IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 76449 of 2016

(Arising out of Order-in-Original No. 01/Pr. Commr./Kol-I/C.Ex./2016-17 dated 24.05.2016 passed by the Principal Commissioner of Central Excise, Kolkata-I Commissionerate, 180, Shantipally, Rajdanga Main Road, Kolkata – 700 107)

M/s. Omni Auto Limited **: Appellant**
Plot No. B-7 & 8, Phase-VII, Adityapur Industrial Area,
Jamshedpur – 832 109

VERSUS

Principal Commissioner of Central Excise **: Respondent**
Kolkata-I Commissionerate,
180, Shantipally, Rajdanga Main Road, Kolkata – 700 107

WITH

Customs Appeal No. 76450 of 2016

(Arising out of Order-in-Original No. 01/Pr. Commr./Kol-I/C.Ex./2016-17 dated 24.05.2016 passed by the Principal Commissioner of Central Excise, Kolkata-I Commissionerate, 180, Shantipally, Rajdanga Main Road, Kolkata – 700 107)

Shri Bikas Chandra Banerjee, **: Appellant**
Authorized Representative,
M/s. Omni Auto Limited
Plot No. B-7 & 8, Phase-VII, Adityapur Industrial Area,
Jamshedpur – 832 109

VERSUS

Principal Commissioner of Central Excise **: Respondent**
Kolkata-I Commissionerate,
180, Shantipally, Rajdanga Main Road, Kolkata – 700 107

AND

Customs Appeal No. 76452 of 2016

(Arising out of Order-in-Original No. 01/Pr. Commr./Kol-I/C.Ex./2016-17 dated 24.05.2016 passed by the Principal Commissioner of Central Excise, Kolkata-I Commissionerate, 180, Shantipally, Rajdanga Main Road, Kolkata – 700 107)

Shri Anil Roy, Managing Director, **: Appellant**
M/s. Omni Auto Limited
Plot No. B-7 & 8, Phase-VII, Adityapur Industrial Area,
Jamshedpur – 832 109

VERSUS

Principal Commissioner of Central Excise **: Respondent**
Kolkata-I Commissionerate,
180, Shantipally, Rajdanga Main Road, Kolkata – 700 107

APPEARANCE:

Shri V.N. Dwivedi, Smt. Jayanti Char and Shri B.N. Pal, all Advocates,
For the Appellant(s)

Shri Ashwini Kr. Choudhary, Authorized Representative,
For the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NOs. 76273-76275 / 2025

DATE OF HEARING: 23.04.2025

DATE OF DECISION: 30.04.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

The facts of the case are an EPCG license number P/CG/2098472/C/XX/52/N/99 dated 12.05.1999 was issued to M/s Omni Auto Ltd., Jamshedpur (the appellant-company herein) for import of Five numbers Horizontal Lathe Machines and their accessories for C.I.F. value Rs. 1,30,09,500/- (J. Yen 3,67,50,000/-). Against the said license, the appellant imported 5 Nos. of Horizontal Lathe Machines and their accessories vide Bill of Entry No. 1397 dated 18.06.1999 (Assessable value Rs. 47,10,122.48) and Bill of Entry No. 545 dated 07.06.1999 (Assessable value Rs. 78,94,514.53). The appellant availed concessional rate of duty at the rate of 10% as provided under Notification No.29/1997 dated 01.04.1997.

1.1. However, the appellant failed to fulfil their export obligation during the first block of two years i.e., 12.05.1999 to 11.05.2001. A demand notice was issued vide letter dated 27.03.2002, demanding payment of differential duty on unfulfilled portion of export obligation, along with interest. The said notice is pending adjudication.

2. The appellant approached the Directorate General of Foreign Trade (DGFT), Patna requesting for extension of export obligation period and inclusion of additional items in their licence for fulfilment of export obligation. As requested by the appellant, the export obligation period was extended by the DGFT, Patna and certain new/additional items were included for fulfilment of export obligation.

3. An investigation was initiated by the Directorate of Revenue Intelligence (DRI), by writing a letter dated 29.05.2006 to the Deputy Director, DGFT, Patna to ascertain as to whether the inclusion of the new commodity on 15.03.2005 in the EPCG Licence has retrospective effect or not. In response to this, Mr. S.N. Das, Deputy Director General of Foreign Trade, DGFT, Patna vide letter dated 09.06.2006 admitted that the fulfilment of export obligation certificate was wrongly issued on the basis of the certificate furnished by an independent Chartered Accountant and the points raised by the DRI in respect of fulfilment of export obligation for the first block, had been overlooked by them.

4. Thus, it appeared to the Revenue that the appellant had procured the fulfilment of export obligation certificate by wilful mis-statement of the facts endorsed by their Chartered Accountant, by wrongly claiming export of newly included commodity (various types of machine parts, included in their licence on 15.03.2005) for discharging the export obligation for the first block year i.e., 12.05.1999 to 11.05.2003.

5. Accordingly, a Show Cause Notice was issued to the appellant on 07.02.2007demanding duty of Rs.19,32,497/- leviable on the unfulfilled portion of

the export obligation and the same was pending adjudication with the Additional Commissioner of Customs (Port), Kolkata Customs, Kolkata.

6. The appellant was asked to substantiate their claim of discharge of export obligation as reported to the DGFT, Patna along with documentary evidence.

6.1. In his statement dated 23.04.2008, Shri Bikas Chandra Banerjee (appellant no.2 herein) *inter alia* deposed that their firm, namely, M/s. Omni Auto Ltd.was engaged in carrying out certain jobs like grinding, machining, phosphating, ID polishing, etc., on the materials supplied by M/s. Timken India Ltd., Jamshedpur as per the drawings and designs supplied by M/s. Timken India Ltd. He also informed that they had accounted for the charges received from M/s. Timken India Ltd. against the services rendered to them during the impugned period and had incorporated the same in the statutory report ANF-5B. He further informed that since M/s. Timken India Ltd. had been accredited as a Star Trading House, they have treated their supply of goods to the said concern as ‘deemed export’ during the said period.

6.2. As M/s. Timken India Pvt. Ltd. was granted Star Trading House status on or after 1st April, 2006, the investigating officers were of the view that the supplies made to M/s. Timken India Ltd. before 1st April, 2006 would not qualify as deemed export straightaway unless their name and E.P.C.G. Licence number were properly endorsed in the shipping bills of M/s. Timken India Ltd., as required under Para 5.6 of the Foreign Trade Policy (FTP), Handbook of Procedures.

7. During the course of further investigation, Mr. Ashit Chatterji, Manager (Taxation) of M/s. Timken India Ltd., in his letter dated 18.09.2008, inter alia informed that they had declared M/s. Omni Auto Ltd. as their supporting manufacturer and co-Licencee for procuring raw material under Advance Authorization in the recent past (31-08-2006) and had been fulfilling export obligations from time to time.

8. On the basis of the information procured from M/s. Timken India Ltd., Jamshedpur, the statement of Mr. Bikas Chandra Banerjee / appellant no. 2, Accounts Manager of M/s. Omni Auto Ltd. was again recorded, wherein he revealed that the appellants had only calculated the job charges towards fulfilment of export obligation, but not the cost of raw materials. With regard to the statement of Mr. Roy of M/s. Timken India Ltd. to the effect that the materials supplied were not exported as such and there was no mention of their EPCG Licence no. in the shipping bills of M/s. Timken India Ltd., the appellant no. 2 stated that they were of the assumption that all goods supplied to a Star Export House status-holder would be treated as deemed export and accordingly, had accounted the same in such manner.

9. On completion of the investigation, the following three Show Cause Notices were issued to the appellants:

(I) The first Show Cause Notice-cum-Demand was issued to (1) M/s Omni Auto Ltd. and (ii) Shri Anil Roy, Managing Director on 27.03.2002 by the Deputy Director, Directorate of Revenue Intelligence, Patna Regional Unit seeking (a) recovery of Customs Duty amounting to Rs. 8,28,427/- under Section 28 of the Customs

Act, 1962 (b) realization of Interest @24% per annum on the above amount under Section 28AA of the Customs Act, 1962 and (c) imposition of penalty under Section 112 (b) of the Customs Act, 1962.

(II) The second Show Cause Notice-cum Demand was issued to (i) M/s Omni Auto Ltd. and (ii) Shri Anil Roy, Managing Director on 07.02.2007 by the Deputy Director, Directorate of Revenue Intelligence, Patna Regional Unit seeking (a) recovery of Customs Duty amounting to Rs. 19,32,997/- under Section 28 of the Customs Act, 1962 read with Notification No. 29/97-Cus dated 01.04.1997 and as per the Bond executed (b) realization of interest @24% per annum on the above amount under Section 28AA and Section 28AB of the Customs Act, 1962 and (c) imposition of penalty under Section 112 (b) of the Customs Act, 1962.

(III) The third Show Cause Notice-cum-Demand was issued to (i) M/s Omni Auto Ltd.; (ii) Shri Anil Roy, Managing Director of Noticee No. (i); (iii) Sri P.R. Roy. Director of Noticee No. (i); (iv) Sri Bikas Chandra Banerjee, Authorised Representative of Noticee No. (i); and (v) M/s R. Sinha & Associates, Chartered Accountants on 07.02.2007 by the Deputy Director, Directorate of Revenue Intelligence, Patna Regional Unit.

9.1. The first two notices mentioned above are not the part of the current proceedings. The third SCN mentioned above has proposed recovery of Duties of Customs amounting to Rs. 55,22 848/-, along with interest, under Section 28 of the Customs Act, 1962 read with Notification No.29/97-Cus dated 01.04.1997 as per provisions of the bond executed by the noticee no.1, by invoking the extended period of limitation. The notice also proposed to impose penalty on the appellants. Further, confiscation of the capital goods imported against the impugned EPCG Licence was proposed under Section 111(o) of the Act, along with enforcement of bonds executed at the time of import as well as encashment and appropriation of the Bank Guarantee furnished by the appellant. An amount of Rs.10,00,000/- already deposited was proposed to be adjusted.

10. During adjudication proceedings, Ld. Principal Commissioner of Central Excise, Kolkata-I Commissionerate, vide the impugned Order-in-Original No. 01/Pr. Commr./Kol-I/C.Ex./2016-17 dated 24.05.2016, passed the following order: -

> *"(i) Five numbers of Horizontal Lathe Machines and their accessories and two units of total memory parts for computer of Horizontal Lathe Machines having assessable value of Rs. 1,26,04,637.01 (Rupees One crore Twenty-six lakh Four thousand Six hundred Thirty-seven and Paisa One only) imported under Bills of Entry No. 545 dated 07.06.1999 and 1397 dated 18.06.1999 against EPCG license no. P/ CG/2098472/C/XX/52/N/99 dated 12.05.1999 on payment of concessional rate of Customs Duty and availing exemption benefit of Rs. 55,22,848/-,are held to be confiscated under section 111(0) of the Customs Act, 1962for non-fulfilment of the conditions stipulated under Notification No. 29/97- Cus dated 01.04.1997.*
>
> *(ii) An option is granted to the Noticee No. 1 to redeem the abovementioned capital goods on payment of Redemption Fine of Rs. 31,51,159/- (Rupees Thirty-one lakh Fifty-one thousand One hundred Fifty-nine only), in lieu of confiscation.*
>
> *(iii) I confirm that Duties of Customs amounting to Rs. 55,22,848.00 (Rupees Fifty-five lakh Twenty-two thousand Eight hundred Forty-eight only) is to be recovered from the importing firm under Section 28 of the Customs Act, 1962 read with Notification No.29/97-Cus dated 01.04.1997 as per provisions of*

the bond executed by the noticee no.1, and invoking the extended period of five years for realisation of Govt., dues under the provisions of Section 28 of the Customs Act, 1962.

(iv) I also order for realisation of Interest on the above amount @ 24% per annum as applicable from the date of clearance to 15.01.2002 and 15% per annum from 16.01.2002 till the date of payment under Section 28AA and 28AB of the Customs Act, 1962 read with Notification No. 29/97-Cus dated 01.04.1997.

(v) Considering the facts of the case, I do also impose personal penalty under section 112(b) of the Customs Act, 1962, on the Noticee No. 1 to 5 for the following amounts, respectively for their involvement in the evasion of legitimate Customs duty:

> *(a) Rs. 5,00,000/- (Rupees Five Lakh only) on the Noticee No. 1 i.e.M/s Omni Auto Ltd., Jamshedpur.*
>
> *(b) Rs. 5,00,000/- (Rupees Five Lakh only) on the Noticee No.2 i.e. Shri Anil Roy, Managing Director*
>
> *(c) Rs. 5,00,000/-(Rupees Five Lakh only) on the Noticee No. 3 i.e. Sri P.R. Roy, Director*
>
> *(d) Rs. 2,00,000/- (Rupees Two Lakh only) on the Noticee No. 4 i.e. Sri Bikas Chandra Banerjee, Authorised Representative of M/s Omni Auto Ltd., Jamshedpur.*
>
> *(e) Rs. 2,00,000/- (Rupees Two Lakh only) on the Noticee No. 5 i.e. M/s R. Sinha& Associates, Chartered Accountants.*

(vi) The said Redemption Fine may be adjusted and the amount of duty liable to be paid may be recovered by enforcing the two Bonds executed (valued Rs. 34,59,061.00 &Rs. 20,63,787.00 totalling Rs. 55,22,848.00) and encashment of Bank Guarantee No. 99/21 dated 10.03.99 & 99/251 dated 23.06.99 furnished (amounting to Rs. 17,29,550.00 and Rs. 10,31,900/-) and appropriating the Cash Security of Rs. 10,00,000/- voluntarily deposited by the noticee No.1 towards payment of Customs duty vide TR-6 Challan No. 01/2008-09 dated 23.09.2008 &02/2008-09 dated 31.10.2008 received in the SBI, Patna (Main Branch)."

11. Aggrieved by the confirmation of the demands mentioned supra, the appellants herein have filed these appeals.

12. The Ld. Counsel appearing on behalf of the appellants submitted that initially, they had failed to fulfil the export obligation, but later, the DGFT, Patna had amended the Licence and extended the export obligation period, by inclusion of additional export items. It is submitted that the DGFT had issued a certificate on 31.01.2012 wherein the DGFT has regularized the export obligation and certified that the appellant has fulfilled their export obligation in respect of the said EPCG Authorization. However, the ld. adjudicating authority has disregarded the EODC Certificate dated 31.01.2012 by holding as follows: -

a. The EODC Certificate dated 31.01.2012 issued by DGFT, Patna into consideration but the said certificate cannot be accepted considering the letter dated 09.06.2006 of Sri S. N. Das, DDGFT, Patna admitting that the fulfilment of E.O. certificate (the partial one dated 06.09.2005 related to the 1 Block Year, in connection with the instant EPCG Licence) was wrongly issued by them on the basis of certificate furnished by independent Chartered Accountant and that the points in respect of fulfilment of export obligation for the first block, taking into account retrospectively the exports of additional items, was overlooked by them. He gave the plea that such strong examination was not possible due to heavy work load.

b. Hence, when the EODC dated 31.01.2012 loses all its meaning when it is admitted by DGFT that examination of documents is not possible at their end, the question of fulfilment of E.O. is to be judged independently, on the basis of investigation.

c. Mere supply of goods to the exporter having Export House Status did not enable the noticee to claim the benefit of deemed export, as the noticee failed to produce any shipping bill of the exporter i.e. M/s Timken India Ltd., Jamshedpur having endorsement of EPCG license No. in question. As per para 5.7.1 of Hand Book of Procedure Part 2, EPCG authorization holder shall export either directly or through third party. EPCG authorization No. and date should have been endorsed on shipping bills, if the same were intended to be presented towards discharge of export obligation. Hence, clearances of the goods to M/s. Timken India Ltd., during the material period from 12.05.2003 to 11.05.2007 cannot be treated as Deemed Export. Neither the Noticee nor the manufacturer exporter fulfilled the prescribed conditions or produced documentary evidences to justify their claim regarding fulfilment of export obligation under Deemed Export criteria. Therefore, the supplies made by them to M/s Timken India Ltd., during the period 12.05.2003 to 11.05.2007 claiming fulfilment of export obligation did not qualify as deemed export or export through third party and by way of direct export, they fulfilled only 0.61% during the 2nd Block Year and 0.46% during the 3rd Block Year.

12.1. In this regard, it is the appellants' contention that DGFT is the proper authority to decide the fulfilment of export obligation; once the DGFT authorities have issued the certificate on 31.01.2012 certifying that the appellant had fulfilled their export obligation, it is not open to the Customs authorities to initiate any action by disregarding the Export Obligation Discharge Certificate (EODC) issued by the DGFT.

12.2. The Ld. Counsel for the appellants also made the following submissions: -

(i) The appellant discharged its export obligation via direct as well as deemed exports. As regards deemed exports, the appellant submitted the Excise Invoices (representative copies at page 126-129 of PB) since inception of these transactions, certificate of Central Excise dated 15-03-2006 and minutes of the meeting dated 09-02-2007also the evidence of direct export duly certified by the Chartered Accountant as well as by submission of ANF-5B. DGFT issued certificate 06-09-2005 showing fulfilment of Export obligation (para 6 of O-IO) and thereafter issued EODC dated 31-01-2012.

(ii) DGFT is competent authority to interpret the policy and to determine whether appellant has achieved the export performance or not in terms of provisions made under the policy. After issuance of EODC by the office of DGFT and redemption of EPCG license, demand of duty by the department of Customs is neither just nor legal.

(iii) Vide letter dated 31.01.2012, the office of DGFT regularized the EO and redeemed the license. In response to letter dated 11.03.2013 of DRI, the office of DGFT authenticated its letter dated 31.01.2012. The office of DGFT has neither questioned the EODC nor revoked it. Having full knowledge of the finding and order of DGFT in form of EODC, the department has not challenged the same before the higher home. Hence the same became final and binding.

(iv) As per para 2.3 of the relevant Exim Policy 2009-14, if any question or doubt arises regarding interpretation of any provisions in the Policy or regarding the Handbook, the decision of the DGFT shall be final and binding. In support of the above contentions, the appellant relies upon the following cases: -

- *Commissioner of Customs (Gen.), Mumbai v. AKM Trading Corporation [2007 (208) ELT 406 (Tri-Mumbai)] Commissioner of Customs (Gen.), Mumbai Vs AKM Trading Corporation*
- *Skipper Ltd. Vs Commissioner of Customs (port), Kolkata [2025 SCC Online Cestat 94]*
- *Ashok Enterprises vs commissioner of Customs Chennai [2005 (179) ELT 124 (Tri-Chennai)]*

(v)The 3rd. and final SCN is barred by law of Limitation. The importation took place vide two Bills of entry nos. 545 dated 07-06-1999 and 1397 dated 18-06-1999; and 3rd. block of export obligation period ended on 11 May 2007. The 3rd, SCN was issued on 18-06-2010 after a long gap of more than 3 years. The department was fully aware that appellant was making deemed exports from the very first block period and continued to do so during the 2nd block period through Star Export house M/s Timken India Ltd. All facts were well within the knowledge of the department. Rejecting claim of deemed exports, department issued two SCNS (1st & 2nd) without invoking the extended period of Limitation. The appellant has not suppressed or mis-represented any fact.

12.3. Accordingly, the Ld. Counsel for the appellants prayed that the demands confirmed against them in the impugned order be set aside, being unsustainable in law.

13. On the other hand, the Ld. Authorized Representative of the Revenue submitted that the appellants have obtained the said certificate from the DGFT by mis-representing the facts, which has been admitted by the Deputy Director, DGFT, Patna. Accordingly, he contends that the EODC dated 31.01.2012 issued to the appellant has no validity. Thus, the Ld. Authorized Representative of the Revenue contends that the demands confirmed against the appellants vide the impugned order are legally sustainable.

14. Heard both sides and perused the appeal records.

15. We observe that the appellant-company was issued an EPCG Licence bearing No. P/CG/2098472/C/XX/52/N/99 dated 12.05.1999 for import of Five numbers Horizontal Lathe Machines and their accessories for C.L.F. value Rs. 1,30,09,500/-. Since the appellant had failed to fulfil their export

obligation, they approached the DGFT, Patna seeking extension of export obligation period and also for inclusion of additional items in their said licence for fulfilment of export obligation. The Deputy Director General of Foreign Trade, DGFT, Patna, vide letter dated 06.09.2005 issued to the appellant, certified partial fulfilment of export obligation for the first block year. However, during investigation by the DRI, the Deputy Director General of Foreign Trade, DGFT, Patna, vide letter dated 09.06.2006 admitted that the fulfilment of export obligation certificate was wrongly issued inter alia since strong examination was not possible due to heavy work load.

14.1. We observe that the appellants have claimed that they had fulfilled their export obligation by accounting the supplies made by them to M/s. Timken India Ltd., Jamshedpur, which had been accorded the status of a Star Export House, but the Department has not treated these as 'deemed exports' for the purpose of fulfilment of their export obligation on the ground that the EPCG Authorization number and date were not endorsed on the shipping bills and supporting documentary evidence were not produced. Accordingly, it was alleged that the appellant-company had failed to fulfil the conditions of the EPCG Licence issued to them as well as the conditions enshrined in Notification No. 29/1997-Cus. dated 01.04.1997.

15. In this regard, we find that the Directorate General of Foreign Trade (DGFT) is the proper authority to decide as to whether the appellant have fulfilled their export obligation or not. It is seen that vide a letter dated 31.01.2012, the DGFT, Patna has issued a certificate to the effect that the appellant had fulfilled their export obligation. For the sake of ready reference, the certificate dated 31.01.2012 issued by the DGFT is scanned and reproduced below: -

Regd.

GOVERNMENT OF INDIA
MINISTRY OF COMMERCE & INDUSTRY
OFFICE OF THE JOINT DIRECTOR GENERAL OF FOREIGN TRADE
BISCOMAUN BHAWAN: GROUND FLOOR: PATNA /BIHAR-800001
Phone/Fax No.2212052/2231326, E.mail: patna-dgft@nic.in

NO:JDG/PAT/3/EPCG/98-99/3/ 9130 DATE: 31.01.2012.

To,

M/s. Omni Auto Limited,
Opp. Road No. 2 of Sanjay Colony,
Near Kali Mandir, Hanuman Nagar,
Kankarbagh,
Patna/Bihar-800020.

Subject: Regularization of EPCG Authorization
No.P/CG/2098472/C/XX/52/N/99 dated 12.05.1999.

Gentlemen,

With reference to your letter No.OAL/DGFT PATNA/11/11-12 dated 24.01.2012 on the above subject I am to inform you that you have furnished export documents and paid composition fee towards completion of export obligation and submitted the documents as per Para 5.14 of the Hand Book of Procedures (Vol.I) 2009-14 against above mentioned subject EPCG Authorization and accordingly the E.O. has been regularized and case has been redeemed.

Yours faithfully,

31/1/12

(B. C. Boro)
Asstt. Director General of Foreign Trade
For Joint Director General of Foreign Trade

11/02/2013

15.1. From the above, it is evident that the DGFT authorities have accepted the compensation fee paid towards the export obligation and concluded that the appellant had fulfilled their export obligation. Thus, when the proper authority has already considered the fulfilment of export obligation, raising of demand of

Customs duty on the appellant by the Revenue on the ground that they have not fulfilled the export obligation, is not legally sustainable.

15.2. We observe that this view has also been held by this Tribunal in the case of *Skipper Ltd. v. Commissioner of Customs (Port), Kolkata [2025 SC OnLine CESTAT 94] (Final Order No. 75161 of 2025 dated 23.01.2025 in Customs Appeal No. 79219 of 2018 – CESTAT, Kolkata),* wherein it has been held as under: -

> *"7.1. We agree with the submission of the Appellant that determination of fulfilment of export obligation falls within the jurisdiction of the DGFT. Once the DGFT accepts the fulfilment of export obligation and the bond has been released, the Customs authorities cannot initiate any proceedings for contravention of the provisions of the Foreign Trade Policy. We observe that this view has been held by the Hon'ble Supreme Court in the case of M/s. Titan Medical Systems Pvt. Ltd. v. Collector of Customs, New Delhi [2003 (151) E.L.T. 254 (S.C.)]wherein it has been held as under:-*
>
> *"13. As regards the contention that the appellants were not entitled to the benefit of the exemption notification as they had misrepresented to the licensing authority, it was fairly admitted that there was no requirement, for issuance of a licence, that an applicant set out the quantity or value of the indigenous components which would be used in the manufacture. Undoubtedly, while applying for a licence, the appellants set out the components they would use and their value. However, the value was only an estimate. It is not the respondents' case that the components were not used. The only case is that the value which had been indicated in the application was very large whereas what was actually spent was a paltry amount. To be noted that the licensing authority having taken no steps to cancel the licence. The licensing authority have not claimed that there was any misrepresentation. Once an advance licence was issued and not questioned by the licensing authority, the Customs authorities cannot refuse exemption on an allegation that there was misrepresentation. If there was any*

misrepresentation, it was for the licensing authority to take steps in that behalf."

7.2. We also find that once the Appellant has fulfilled their export obligation and EODC has been issued by the DGFT authorities and bond released, it amounts to fulfilment of all the conditions laid down under the Notification No. 96/2009-Cus. dated 11.06.2009 under which the Appellant has imported the goods without payment of duty. This view has also been supported by the decision in the case of M/s. Aditya Birla Nuvo Ltd. v. Commissioner of Cus., Bangalore [2010 (249) E.L.T. 273 (Tri. – Bang.)]. The relevant part of the said decision is reproduced below: -

"8.3 We now take up question (d) for discussion.

(d) Whether after completion of the export obligation stipulated in the advance license, can duty demand on the imported material sustain under Customs Notification?

The proviso to condition (ii) of the exemption Notification No. 30/97 stipulates that the bond shall not be necessary in respect of imports made after discharge of export obligation in full. As a necessary corollary, it would mean that in the case of export obligation is completed, fastening of any duty liability is not contemplated by notification. However, though the fulfilment of EO is not in dispute, impugned order erroneously casts liability of duty and penalty under the Act which according to us is not sustainable.

In the instant case before us, as per certain other facts above discloses, the Joint DGFT issued EODCs, certifying that the appellant had discharged export obligation which was cast on them in respect of the advance licenses. It has been contended by the appellant before the Commissioner, that, in view of the said EODC, the case against them, could not survive. However, it must be mentioned here that the Commissioner had failed in considering this effect of undisputed EODC issued by the DGFT in the context of this licenses acting upon which, even the bonds were already cancelled. Moreover, no condition of the exemption was violated and therefore, there cannot any liability of penalty, as well."

16. In view of the above discussion and by relying on the decision cited supra, we hold that the DGFT is the competent authority to determine the policy and to determine as to whether the appellant has achieved fulfilment of the export obligation under the said policy or not. In the present case, as it is a fact on record that the DGFT has regularized the export obligation and held that the appellant had achieved the export obligation vide their letter/certificate issued on 31.01.2012, we find that the demands confirmed in the impugned order against the appellants herein on the ground that the appellants had not fulfilled their export obligation, are not legally sustainable. Thus, we hold that the demands of customs duty along with interest and penalty confirmed against the appellant in the impugned order are not sustainable and hence we set aside the same. Accordingly, we set aside the penalties imposed on M/s. Omni Auto Ltd., Jamshedpur (appellant-company/appellant no. 1), Mr. Bikas Chandra Banerjee (appellant no. 2) and Mr. Anil Roy, Managing Director (appellant no. 3), under Section 112(b) of the Customs Act, 1962.

17. In the result, we pass the following order: -

(1) The demand of Customs Duty amounting to Rs.55,22,848/- confirmed in the impugned order under Section 28 of the Customs Act, 1962 read with Notification No. 29/97-Cus. dated 01.04.1997, is set aside.

(2) The penalties imposed on M/s. Omni Auto Ltd., Jamshedpur (appellant-company/appellant no. 1), Mr. Bikas Chandra Banerjee (appellant no. 2) and Mr. Anil Roy (appellant no. 3) under Section 112(b) of the Customs Act, 1962 are set aside.

18. The appeals are disposed of in the above manner.

(Order pronounced in the open court on **30.04.2025**)

Sd/-

(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd