceedings themselves reveal that various export promotion

bodies including FIEO, SIMA, SISPA and others had questioned the interpretation adopted in Trade Notice No.2 dated 25.11.2014 and sought clarification regarding third-party exports. The DGFT thereafter convened a high-level meeting with DRI officials and trade representatives on 18.06.2015 and subsequently clarified through Policy Circular No.3/2015-20 dated 02.09.2015 that the amended provisions introduced under Para 5.10(d) of HBP would apply prospectively from 01.04.2015 onwards.

54. We also find considerable significance in the observations recorded during the DGFT-DRI meeting dated 18.06.2015 wherein the Additional Director General, DRI himself clarified that investigative action is ordinarily warranted only where capital goods are not installed or where forged shipping bills/documents are submitted for discharge of export obligation. In the present case, neither non-installation of capital goods nor forged shipping bills/fictitious exports stand established. The dispute essentially concerns interpretation of third-party export provisions under the FTP and Notification No.97/2004-Cus.

55. We further find that the Coordinate Bench in *Sree Koppammal Cotton Spinning Mills Pvt. Ltd. (Supra)* specifically examined the very same Notification No.97/2004-

Cus., the FTP provisions and the issue relating to third-party exports and observed that considerable ambiguity existed at the relevant time regarding the interpretation of the expression "same products capable of being manufactured" and the scope of third-party exports under clause 4(c) of the Notification. The Tribunal specifically observed that nowhere in the Notification was it expressly mandated that the third-party exports should necessarily be manufactured only by using the imported capital goods themselves.

56. The Coordinate Bench further observed that the entire dispute essentially arose because the Department interpreted the expression "same product" to mean products manufactured only by imported capital goods, whereas the Notification itself permitted export of products "capable of being manufactured" using such capital goods. The Tribunal specifically recorded that there existed "a lot of confusion and ambiguity in the matter of third-party exports at the relevant time."

57. We find that invocation of stringent penal provisions requiring deliberate falsification, conscious suppression or knowing use of false documents cannot be sustained merely because the Department subsequently adopted a different interpretation regarding third-party

exports. Section 112(a) contemplates conscious abetment or intentional involvement in acts rendering imported goods liable to confiscation. Likewise, Section 114AA requires knowing use of false or incorrect declaration, statement or document in customs transactions. Mere reliance upon third-party exports under a disputed interpretational framework cannot automatically attract penal consequences.

58. We further note that the exports covered under the shipping bills were admittedly processed through regular Customs channels and the shipping bills themselves contained EPCG endorsements indicating the names of the EPCG licence holders and third-party exporters. No evidence has been produced to establish fabrication of shipping bills, forged Customs documents or non-existent exports. The dispute, at its highest, concerns legal acceptability of such exports for fulfillment of EPCG obligations and not fabrication of the export documents themselves.

59. We also find significance in the fact that the DGFT appellate authority restored the EODCs after considering the DRI objections, the DGFT-DRI meeting dated 18.06.2015 and the subsequent policy clarifications. The restoration of EODCs by the competent licensing authority itself demonstrates that the issue substantially involved

policy interpretation and procedural ambiguity rather than deliberate fraud.

60. We find that in the case of *Hindustan Steel Ltd. v. State of Orissa*, 1978 (2) E.L.T. (J159) (S.C.), the Hon'ble Supreme Court held that penalty is not automatic and cannot ordinarily be imposed unless the conduct is contumacious or deliberately dishonest. Likewise, in *Union of India v. Rajasthan Spinning & Weaving Mills*, 2009 (238) E.L.T. 3 (S.C.), the Apex Court reiterated that imposition of fiscal penalty requires deliberate contravention involving guilty intent. We find that such essential ingredients are absent in the present case.

61. In view of the foregoing discussions, particularly the findings recorded by the Coordinate Bench in *Sree Koppammal Cotton Spinning Mills Pvt. Ltd. (Supra)* regarding ambiguity in the legal framework governing third-party exports, we hold that the ingredients necessary for sustaining penalties under Sections 112(a), 114A and 114AA of the Customs Act, 1962 are not established against the EPCG licence holders, third-party exporters, merchant exporters, manufacturer exporters, consultants or other connected persons. We accordingly hold that the penalties

imposed under the impugned orders are unsustainable in law and liable to be set aside.

Issue No. (iii): Whether confiscation under Section 111(o) and consequential redemption fine under Section 125 are sustainable: -

62. We note that the confiscation of the imported capital goods under Section 111(o) and the consequential redemption fine imposed under Section 125 are entirely founded upon the Department's conclusion that the appellants had failed to validly fulfill the export obligation under the EPCG Scheme through the third-party exports relied upon by them. However, under Issue No. (i), we have already held that the rejection of EODCs and denial of EPCG benefits are legally unsustainable in view of the restoration of EODCs by the competent DGFT authorities, the admitted genuineness of exports and the absence of conclusive evidence establishing fraud or fictitious exports. Once the very basis for treating the export obligation as unfulfilled does not survive, the consequential confiscation and redemption fine also become unsustainable in law and are accordingly set aside.

63. In view of the foregoing discussions, findings and conclusions recorded hereinabove, we hold as follows: -

- i. The rejection/cancellation of the Export Obligation Discharge Certificates (EODCs) and the consequential denial of EPCG benefits by the Customs authorities are legally unsustainable in view of the subsequent adjudication and appellate proceedings before the DGFT authorities validating discharge of export obligation under the EPCG Scheme.
- ii. The findings in the impugned orders regarding non-fulfilment of export obligation on the ground of alleged absence of strict nexus between the imported capital goods and exported goods are legally untenable in light of the value-based export obligation framework under the EPCG Scheme, the recognition of third-party exports under the FTP, Handbook of Procedures and Notification No.97/2004-Cus., and the substantial ambiguity admittedly prevailing during the relevant period regarding interpretation of third-party export provisions.
- iii. The findings treating the third-party exports relied upon by the appellants as invalid for EPCG purposes cannot be sustained particularly when the exports were genuine physical exports processed through regular Customs channels, the shipping bills carried EPCG endorsements, realization of export proceeds was not disputed and the competent DGFT authorities

themselves ultimately restored and validated the EODCs after considering the DRI objections, policy clarifications and trade representations.

- iv. Consequently, the confirmation of differential customs duty together with applicable interest, confiscation of imported/procured capital goods under Section 111(o) of the Customs Act, 1962, imposition of redemption fine under Section 125 and penalties imposed under Sections 112(a), 114A and 114AA upon the EPCG licence holders, their Directors, third-party exporters, consultants, Chartered Accountant and other connected persons are unsustainable in law and liable to be set aside.

64. Accordingly, impugned Order-in-Original No. 13/2016 dated 04.08.2016 issued on 11.08.2016 and Impugned Order-in-Original No. 14/2016 dated 12.08.2016 passed by the Commissioner of Customs, Tuticorin are set aside to the extent challenged in the present appeals. Consequently, all the sixteen appeals stand allowed with consequential reliefs, if any, in accordance with law.

(Order pronounced in open court on 29.05.2026)

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

Sd/-
(P. DINESHA)
 MEMBER (JUDICIAL)