IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 76470 of 2024

(Arising out of Order-in-Original No. KOL/CUS/COMMISSIONER/PORT/18/2019 dated 02.07.2019 passed by the Commissioner of Customs (Port), Custom House, 15/1, Strand Road, Kolkata – 700 001)

Principal Commissioner of Customs (Port) **: Appellant**
Custom House, 15/1, Strand Road,
Kolkata – 700 001

VERSUS

M/s. Jelenta Polytraders Private Limited **: Respondent**
114/5, Hazra Road,
Kolkata

APPEARANCE:

Shri Tariq Sulaiman, Authorized Representative, for the Appellant / Revenue

None for the Respondent

CORAM:

HON’BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON’BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 75686 / 2026

DATE OF HEARING / DECISION: 10.06.2026

ORDER: [PER SHRI ASHOK JINDAL]

The Revenue is in appeal against the impugned order.

2. The facts of the case are that intelligence was developed by the officers of the Directorate of Revenue Intelligence (DRI), Kolkata Zonal Unit to the effect that M/s. Jelenta Polytraders Pvt. Ltd., Kolkata, West Bengal (hereinafter referred to as "JPPL") had undertaken duty-free imports of goods such as High Density Polyethylene (HDPE), PVC Resin, LLDPE Granules, Polypropylene, LDPE etc. under the Advance Authorization (AA) and Duty Free Import Authorization (DFIA) Schemes through Kolkata Port.

2.1. It appeared to the Revenue that M/s. Kalpena Industries Ltd. (hereinafter referred to as "KIL"), the promoting company, had been shown as the supporting manufacturer and that high sea sale agreements had been entered into between JPPL and KIL in respect of the imported goods. It further appeared to the Revenue that the export obligations under the aforesaid schemes had been shown to have been fulfilled through supplies made to M/s. Tara Holding Pvt. Ltd. (hereinafter referred to as "THPL"), a 100% EOU, stated to be under the control of KIL.

3. Pursuant thereto, investigation was initiated by DRI, Kolkata. During the course of investigation, it was noticed that JPPL had imported substantial quantities of LLDPE, HDPE, LDPE, PVC Resin and Polypropylene without payment of duty under Advance Authorizations and DFIAs issued by the DGFT, Kolkata and that KIL had been declared as the supporting manufacturer in the respective authorizations. It further emerged that JPPL had obtained five Advance Authorizations and thirteen Duty Free Import Authorizations against which export obligations were stated to have been discharged by way of deemed exports effected through KIL to THPL.

4. On the basis of the materials gathered during investigation, the Revenue entertained a view that the conditions governing the aforesaid schemes had not been fulfilled and that the transactions shown as deemed exports to THPL did not correspond to actual movement of goods. In this regard, reliance was placed, inter alia, upon verification of transport documents and statements recorded during the course of investigation. It also appeared to the Revenue that certain documents relied upon for

availing the benefits under the schemes had been altered or tampered with. Accordingly, the Revenue formed a view that the duty-free imported materials had not been utilized in the manner prescribed under the relevant notifications issued under the Customs Act, 1962 and the Foreign Trade Policy, thereby rendering the goods liable to confiscation and the duty foregone recoverable in accordance with law.

5. On completion of investigation, a Show Cause Notice bearing F. No. 02/KOL/APP/2013/P/JELENTA/9118-9123 dated 28.03.2015 came to be issued to (i) M/s. Jelenta Polytraders Pvt. Ltd., (ii) Shri Narrindra Suranna, CMD of M/s. Kalpena Industries Ltd., (iii) M/s. Kalpena Industries Ltd., (iv) Shri Ashis Sen, Director of M/s. Jelenta Polytraders Pvt. Ltd., (v) M/s. Tara Holding Pvt. Ltd. and (vi) Shri Tara Chand Jain, Director of M/s. Tara Holding Pvt. Ltd., proposing, inter alia, the following:-

a) Noticee No. (i) Goods valued Rs.38,93,39,975/- (Rupees thirty eight crores ninety three lakhs thirty nine thousand nine hundred seventy five only) imported as duty free goods from Kolkata Sea Port under 17 Licenses (5 Advance Authorization and 12 Duty Free Import Authorizations) liable to confiscation under Section 111(o) of the Customs Act, 1962 for not utilizing the said goods in manufacturing of export goods and thereby violating the conditions of respective notifications.

b) Recovery of duty amounting to Rs. 8,52,46,964/- (Rupees eight crores fifty two lakhs forty six thousand nine hundred sixty four only) from them under Section 28(4) of the Customs Act, 1962.

c) Recovery of interest at appropriate rate from them under Section 28AA (erstwhile Section 28AB) of the Customs Act, 1962.

d) Imposition of Penalty upon them under Section 114A or 112(a) of the Customs Act, 1962.

and in case of Noticee No. (ii), Noticee No. (iii), Noticee No. (iv), Noticee No. (v) & Noticee No. (vi) imposition of penalty upon each of them under Section 112(a) of the Customs Act, 1962.

5.1. Upon adjudication of the aforesaid Show Cause Notice, the ld. adjudicating authority passed the Order-in-Original No. KOL/CUS/COMMISSIONER/ PORT/18/2019 dated 02.07.2019 (hereinafter referred to as the 'impugned order') and ordered as follows: -

i) Confiscation of the goods valued at Rs.38,93,39,975/- (Rupees thirty eight crore ninety three lakh thirty nine thousand nine hundred seventy five only) imported as duty free from Kolkata Sea Port under the said Advance Authorizations and Duty Free Import Authorizations under Section 111(o) of Customs Act, 1962, allowing redemption on payment of Rs.4,00,00,000/- (Rupees four crore only) as

Redemption Fine under Section 125 of Customs Act, 1962.

ii) Confirmation of the duty demand amounting to Rs. 8,52,46,964/- (Rupees eight crore fifty two lakh forty six thousand nine hundred sixty four only) under Section 28(8) of Customs Act, 1962 and applicable interest under Section 28AA (erstwhile Section 28AB) of the Act ibid.

iii) Imposition of penalty of Rs. 8,52,46,964/- (Rupees eight crore fifty two lakh forty six thousand nine hundred sixty four only) on M/s. Jelenta Polytraders Pvt. Ltd. (JPPL) under Section 114A of the Customs Act, 1962.

iv) Imposition of penalty of Rs. 80,00,000/- (Rupees eighty lakh only) on Shri Narrindra Suranna, CMD of M/s. Kalpena Industries Ltd. (KIL) under Section 112(a)(ii) of the Customs Act, 1962.

v) Imposition of penalty of Rs. 80,00,000/- (Rupees eighty lakh only) on Shri Ashis Sen, Director of M/s. Jelenta Polytraders Pvt. Ltd. (JPPL) under Section 112(a)(ii) of the Customs Act, 1962.

vi) Imposition of penalty of Rs. 80,00,000/- (Rupees eighty lakh only) on Shri Tara Chand Jain, Director of M/s. Tara Holding Pvt. Ltd. (THPL) under Section 112(a)(ii) of the Customs Act, 1962.

5.2. Aggrieved by the non-imposition of penalties under Section 112(a) of the Customs Act, 1962 upon M/s. Kalpena Industries Ltd. (KIL) and M/s. Tara Holding Pvt. Ltd. (THPL), the Revenue is before us.

6. The Ld. Authorized Representative of the appellant/Revenue reiterated the grounds and contentions urged in the Memorandum of Appeal.

7. None appeared on behalf of the respondent.

8. Heard the Ld. Authorized Representative of the Revenue and perused the records of the case.

9. We find that the issue arising for consideration in the present appeal is no longer res integra as an identical issue involving a similar set of facts, has already been decided by this Tribunal in the case of *Commissioner of Customs (Port), Kolkata v. M/s. Kalpena Plastiks Ltd. & ors. [Final Order Nos. 75638-75641 of 2026 dated 22.05.2026 in Customs Appeal No. 76048 of 2019 & ors. – CESTAT, Kolkata]*. The relevant portion of the aforesaid Order is reproduced below: -

> *"3. The facts of the case in brief are that the Appellant-Assessee, formerly known as M/s. Sarla Gems Limited, is engaged in the import and trade of polymer and plastic raw materials under the Advance Authorisation ("AA") and Duty-Free Import Authorisation ("DFIA") schemes of the FTP. During 2009–2012, the Appellant obtained 29 authorisations from DGFT, Kolkata — 15 under Notifications No. 93/2004-Cus dated 10.09.2004 and 96/2009-Cus dated 11.09.2009 (AA), and 14 under Notifications No. 40/2006-Cus dated 01.05.2006 and 98/2009-Cus dated 11.09.2009 (DFIA) — declaring M/s. Kalpena Industries Limited ("KIL") as the supporting manufacturer in each application.*
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> *3.1 Under these authorisations, the Appellant imported polymer raw materials with total CIF value of Rs. 67,51,85,463/- and duty foregone of Rs.14,97,51,922/- (Rs.9,84,42,093/- under AA and Rs. 5,13,09,829/- under DFIA). The transaction architecture was: (i) merchant-exporter (Appellant) tied with named supporting manufacturer (KIL); (ii) high-seas purchase of consignments sold by KIL to the Appellant under registered HSS agreements; (iii)*

discharge of export obligation by way of deemed exports to THPL, a 100% EOU under Chapter 7/8 of the FTP. This structure is expressly permitted by Para 4.1.3 read with Para 4.1.7 of FTP 2009-14, Para 4.04 of HoP (AA to merchant-exporter with supporting manufacturer); Para 8.2(b) (supply by DTA unit to EOU recognised as deemed export); and Para 8.3.1(ii) read with Para 4.28 of HoP (discharge of EO under AA/DFIA by deemed export to EOU on production of CT-3 and Central Excise attested invoice).

3.2 Upon completion of deemed export supplies, the DGFT, Kolkata, after due verification, issued Export Obligation Discharge Certificates (EODCs) for all 29 authorisations. On the strength of these EODCs, the customs bonds executed at the time of import stood duly redeemed and vacated by the jurisdictional Bond Cell of the Customs House, Kolkata, and bank guarantees, if any, were returned. This administrative closure of every one of the 29 authorisations by the Customs Department itself is an admitted and undisputed fact. No proceeding has ever been initiated by DGFT, Kolkata or by any other Regional Authority to revoke, cancel or reopen any of the EODCs; the EODCs remain valid and subsisting till date.

3.3 DRI, Kolkata Zonal Unit, on the basis of intelligence, issued SCN No. DRI F. NO. 02/KOL/APP/2013/Pt./KPL/4147 dated 29.08.2014 under Section 124 read with Section 28 of the Customs Act, 1962, alleging that the Appellant misused the AA/DFIA schemes by diverting duty-free imported raw materials in the open market and that the deemed exports to THPL were fictitious. The SCN proposed (i) confiscation under Section 111(o); (ii) demand of Rs. 14,97,51,922/- under Section 28(4); (iii) interest under Section 28AA; and (iv) penalty under Section 114A. The Appellant filed a detailed reply dated 15.03.2016 denying every allegation.

3.4 Significantly, the SCN was issued by DRI without any prior reference to or consultation with DGFT, Kolkata, and without first seeking revocation of the EODCs from the licensing authority. The proceedings have thus been initiated in direct disregard of the jurisdictional scheme of the Foreign Trade (Development & Regulation) Act, 1992 read with the FTP, under which the licensing authority *alone is competent to determine fulfilment of export obligation.*

3.5 Equally significantly, five separate Show Cause Notices were issued by the Commissioner of Central Excise, Kolkata-V to THPL alleging short payment of duty on DTA clearance of manufactured excisable goods. Each of these Central Excise SCNs, and the OIOs passed thereon (three of which were the subject of appeals before this Hon'ble Tribunal), proceeded on the express footing that THPL actually received inputs from suppliers including the Appellant, manufactured goods therefrom, and cleared those goods. These contemporaneous departmental records from a sister CBIC authority are in direct contradiction to the DRI's theory that no goods ever moved from the Appellant to THPL.

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Issue (i) Whether the Customs authorities can demand duty on the ground of non-fulfilment of export obligation when EODCs have been issued by DGFT, Kolkata after due verification in respect of all 29 licences and have not been revoked?

8. Admittedly, the assessee has obtained EODC from DGFT and all the bonds were executed by the assessee has been duly discharged and discharged. In that circumstances, the demand against the assessee is not sustainable as held by this Tribunal in the case of Skipper Ltd. Vs. Commissioner of Customs (Port), Kolkata reported in (2025) 27 Centax 246 (Tri-Cal),wherein this Tribunal has observed as under :

> *"8. In view of the above findings, we hold that the Appellant has not contravened the conditions of the exemption Notification No. 96/2009-Cus. dated 11.06.2009, as amended. As the appellant has discharged their export obligation and EODC has been issued by DGFT and the Customs authorities have also released the bond executed by them after satisfying that the appellant has fulfilled all the conditions, we hold that confirming the demand of Customs duty alleging violation of the conditions of the said*

> *Notification is bad in law. Therefore, we hold that the demand of Customs duty confirmed in the impugned order is not sustainable.*
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> *8.1. Since the demand of duty itself is not sustainable, the question of demanding interest and imposing penalty does not arise.*
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> *9. We also find that the Appellant has not suppressed any information from the Department. In the instant case, the Appellant has completed their export obligation, obtained EODC issued by the DGFT authorities and got the bond released by the Customs authorities. Thus, there is no question of wilful misstatement or suppression of facts with intent to evade payment of duty established in this case. Hence, we hold that the demand is not sustainable on the ground of limitation also."*

9. Further, in the case of Vedanta Ltd. Vs. Commissioner of Customs vide Final Order No.40139/2026 in Customs Appeal No.40306/2020 dated 23.01.2026, this Tribunal has observed as under :

> *"25. In any case, we find that the demand has been confirmed by the Commissioner-Respondent under Section 143(3) of the Customs Act, 1962, it is an undisputed factual matrix on record that the bonds executed by the Appellant in respect of the three Advance Authorizations dated 02.01.2009, 30.11.2009 and 10.06.2010 have been cancelled by the Customs albeit after passing of the impugned order; since these bonds stand cancelled, we are of the view that no demand could be enforced under Section 143(3) of the Customs Act, 1962. On this ground as well, the demand so confirmed in the impugned order does not survive. When the demand for duty does not survive, there is no question of levy of any interest or penalty upon the Appellant and therefore, there is no question of confiscation in absence of there being any violation of the provisions of Customs Act, 1962 and / or the Notifications issued thereunder."*

10. Further, in the case of Interglobe Enterprises Limited Vs. Commissioner of Customs, New Delhi vide Final Order No.51777/2025 dated 2011.2025, against this Tribunal has observed as under :

> *"18. In the instant case, the holding of the EODCs was determinative of completing their export obligations towards the import of the three cars. We note that copies of logbooks of all the 3 vehicles were submitted to the departmental authorities establishing the use of the said three vehicles for transporting guests and used in other tourism related activities. The Department has led no evidence to the contrary. Hence, we hold that the appellant had completed his export obligation and the issuance of EODCs by DGFT are determinative of the same."*

As it is evident from the records that the assessee has obtained the EODC from the DGFT and all the bonds issued have also been discharged against 29 licences, therefore, the impugned demand is not sustainable against the assessee.

The issue is answered in favour of the assessee.

Issue No. (ii) Whether the demand can be sustained when the Central Excise Department, in five contemporaneous SCNs to THPL, has itself proceeded on the footing that goods were received by THPL — squarely contradicting the DRI's hypothesis of no-movement ?

11. We find that in this case, the allegation against the appellant is that they have not sent the goods to M/s THPL, who is the exporter. Therefore, the goods have been diverted in the domestic market, but the Revenue has issued the show-cause notice to M/s Tara Holdings Pvt. Ltd. (THPL) on 29.09.2011 alleging as under :

> *"It is further indicated from the records that the said assessee had procured raw materials, namely, modified LLDPE Compound without payment of duty from M/s Kalpena Industries Ltd. against CT3 No. THPL/100% E.O.U/R-1/09-10/05 dt. 08.01.2010 (Reference Invoice No. 005462 d. 11.01.2010 and AR3 No. SLV/IV/140-09-10 dt. 11.01.2010);*

> *Invoice No.5473 dt. 12.01.2010, 5562 dt. 17.01.2010, 6668 dt. 16.03.2010, 6029 dt. 12.02.2010, 6031 dt. 12.02.2010, 6083 d. 14.02.10, 5939 dt. 08.02.2010 and several others) and also procured PVC compound without filler from M/s Kalpena Industries Ltd. without payment of duty (Ref. Invoice No.4029 dt. 26.03.2010, 4030 dt. 26.03.2010). They had also procured Linear Low Density Polyethylene (LLDP) without payment of duty from M/s Reliance Industries Ltd., Surat (Ref. Invoice No. 101585 dt. 24.12.2009, 101587 dt. 26.12.2009, 101583 dt. 24.12.09."*

It is evident from the show-cause notice itself issued to THPL that they have received the goods in question from the assessee before us. Therefore, the allegation that the assessee has diverted the goods into the domestic market, is not sustainable at all. Therefore, the Issue No.(ii) is answered in favour of the assessee.

Issue No.(iii) & (iv) Whether the impugned OIO can stand when cross-examination of the very witnesses on whose statements the OIO is built has been denied to the Appellant despite specific requests?

Whether a duty demand on 100% of the consignments under 29 authorisations can be sustained by extrapolation from a vehicle enquiry that admittedly covered at best one-third of the consignments and was inconclusive in the bulk of that subset?

12. We find that in this case, no cross examination of the transporter whose statements have been relied upon by the adjudicating authority to the appellant. Therefore, it is gross violation of principle of natural justice. To rely the statement of the witness, the witness is to be examined in Chief and thereafter to be offered cross-examination to the accused,which the Revenue has failed to do so. In that circumstances, the statement of the transporters cannot be relied upon to allege the diversion of the goods in the domestic market as held by the Hon'ble High Court of Punjab & Haryana in the case of Jindal Drugs Pvt. Ltd. Vs. Union of India reported in 2016 (340) ELT 67 (P & H), *wherein the Hon'ble Punjab & Haryana High Court has observed as under :*

….

Therefore, the Issue Nos.(iii) & (iv) are also answered in favour of the assesses.

Issue No.(v) Whether extended period under Section 28(4) of the Customs Act, 1962 is invokable in the absence of any positive act of fraud, collusion, wilful misstatement or suppression?

13. In this case, the show-cause notice dated 29.08.2014 was issued during the period 2013.2014 by invoking extended period of limitation. We find that the above demand is barred by limitation as obtaining EODC from the DGFT by the assessee and the discharging of the bonds were well within the knowledge of the Revenue, therefore, the extended period of limitation is also not invokable in the facts and circumstances of the case.

These issues are answered in favour of the assessee.

Issue No. (vi) Whether the recommendation under Section 135 at Paragraph 46 of the OIO can survive once the foundation of the adjudication falls?

14. We find that the adjudicating authority has re-commended the proceedings under Section 135 of the Customs Act, 1962, whereas it has been established by the assessee that they have obtained EODC from the DGFT and as per the show-cause notice dated 29.08.2014, THPL received the goods from the assessee. Therefore, the proceedings under Section 135 of the Customs Act, 1962, are not warranted against the assessee as held by the Hon'ble Apex Court in the case of Radheshyam Kejriwal Vs. State of West Bengal reported in (2011) 3 Supreme Court Cases 581. Therefore, this issue is also answered in favour of the assessee.

Issue (vii) Whether the facts and circumstances of the case, the goods can be confiscated and redemption fine can be imposed or not ?

15. As the goods in question has also been exported as held by us by deciding the Issue No.(i) in favour of the assessee, we hold that the goods in

> *question are not held to be liable for confiscation. Consequently, no redemption fine is imposable.*
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> *16. In the result, the appeals filed by the assessee and the co-noticees, namely Shri Narrindra K. Suranna & Shri Tara Chand Jain, are allowed and the appeal filed by the Revenue is dismissed."*

9.1. The factual matrix of the above case and that of the present proceedings being broadly similar, the ratio laid down in the aforesaid Order is squarely applicable to the facts and circumstances of the present case. Therefore, by applying the ratio of the decision cited supra, we are of the considered view that no case has been made out warranting imposition of penalties under Section 112(a) of the Customs Act, 1962 upon M/s. Kalpena Industries Ltd. (KIL) and M/s. Tara Holding Pvt. Ltd. (THPL). Consequently, we do not find any infirmity in the impugned Order-in-Original to the extent challenged in the present appeal and thus the same is upheld.

10. In the result, we do not find any merit in the appeal filed by the Revenue and accordingly, the same is rejected.

(Dictated and pronounced in the open court)

Sd/-
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd