CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

EXCISE APPEAL NO: 85486 OF 2014

[Arising out of Order-in-Original No: 28/CEX/2013 dated 31st October 2013 passed by the Commissioner of Central Excise, Customs & Service Tax, Nashik]

Rajesh C Chaudhari
1/80 Hari Nagar, Udhna, District Surat, Gujrat - 394210 … ***Appellant***

versus

Commissioner of Customs
Kendriya Rajaswa Bhavan, RG Gadkari Chowk
Nasik - 422002 ***…Respondent***

WITH

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Rajesh C Chaudhari
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versus

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Nasik - 422002 ***…Respondent***

APPEARANCE:

Shri JC Patel, Advocate for the appellant

Shri DS Maan, Joint Commissioner (AR) for the respondent

CORAM:

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

FINAL ORDER NO: 86774-86775/2025

DATE OF HEARING: 08/05/2025
DATE OF DECISION: 07/11/2025

PER: C J MATHEW

These two appeals – one relating to recovery of duties of customs amounting to ₹ 2,73,14,598 foregone at the time of import and the other to recovery of duties of central excise amounting to ₹ 1,95,33,499 foregone at the time of domestic procurement as well as attendant penalties – filed by Shri Rajesh Chaudhari arise from the same order[1] of Commissioner of Central Excise & Customs, Nasik and are disposed off together.

2. The recoveries pertained to 'polyester yarns' that were imported/procured by M/s Omi Textiles, a unit holding Letter of Permission (LoP) issued by the jurisdictional Development Commissioner to operate as 'export oriented unit' under the eponymous scheme in the relevant Foreign Trade Policy (FTP). Such units were entitled to avail exemption on 'raw materials' under notification no. 53/97-Cus dated 3rd June 1997 when imported and under notification no. 1/95-CE dated 4th January 1995 when procured domestically subject to utilisation in manufacture of goods to be exported. The alleged

[1] [order-in-original no. 28/CEX/2013 dated 31st October 2013]

diversion of impugned goods into the local market between April 2002 and August 2002 culminated in issue of show cause notice[2] that was adjudicated upon on the basis of written submissions furnished on behalf of M/s Omi Textiles.

3. Learned Counsel for appellant submitted that the detriment fastened on the appellant was without jurisdiction inasmuch as the status of the appellant *vis-à-vis* the manufacturer has been clearly stated as 'former proprietor' and that the notice itself is barred by limitation. A further aspect canvassed by Learned Counsel is that the notice was also without jurisdiction as another proceeding initiated in 2003 for recovery of duties on goods so manufactured from the impugned 'raw materials' was, as yet, pending.

4. Learned Authorized Representative contended that this was a clear case of non-utilization of exempted 'raw materials' in export goods and that the evidence had been sufficiently elaborated upon in the show cause notice.

5. We note that the duty liability has been fastened on M/s Omi Textiles as also the penalties in addition to penalty on one Bihari Bhai Patel. The appellant has submitted that the M/s Omi Textiles was a proprietorship from 9th April 2002 to 30th September 2002 and a

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[2] [show cause notice no. DGCEI/MZU/I&IS'D'/30-75/2012 DATED 7th September 2012]

partnership, with himself as one of the constituents between 1st October 2002 and 1st June 2003, thereafter.

6. It is also seen from

> *'4.11. Coming to proposal for imposition of personal penalty on Shri Bihari Bhai Patel, a Surat resident, I find that he was the key person and in fact the owner of M/s. Omi and was managing all the illegal activities of M/s. Omi. This fact became evident from the deposition of Shri Rajesh C. Chaudhari and Shri Jayvadan Vrajlal Mistry, both proprietor / partner in M/s. Omi during material time, in their respective statements both dated 07.08.2003, revealing the fact that all the investment in M/s. Omi was made by Shri Bihari Bhai Patel and he was the actual beneficiary of the profit earned by M/s. Omi, and they (both persons) were working for Shri Bihari Bhai Patel on certain monetary consideration. The documents showing manufacture of fabrics from duty free yarns were forged on the instruction of Shri Bihari B. Patel, and he was the person who had abetted such planned activity of clandestine removal (diversion) of the yarns without payment of duty. Without his consent, knowledge & direction, such unscrupulous activity would not have taken place. To conclude, Shri Bihari B. Patel, was responsible for this act, and proactively indulged in managing the illegal show and thus rendered liable for penal action.'*

of impugned order that no finding detrimental to the appellant is on record.

7. The notice has not sought response from the appellant and the connection of the appellant with the proceedings is merely as the

medium for service. So too when it comes to the impugned order.

8. In these circumstances, the appellant has no *locus standii* as far as the impugned order is concerned and has no cause of action to seek jurisdiction of the Tribunal. Accordingly, the appeals are dismissed.

(Order pronounced in the open court on 07/11/2025)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*