CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH, MUMBAI

Customs Appeal No. 86781 of 2019

(Arising out of Order-in-Appeal No. 47 (EPCG Monitoring)/2019(JNCH)/Appeal-I dated 25.03.2019 passed by the Commissioner of Customs (Appeals), Mumbai-II.)

M/s New Poly Tech Engineers ....Appellant
W. No. 21, H. No. 1875, Jawahar Nagar,
Behind Swam Ind., Near Pallod Udyog,
Ichalkaranji, Maharashtra – 416 115

VERSUS

Commissioner of Customs, ...Respondent
Nhava Sheva-II
Jawaharlal Nehru Customs House,
Nhava Sheva, Taluka – Uran,
Dist.- Raigad, Navi Mumbai – 400 707

APPERANCE:

Shri M.P. Joshi, Advocate for the Appellant
Shri Rajiv Ranjan, Assistant Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. 85484/2025

Date of Hearing: 24.01.2025
Date of Decision: 25.03.2025

This appeal was originally filed assailing legality of the order passed by the Commissioner of Customs (Appeals), Mumbai-II on dated 25.03.2019 in confirming duty demand of ₹5,66,062/- alongwith interest as well as confiscation of goods, levy of redemption fine of

₹5,00,000/- with penalty of ₹50,000/- for failure on the part of the Appellant to fulfil export obligation after availment of EPCG Scheme Subsequently Appellant had availed the benefit of Amnesty Scheme launched on 01.04.2023 by the Department of Commerce, Government of India and received final duty paid Regularisation Letter issued by the DGFT (Director General of Foreign Trade) on 28.03.2024, after which it has restricted its scope of appeal to the legality of imposition of penalty and levy of fine.

2. Facts of the case would go to reveal that Appellant had imported Coordinate Measuring Machine without payment of import duty under EPCG licence with conditions that it would export certain value of goods to be manufactured with the help of the said imported machine and fulfil export obligation. The said purchase was made in 2004-2005 but due to heavy competition from neighbouring countries it failed to fulfil export obligation, for which it was put to show-cause notice with proposal for recovery of duty with interest, confiscation of imported capital goods under Section 111(o) and proposal for imposition of penalty under Section 112(a) of the Customs Act, 1962. It had suffered adjudication process and both the Adjudicating Authority *vide* his order dated 06.03.2018 as well as the Appellate Authority namely Commissioner (Appeals) *vide* his order dated 25.03.2019, in an appeal filed before him by the Assessee-Appellant, confirmed the duty demand etc. as proposed in the show-cause notice, which Appellant has assailed before this forum.

3. Grounds taken in the appeal memo are completely different and what is being urged by learned Counsel for the Appellant is restricted to challenging validity of such imposition of penalty and redemption fine and its enforcement after Appellant had availed the benefit of Amnesty Scheme by making payment of the entire Customs duty with required interest on 22.03.2024 and after it has receipt regularisation letter on 20.03.2024!

4. During course of hearing of the appeal, in drawing attention to Clause (ix) of the said Amnesty Scheme dated 01.04.2023, learned Counsel had argued that in cases where appeals were pending, once closer letter is submitted before the Adjudicating Authority / Appellate Authority, they will decide on the closer of such appeal and will inform the Appellant and also the concerned RA (Regional Authority) and as because the Scheme does not contemplate payment of any redemption fine or penalty for which such confirmation of fine and penalty, which were to be made when Act or omission had rendered the goods liable for confiscation under Section 111, as provided under Section 112(a) was no more subsisting. He placed his reliance also on several decisions on the issue including the one passed by Chennai Bench of this Tribunal on 17.12.2024 *vide* Customs Appeal No. 40387 of 2021 in the case of *M/s. Makwuds India Private Limited Vs. The Commissioner of Customs, Chennai-IV* reported in *2024 (12) TMI 1038 – CESTAT Chennai*. He, therefore, prayed for setting aside of the penalty and redemption fine as was being confirmed by the Commissioner of Customs (Appeals), Mumbai-II in 2019.

5. Learned Authorised Representative objects the petition and supports the finding of the Commissioner of Customs (Appeals), Mumbai-II and he is of the view that Appellate Authority in Clause (ix) of Amnesty Scheme would mean only the first Appellate Authority and not the Tribunal, for which the order passed by the Commissioner (Appeals) needs no interference by this Tribunal.

6. I have perused the case record, the relevant Public Notice No. 2/2023 vide which Amnesty Scheme for one time settlement of default in export obligation by advance EPCG authorisation holders was launched as well as the decided case laws relied upon by the Appellant. The scheme starts with the heading which indicates that all variants of advance authorisation scheme and EPCG Scheme issued under Foreign Trade Policy from 2009 to 2015 including its prior period from 2004-2009 were covered under the scheme and Clause (ix) of the said Scheme does not indicate that appeal field before the First Appellate Authority can only be covered under the Scheme, since the language in sub-Clause (b) of Clause (ix) would go to say that it would cover cases in which appeals have been filed. For better clarity it is reproduced below:-

> *"ix (b) In case an appeal has been filed, then this closure letter will have to be submitted to the Appellate Authority. On submission of such closure letter Adjudicating Authority/Appellate Authority will decide on closure of such case/appeal and will inform the same to the Appellant and to the concerned RA."*

Therefore, I am of the view that appeal pending before this Tribunal is also covered under the scheme.

7. This being the observation of this Bench, it would be worthwhile to go with the findings of this Tribunal passed in the case of *M/s. Makwuds India Private Limited, cited supra*, relevant para 7 of which would also be relevant for the purpose of determination of this appeal, it reads:

> *"7. In view of the above pleadings of the Ld. Advocate and upon consideration of the requirements of Public Notice No.2 (supra), we find that the Authority being satisfied with the remittance of duty and interest as per the Amnesty Scheme, has issued closure letter. Hence, there is no scope to confirm the penalty which is imposed on an alleged violation. Though Ld. Advocate has disputed leviability of penalty under Section 112(a) ibid since the violation here is of EPCG scheme, for the reasons which were beyond the reach of the appellant but, however, we find that the whole Amnesty Scheme does not specify anything about the penalty and hence, it is possible that any violation insofar as the non-fulfilment of export obligation is concerned, is not viewed as irregularity or a mala fide intention."*
>
> *(Underlined to emphasise)*

In view of the above observation since Appellant had sought for deletion of penalty and redemption fine imposed against the Appellant, the part component of which is addressed in the above para and the other part concerning confiscation would no more be valid as the Act or its omission had been regularised through the Amnesty Scheme launched by the Government of India, the order passed by the

Commissioner (Appeals) against which appeal has been pending before this Tribunal at the time of availment of such Amnesty Scheme, becomes unenforceable after irregularity, if any, has been remediated and therefore, the same is required to be set aside. Hence the order.

THE ORDER

6. The appeal is allowed and the order passed by the Commissioner of Customs (Appeals), Mumbai-II *vide* Order-in-Appeal No. 47 (EPCG Monitoring)/2019(JNCH)/Appeal-I dated 25.03.2019 is hereby set aside.

(Order pronounced in the open court on 25.03.2025)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

Prasad