IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA
REGIONAL BENCH – COURT NO. 1
Customs Appeal No. 52 of 2011

(Arising out of Order-in-Original No.KOL/CUS/Airport/ADMN/08/2010 dated 30th April, 2010 passed by Commissioner of Customs, Kolkata)

Jay Shree Tea and Industries Limited **: Appellant**
Plot:Y-13, Block-EP, Salt Lake, Sector-V, Kolkata-700 091.

VERSUS

Commissioner of Customs, Kolkata **: Respondent**
15/1, Strand Road, Kolkata-700 001.

APPEARANCE:

Shri Sweta Mukherjee, Advocate for the Appellant

Shri S.Debnath, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO. 77378/ 2025

DATE OF HEARING :28.07.2025

DATE OF DECISION:28.07.2025

Order : [Per Shri Ashok Jindal]

This is a second round of litigation. The facts of the case are as under:

"M/s. Jayashree Infotech Consultants, Prop. M/s. Jayashree Tea and Industries Ltd. [hereinafter referred to as 'unit'] was granted a Customs Warehousing Licence for warehousing, manufacturing and export of software against LOP reference no. STPK: DIR:327:2001-02:539 dated 12.02.2002 issued by the Director, STPI, Kolkata. M/s. Jayshree Infotech Consultants also executed a B-17 Bond dated 18.07.2002 with the Customs authorities binding themselves to fulfil their export obligations and the conditions stipulated in the Customs Notification.

2. As per the performance report forwarded by STP, Kolkata vide their letter No. STPK:MGR:327 2007-08:519 dated 12.07.2007, it was observed as under: -

i) That the unit failed to achieve minimum required export obligation (EO) in two out of five financial years and during five years as a whole.

ii) That the unit failed to meet the required annual NFE and NFEP in three out of five financial years and average NFE and NFEP at the end of five years.

iii) That the unit executed DTA sales in the financial year 2003-04, 2004-05 and 2005-06 without permission of STP Kolkata.

2.1 In view of the above, it appeared that the unit had not achieved export obligation cumulatively or annually. Accordingly, as per paragraph 3(d)(ii) of Notification No. 52/2003-Cus. dated 31.03.2003, it appeared that the appellant was liable to pay duty along with interest on the imported and domestically procured goods.

3. In view of the above, a Show Cause Notice dated 23.10.2007 was issued to the appellant proposing as follows:-

4. The Notice was adjudicated vide impugned order dated 30.04.2010 wherein the ld. adjudicating authority has passed the following order: -

"15. … (a)(i) Computer hardware and accessories, valued at Rs. 2,74,99,090,28 (Rupees two crore seventy four lakh ninety nine thousand ninety & paisa twenty eight only) are confiscated under section 111(0) of the Customs Act, 1962. (a)(ii) However an option is given to the owner of the impugned goods M/s Jayashree Infotech Consultants to redeem the goods valued at Rs. 2,74,99,090.28 (Rupees two crore seventy four lakh ninety nine thousand ninety & paisa twenty eight only) on payment of a redemption fine of Rs. 75,00,000/- (Rupees seventy five lakh only) in terms of Section 125 of the Customs Act, 1962. (b)(i) Computer hardware and accessories valued at Rs. 40,10,062.00 (Rupees forty lakh ten thousand sixty two only) are confiscated under Rule25(1) (d) of Central Excise Rules, 2002. (b)(ii) However an option is given to the owner of the impugned goods M/s Jayashree Infotech Consultants to redeem the goods valued at Rs.40,10,062.00 (Rupees forty lakh ten thousand sixty two only) on payment of redemption fine of Rs. 10,00,000/- (Rupees ten lakh only) in terms of Section 34 of the Central Excise Act, 1944. 16(i). In view of the aforesaid reasons, I confirm the demand of Customs duty amounting to Rs. 1,01,65,881.00 (Rupees one crore one lakh sixty five thousand eight hundred eighty one only) and the demand of Central Excise duty amounting to Rs.5,53,112.00 (Rupee five lakh fifty three thousand one hundred twelve only) in respect of the impugned goods. 16(ii) I also demand interest at the appropriate rate under Section 28AB of the Customs Act, 1962 and Section 11AC of Central Excise Act, 1944 on the Customs and Central Excise duty not levied on the impugned goods. The interest will be payable for the period starting from the day when the duties became due and the date on which the payment of the demanded duty is made.

17. For the aforesaid reasons, I also impose a penalty of Rs. 1,25,00,000 (Rupees one crore twenty five lakh only) under Section 112(a) of the Customs

Act and Rule 25(1)(d) of the Central Excise Rules, 2002 on M/s Jayashree Infotech Consultants."

5. Aggrieved against the impugned order, the appellant has filed by this appeal. "

2. This Tribunal passed the following order.:

"*10. Thus, we observe that the appellant was granted time for another period of five years from 5th May, 2008 to fulfil their export obligation. Hence, the impugned order dated 30.04.2010 is premature. The ld. adjudicating authority could have waited for the final decision of the Development Commissioner, STPI, before passing the order. Since the appellant has received extension for another period of five years with retrospective effect, we hold that the demand confirmed in the impugned order is not sustainable. As the confiscation of the goods and the demand of duties are not sustainable, the question of imposition of redemption fine and penalty does not arise.*

11. In view of the above, we set aside the impugned order and allow the appeal filed by the appellant."

3. The said order was challenged before the Hon'ble High Court and the Hon'ble High Court vide order dated 10th January, 2025 observed the following:

"*Therefore, we are inclined to remand the matter back to the Ld. Tribunal for fresh consideration, since documents are to be examined and a factual finding has to be recorded.*

For the above reasons, the appeal is allowed and the order passed by the learned Tribunal is set aside and the matter is restored to the file of the learned Tribunal to be heard and decided afresh.

The appellant/revenue is directed to file compilation containing all proceedings relating to the subject matter and placed the same before the Ld. Tribunal for consideration. "

4. Upon remanded by the Hon'ble High Court of Kolkata this Tribunal passed the following order:

"*Today, when the matter was called, it was found that the matter has been remanded by the Hon'ble High Court on 10.01.2025 with the direction to file a compilation containing all proceedings relating to the subject matter.*

In these circumstances, we direct the Ld. Authorized Representative of the Revenue to submit whether LOP, in this case, has been issued to the appellant or not and whether the LOP produced by the appellant at the time of filing of the appeal before this Tribunal is genuine or not.

The matter shall come up on ***7th May, 2025***. "

5. And a report has been submitted which are as under :

एसटीपीआई STPI

आज़ादी का अमृत महोत्सव

सॉफ्टवेयर टेक्नोलॉजी पार्कस ऑफ इंडिया
Software Technology Parks of India
इलेक्ट्रॉनिकी और सूचना प्रौद्योगिकी मंत्रालय (एमईआईटीवाई), भारत सरकार
Ministry of Electronics and Information Technology (MeitY), Govt. of India
प्लॉट - 5/1, ब्लॉक - डीपी, सेक्टर - V साल्ट लेक, कोलकाता - 700 091
Plot - 5/1, Block - DP, Sector - V, SALT LAKE, KOLKATA - 700 091
TEL.: +91-33-23673598/99 FAX: +91-33-23673597
e-mail : kol.info@stpi.in URL : https://kolkata.stpi.in/
GSTIN : 19AAATS2468J1Z3

STPI-KOL/EXIM-533/2025/2990
Date : 09-04-2025

To
Sachin Kumar Mazumder
Deputy Commissioner of Customs
Tribunal Cell (A&A)
Custom House, 15/1 Strand Road
Kolkata – 700001, WB

Sub: Proceedings of the matter pertains to the customs appeal No. 52/2011, M/s. Jayshree Tea- vs- commissioner of customs

Dear Sir,

This is with reference to your email dated 25 March 2025 regarding subject matter.

In this regard, please note that letter No. STPI/DIR/GHY/AP/2010/01, dated 12-03-2010, (subject to Adjudication proceedings in respect of M/s Jay Shree Infotech Consultants, Salt Lake, Kolkata) issued by Software Technology Parks of India, Guwahati, is genuine and copy of letter being sent for your information.

Yours Sincerely

Director

मुख्यालय : एस. टी. पी. आई. नई दिल्ली / Head Quarter : STPI, New Delhi गुआरएल / URL : www.stpi.in
उपकेन्द्र : दुर्गापुर, खड़गपुर, सिलिगुड़ि, हल्दिया / Sub-Centre : Durgapur, Kharagpur, Siliguri, Haldia

6. Coming to the fact that as an order for extension of LOP for another 5 years from 05.05.2008 has been placed on record and the said renewal has been found to be genuine.

7. In that circumstances we hold that the impugned order dated 30th April, 2010 is pre mature.

8. Therefore, the proceedings against the appellant are not sustainable. Accordingly, we set

aside the impugned order and allow the appeal with consequential relief, if any.

(Operative part of the order was pronounced in open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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