CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT No. III

Customs Appeal No. 41360 of 2017

(Arising out of Order-in-Original No. 11/2017 dated 31.03.2017 passed by Commissioner of Customs, Custom House, New Harbour Estate, Tuticorin – 628 004)

M/s. Sree Koppammal Cotton Spinning Mills Pvt. Ltd. **...Appellant**
Sempatti Post,
Puliyuran,
Aruppukottai – 626 101.

Versus

Commissioner of Customs **...Respondent**
Tuticorin Commissionerate,
Custom House,
New Harbour Estate,
Tuticorin – 628 004.

APPEARANCE:

For the Appellant : Mr. Mayavan Gopinath, Advocate
For the Respondent : Ms. O.M. Reena, Authorised Representative

CORAM:
HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER No. 40539 / 2026

DATE OF HEARING : 13.11.2025
DATE OF DECISION : 27.04.2026

Per Mr. VASA SESHAGIRI RAO

This is an appeal filed by M/s. Sree Koppammal Cotton Spinning Mills Private Limited (hereinafter referred to as "Appellant") to assail the Order-in-Original No. 11/2017 dated 31.03.2017 passed by Commissioner of Customs, Tuticorin (hereinafter referred to as "LAA").

2. Briefly stated, the facts of the case are that the Appellant imported capital goods under four EPCG licences and availed the benefit of concessional rate of duty under Notification No. 97/2004-Cus dated 17/09/2004. Details of the EPCG Licence No. & date, Bill of Entry No. & date, value of imported capital goods and Customs duty foregone are as mentioned in the table below: -

Sl. No.	EPCG Licence No. & Date	Bill of Entry No. & Date	Value of imported capital goods (Rs.)	Duty Foregone (in Rs.)
1	(i) 3530002103 dated 07.11.2006	(i)399894 dated 21.11.2006	2,34,18,444	66,87,709
2	(ii) 3530002105 dated 07.11.2006	(ii) 399653 dated 16.11.2006 (iii) 353987 dated 11.12.2006	1,04,02,288	29,88,418
3	(iii) 3530002669 dated 07.06.2007	(iv) 493028 dated 27.06.2007	4,36,571	1,12,903
4	(iv) 3530002608 dated 30.04.2007	(v) 410818 dated 14.05.2007	1,95,73,800	44,52,236
	TOTAL		**5,38,31,103**	**1,42,41,266**

3. Appellant got the imported goods cleared from Customs on execution of bond binding the Appellant to pay the differential duty with interest in case the export obligation stipulated under the said notification was not fulfilled. In terms of the condition stipulated in the four EPCG licences, the Appellant was required to export goods valued at Rs. 11,39,30,128/- to fulfill the export obligation.

4. The officers of Directorate of Revenue Intelligence (hereinafter referred to as "DRI") gathered specific intelligence that the Appellant has fraudulently obtained Export Obligation Discharge Certificate (hereinafter referred to as "EODC") from the office of the Joint Director General of Foreign Trade (JDGFT), Madurai, by claiming that they have fulfilled their export obligation by exporting through some unconnected third-party exporters, by submitting irrelevant export documents falsely showing exports having been done on their behalf and by submitting false certificate in order to evade Customs duty payable for non-fulfillment of export obligation as undertaken by them at the time of importing the capital goods and thus evaded payment of appropriate Customs duty involved in the imported capital goods.

5. Investigation conducted by DRI revealed that towards discharge of their export obligation, Appellant had submitted shipping bills filed by third party exporters which had endorsement of EPCG licenses of the Appellant despite such third party exporters being in no way connected with the Appellant as there was no commercial relationship or transaction between the third party exporters and Appellant. The Appellant got their export obligation discharged by obtaining false certificate from Chartered Accountant that the

goods covered under Shipping Bills filed by third party exporters which were being considered for EODC had been manufactured by Appellant.

6. Upon completion of investigation, the Show Cause Notice No. 10/2015 dated 30.03.2015 was issued to Appellant by Additional Director General, DRI, Chennai Zonal Unit with the proposals to: -

i. reject the EODCs in F.No. 35/36/21/461/AM07 & 35/36/21/451/AM07 both dated 15.07.2014 for the EPCG Licence Nos. 3530002103 & 3530002105 both dated 07.11.2006 respectively obtained from JDGFT office, Madurai by submitting falsified documents;

ii. proceed under Section 143(3) of the Customs Act, 1962 upon the bond executed at the time of import with the office of the Commissioner of Customs, Custom House, Tuticorin against the above EPCG License Nos. 3530002103 & 3530002105 both dated 07.11.2006, for non fulfilment of the conditions of the bond;

iii. deny the concessional duty exemption benefit claimed under EPCG Licence Nos. 3530002103 & 3530002105 both dated 07.11.2006 and 3530002608 dated 30.04.2007 availed under the Customs Notification No. 97/2004-Cus dated 17.09.2004 in respect of the four

bills of entry Nos. 399894 dated 21.11.2006, 399653 dated 16.11.2006, 353987 dated 11.12.2006 and 410818 dated 14.05.2007;

iv. demand the differential duty amounting to Rs.1,41,28,363/- (Rupees One Crore Forty One Lakhs Twenty Eight Thousand Three Hundred and Sixty Three only) in respect of goods imported vide the said 4 bills of entry Nos. 399894 dated 21.11.2006, 399653 dated 16.11.2006, 353987 dated 11.12.2006 and 410818 dated 14.05.2007 along with appropriate interest in terms of condition No. 2 & 4 of the notification No. 97/2004-Cus. dated 17.09.2004 read with Section 143(3) of the Customs Act, 1962;

v. hold the impugned goods imported and cleared vide the said 4 bills of entry Nos. 399894 dated 21.11.2006, 399653 dated 16.11.2006, 353987 dated 11.12.2006 and 410818 dated 14.05.2007, with a total assessable value of Rs.5,33,94,532/-, liable for confiscation under Section 111(d) and 111(o) of the Customs Act, 1962 and impose penalty on the Appellant under Section 114A and also under Section 114AA of the Customs Act, 1962 separately;

vi. adjust the amount of Rs.1,41,28,363/- (Rupees One Crore Forty One Lakhs Twenty Eight Thousand Three Hundred and Sixty Three only) already paid by the

Appellant voluntarily, against the liabilities arising out of the show cause notice;

vii. proceed under Section 143(3) of the Customs Act, 1962 upon the bond executed at the time of import with the office of the Commissioner of Customs, Custom House, Chennai against EPCG License No. 3530002669, for non fulfilment of the conditions of the bond;

viii. deny the concessional duty exemption benefit claimed under EPCG Licence No. 3530002669 dated 07.06.2007 and availed under the Customs Notification No. 97/2004-Cus dated 17.09.2004 in respect of the bill of entry No. 493028 dated 27.06.2007;

ix. demand the differential duty amounting to Rs.1,12,903/- (Rupees One Lakh Twelve Thousand Nine Hundred and Three only) in respect of goods imported *vide* bill of entry No. 493028 dated 27.06.2007 along with appropriate interest in terms of condition No. 2 & 4 of the notification No. 97/2004-Cus. dated 17.09.2004 read with Section 143(3) of the Customs Act, 1962;

x. hold the impugned goods imported and cleared vide the bills of entry No. 493028 dated 27.06.2007, with a total assessable value of Rs.4,36,571/-, liable for confiscation under Section 111(d) and 111(o) of the

Customs Act, 1962 and impose penalty on the Appellant under Section 114A and also under Section 144A of the Customs Act, 1962 separately;

xi. adjust the amount of Rs.1,12,903/- (Rupees One Lakh Twelve Thousand Nine Hundred and Three only) already paid by the Appellant voluntarily, against the liabilities arising out of the show cause notice.

7. After following due process of adjudication, Order-in-Original No. 11/2017 dated 31.03.2017 was passed wherein the LAA

i. rejected the EODCs as detailed below obtained from the Office of the JDGFT, Madurai by submitting allegedly falsified documents by the Appellant

Sl. No.	EODC File No. and DATE	EPCG Licence No. / Date	Bill of Entry No. / Date	Port of Import
1	F.No. 35/36/21/ 461/AM07 & 35/36/ 21/451/AM07 both dated 15.07.2014	i) 3530002103 & (ii) 3530002105 both dated 07.11.2006 and (iii) 3530002608 dated 30.04.2007	i)399894 / 21.11.2006 (ii) 399653 / 16.11.2006 (iii) 410818 / 14.05.2007 (iv) 353987 / 11.12.2006	Custom House, Tuticorin
2	Appellant informed the JDGFT that they have fulfilled the EO but yet to obtain EODC	(iv) 3530002669 dated 07.06.2007	(v) 493028 / 27.06.2007	Custom House, Chennai

ii. Held that the cancellation of the bond executed by the Appellant at the time of import with the Office of the Commissioner of Customs, Custom House, Tuticorin and Office of the Commissioner of Customs, Custom House, Chennai against the above four EPCG Licences as null and void for the reason that the EODCs were obtained by fraudulent means and for non-fulfillment of the conditions of the bond under Section 143(3) of the Customs Act, 1962;

iii. denied the concessional duty exemption benefit claimed for the said four EPCG Licences of the Appellant and availed under the Customs Notification No. 97/2004-Cus dated 17.09.2004 in respect of the bills of entry Nos. 399894 dated 21.11.2006, 399653 dated 16.11.2006, 353987 dated 11.12.2006, 410818 dated 14.05.2007 and 493028 dated 27.06.2007;

iv. ordered the Appellant to pay the differential duty amounting to Rs.1,12,903/- (Rupees One Lakh Twelve Thousand Nine Hundred and Three only) pertaining to the one Bill of Entry No. 493028 dated 27.06.2007 filed at Custom House, Chennai and Rs.1,41,28,363/- (Rupees One Crore Forty One Lakhs Twenty Eight Thousand Three Hundred and Sixty Three only) pertaining to the four bills of entry Nos. 399894 dated 21.11.2006, 399653 dated 16.11.2006, 353987 dated 11.12.2006 and 410818 dated

14.05.2007 filed at Custom House, Tuticorin, totaling to Rs.1,42,41,266/- (Rupees One Crore Forty Two Lakhs Forty One Thousand Two Hundred and Sixty Six only) along with appropriate interest in terms of condition No. 2 & 4 of the notification No. 97/2004-Cus. dated 17.09.2004 read with Section 143(3) of the Customs Act, 1962;

v. confiscated the impugned goods imported and cleared vide the one Bill of Entry filed at Custom House, Chennai with a total assessable value of Rs.4,36,571/- and four bills of entry filed at Custom House, Tuticorin with a total assessable value of Rs.5,33,94,532/-, totalling to Rs.5,38,31,103/- under Section 111(d) and 111(o) of the Customs Act, 1962, with an option to the Appellant to redeem the goods on payment of fine of Rs. 1,00,000/- (Rupees One Lakh only) in respect of import made through Chennai Customs and Rs. 9,00,000/- (Rupees Nine Lakhs only) in respect of import made through Tuticorin Customs respectively under Section 125 of the Customs Act, 1962;

vi. appropriated the amount of the amount of Rs.1,12,903/- (Rupees One Lakh Twelve Thousand Nine Hundred and Three only) already paid by the Appellant voluntarily pertaining to the one Bill of Entry filed at Custom House, Chennai and the amount of Rs.1,41,28,363/- (Rupees

One Crore Forty One Lakhs Twenty Eight Thousand Three Hundred and Sixty Three only) already paid by the Appellant voluntarily pertaining to the four bills of entry filed at Custom House, Tuticorin, totaling to Rs.1,42,41,266/- (Rupees One Crore Forty Two Lakhs Forty One Thousand Two Hundred and Sixty Six only) towards the adjudication liabilities;

vii. imposed penalty of Rs.1,12,903/- plus the interest payable (Rupees One Lakh Twelve Thousand Nine Hundred and Three plus the interest payable) under Section 114A of the Customs Act, 1962 and also a penalty of Rs.1,00,000/- (Rupees One Lakh only) under Section 114AA ibid on the Appellant in respect of imports made through Chennai Customs Commissionerate;

viii. imposed penalty of Rs.1,41,28,363/- plus the interest payable (Rupees One Crore Forty One Lakhs Twenty Eight Thousand Three Hundred and Sixty Three plus the interest payable) under Section 114A of the Customs Act, 1962 and also a penalty of Rs.9,00,000/- (Rupees Nine Lakhs only) under Section 114AA *ibid* on the Appellant in respect of imports made through Tuticorin Customs Commissionerate.

8. The appellant has preferred the present appeal assailing the impugned order dated 31.03.2017.

9.1 The Ld. Advocate Mr. Mayavan Gopinath appeared and argued for the Appellant and submitted that the Appellant had already paid the duty along with interest against EPCG License No. 3530002608 dated 30.04.2007 and acknowledgement has been received from Customs and as regards EPCG License No. 3530002669 dated 07.06.2007, the Appellant settled the dues under Amnesty Scheme as per Public Notice No.2/2023 dt. 01.04.2023 issued by the DGFT, New Delhi for a total value of Rs. 54,81,901/- and the Regional Authority, Coimbatore had also issued Final Duty paid Regularisation Letter dt. 03.11.2023 and therefore, these two Authorisations and relevant findings of the LAA in the impugned order may be deleted in the Appeal Proceedings and the Appellant withdraws its pleadings before this Tribunal, and resultantly this appeal proceedings may be restricted to the issues of facts and law against the two licenses Nos. 3530002103 & 3530002105 both dated 07.11.2006.

9.2 He contended that the impugned order is unsustainable both in law and facts and hence, liable to be set aside on the following grounds: -

i. The Appellant had, upon receipt of the EPCG Authorisations, imported the capital goods and installed

in its factory for manufacturing end product – Cotton Yarn as per the Terms and Conditions of the licenses stipulated thereof and the impugned order does not contain any perceptible violations on the import of capital goods, such as under valuation, over valuation, misrepresentation or any classification issues at all and therefore, being a genuine manufacturing company imported the capital goods strictly following the mandate of the Customs Notification No. 97/2004 dt. 17.09.2004 and there is no dispute on the import front.

ii. However, the entire impugned order has been constructed solely on the post export violation on presumption and assumption as against the mandate of both Foreign Trade Policy (FTP), Hand Book of Procedures (HBP) issued by exercising the powers vested with the sponsoring Authority, DGFT under the Foreign Trade [Regulation Development] Act, 1992 and the Rules made thereunder including the Public Notices, Notifications and Circulars issued by such authorities.

iii. Upon fulfilment of the export obligation conditions of the said licenses, the Appellant submitted all the relevant documents of exports issued and certified by various statutory authorities to the Regional Authority, Madurai. The Joint Director General of Foreign Trade exercising its Jurisdictional powers in the Madurai Region of Tamil

Nadu, upon scrutiny of the documents and verification of the export obligation data, had issued the EODC orders dt. 15.07.2014.

iv. Upon receipt of communications from the DRI dt. 08.04.2015 & 15.04.2015, the Joint DGFT, Madurai had issued a Show Cause Notice dt. 28.04.2015 and thereafter, withdrawn their EODC orders vide its adjudication order dt. 27.07.2015. Thereafter, on appeal, the Appellate Authority, the Addl. DGFT, O/o. DGFT, New Delhi, in exercise of his powers u/s.15 of the FT [D&R] Act, 1992 vide his order dt. 11.04.2016 had set aside the above O-I-O of the Joint DGFT, Madurai thereby restoring the EODC orders by holding that the Third-Party Exports shown in the EODC applications were in order as per FTP and HBP respectively. This order was issued in terms of the Minutes dt. 18.06.2015 of the high-level meeting of the DGFT and DRI on the issue of Third-Party Exports. Thereafter, the DGFT reviewed the Third-Party Exports under EPCG Scheme and also amended the HBP vide para 5.10(d) thereof by incorporating new conditions thereby regulating the Third-Party Exports for an orderly and seamless exports without any confusion. As many export trade bodies including FIEO raised doubt about the applicability of para 5.10(d) of Hand Book on third party exports, the

DGFT intervened and subsequently issued a Policy Circular No.3/2015-2- dt. 02.09.2015 making the issue abundantly clear and putting the controversy on Third Party Exports to rest. In other words, the provisions on Third Party Exports that existed before 31.03.2015 under para 9.62 would remain unaltered and the amended version under para 5.10(d) of HBP would be applicable from 01.04.2015 onwards only.

v. Subsequently, the JDGFT, Madurai had restored the EODC Order dt. 15.07.2014 vide its Order dt. 02.06.2016 issued from F.No.35/DRI/EPCG/AM16/3275. Thus, the entire process of enquiry by an SCN, Adjudication, Appellate Proceedings and restoration of EODC order confirm that the sponsoring authorities had taken adequate statutory measure upon receipt of information from DRI and therefore, no further parallel adjudication would survive as held by the Delhi High Court and various Tribunals including the Apex Court.

vi. Upon the restoration of the EODC orders dt. 15.07.2014 by the DGFT Authorities under the FT [D&R] Act, 1992, it is crystal clear that the post export violation on the ground of third party exports had become a nullity and the exercise of the DRI and Customs Authority including the impugned Order-in-Original dt. 31.03.2017 had become otiose and any further punitive actions taken by

the Customs Authority on similar grounds are not sustainable both on facts and in law supported by catena of decisions.

9.3 The Ld. Advocate relied upon Para 2.3 of FTP – 2002-07 to contend that the DGFT, New Delhi is the Competent Authority to interpret and also give relaxation in the matters of Policy and Procedures whose decision is final and binding and Customs Authorities have no jurisdiction once the licensing authority – DGFT, New Delhi clarified the issue in favour of the Appellant – EPCG license holder.

9.4 He argued that the Appellant has not violated the mandate of Para 9.62 of FTP and Para 5.71 of the HBP on third-party exports. In this regard, he submitted that vide Policy Circular No. 16/2002-2007 dated 24.12.2002, DGFT had also clarified the applicability of Third Party exports for availing the benefits in the Export Promotion Schemes made available in the Foreign Trade Policy read with the Handbook of Procedures.

9.5 He referred to clause 4(c) of the Customs Notification No.97/2004 dt. 17.09.2004 on third party exports to submit that the LAA has even failed to bring out a single piece of evidence on the violation of the same.

9.6 The Ld. Advocate further submitted that the Cotton Yarn exported through third party is the similar item being capable of being manufactured by the capital goods imported under the EPCG licenses and certainly the appellant has not exported any dissimilar item other than the one that was undertaken to be exported as per the conditions of the license and that such liberal approach has also been prescribed under para 5.4 of the Foreign Trade Policy.

9.7 He submitted that the value of export obligation fulfilled through Third Party Exports under the two authorisations was Rs.9,00,81,423/- whereas the domestic turnover of the Appellant for AM-13 & AM-14 stood at Rs.55.67 Cr. and 54.31 Cr. He averred that when the domestic turnover of Cotton Yarn at Rs.54.31 Cr. was higher than the export turnover during the relevant period of exports, it is fully covered under the Minutes of the high-level meeting dt. 18.06.2015 which took a liberal view that the goods have been manufactured using the imported capital goods but exported within that turnover even through Third Party Exports.

9.8 He argued that there is no revenue loss or even double benefit availed by either the Appellant or the Third-

Party Exporter in the export obligation completed by the Appellant against the two EPCG licences for the following reasons: -

i. The LAA has not highlighted any evidence of double benefit against the 24 Shipping Bills of Exports taken in to account by the Joint DGFT, Madurai while issuing the EODC dt. 15.07.2014.

ii. The ultimate Third-Party Exporters of the licensee have not availed similar benefits under EPCG Scheme for those shipping bills accounted for in the export obligation of the license against the two EPCG Licenses bearing Nos. 3530002103 and 3530002105 both dated 07.11.2016. In fact, the Third Parties who had shipped the export product – Cotton Yarn, had also furnished a 'Disclaimer Certificate' relinquishing their rights to claim such benefits for such exports which would show that only one benefit was availed and no double benefits were availed for the same and similar exports taken for the fulfilment of Export Obligation.

9.9 The Ld. Advocate submitted that the LAA failed to render findings on the reliance placed by the Appellant on the judgment of the Hon'ble High Court in the case of *FNS Agro Food Ltd., vs CC (Preventive), Delhi* reported in *2016*

(337) ELT 31 (Del) to submit that the Customs authorities have 'no' jurisdiction when the Director General of Foreign Trade authorities have ratified the export by third parties, and thereby the impugned order is violative of principles of natural justice.

9.10 He submitted further that LAA has totally ignored the findings and order of the Learned Commissioner of Customs (Appeals-II), Tiruchirappalli *vide* Order-in-Appeal No. TUT-CUS-000-APP-12 to 14/2007 dated on similar facts and grounds relied upon by the Appellant. In this regard, he submitted that from the gist of the said order, it can be considered that the Customs authorities cannot initiate any further proceedings, except taking up the matter before the JDGFT for cancelling the EODCs and therefore, the impugned order suffers from the vice of jurisdiction and is liable to be set aside.

9.11 He contended that it is well settled that the DGFT authorities are the competent ones in the matters relating to the post issue licensing conditions and all issues including linkage between the capital goods imported and the export product shipped through third party including the procedural matters dealing with the third party as per Para 9.62 have been fully addressed and necessary relief has also

been granted by the competent authority vide their Minutes dated 18.06.2015. In this regard, he relied on the following case laws to submit that the Appellant cannot be penalized and the demand of duty and appropriation of duty paid are liable to be set aside: -

i. *Hy-Grade Pellets Ltd., vs CC [2004 (171) 177 (Tri-Del)]*
ii. *General Instruments Co. vs UOI [2008 (229) ELT 642 (S.C.)]*
iii. *CC, Jaipur vs Shri Ram Rayons [2009 (236) ELT 104 (Tri-Del)]*
iv. *Hindustan Lever Ltd., vs CC [2012 (281) ELT 241 (Tri-Mum.)]*

9.12 On the issue of penalty, the Ld. Advocate submitted that the Appellant had availed third party export benefit under the *bonafide* belief that they were eligible as per the existing policy and procedures that existed before 1-4-2015 and similar such benefits were also availed by all the exporters holding EPCG licenses in the country. In this regard, he relied on the judgment of Hon'ble Supreme Court in the case of *Bata India Ltd., vs CCE, Bangalore [Civil Appeal No. 6010 of 2014 decided on 15.04.2015]* to submit that wherever exemptions are availed under *bonafide* belief, no penalty can be imposed against such assessee.

9.13 He further submitted that the mandate for third party export transaction under EPCG licence that existed before 01-04-2015 had some ambiguity and this was later on corrected in the HBP vide para 5.10(d) and in such a fluid

conditions of the procedures, no penal action can be contemplated whatsoever as held by the Hon'ble Supreme Court in the case of *CCE, Jaipur vs Shree Rajasthan Syntex Ltd. [2015 (318) ELT 626 (SC)]* which is squarely applicable to the Appellant's case where the legal position and interpretation of the un-amended section of the FTP vis-a-vis the position after the amendment in Para 9.62 of FTP was in a fluid state.

10.1 *Per contra*, the Ld. AR Ms. O.M. Reena appeared for the department and supported the impugned order. She reiterated the findings of LAA and submitted that the Appellant, who are manufacturers of Cotton Yarn, Polyester Yarn, Hank Yarn *etc*., had used the capital goods to manufacture cotton yarn which has been entirely sold in the domestic market and they have not made a single export as evidenced from the ledger accounts of the Appellant. Appellant have submitted documents relating to license number 3530002103 and 3530002105 showing the third-party exports made by M/s. Damodhar Industries Ltd., Mumbai; M/s. Kewalram Textiles Pvt. Ltd., Ahmedabad and M/s. Palani Vijay Cottspin P. Ltd., Dharapuram, as if made against the EPCG Licenses and obtained EODC from DGFT vide file no dated 15.07.2014. The Shipping Bills of M/s. Kewalram Textiles P. Ltd. and M/s. Damodhar Industries Ltd.

were arranged by Shri Kishore on Commission basis through M/s. Palani Vijay Cottspin P. Ltd. who are the actual manufacturer supplier of cotton yarn exported by the Merchant exporters in Ahmedabad and Mumbai in all the Shipping Bills submitted for EODC before DGFT for the two licenses as referred above. Further the manufacturer exporter - M/s. Palani Vijay Cottspin P. Ltd. and two merchant exporters M/s. Kewalram Textiles P. Ltd. and M/s. Damodhar Industries Ltd. who provided/lent the S/Bs to the Appellant on Commission basis had no direct link or nexus to the Appellant.

10.2 She submitted that the Shipping Bills were purchased by the Appellant by paying consideration at the rate of 3% of the EO for all the 4 EPCG licenses, though they had no business transaction with the actual exporters and thus, the Appellant fabricated the declarations and undertakings submitted for obtaining EODC before the JDGFT Office, Madurai.

10.3 The Ld. AR averred that the conspiratorial arrangement for obtaining Shipping Bills and submitting before DGFT to get the EODC was made by Shri Kishore, FT Consultant of Appellant and MD of M/s. Nandhshiv Impex P. Ltd., along with K.Veeramani, Finance Manager of Appellant,

Shri Somasundaram, GM of M/s. Thirumathi Muthamal Textiles, Viralimalai; Shri S. Suresh Kr, Chartered Accountant of Appellant; Shri Pitcaimani, ED of M/s. Palani Vijay Cottspin P. Ltd.; Shri Shisir Choudhary, Authorised Signatory of M/s. Kewalram Textiles P. Ltd. and Shri Ashok Ojha, authorised signatory of M/s. Damodhar Industries Ltd. as evident from the statements made by all the persons mentioned above read with the e mail printouts showing transaction of the documents with Shri Kishore and service bills raised by M/s. Nandkishore Impex, Tirupur which were seized from the Appellant vide Mahazar dated 07.04.2015.

10.4 She contended that the Appellant had violated FTP 2002-2007, in as much as Chapter 5 of the Policy stipulates that export goods should have been manufactured by the EPCG license holder or specified Supporting Manufacturer in case of Merchant Exporter, that the goods so produced can be exported directly or through the third party. If the Merchant Exporter is the importer of Capital Goods, the name of the supporting manufacturer is to be indicated in the shipping bills, but in such cases conditions provided in the condition sheet makes it explicitly clear that the authorization holder shall fulfil the obligation imposed on the authorization and discharge the stipulated EO through the

capital goods installed in the supporting manufacturer's factory.

10.5 She referred to DGFT Policy Circular No. 7/2002 dated 11.07.2002 to submit that the declaration by third party had to be made on a stamp paper duly certified by an independent CA declaring that the products exported for fulfilment of EO by them on behalf of the License holder as per details in the statements of exports manufactured by License Holder.

10.6 The Ld. AR pointed out that the DGFT Policy Circular No. 16/2002-2007 dated 24.12.2002 had clarified that "---- *the third-party exports are intended to service the manufacturer exporters who may not be able to export directly and would therefore avail of the services of a third party namely merchant exporter. The third party thus in effect acts as a marketing wing in the entire export transaction ---".*

10.7 She submitted that the Customs Notification No. 97/2004 dated 17.09.2004 states that "Export Obligation" means

(i) In relation to importers other than those rendering services, means exports to a place outside India, of

products manufactured with the use of capital goods imported, assembled or manufactured in terms of this notification.

She submitted further that the Customs Circular No. 120/1995 dated 23.11.1995 as amended by Circular No. 30/2005 dated 12.07.2005 states that

"…. Exports made by a third party can be counted towards discharge of EO by the EPCG License holder subject to the condition that

There is a contractual agreement between the EPCG License holder and the third party in respect of export goods sought to be exported.

The Shipping Bill shall indicate the name of both the manufacturer (license holder and third-party exporter….."

The declaration to be submitted by the License holder and the third party at the time of filing for EODC is as follows: -

DECLARATION BY LICENCE HOLDER

"We hereby undertake that the goods exported by the third-party readymade garments are goods manufactured by us vide the capital goods imported by EPCG Lic No……. and no double benefits of EPCG are claimed for the shipment effected under the license."

NOC by the third-party exporter

"We hereby undertake/declare that the exports shown towards fulfillment of EO against EPCG Lic No……. are manufactured by the CGs imported under the said Licenses".

10.8 Referring to Para 77 of the impugned order, the Learned AR reiterated that DGFT vide order dated 11.4.2016, while setting aside the Order-in-Original of DGFT Madurai

dated 03.11.2015 had said that *"…..as the provisions under Customs Act, 1962 and FT (D&R) Act, 1992 operate independently, DRI / Customs could have proceeded against the party based on the evidences available with them, under Customs Act, 1962 as the EODC had already been discharged under FTP/HBP".*

10.9 It was further submitted by Learned AR that the CA had agreed in his statement that he had certified Form ANF 5B and Appendix 26A for the said EPCG Licenses without verifying the ledger accounts and hence, as mentioned above, the EODCs are obtained by submitting falsified documents containing Shipping Bills of unrelated exporters which contained the endorsement of impugned License number, which are not at all manufactured by using the capital goods imported vide the impugned EPCG Licenses. She submitted that the Appellant have mis-used the Customs Notification No. 97/2004 dated 17.09.2004, read with Customs Circular No. 30/2005 dated 12.07.2005 and discharged the bond executed with the Commissioner of Customs, citing the falsified/impugned EODC and therefore, the action initiated under the Customs Act is maintainable against the Appellant.

10.10 The Ld. AR placed reliance on the cases of *Sheshank Foods Pvt. Ltd V Union of India [1996 (88) ELT*

626 SC] and *Commissioner of Customs Vs Air Travel Bureau Ltd [2010 (260) ELT 78 Del]* to submit that the opinion of DGFT is not conclusive. The Certificate of Discharge of obligation cannot prevent the customs authority to reopen even concluded matter if it is shown that the conclusion was vitiated by fraud, concealment of facts, misrepresentation or misdeclaration. It is held that jurisdiction of licensing authority to investigate the violation of condition of import license does not preclude the jurisdiction of customs authorities to take action when the condition of exemption is violated. Further, she relied on the case of *Shri Shambari [2011 (263) ELT 393 (Mad) HC]* to submit that the Assistant Commissioner of Customs would be justified in initiating action for violation of condition of a notification issued under Customs Act, 1962.

11. Further, in his rejoinder, the Ld. Advocate for the Appellant has filed additional submissions: -

i. Denying all the allegations once again reproduced by the department circulated during the hearing of the matter before the Tribunal Bench on 13.11.2025 which is the replica of the impugned O-I-O No. 11/2017 dt. 31.03.2015 of the Commissioner of Customs, Tuticorin.

ii. That the contention of the department that the Appellant violated the FT [D&R] Act, 1992, FTP and the relevant

Customs Notification No.97/2004 dt. 17.09.2004 have been adequately disproved *vide* its Memorandum of Appeal, its reply dt. 31.10.2015 to the SCN, Written Submission dt. 08.12.2016 and briefly mentioned in the Synopsis dt. 09.10.2015 filed including its submissions during the arguments on 13.11.2025.

iii. That no fresh evidence on the alleged violations of the FTP and the Customs Notification No. 97/2004 have been adduced in the above Counter of the department. Rather, all the issues highlighted in the Counter are in favour of the Appellant including the Customs Circular No. 120/1995 dt. 23.11.1995. In fact, Para 6 of the said Circular is in favour of the Appellant in as much as the DBK Division of the DOR has directed the field formations to accept the Third Party Exports even if such exports do not strictly fulfils the conditions of the FTP and Customs Notification. This Circular issued for regularising the exports already made as a measure of regularising the Exports which is squarely applicable to the facts and circumstances of the Appellant. Hence, this Circular does not support the revenue's stand. [Emphasis Supplied]

iv. That the Department has not come out with new findings on the violation of Customs Notification No. 97/2004 and para 9.62 of the FTP on Third Party exports especially

when the Shipping Bills shown in the EODC orders contained the name of the Appellant company along with its EPCG Licence number which is not in dispute at all even in the O-I-O and in the Appellate Order dt. 11.04.2016 of the Addl. DGFT, New Delhi issued u/s. 15 of the FT [D&R] Act, 1992 restoring the EODC order dt. 15.07.2014 by the JDGFT, Madurai who had earlier cancelled the same pending preliminary enquiry.

v. That the case laws relied by the department are not applicable to the facts and circumstances of the applicant in view of the settled principles of law highlighted in the written submissions filed in the Memorandum of Appeal.

vi. That the ratio of the Judgements of the Tribunal, High Court and the Hon'ble Apex Court highlighted would confirm that upon receipt of information of any violation by the Customs and upon adjudication by the DGFT Authorities giving relief would be final and binding on the Customs Authorities especially since such regularization orders were issued in consultation with the DRI, New Delhi as per the Minutes of the DGFT Meeting dt. 18.06.2015. Therefore, in the absence of double benefit or even undue benefits on the Third Party Exports regularized by the DGFT and reiterated by the PC No. 3/2015-20 dt. 02.09.2015 issued thereafter put an end

to the controversies on the issue of third party exports under these EPCG Licenses as per the policy in force vide Para 9.62 of the FTP that existed before 01.04.2015. Hence, the sponsoring authority, the DGFT, New Delhi has taken a pro exporters promotion relief, any subsequent proceedings by the Customs Authorities on the same matter is not sustainable. This ratio is settled in the case of *Collector of Customs vs. Reliance Industries in CC vs. Essar Gujarat Ltd and Associated Civil Companies Ltd vs. CC, Customs* relied in the *High Grade Pellets Ltd vs. Commissioner of Customs, Vizag [Tribunal (570/2004) dt. 4th June, 2004]*, holding that: -

> *'after the appellant got itself released from the export obligation to the DGFT, Commissioner of Customs passed the impugned order imposing enormous duty and other burden on the Appellant. This would rattle the business confidence in the Appellant. This is clearly on way to promote exports. Clear delineation of the authority and responsibility in area of export promotion between DGFT and Customs is necessary to eliminate double jeopardy as in the present case. Ministry of Commerce and Department of Revenue should draw the line and issue clear instructions. We, therefore, direct a copy of this order be sent to the Commerce Secretary and Revenue Secretary, Govt. of India'.*

vii. That the above issue is also settled by the Apex Court in the case of *Titan Medical Systems Pvt. Ltd vs. Collector of Customs, New Delhi (CA No. 4693/1995) 12th November, 2002.*

viii. That the alleged procedural violations due to a lacuna in the FTP and the Customs Notification were condoned in conformity with the settled principles of law of the

Apex Court in *BATA India Ltd. vs. Commissioner of C.EX., Bangalore CA No. 610/2004 (2015)* and *Commissioner of Central Excise, Jaipur Vs. Shree Rajasthan Syntex Ltd – 2015 (318) E.L.T. 626 (SC)* and other case laws circulated which would prove that the case laws relied by the department would have no relevance in the case of the Appellant. That the Policy Circular No. 3/2015-20 dt. 02.09.2015 quoted above has put an end to all such issues by the DGFT Authorities and hence, no further proceedings would survive in a relief-oriented orders of the DGFT which is also supported by the Circular No. 120/1995 dt. 23.11.1995 of the Customs quoted above.

ix. As desired by the Tribunal, copy of two shipping bills filed wherein the name of the Appellant and its EPCG License number are mentioned satisfying the stipulations of FTP *vide* Para 9.62 and the Customs Notification No. 97/2004 *vide* Para 4c thereof.

x. Neither the FTP *vide* Para 9.62 nor the Customs Notification No. 97/2004 have been violated by the Appellant. This is the undisputed facts of the case. The counter of the department does not have any merit both on facts and in law.

12. We have carefully heard both sides and examined the appeal records and considered rival

submissions of the appellant and the Revenue including the case laws relied upon.

13. The issue for consideration in this appeal is whether the impugned order confirming the demand of duty, holding that the Appellant has violated conditions No. 2 & 4 of the notification No. 97/2004-Cus. dated 17.09.2004 is correct even when the DGFT had issued EODCs and if so, whether confiscation of the impugned goods and imposition of fines and penalties in the impugned order is legally justified or not.

14. For a proper appreciation of the issue it is essential to refer to the notification and the provisions of the FTP as it existed at the relevant point of time. As the Notification is issued for the benefit of those who hold the licences issued under Para 5 of the policy, the conditions of the policy get merged with that of the Notification and they cannot be read in isolation.

15. Relevant part of the Notification No. 97/2004-Cus dated 17-9-2004 is as under: -

> *"In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts goods specified in the Table annexed hereto, from, -*
>
> > *(i) so much of the duty of customs leviable thereon which is specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) as is in excess*

of the amount calculated at the rate of five per cent ad valorem, and
(ii) the whole of the additional duty leviable thereon under section 3 of the said Customs Tariff Act, when specifically claimed by the importer.

2. The exemption under this notification shall be subject to the fallowing conditions, namely :-

(1) that the goods imported are covered by a valid licence issued under the Export Promotion Capital Goods Scheme in terms of Chapter 5 of the Foreign Trade Policy permitting import of goods at the rate of five percent duty and the said licence is produced for debit by the proper officer of customs at the time of clearance :

***Provided** that for import of spare parts specified at S. No. 4 of the said Table, the validity period of the licence shall be deemed to be the period permitted for fulfilment of the export obligation in full;*

(2) that the importer executes a bond in such form and for such sum and with such surety or security as may be specified by the Deputy Commissioner of Customs or Assistant Commissioner of Customs binding himself to fulfil export obligation on FOB basis equivalent to eight times the duty saved on the goods imported as may be specified on the licence, or for such higher sum as may be fixed by the Licensing Authority, within a period of eight years from the date of issue of licence, in the following proportions, namely :-

S.No.	Period from the date of issue of licence	Proportion of total export obligation
(1)	(2)	(3)
1.	Block of 1st to 6th year	50%
2.	Block of 7th to 8th year	50%

***Provided** that where the duty saved is not less than Rs. 100 crores, or where the licence is issued to units in the agri export zone as may be notified by the licensing authority, the export obligation shall be fulfilled within a period of twelve years from the date of issue of licence in the following proportions, namely :-*

S.No.	Period from the date of licence	Proportion of total export obligation
(1)	(2)	(3)
1.	Block of 1st to 10th year	50%
2.	Block of 11th and 12th year	50%

....
....
....

3. Where the goods specified in the said Table are found defective or unfit for use, the said goods may be re-

exported back to the foreign supplier within 3 years from the date of payment of duty on the importation thereof;
Provided that at the time of re-export, the goods are identified to the satisfaction of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, as the goods which were imported.

TABLE

S.No.	*Description of goods*
(1)	*(2)*
1.	*Capital goods for pre-production, production and post production including second hand capital goods.*
2.	*Capital goods in SKD/CKD conditions to be assembled into capital goods by the importer.*
3.	*Components of capital goods required for assembly or manufacture of capital goods by the importer.*
4.	*Spare parts of goods specified at Serial Nos.1,2 and 3 as actually imported and required for maintenance of capital goods so imported, assembled, or manufactured.*
5.	*Spare parts including consumables for the existing plant and machinery of the licence holder.*

Explanation. - For the purposes of this notification, -

(1) "Capital goods" has the same meaning as assigned to it in Paragraph of 9.12 of the Foreign Trade Policy;

(2) "Foreign Trade Policy" means the Foreign Trade Policy 2004-2009 published vide notification of the Government of India in the Ministry of Commerce and Industry, No. 1/2004 dated the 31st August, 2004 as amended from time to time;

(3) "Licensing Authority" means the Director General of Foreign Trade appointed under section 6 of the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992) or an officer authorized by him to grant a licence under the said Act;

(4) "export obligation", -
(i) in relation to importers other than those rendering services, means exports to a place outside India, of products manufactured with the use of capital goods imported, assembled or manufactured in terms of this notification :

***Provided** that export obligation may also be fulfilled by, -*
(a) export of same products capable of being manufactured with the use of said capital goods; or
(b) export of same products manufactured in different units of the licence holder; or
(c) through third party exports made by an exporter or manufacturer on behalf of the licence holder by exporting the same product and in such cases, inter alia the shipping

bills shall indicate name of both the third party and the licence holder; or
(d) making supplies of manufactured product in terms of paragraph 5.4 of the Foreign Trade Policy; or
(e) export of other goods manufactured by the importer;

(ii) in relation to importers rendering services, means, receiving payments in freely convertible foreign currency for services rendered through the use of capital goods:

***Provided** that in respect of units holding licence both as manufacturer- exporter and service provider, the export obligation may be fulfilled either by export of products specified in sub-clause (i) or by receiving payments in freely convertible foreign currency for services rendered through the use of such capital goods.*
***Provided** further that in respect of Group Company as defined in paragraph 9.28 of the Foreign Trade policy where licence has been issued to any one of such Group Company, the export obligation may also be fulfilled by export of manufactured goods by any other company(s) belonging to such Group Company:*

***Provided** also that in respect of service providers in the Port Handling sector, the export obligation may be fulfilled by earning service charges in Indian rupees which are otherwise considered as free foreign exchange by the Reserve Bank of India:*

***Provided** also that in respect for hotels the export obligation may also be fulfilled by Managed Hotels as defined in paragraph 9.36 of the Foreign Trade Policy."*

16. A plain reading of the above notification reveals that the primary conditions that Appellant needs to satisfy in this case for claiming the exemption benefit under the notification are as under: -

i. Goods should be imported under a valid license issued under Chapter 5 of the Foreign Trade Policy.

ii. (ii) The export obligation has to be fulfilled as per the condition 4 of the Notification.

17. There is no dispute regarding the validity of EPCG licenses under which the impugned goods were imported by Appellant. The only dispute is regarding fulfilment of export obligation by the Appellant. Appellant claims to have fulfilled the same in terms of the definition of "export obligation" as contained in clause (c) of the proviso to sub-para (i) of para (4) of the Explanation to the above notification, *viz*. through third party exports made by an exporter or manufacturer on behalf of the licence holder by exporting the same product and in such cases, inter alia the shipping bills shall indicate name of both the third party and the licence holder. Alternately, the Appellant claims to have fulfilled the same in terms of the definition of "export obligation" as contained in clause (a) of the proviso to sub-para (i) of para (4) of the Explanation to the above notification, *viz*. export of same products capable of being manufactured with the use of said capital goods.

18. The case of Revenue can be summarized as under: -

i. The goods manufactured by the Appellant using the impugned imported capital goods have been entirely sold in the domestic market and Appellant have not made a single export as evidenced from the ledger accounts of the Appellant.

ii. The Shipping Bills submitted by Appellant towards fulfilment of export obligation through third-party exports for obtaining EODC were purchased by Appellant by paying consideration at the rate of 3% of the Export Obligation for all the 4 EPCG licenses, though they had no business transactions with the actual exporters and thus, the Appellant fabricated the declarations and undertakings submitted for obtaining EODC before the JDGFT Office, Madurai.

iii. It was further alleged that the appellant has indulged in a conspiratorial arrangement for obtaining Shipping Bills and submitting before DGFT to get the EODC with one Kishore, FT Consultant of Appellant and MD of M/s. Nandhshiv Impex P. Ltd., along with K.Veeramani, Finance Manager of Appellant, Shri Somasundaram, GM of M/s. Thirumathi Muthamal Textiles, Viralimalai; Shri S. Suresh Kr, Chartered Accountant of Appellant; Shri Pitcaimani, ED of M/s. Palani Vijay Cottspin P. Ltd.; Shri Shisir Choudhary, Authorised Signatory of M/s. Kewalram Textiles P. Ltd. and Shri Ashok Ojha, authorised signatory of M/s. Damodhar Industries Ltd. as evident from the statements made by all the persons mentioned above read with the e mail printouts showing transaction of the documents with Shri Kishore and service bills raised by M/s. Nandkishore Impex,

Tirupur which were seized from the Appellant *vide* Mahazar dated 07.04.2015.

iv. Thus, the Appellant had violated FTP 2002-2007, in as much as Chapter 5 of the Policy stipulates that export goods should have been manufactured by the EPCG license holder or specified Supporting Manufacturer in case of Merchant Exporter, that the goods so produced can be exported directly or through the third party. If the Merchant Exporter is the importer of Capital Goods, the name of the supporting manufacturer is to be indicated in the shipping bills, but in such cases conditions provided in the condition sheet makes it explicitly clear that the authorization holder shall fulfil the obligation imposed on the authorization and discharge the stipulated EO through the capital goods installed in the supporting manufacturer's factory.

v. As per DGFT Policy Circular No. 7/2002 dated 11.07.2002, the declaration by third party had to be made on a stamp paper duly certified by an independent CA declaring that the products exported for fulfilment of EO by them on behalf of the License holder are as per details in the statements of exports and have been manufactured by the License Holder.

vi. As per DGFT Policy Circular No. 16/2002-2007 dated 24.12.2002, the third-party exports are intended to service the manufacturer exporters who may not be able to export directly and would therefore avail of the services of a third party namely merchant exporter. The third party thus in effect acts as a marketing wing in the entire export transaction.

vii. In terms of Customs Notification No. 97/2004 dated 17.09.2004, "Export Obligation" means (i) In relation to importers other than those rendering services, means exports to a place outside India, of products manufactured with the use of capital goods imported, assembled or manufactured in terms of this notification.

viii. In terms of Customs Circular No. 120/1995 dated 23.11.1995 as amended by Circular No. 30/2005 dated 12.07.2005, exports made by a third party can be counted towards discharge of EO by the EPCG License holder subject to the condition that: -

a) There is a contractual agreement between the EPCG License holder and the third party in respect of export goods sought to be exported; and

b) The Shipping Bill shall indicate the name of both the manufacturer (license holder) and third-party exporter.

ix. The declaration to be submitted by the License holder and the third party at the time of filing for EODC shows **that the goods exported by the third-party should be manufactured by License Holder using the capital goods imported against the EPCG License.**

x. The NOC by the third-party exporter at the time of filing for EODC shows that the third-party exports shown towards fulfillment of Export Obligation against EPCG Licenses **should be manufactured by using the Capital Goods imported under the said Licenses.**

xi. DGFT *vide* order dated 11.04.2016, while setting aside the Order-n-Original of DGFT Madurai dated 03.11.2015 had said that *"…..as the provisions under Customs Act, 1962 and FT (D&R) Act, 1992 operate independently, DRI / Customs could have proceeded against the party based on the evidences available with them, under Customs Act, 1962 as the EODC had already been discharged under FTP/HBP".*

xii. The CA had agreed in his statement that he had certified Form ANF 5B and Appendix 26A for the said EPCG Licenses without verifying the ledger accounts and hence, the EODCs are obtained by submitting

falsified documents containing Shipping Bills of unrelated exporters which contained the endorsement of impugned License number, which are not at all manufactured by using the capital goods imported vide the impugned EPCG Licenses.

xiii. The Appellant have mis-used the Customs Notification No. 97/2004 dated 17.09.2004, read with Customs Circular No. 30/2005 dated 12.07.2005 and discharged the bond executed with the Commissioner of Customs, citing the falsified/impugned EODCs.

19. A careful examination of the appellate records indicates that the appellant importer has obtained his licenses during the period November 2006 to May 2007, as per the details given in the table given below para 2 above.

20. The Ld. Advocate for the appellant has argued that the Department has not alleged violation of any conditions of the Notification or the provisions of Foreign

Trade Policy and the proceedings were initiated on the false presumption that the third-party exports have to be manufactured by using the imported capital goods under the EPCG Licenses. He has drawn our attention to that part of the Customs Notification No. 97/2004 dated 17.09.2004 relating to export obligation of third-party exports as incorporated therein and at clause 4 to the explanation to the Notification as extracted below: -

> ***"(4) "export obligation"**, -*
> *(i) in relation to importers other than those rendering services, means exports to a place outside India, of products manufactured with the use of capital goods imported, assembled or manufactured in terms of this notification :*
>
> ***Provided** that export obligation may also be fulfilled by, -*
> *(a) export of same products capable of being manufactured with the use of said capital goods; or*
> *(b) export of same products manufactured in different units of the licence holder; or*
> ***(c) through third party exports made by an exporter or manufacturer on behalf of the licence holder by exporting the same product and in such cases, inter alia the shipping bills shall indicate name of both the third party and the licence holder; or***
> *(d) making supplies of manufactured product in terms of paragraph 5.4 of the Foreign Trade Policy; or*
> *(e) export of other goods manufactured by the importer;"*

21. He has further elaborated that this export obligation can be discharged

(i) by export of same products **capable** of being manufactured with the use of the said capital goods.

Here emphasis is on the product to be exported. If imported capital goods are meant to manufacture 'yarn' as is the case here, by export of 'yarn', the license holder can discharge his

export obligation. As we read the Notification, there is no implicit condition that the 'yarn' has to be manufactured only by the capital goods imported and not by other similar capital goods. The words 'same products capable of being manufactured' is significant.

(ii) export of same products manufactured in different units of the license holder or

(iii) through third party exports which are made by an exporter or a manufacturer on behalf of license holder (Appellant) by exporting the same product and in such cases, the shipping bills shall indicate the name of both the third party and the license holder.

The words "Same product to be exported on behalf of the license holder" has been interpreted by the Department that "same product" means that which is manufactured only by imported capital goods leading to the dispute in this appeal.

Thus, from the above, it emerges that in case of third party exports what is essential is the shipping bills shall indicate the name of both the third party, the license number and name of the license holder and nowhere it is specifically mandated that these third-party exports have to be manufactured by the capital goods imported under EPCG Licenses. However, when these conditions are read with the extant provisions of Foreign Trade Policy and Circulars issued on third party exports, one may reasonably conclude

justifiably at that relevant time that third party exports means manufactured goods of the license holder utilizing the capital goods imported which were exported through another manufacturer / exporter. Thus, there was a lot of confusion and ambiguity in the matter of third-party exports at the relevant time. When the investigations started, the DRI has intimated to the Licensing Authority at Madurai for cancellation of the EODCs issued to the appellant which were promptly cancelled *vide* the Order-in-Original No. 35/DRI/EPCG/AM 15/7828 dated 03.11.2015 passed by Jt. DGFT, Madurai. Thus, there was an assumption that exports of third party were required to be manufactured by the license holder by using the imported capital goods. It is not disputed that the appellant has sold all the manufactured goods in the domestic market and has taken the exports under shipping bills of third parties on payment of commission. The above order of the Jt. DGFT dated 03.11.2015 has been agitated by filing an appeal before the Addition Director General of Foreign Trade who *vide* his Order-in-Appeal F.No. 11/21/2015-16/ECA-I/1688 dated 11.04.2016, who has held as follows: -

> *"5. I have gone through the order of the Adjudicating Authority and the petition filed by the party. The Appellants have stated that the findings and the documents relied upon by the Adjudicating Authority for issuing SCN had not been supplied to them and, hence, they could not defend their case. Thus, in this case, the principles of natural justice have been violated. They have further stated that as far fulfilment of conditions of export obligations in respect of third party export is concerned, in their case, Para 5.7.1 of HBP (AM 07) is*

applicable. They have already given a disclaimer in favour of the EPCG licence holder. Thus there is no double counting (benefit) of these exports. The adjudicating officer did not take into consideration the copy of minutes of the meeting held on 18.06.2015 between DGFT, senior officer from DRI and representatives of trade industries produced by the party nor did he consider the clarification issued by DGFT vide Policy Circular No. 3/2015-20 dated 02.09.2015. The adjudicating authority should have referred the matter to DGFT Headquarters before re-opening the closed (EO discharged) case. It can, therefore, be concluded that the RA, Madurai took the decision of opening the case based on preliminary report of DRI without waiting for the outcome of the DRI investigation.

6. Further as the provisions under the Customs Act, 1962 and FT(D&R) Act, 1992, operate independently, the DRI/Customs could have proceeded against the party based on the evidence available with them, under the Customs Act, 1962 as the EODC had already been discharged under FTP/HBP.

7. THE Hon'ble SUPREME COURT OF INDIA in its order dated 27.10.2015 in Civil Appeal Nos. 554, 658, 1587, 1589 of 2006, an Writ Petition (Civil) Nos. 27 of 2008, 343 of 2009, 246 of 2010 in appeal filed by DGFT and others in the matter of Kanak Exports and Ors., inter-alia stated as under:

> *"108. We may, in the first instance, make this legal position clear that a delegated or subordinate legislation can only be prospective and not retrospective, unless rule making authority has been vested with power under a statute to make rules with retrospective effect. In the present case, Section 5 of the Act does not give any such power specifically to the Central Government to make rules retrospective. No doubt, this Section confer powers upon the Central Government to 'amend' the policy which has been framed under the aforesaid provisions. However, that by itself would not mean that such a provision empowers the Government to do so retrospective."*

From the above it is clear that policy changes introduced on 1/4/2015 in respect of Third Party exports cannot be made applicable retrospectively to the cases of the past.

8. I, therefore, in exercise of the powers vested in me under Section 15 of the Foreign Trade (Development & Regulation) Act, 1992, as amended, pass the following order.

Order

F.No. 11/21/2015-16/ECA-I Dated: 11th April, 2016

Order-in-Original dated 03.11.2015 passed by JDGFT, Madurai is set aside.

(Jaikant Singh)

Additional Director General of Foreign Trade

M/s. Sree Koppammal Cotton Spinning Mills (P) Ltd.,
311/2, Jayavilas Bungalow,
Sempatti Post,
Aruppukottai, Tamilnadu
Pin – 626 101"

22. It is on record that the DGFT has conducted a meeting to discuss about 'Third party exports' under EPCG on 18.06.2014 wherein representatives of South India Mills Association, South India Spinners Association, various chambers of commerce & industry and Shri John Joseph, ADG, DRI have participated. The minutes of the meeting on third party exports under EPCG were circulated *vide* No. 18/148/AM-16/P-5/27 dated 09.07.2015 and it was decided therein as under: -

> *"5. Thereafter they suggested that their exports through third party could be verified from the turnover of the exporters which is available with SIMA and other trade bodies/Income Tax Returns / Balance Sheet filed with RoC. It was further suggested that in case a manufacturing unit had a turnover of say Rs. 10 crore then any export upto that value whether by direct export or through third party should be considered as genuine. However, if the export figure crosses this turnover figure the manufacturing unit needs to explain the export figure and that such export should normally not be counted for discharge of EO under EPCG Scheme.*
>
> *6 After hearing the exporters Dr. John Joseph, Additional Director General DRI (Hqrs.) stated that DRI takes action only if Capital Goods are not installed or sold out and if there is forged shipping bills/documents submitted for discharge of Export Obligation. However, ADG, DRI assured the representatives that concerned DRI officers in Coimbatore will be advised suitably. He further advised the exporters to approach ADG(DRI), Chennai in case of undue harassment, who will definitely look into the matter or they may write to him directly.*
>
> *7. The DGFT opined that some exporters have used forged shipping bills for issue of EODC which came to the notice of*

DRI. He was sure that most of the exporters were clean but there are a few black sheep who do not abide by the law of the land and it is because of them that the bonafide exporters also suffer. He advised the trade bodies to identify the unscrupulous elements and take suitable action against such exporters (including termination of their membership) so that bonafide exporters do not suffer.

8. After deliberation the following decisions were taken:

i. DRI should not pass any oral instructions to the EPCG authorization holders and follow the laid down procedure.
ii. The exporters shall not expect leniency in respect of forged shipping bills or if capital goods are not found to be installed.
iii. It was suggested that DRI should not look into very old cases, as the documents related to such cases have been weeded out or are not available with the exporters. Accordingly, it was agreed that DRI should only ask for documents relied upon for issue of EODCs issued on or after 1.4.2010. Exporters should retain export document pertaining to such EODCS.
iv. The normal, Investigative action by DRI should not cause or force stoppage of production.
v. The suggestion at Para 5 above seems to be logical and DRI could consider the same.
vi. In view of Para 5.10 (d) of HBP the Trade Notice No. 2 dated 25.11.2014 issued by RA, Coimbatore may be treated as withdrawn.
vii. Since the RAs issue EODC based on ANF 5 B, BRC and CA Certificate and send a copy of the same to the Customs at Port of Registration for release of BG/LUT the DRI should first examine the cases at their end and only when they find that prima-facie there is a mismatch, they should start investigation and call for documents from the RA

9. The meeting ended with the vote of thanks to the Chair."

23. Further, it is to be noted that consequent to the passing of the above order as detailed above, the appellant was communicated from the DGFT office, the copy of which is reproduced below restoring EODCs cancelled by ADGFT, Madurai: -

GOVERNMENT OF INDIA
MINISTRY OF COMMERCE
OFFICE OF THE JOINT DIRECTOR GENERAL OF FOREIGN TRADE
PLOT NO.117, IST MAIN ROAD, K.K. NAGAR, MADURAI

PHONE: 0452-2586485 E-mail: madurai-dgft@nic.in

फाइल सं/ F. No: 35/DRI/EPCG/AM16/3275 Date: 2.6.2016

सेवा में/To

M/s. Sree Koppammal Cotton Spinning Mills (P) Ltd.,
311/2, Jayavilas Bunglow,
Sempatti Post, Aruppukottai – 626101

विषय/Sub : Filfillment of export obligation in respect of EPCG authorizations no. 3530002103 dt. 7.11.2006, 3530002105 dt. 7.11.2006 and 3530002223 dt. 12.12.2006 – restoration of EODCs and removal from Denied Entities List - Reg.

Ref: 1) This office letter dt. 27.7.2015 cancelling EODCs
2) Order-In-Appeal no. 11/20/2015-16/ECA-1 dt. 11.4.2016 and 11/21/2015-16/ECA-1 dt. 11.4.2016 issued by Appellate authority
3) Your letter dt. 23.5.2016

The Appellate authority vide Order-In-Appeal no. 11/20/2015-16/ECA-1 dt. 11.4.2016 and 11/21/2015-16/ECA-1 dt. 11.4.2016 has set aside the Order-in-originals issued by this Office in respect of EPCG authorization no. 3530002103 dt. 7.11.2006, 3530002105 dt. 7.11.2006 & 3530002223 dt. 12.12.2006. Hence as requested vide your letter dt. 23.5.2016, EODCs cancelled by this Office vide letter dt. 27.7.2015 is restored. You are also removed from Denied Entities List.

Yours faithfully

/M. RAVICHANDRAN /
FOREIGN TRADE DEVELOPMENT OFFICER
For JOINT DIRECTOR GENERAL OF FOREIGN TRADE

24. At that relevant time on third party exports, the handbook of procedures read as given below: -

> *"9.62 "Third-party exports" means exports made by an exporter or manufacturer on behalf of another exporter(s). In such cases, export documents such as shipping bills etc., shall indicate the name of both the manufacturing exporter/manufacturer and third party exporter(s). The BRC, GR declaration, export [illegible] the third party exporter."*

is observed that above 9.62 of Handbook of Procedures is been incorporated in Customs Notification No. 97/2004 dated 17.09.2004.

25. The policy relating to third party exports has undergone a major change as per Foreign Trade Policy and

the handbook of procedures at Chapter 5 as on 04.05.2021 reads as given below: -

> *"5.10 Conditions for fulfillment of Export Obligation*
> *….*
> *…*
> *(d) The EPCG authorization holder shall submit the following additional documents for discharge of EO through third party (ies):*
>
> *(i) A copy of agreement entered into between the authorization holder and the ultimate exporter undertaking to export the goods manufactured by the authorization holder/supporting manufacturer for fulfillment of the export obligation against the EPCG authorization in question.*
>
> *(ii) Proof of having dispatched the goods from authorization Holder's factory premises to the ultimate exporter/port of export viz. (a) ARE 1 certificate issued by Central Excise / Tax invoice for export prescribed under the GST rules with due authentication by the Customs verifying the exports along with the shipping bill number, date and EPCG authorization number or (b) Invoice duly incorporating the relevant EPCG authorization number & date at the time of dispatch in case the unit is not registered with Central Excise / GST.*
>
> *(iii) Lorry Receipt (LR) /Logistical evidence for transportation of goods from the premises of the authorization holder to the third party/port of export.*
> *(iv) An undertaking from the 3rd party on a stamp paper, declaring that the products exported for fulfillment of EO by them on behalf of the license holder as per details given in the statement of exports, were manufactured by the license holder.*
> *(v) Financial evidence for having received proceeds through normal banking channel from third party exporter"s account to the authorization holder"s account on account of such exports towards such third party supplies.*
> *(vi) Disclaimer certificate from third party that they shall not use such proceeds towards EO fulfilment of any EPCG authorization (s) obtained by them."*

26. The Competent Officer under the Foreign Trade (Development Regulations) Act, 1992 has issued a Policy Circular consequent to the changes in the import / export policy *vide* Policy Circular No. 3/2015-20 dated 02.09.2015,

relevant to the third-party exports under EPCG Scheme which reads as below: -

Government of India
Ministry of Commerce and Industry
Department of Commerce
Directorate General of Foreign Trade
Udyog Bhawan, New Delhi

Policy Circular No. 3/ 2015-20 Dated: 02.09.2015

To

All Regional Authorities

Subject: Applicability of Para 5.10 (d) of Handbook of Procedure, 2015-20 relating to third party exports under EPCG Scheme.

1. References have been received in this Directorate regarding the applicability of provisions of Para 5.10(d) of HBP 2015-20 relating to third party exports.

2. It is clarified that the provisions of Para 5.10(d) of HBP 2015-20 shall be applicable to third party exports made on or after 01.04.2015 (even in respect of exports made under EPCG authorisations issued prior to 01.04.2015). Third party exports which have been made prior to 01.04.2015 will be governed by the provisions of relevant policy/procedure.

This issues with the approval of DGFT.

(Akash Taneja)
Joint Director General of Foreign Trade
Tel. No. +91 11 2306 1562 / Ext. 217
E-mail: akash.taneja@nic.in

(Issued from File No. 18/69/AM-16/P-5)

27. Even in case of appeal by the appellant against ADC order Madurai, the appellate authority has held that the policy change introduced on 11.04.2015 in respect of third-party exports cannot be made applicable retrospectively to the issue of the appellant as it would apply only prospectively.

28. On the same issue of whether the demand could be confirmed with consequent penalties for violation of the conditions of EPCG Notification, when the EODC was issued in favour of the appellant came up for consideration before a

co-ordinate bench of this Tribunal in the case of *M/s. Bestech Hospitalities Pvt. Ltd., Mr. D. Bhandari and Mr. Sunil Satija Versus Commissioner of Customs (Preventive), New Delhi [2025 (8) TMI 509 - CESTAT NEW DELHI]* and the Tribunal ruled against Revenue. Relevant paras of the said order read as under: -

> *"19. The issue that arises for consideration in these appeals is whether the demand could be confirmed with consequent penalties for violation of the conditions of the Notification, when the EODC was issued in favour of the appellant evidencing fulfilment of export obligation and it has not been cancelled till date.*
>
> *20. The first submission that has been advanced by the learned counsel for the appellant is that since that export obligation had been fulfilled by the appellant within the time granted by the DGFT and EODC was issued and received by the appellant, duty could not have been demanded from the appellant when proceedings had not been initiated by DGFT against the appellant for cancelling the EODC. The contention, therefore, that has been advanced is that once the DGFT authorities exercised their jurisdiction and satisfied themselves that the export obligation was fulfilled by the appellant within the stipulated time and redeemed the bank guarantee, the customs department does not have any jurisdiction to sit in judgment over the EODC issued by the DGFT.*
>
> *21. To support this contention learned counsel placed reliance upon the decision of the Supreme Court in **Titan Medical Systems** and the decision of the Delhi High Court in **Design Company**.*
>
> *22. In **Titan Medical Systems** the Supreme Court held:*
>
> > ***"13.** As regards the contention that the appellants were not entitled to the benefit of the exemption notification as they had misrepresented to the licensing authority, it was fairly admitted that there was no requirement, for issuance of a licence, that an applicant set out the quantity or value of the indigenous components which would be used in the manufacture. Undoubtedly, while applying for a licence, the appellants set out the components they would use and their value. However, the value was only an estimate. It is not the respondents' case that the components were not used. The only case is that*

the value which had been indicated in the application was very large whereas what was actually spent was a paltry amount. ***To be noted that the licensing authority having taken no steps to cancel the licence. The licensing authority have not claimed that there was any misrepresentation. Once an advance licence was issued and not questioned by the licensing authority, the Customs authorities cannot refuse exemption on an allegation that there was misrepresentation. If there was any misrepresentation, it was for the licensing authority to take steps in that behalf.****"*

(emphasis supplied)

23. In ***Design Company****, the Delhi High Court followed the decision of the Supreme Court in* ***Titan Medical Systems*** *and observed as follows:*

*"****104. As we read the various provisions enshrined in the FTDR Act alongside the FTP as well as the FTDR Rules, we find ourselves unable to recognize a right that may be said to inhere in the customs authorities to doubt the issuance of an instrument. We, in the preceding parts of this decision, had an occasion to notice the relevant provisions contained in the FTDR Act and which anoint the DGFT as the central authority for the purposes of administering the provisions of that statute and regulating the subject of import and exports.*** *The FTP 2015-20 in unequivocal terms provides in para 2.57 that it would be the decision of the DGFT on all matters pertaining to interpretation of policy, provisions in the Handbook of Procedures, Appendices, and more importantly, classification of any item for import/export in the ITC (HS) which would be final and binding. The FTP undoubtedly stands imbued with statutory authority by virtue of Section 5 of the FTDR Act.*

105. Of equal importance are the FTDR Rules and which too incorporate provisions conferring an authority on the Director General or the licensing authority to suspend or cancel a license, certificate, scrip or any instrument bestowing financial or fiscal benefits. ***Once it is held that the MEIS would clearly qualify as an instrument bestowing financial or fiscal benefits, the power to cancel or suspend would be liable to be recognized as being exercisable by the Director General on the licensing authority alone. It would thus be wholly impermissible for the customs authorities to either ignore the MEIS certificate or deprive a holder thereof of benefits that could be claimed under that scheme absent any***

adjudication or declaration of invalidity being rendered by the DGFT in exercise of powers conferred by either Rules 8, 9 or 10 of the FTDR Rules. The customs authorities cannot be recognised to have the power or the authority to either question or go behind an instrument issued under the FTDR in law.

106. Taking any other view would result in us recognizing a parallel or a contemporaneous power inhering in two separate sets of authorities with respect to the same subject. *That clearly is not the position which emerges from a reading of Section 28AAA. Quite apart from the deleterious effect which may ensue if such a position were countenanced, in our considered opinion, if the validity of an instrument issued under the FTDR Act were to be doubted on the basis of it having been obtained by collusion, wilful misstatement or concealment of facts, any action under Section 28AAA would have to be preceded by the competent authority under the FTDR Act having come to the conclusion that the instrument had come to be incorrectly issued or illegally obtained. The procedure for recovery of duties and interest would have to be preceded by the competent authority under the FTDR Act having so found and the power to recover duty being liable to be exercised only thereafter."*

29. In view of the similarity of the issue dealt in the above case and the present case, the ratio of the above decision is squarely applicable to the facts of this appeal. The validity of EPCG Licenses, installation of capital goods imported, utilization of these goods for manufacture of the intended goods is not disputed. What is disputed is only relating to the exports made by third parties whether can be counted toward export obligation cast on the license holder / appellant. Therefore, the issue in this appeal is decided in favour of Appellant and against the Revenue in respect of the two licenses Nos. 3530002103 & 3530002105 both dated 07.11.2006. Appellant has withdrawn the appeal in so far as

the remaining two EPCG licences are concerned and therefore, the portion of the impugned order dealing with the said two EPCG licenses and the imports made thereunder remains unchallenged. (refers to para 9.1 above)

30. In view of the above discussion and findings, the appeal is allowed and the impugned order is modified to the extent of setting aside the demand and penalties in respect of imports made under the two licenses Nos. 3530002103 & 3530002105 both dated 07.11.2006 with consequential relief, if any, as per the law.

(Order pronounced in open court on 27.04.2026)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

MK