CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 86929 OF 2022

[Arising out of Order-in-Appeal No: 51 & 52 (CAC)/2021(JNCH)/Appeals dated 22ND July 2021 passed by the Commissioner of Customs (Appeals), Mumbai – II.]

Voras Exclusive Tools Pvt Ltd
C/o PN-NJ Industries Pvt Ltd
Plot No. A-470, TTC Industrial Area, MIDC-Mahape
Navi Mumbai - 400710 … ***Appellant***

versus

Commissioner of Customs
Jawaharlal Nehru Customs House, Nhava Sheva
Tal: Uran, Dist: Raigad - 400707 ***…Respondent***

WITH

CUSTOMS APPEAL NO: 86930 OF 2022

[Arising out of Order-in-Appeal No: 51 & 52 (CAC)/2021(JNCH)/Appeals dated 22ND July 2021 passed by the Commissioner of Customs (Appeals), Mumbai – II.]

Voras Exclusive Tools Pvt Ltd
C/o PN-NJ Industries Pvt Ltd
Plot No. A-470, TTC Industrial Area, MIDC-Mahape
Navi Mumbai - 400710 … ***Appellant***

versus

Commissioner of Customs
Jawaharlal Nehru Customs House, Nhava Sheva
Tal: Uran, Dist: Raigad - 400707 ***…Respondent***

APPEARANCE:

Shri Neerav Mainkar, Advocate for the appellant

Shri Krishna Azad, Assistant Commissioner (AR) for the respondent

CORAM:

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

FINAL ORDER NO: 85840-85841/2025

DATE OF HEARING: 15/05/2025
DATE OF DECISION: 15/05/2025

This appeal of M/s Voras Exclusive Tools Pvt Ltd lies against affirmation of the order of the original authority for recovery of ₹ 2,88,868 that had been foregone as duty on import of 'capital goods' under the 'export promotion capital goods (EPCG)' scheme of the Foreign Trade Policy (FTP) operationalized through notification[1] for non-fulfilment of export obligation.

2. Learned Counsel for the appellant submitted that, immediately after import, the operations had to be shut down and that the duty foregone, along with applicable interest, had been paid on 28th February 2005. He submitted that in terms of clause (v) of notification[2], read with public notice[3] of Director General of Foreign Trade, discharge of duty liability should have closed the proceedings, if any, initiated as consequence of non-fulfilment.

[1] [no. 55/2003-Cus dated 1st April 2003]
[2] [no. 55/2003-Cus dated 1st April 2003]
[3] [no. 22(RE-2013)/2009-2014 dated 12th August 2013]

3. Learned Authorized Representative reiterated the findings in the impugned order.

4. On perusal of the impugned order, it is seen that the first appellate authority, while taking note of submission of the appellant that duty foregone had been made good along with interest, failed to dwell upon consequences of such discharge of duty liability. Furthermore, the submission of the Learned Counsel, that, in the light of provisions for regularization incorporated in the exemption notification, confiscation of goods under section 111 of Customs Act, 1962 with option to redeem on payment of ₹ 2,00,000 and imposition of penalty of ₹ 25,000 under section 112 of Customs Act, 1962 should not have survived, was also ignored. The lower authorities have not taken cognizance of submission of appellant on discharge of duty liability and recourse to section 111 of Customs Act, 1962, that were proceeded to be invoked on the conclusion of the appellant continuing to be defaulter notwithstanding such regularization, and, in the absence of any clarity on issue of discharge certificate by the licensing authority in such instances, both on law and facts, enforcement of bond, the jurisdiction to confiscate goods and impose penalty is questionable.

5. In view of the deficiencies in the findings of the lower authorities, it would be appropriate to set aside the impugned order and remand the matter back to the original authority for fresh

determination in the light of the factual matrix as described by Learned Counsel for the appellant.

6. Accordingly, appeals are allowed by way of remand.

(Dictated and Pronounced in Open Court)

(C J MATHEW)
Member (Technical)

**/as*