

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE  
TRIBUNAL,  
EAST REGIONAL BENCH : KOLKATA**

**Appeal No.C/26/2009**

(Arising out of Order-in-Original No.29/Commr/CE/KOL-III/2008-2009 dated 29.10.2008 passed by the Commissioner, Central Excise, Kolkata-III)

M/s. Libas India

...APPELLANT(S)

VERSUS

Commissioner of Central Excise, Kolkata-III

...RESPONDENT (S)

**APPEARANCE**

None for the Appellants

Shri S.Guha, AC(AR) for the Revenue

**CORAM:**

**HON'BLE SHRI P. K. CHOUDHARY, JUDICIAL MEMBER**

**Hon'ble SHRI V.Padmanabhan, Member (Technical)**

Date of Hearing/Decision : 10.12.2018

ORDER NO.FO/77106/2018

**Per Bench :**

The appeal is filed against the Order-in-Original No.29/Commr/CE/KOL-III/2008-2009 dated 29.10.2008. When the appeal was called today none appeared on behalf of the appellant. It is further seen from records that the appellant has not bothered to represent during the earlier hearings fixed on 13.12.2010 and 09.07.2018. Since the appeal is very old and cannot be kept pending endlessly, the same is taken up for decision.

2. Acting on intelligence, the Directorate of Revenue Intelligence intercepted one vehicle on 28.12.2004 containing 22 cartons of imported silk fabrics of Chinese origin. In the follow-up action, another 21

cardboard cartons of silk fabrics of Chinese origin in original packing condition as well as nine bundles of polyester fabrics of Chinese origin were found and seized in the factory premises of M/s. G.N.Rubbertech Pvt. Ltd., 24 Parganas (North), West Bengal. Investigations were conducted by DRI into the affairs of M/s. G.N.Rubbertech Pvt. Ltd. who were registered as Export Oriented Unit and importing duty free raw-materials. The investigations concluded that M/s. G.N.Rubbertech Pvt. Ltd. had misused the EOU Scheme and the goods imported without payment of duty under Customs Notification No.52/03-Cus dated 31.03.2003 were diverted in the market without utilizing the same for manufacture of products for export. In the course of investigations it was revealed that EOU had shown export of readymade garments to Bangladesh by some merchant exporters namely M/s. Renuka Enterprise, M/s. Libas India and M/s. Overseas Trading during the period December, 2003 to December, 2004.

3. After completion of the investigations, show cause notice dated 02.07.2007 was issued by DRI to M/s. G.N.Rubbertech Pvt. Ltd, as well as various connected parties including M/s. Libas India, Kolkata. The adjudication of the case resulted in the issue of the impugned order in which customs duty of Rs.14.51 Crores was demanded from M/s. G.N.Rubbertech Pvt. Ltd alongwith interest on account of misuse of the EOU Scheme. The seized goods were confiscated and penalties were imposed on M/s. G.N.Rubbertech Pvt. Ltd. and various other notices. A penalty of Rs.5,00,000/- was imposed on M/s. Libas India, Merchant Exporter. This penalty is under challenge in the present appeal.

4. From records it is seen that the appeal filed by all other persons against the impugned order stand dismissed by the Tribunal. In the

present appeal M/s. Libas India have agitated against the penalty imposed on them.

5. M/s. Libas India has argued in the appeal that the penalty imposed on them was totally unjustified. It is submitted that they have entered into agreement with the EOU only for earning 3% commission. It is claimed that the goods came to M/s. Libas India under Central Excise Seal and subsequently moved straight to the port of export in their name.

6. A careful consideration of the record of the present case reveals that M/s. Libas India has played a significant role in abetting and facilitating the gross evasion of customs duty by misuse of EOU Scheme by M/s. G.N.Rubbertech Pvt. Ltd. It is seen from records that M/s. Libas India has entered into a Purchase Contract worth Rs.1,31,58,400/- with M/s. G.N.Rubbertech Pvt. Ltd. on 07.11.2003. Records show date-wise purchase of goods from EOU and date-wise payment made through banking channels. Documents indicate that 44 exports have been shown to have been made in the name of M/s. Libas India to Bangladesh. The investigations conducted at Bangladesh has confirmed through report dated 22.10.2008 from the Commissioner of Customs, Dhaka, Bangladesh that no goods were imported into Bangladesh in conformity with the exports shown to have been made by M/s. Libas India. It is also admitted position that M/s. Libas India have never seen or inspected the goods for which they issued export documents as merchant exporter.

7. The DRI investigations established the role played by M/s. Libas India in facilitating and abetting the evasion of customs duty by M/s. G.N.Rubbertech Pvt. Ltd.

8. In view of the above, we find that the appellant has been rightly been penalised by the adjudicating authority. In the result, we find no reason to interfere with the impugned order which is sustained in so far as it relates to imposition of penalty on M/s. Libas and the appeal filed is rejected.

(Ordered portion have already been pronounced in the open court.)

S/d.

**(P. K. CHOUDHARY)**  
**MEMBER (JUDICIAL)**

S/d.

**(V. Padmanabhan)**  
**MEMBER (TECHNICAL)**