CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 85314 of 2016

(Arising out of Order-in-Appeal No. 101 & 102(Adj./Exp)/2015/A-I dated 30.10.2015 passed by Commissioner of Customs (Appeals), JNCH, Nhava Sheva)

M/s. Puja Synthetics (P) Ltd. **....Appellant**
4-A 5 Bhilwara Textile Market Pur Road,
Bhilwara Rajssthan – 311 001.

Versus

Commissioner of Customs, Nhava Sheva-II, Mumbai **.... Respondent**
Jawaharlal Nehru Custom House, Nhava Sheva, Dist.-Raigad,
Maharashtra 400 707.

AND

Customs Appeal No. 85315 of 2016

(Arising out of Order-in-Appeal No. 101 & 102(Adj./Exp)/2015/A-I dated 30.10.2015 passed by Commissioner of Customs (Appeals), JNCH, Nhava Sheva)

Sharad Kabra, Director
M/s. Puja Synthetics (P) Ltd. **....Appellant**
4-A 5 Bhilwara Textile Market Pur Road,
Bhilwara Rajsthan – 311 001.

Versus

Commissioner of Customs, Nhava Sheva-II, Mumbai **.... Respondent**
Jawaharlal Nehru Custom House, Nhava Sheva, Dist.-Raigad,
Maharashtra 400 707.

APPEARANCE:

Shri Akhilesh Kangsia, Advocate for the Appellant

Shri C. S. Vinod, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85855-85856/2026

Date of Hearing: 01.07.2026

Date of Decision: 01.07.2026

PER: S.K. MOHANTY

Heard both sides and examined the case records.

2. The appellant M/s. Puja Synthetics Pvt. Ltd. had imported the second-hand textile machinery and availed the exemption benefit provided under Notification No. 97/2004-Cus., dated 17.09.2004. For availment of the benefit provided under the notification dated 17.09.2004, the said appellant had obtained the EPCG authorization from Director General of Foreign Trade (DGFT) and imported the goods by filing the Bills of Entry before the Customs authorities at the port of import. The imported goods were physically examined and cleared by customs department by extending the EPCG benefit provided under the notification dated 17.09.2004. However, on further investigation into the matter, the department had gathered the information that the imported second-hand machinery was beyond the permissible vintage of 10 years, and since the EPCG authorization was required to be read along with the Technology Upgradation Fund (TUF) Scheme, the subject goods were not eligible for the EPCG benefit. On the basis of such understanding, show cause proceedings were initiated against the appellants, which culminated into the adjudication order dated 23.07.2014, wherein the original authority had denied the benefit of the said notification and confirmed the duty liability along with interest and also imposed penalties on the appellants, as proposed for in the show cause notice dated 30.04.2013. On appeal against the said adjudication order dated 23.07.2014, learned Commissioner (Appeals) vide the impugned order dated 30.10.2015 has upheld confirmation of the adjudged demands and rejected the appeal filed by the appellant. Further, the impugned order has also imposed penalty on the other appellant Shri Sharad Kabra, who is the Director of the appellant company. Feeling aggrieved with the impugned order, the appellants have preferred these appeals before the Tribunal.

3. Notification No. 97/2004-Cus., dated 17.09.2004 exempts the capital goods from payment of customs duty and the additional duty of customs, when imported into India under the Export Promotion Capital Goods (EPCG) Scheme. It is an admitted fact on record, that the appellants

had imported the goods under the EPCG Scheme, and duly approved by the DGFT in the authorization letter dated 25.04.2008 issued to them. Further, it is not the case of Revenue that the appellants did not comply with the requirement provided under the said notification dated 17.09.2004. We find that no concrete evidences were provided by the department to substantiate their claim that the machineries were more than 10 years old. Further, nowhere in the said notification, there is any condition prescribed with regard to the year of manufacture of the second-hand machinery. On perusal of the case records, we find that the DGFT vide letter dated 10.09.2018, had redeemed the EPCG license issued to the appellants on fulfilment of the export obligation by them. Since, the second-hand machinery were purchased by availing the benefit of the exemption notification dated 17.09.2004 and the export obligation were duly achieved by them upon utilizing such machinery, we are of the view, that the requirement of the EPCG scheme has been duly complied with by the appellants. Therefore, we are of the considered opinion that the adjudged demands confirmed against the appellants cannot be sustained. Further, we also find that based on the same investigation, proceedings were initiated by the customs department against the other importers and some of the importers had assailed the adjudication order by way of filing the appeals before the Delhi Bench of the Tribunal. The said Bench vide Final order dated 17.12.2024 in the case of M/s. *Devanshi Textiles Vs. Commissioner of Customs, Jaipur* – 2024 (12) TMI 966-CESTAT, New Delhi, has allowed the appeal, concluding as under:

"37. To sum up:

a) the appellant had not declared or mis-declared the year of manufacture of the capital goods in the Bills of Entry or any declaration before the Customs;

b) the EPCG licence issued by the DGFT also does not place any restriction on the year of manufacture of the goods;

c) the EPCG scheme in para 5.3 of HBP under which the appellant was issued the licence specifically permits import of second hand capital goods without any restriction;

d) the Customs notification 103/2009-Cus which exempts the imported goods also does not place any restriction on the year of manufacture;

e) the appellant had not applied under the TUF scheme which has been referred to in the impugned order;

f) the Commissioner has no powers to modify the EPCG licence issued by the DGFT or read something more into it (such as restriction of the year of manufacture of the machinery);

g) the Commissioner also has no powers to demand customs duty even if any undue benefit was claimed or was attempted to be claimed from the Ministry of Textiles or any ministry under some scheme;

h) confiscation of the goods under section 111(m) cannot be sustained because there was no mis-declaration in the Bill of Entry;

i) confiscation of the goods under section 111(o) cannot be sustained because the condition of the exemption, namely, export of manufactured goods has already been fulfilled and an EODC has been issued by the DGFT.

j) Penalty under section 114A cannot be sustained because the demand of duty itself cannot be sustained".

4. In view of the fact that the benefit of notification dated 17.09.2004 has been correctly obtained and more specifically the export obligation under the EPCG scheme was duly achieved by the appellants, in utilizing the second-hand machinery imported by them, we are of the considered opinion that the adjudged demands confirmed against them cannot be sustained.

5. Therefore, the impugned order is set aside and the appeals are allowed in favour of the appellants

(Dictated and pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

SM