CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 90140 OF 2014

[Arising out of Order-in-Original No: CAO/CC/AKG/01/2014 Adj(X) ACC dated 24th September 2014 passed by the Commissioner of Customs (Export), Mumbai.]

Commissioner of Customs (Export)
Air Cargo Complex
Sahar, Andheri (E), Mumbai - 400099 … ***Appellant***

versus

Siemens Ltd
Pandurang Budhkar Marg, Worli, Mumbai - 400018 ***…Respondent***

WITH

CUSTOMS APPEAL NO: 90193 OF 2014

[Arising out of Order-in-Original No: CAO/CC/AKG/01/2014 Adj(X) ACC dated 24th September 2014 passed by the Commissioner of Customs (Export), Mumbai.]

Siemens Ltd
130 Pandurang Budhkar Marg, Worli, Mumbai - 400018 … ***Appellant***

versus

Commissioner of Customs (Export)
Air Cargo Complex
Sahar, Andheri (E), Mumbai - 400099 ***…Respondent***

APPEARANCE:

Shri Ashok Nawal, Cost Accountant for assessee-appellant

Shri Ram Kumar, Assistant Commissioner (AR) for Revenue

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: 85344-85345/2025

DATE OF HEARING: 12/09/2024
DATE OF DECISION: 11/03/2025

PER: C J MATHEW

This appeal of M/s Siemens Ltd concerns demand of ₹ 73,10,696 as duties of customs under section 28 of Customs Act, 1962, along with applicable interest under section 28AB of Customs Act, 1962, besides penalty of like amount imposed under section 114A of Customs Act, 1962 as well as ₹ 5,00,000 under section 114AA of Customs Act, 1962. The impugned order[1] of Commissioner of Customs (Export), Air Cargo Complex, Mumbai adjudicated duty liability on two bills of entry, *viz*., 200/13.09.2011 at 199/13.09.2011 for imports at Air Cargo Complex (ACC), Mumbai that had been against scrips' under the 'status holder incentive scheme (SHIS)' of Foreign Trade Policy (FTP), 2009-14 while clearing further import, valued at ₹ 79,18,794, through Jawaharlal Nehru Customs House (JNCH), Nhava Sheva against bill of entry no. 4934545/17.10.2011 by debit of ₹ 18,92,195, being duty foregone under the 'zero duty export promotion capital goods (EPCG)' scheme in the Foreign Trade Policy (FTP), 2009-14. The duty not paid for the former was ordered to be recovered for breach of notification[2],

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[1] [order-in-original no. CAO/CC/AKG/01/2014 Adj(X) ACC dated 24th September 2014]
[2] [no.102/2009-Cus dated 11th September 2009]

issued under the authority of the Foreign Trade Policy 2009-2014, specifically disbarring simultaneous availing of benefit of both the schemes in the Foreign Trade Policy

2. The respondent-Commissioner of Customs in appeal of importer is also before us with grievance that appropriate penalty has not been imposed.

3. According to Learned Cost Accountant appearing for the importer-appellant, the presumption of simultaneous use of both the schemes that led to fastening the detriments on them was erroneous as the elapse of time between the scrips under the 'status holder incentive scheme (SHIS)' was issued on 5th April 2011 for which application had been preferred in March 2009 and that the authorization under the alternative scheme had been issued on 26th July 2011 following which, and upon rejection of amendment as duty payable authorization, additional scrips were sought for against other shipping details. He pointed out that clearance of the respective imports had been effected on 10th October 2011 and 17th October 2011 which was not considered by the adjudicating authority while ordering recovery of duty and imposition of penalty.

4. Learned Authorized Representative drew attention to

> *'5.1(b)Zero duty EPCG scheme shall not be available to exporters, who avail in that year, the benefit of Status Holder*

Incentive Scheme under Para 3.16 of the Foreign Trade Policy. In case, they have already availed the SHIS benefit, they would be eligible for Zero Duty Scheme if they surrender or refund SHIS with applicable interest in case SHIS has been utilized.'

in Foreign Trade Policy (FTP) 2009-2014 and to

'4. Para 3.10.3(b) is being rewritten to better reflect the intention of policy. The rewritten para will be as under:

(b) In case an applicant has availed Zero Duty EPCG Authorization during the year 2010-11 or 2011-12 or 2012-13, they shall not be entitled to SHIS for that year (i.e. for the exports made during the respective previous years 2009-10, 2010-11. 2011-12). Such SHIS applications will be summarily rejected and para 9.3 (late cut for delay in filing application) shall also not be applicable.'

in public notice[3] issued by the Director General of Foreign Trade (DGFT).

5. We note that

'13. I find that the importer imported Goods under SHIS authorization vide Bill of Entry no.200 dated 13.09.2011 of Assessable Value Rs. 2,33,52,365/- having duty debited of Rs. 55,68,823/- and Bill of Entry No.199 dated 13.09.2011 of Assessable value of Rs 72,89,696/ having duty debited of Rs 17,41,873/ and thus a total duty benefit of Rs 73,10,696/ under SHIS. The importer subsequently imported Goods under zero duty EPCG scheme vide Bill of Entry No. 4934545 dt.17.10.2011 availing a duty benefit of Rs 18,92,195/-.

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[3] [no. 12(RE-2012)/2009-14 dated 26th July 2012]

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17. I further find that the importer, while presenting the Bills of entry for clearance under SHIS has not disclosed/declared about the import under Zero duty EPCG Scheme made by them. This act of omission on their part amounts to a willful mis-statement and suppression of facts resulting in availing un-due duty benefit with an intention to evade the due payment of Customs duty on the goods imported by them under SHIS scrips, hence falling in the ambit of Section 28(4) of Customs Act, 1962.

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19. I also find that as per Para 5.1 (b) of the Foreign Trade Policy, exporter/importer has to surrender/refund the benefit of the SHIS alongwith applicable interest to become eligible for benefit under Zero duty EPCG Scheme not the vice versa. Therefore, the importer's contention that they have paid duties alongwith applicable interest on the import of Capital Goods under Zero duty EPCG scheme to avail the benefit of SHIS is not sustainable.'

in the impugned order was the contextual background as also the appreciation of the policy prescription thus

'14.6 However, according to DGFT Public Notice No. 12 (RE-2012V2009-14 New Delhi, dated 26.07.2012,Para 3.10.3 (b) is being rewritten to better reflect the intention of policy with deemed effect from 5.06.2012. The written Para will be as under:

"In case an applicant has availed Zero Duty EPCG Authorization during the year 2010-11 or 2011-12 or 2012-13 they shall not be entitled to SHIS for that year [i.e. for export

> *made during the respective previous years 2009-10, 2010-11, 2011-12)]. Such SHIS application will be summarily rejected and para 9.3 (late cut for delay in filing application) shall also not be applicable."'*

which, though applicable to the licensing authority, appeared to have been construed as evaluation took vested in customs authorities. This aspect of the impugned public notice of the Director General of Foreign Trade (DGFT) had not been taken into account by the original authority as also the circumstances in which the utilization was effected by the appellant.

6. In order that the sequence of events and the relevant policy prescription be appreciated in context, the matter requires to be re-adjudicated afresh to enable which the impugned order is set aside leaving all issues open. As the issue stands remanded to the original authority, the appeal of Commissioner of Customs (Export), Air Cargo Complex, Mumbai is also disposed off similarly.

7. Accordingly, the impugned order is set aside and the dispute restored to the original authority for a fresh decision

(Order pronounced in the open court on 11/03/2025)

(AJAY SHARMA)	**(C J MATHEW)**
Member (Judicial)	***Member (Technical)***

**/as*