Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad

REGIONAL BENCH-COURT NO. 1

Customs Appeal No. 10272 of 2016- DB

(Arising out of Order in Appeal AHD-CUSTM-000-APP-162-163-15-16 dated 04.11.2015 passed by the Commissioner of Customs(Appeals) -Ahmedabad)

Suruchi Creation Pvt Ltd **........Appellant**

Suruchi Creation Private Ltd, Plot No. 268/3,
Road No 2, GIDC Sachin, Surat - 394230, GUJARAT

VERSUS

Commissioner of Customs - Ahmedabad **......Respondent**

Custom House, Near All India Radio,
Navrangpura, Ahmadabad-380009, Gujarat

With

Customs Appeal No. 10273 of 2016- DB

(Arising out of Order in Appeal AHD-CUSTM-000-APP-162-163-15-16 dated 04.11.2015 passed by the Commissioner of Customs(Appeals) -Ahmedabad)

Hans Creations **........Appellant**

M/s Hans Creations, Plot No 268/3,
Road No. 2, GIDC Sachin,
SURAT-394230, GUJARAT

VERSUS

Commissioner of Customs - Ahmedabad **......Respondent**

Custom House, Near All India Radio,
Navrangpura, Ahmadabad-380009, Gujarat

APPEARANCE:

Shri S Suriyanarayanan appeared for the Appellant
Shri Jaspreet Singh Sukhija, Additional Commissioner (AR) appeared for the Respondent

CORAM:
HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)
HON'BLE MR. SATENDRA VIKRAM SINGH, MEMBER (TECHNICAL)

Final Order No. 10531-10532/2026

DATE OF HEARING: 16.07.2026
DATE OF DECISION: 17.08.2026

SATENDRA VIKRAM SINGH

1. M/s. Suruchi Creation Pvt. Ltd., GIDC-Sachin, Surat (Appellant No.1) were issued EPCG License No. 5230000555 dated 08.08.2005 by DGFT, Surat for import of one set of "ZSK Flat Computerized Embroidery Machine, Model No. MSCI YCF 4405-24/4 T-1400" alongwith accessories under exemption Notification No.97/2004-Cus. dated 17.09.2004 read with para 5.1 and 5.4 of the Export and Import Policy 2004-2009. The said EPCG License was

registered on 26.09.2005 with ICD, Sachin, Surat. The appellant imported said goods vide Bill of Entry No.222/2005-06 dated 26.09.2005 and saved Customs duty of Rs.9,75,116/-. The appellant also furnished a Bond of Rs.24,50,000/- along with a Bank Guarantee for Rs.1,50,000/- in terms of the above Notification.

1.1 Similarly, M/s. Hans Creation Pvt. Ltd. (Appellant No.2), GIDC-Sachin, also obtained EPCG License No. 5230000559 dated 09.08.2005 from DGFT-Surat for import of capital goods under Notification No.97/2004-Cus. dated 17.09.2004. They imported identical embroidery machine under Bill of Entry No.248/2005 dated 24.10.2005 and saved customs duty of Rs.9,59,808/-. They also furnished a Bond of Rs.24,00,000/- along with Bank Guarantee of Rs.1,50,000/- in terms of the above Notification.

1.2 As per Notification No.97/2004-Cus, the appellants were required to fulfil export obligation on FOB basis equivalent to eight times the duty saved on imported goods, out of which 50% obligation was to be fulfilled in the block of 1st to 6th year and the remaining 50% in the block of 7th to 8th year. It transpired that the appellant(s) after importing the said machinery, installed the same in their premises but did not fulfil the export obligation. The Customs Authorities at ICD, Sachin made correspondence with them but no response was received. Later on, the appellants intimated the customs authorities that they installed the imported machinery in their factory premises on 12.10.2005, but due to floods in Surat, the machinery got submerged in water. After getting approval from DGFT, they shifted the damaged machinery to their sister concern unit at Plot No.268/3, Road No.2, GIDC, Surat to avoid rent and other expenses. Vide letter dated 21.02.2007, they intimated the Joint DGFT, regarding installation of machine at the new address and also got necessary amendment done in their EPCG License, on 21.05.2007. It was also intimated that they could not fulfil the export obligations due to damage of said embroidery machine and were left with the salvage value and insurance claim of Rs.55,92,931/-. The appellant also received an amount of Rs.1,00,000/- towards Flood Relief assistance from the State Government.

1.3 The revenue issued a show cause notice dated 11.04.2014, to appellant No.1 demanding Customs duty of Rs.9,75,116/- saved by them under EPCG License under Section 28(1) of the Customs Act, 1962 read with Notification No.97/2004-Cus dated 17.09.2004 along with interest. Appellant No.2 was also issued show cause notice dated 22.04.2014 proposing recovery of customs duty of Rs. 9,59,808/- saved by them under the above provisions alongwith interest. It was also proposed in both the cases to confiscate above imported machinery under Section 111(o) of the Customs Act, 1962 and also impose penalty on them under Section 112(a) of the Customs Act, 1962.

1.4 Both the show cause notices were decided by the Joint Commissioner (Surat), one vide order dated 23.02.2015 and the other one, vide order dated 26.02.2015, wherein, he confirmed the demand of differential duty along with applicable interest. He confiscated the imported capital goods under Section 111(o) and imposed redemption fine under Section 125 of the Customs Act, 1962. He also imposed penalty on both the appellants under Section 112 (a) of the said Act. Aggrieved with the order, both the appellants filed appal with Commissioner (Appeals) who vide impugned order dated 04.01.2015 upheld the demand of Customs duty along with interest in both the cases by denying the benefit of concessional rate of duty under EPCG Scheme. While upholding confiscation of imported machines in both the cases under Section 111(o) of the Customs Act, 1962, he reduced the redemption fine from Rs.1,25,000/- to Rs.1,00,000/- and also reduced penalty on both the appellants to Rs.50,000/- under Section 112(a) of the Customs Act, 1962. Aggrieved with the above order, both the appellants filed appeal before this Tribunal. As both the cases have identical issue, facts in the case of appellant No.1 are discussed for the sake of brevity.

2. The appellant(s) took the following grounds in their appeals and prayed for the setting aside the impugned order by allowing their appeals-

- The Appellate Authority has not considered their contentions that they could not fulfil the export obligation due to unforeseen circumstances/ reasons of historic floods of 2006. Their case for waiver of export obligation is allowable in terms of Clause 4 of Notification No.97/2004-Cus as amended vide Notification 72/2007-Cus dated 21.05.2007.
- EPCG License is a contract between the appellant and DGFT which became unenforceable in terms of Section 56 of the Indian Contract Act, due to unprecedented floods of 2006. Therefore, the order is ab initio void and illegal. For this proposition, they rely on the decision of Hon'ble Bombay High Court in the case of Union of India Vs. Cus & C. Ex Settlement Commission, Kolkata reported at 2010 (254) ELT 647.
- The impugned order is also ab initio illegal as the insurance company never reimbursed the customs duty to the appellant. They rely on the decision of CESTAT Mumbai in the case of Ratnatraya Heat Exchangers Ltd reported at 2011 (269) ELT 419 (Tri-Mumbai) and in the case of Welspun Terri Towels reported at 2002 (149) ELT 593 where, it was held that claiming of insurance benefit by the assessee has no bearing on claim for remission of duty.
- They had no intention to evade Customs duty. The demands confirmed against them cannot be sustained on merits. Likewise, confiscation of imported machinery, imposition of redemption fine and penalties etc. do not arise. They rely on the decision of CESTAT Ahmedabad in the case of Biopac India Corporation Ltd reported at 2008 (224) ELT 548.
- The appellant has suffered huge financial losses due to floods. Non-fulfilment of export obligation by appellant is beyond its control and machines are incapable of production due to damage etc. In view of this, customs duty demand against them is not legally sustainable.

- The impugned order is time barred as the appellant had notified damage/ destruction of imported goods to the office of Joint DGFT vide their letter dated 21.02.2007.

3. During arguments, learned Advocate pleaded that the appellants had imported Computerized Embroidery Machines under EPCG License with an honest mind to fulfil export obligation. After import, the said machines were installed in their premises but due to unprecedented flood in Surat, these machines got submerged in water and damaged. To save these machines from further damage, they shifted them to another safe premises belonging to their sister concern, installed them at the new premises and intimated the Joint Director, DGFT. They also got new address endorsed in their EPCG Licenses. The machines were so badly damaged that the visiting engineer certified them irrepairable. Under these exceptional circumstances, they could not fulfil the export obligations and requested the Joint Director, DGFT for it's waiver. To show Bonafide of the appellants, learned Advocate mentioned that the appellants had also obtained some more EPCG Licenses against which they are undertaking export obligations.

3.1 Learned Counsel further explained the circumstances which led to filing of, and settlement of insurance claim in respect of damaged imported machine(s) as well as grant of Flood Relief assistance from the State Government. He highlighted various case laws to plead that the insurance claim so received by them, does not include Customs duty and therefore, receipt of insurance claim cannot be a ground for demanding customs duty from them. On enquiry, regarding waiver of export obligation by the committee, learned Advocate admitted that the Deputy Director DGFT has already issued order in their case imposing penalty of Rs.47,43,810/-for non-fulfilment of export obligation against which they had filed appeal with the office of Additional Director, DGFT, Mumbai Learned Advocate also submitted a copy of CESTAT order dated 01.06.2026 in the case of Rajdarbar Heritage

Ventures Limited Vs. Additional Director General (Adjudication) reported at 2026 (SCC) Online CESTAT 1357 wherein CESTAT has granted waiver of interest and set aside the redemption fine and penalty imposed on the appellant. He submits that the facts in their case are similar to Rajdarbar Heritage case, where also the appellant could not fulfil export obligation in respect of goods imported under EPCG due to force majeure. Learned Advocate vide his submissions dated 17.07.2026 prayed for allowing their appeals and in case, ratio of decision in Rajdarbar Heritage case is not agreeable, the matter may be referred to the Larger Bench.

3.2 Learned Advocate also placed reliance on the decision of the Hon'ble Supreme Court in the case of M/s Manuelsons Hotels Private Limited v. State of Kerala, (2016) 6 SCC 766, wherein reliance was placed on paragraph 17 of the judgment in State of Punjab v. M/s Nestle India Ltd., (2004) 6 SCC 465. It was pleaded that the word **"may"** appearing in Notification No. 97/2004-Cus. is a promissory estopple by the Government, which cannot be resiled from while considering the grant of waiver of export obligation to the appellants, particularly in view of the force majeure circumstances arising from the damage/destruction of the imported capital goods during Surat floods of 2006.

4. On the other hand, learned AR opposed the above prayer. He mentioned that as per the conditions of Notification No.97/2004-Cus., appellant(s) were required to fulfil the prescribed export obligation (which is equal to eight times the amount of duty saved) in a block of eight years, i.e. 50% in first six years and the remaining 50% in 7th & 8th year. He argues that the appellant did not export anything and their application/ request for waiver/ write off of export obligation was not acceded to by DGFT authorities of Surat who imposed penalty on them for non-fulfilment of export obligation. Learned AR further argued that the appellants have received insurance claim of Rs.55.93 Lakhs as well as Flood Relief assistance from the State Government. The salvage

value of the machinery was also assessed at Rs.11 Lakhs. In view of the facts that appellant's request for waiver of export obligation was not accepted by the concerned authorities, the impugned orders confirming recovery of duty saved on import of embroidery machinery under EPCG License alongwith interest may be upheld and both the appeals be rejected.

5. We have heard both sides. Both the appellants(s) have imported embroidery machine(s) under EPCG License by paying concessional rate of duty in terms of Notification No.97/2004-Cus dated 17.09.2004 which prescribed certain conditions to be complied with by the importer, including fulfilment of export obligation. The relevant conditions as given in para (2) of the above notification, are reproduced below:-

"2. The exemption under this notification shall be subject to the following 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** further that where a sick unit is notified by the Board for Industrial and Financial Reconstruction or where a rehabilitation scheme is announced by the concerned State Government in respect of sick unit for its revival, the export obligation may be fulfilled in terms of Paragraph 5.5.1 of the Foreign Trade Policy.*

***Provided** also that where the capital goods are imported for technological upgradation, the export obligation shall be fixed equivalent to six 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;*

Provided *also that export obligation of a particular block may be set off against the excess exports made in the said preceding block;*

(3) that if the importer does not claim exemption from the additional duty leviable [17][under sub-sections (1), (3) and (5) of section 3] of the Customs Tariff Act, 1975, the additional duty so paid by him shall not be taken for computation of the net duty saved for the purpose of fixation of export obligation provided the Cenvat credit of additional duty paid has not been taken;

(4) that the importer produces within 30 days from the expiry of each block from the date of issue of licence or authorisation or within such extended period as the Deputy Commissioner of Customs or Assistant Commissioner of Customs may allow, evidence to the satisfaction of the Deputy Commissioner of Customs or Assistant Commissioner of Customs showing the extent of export obligation fulfilled, and where the export obligation of any particular block is not fulfilled in terms of the preceding condition, the importer shall within three months from the expiry of the said block pay duties of customs of an equal amount equal to that portion of duties leviable on the goods, but for the exemption contained herein which bears the same proportion as the unfulfilled portion of the export obligation bears to the total export obligation together with interest at the rate of 15 per cent per annum from the date of clearance of the goods;

(4A) where the importer fulfils 75% or more of the export obligation as specified in condition (2) within half of the period specified for export obligation as mentioned in condition (2), his balance export obligation shall be condoned and he shall be treated to have fulfilled the entire export obligation.

(5) that the capital goods imported, assembled or manufactured are installed in the importer's factory or premises and a certificate from the jurisdictional Deputy Commissioner of Central Excise or Assistant Commissioner of Central Excise, as the case may be, is produced confirming installation and use of capital goods in the importer's factory or premises, within six months from the date of completion of imports or within such extended period as the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, may allow :

Provided *that if the importer is a service provider, he may produce said certificate of installation and usage issued by an independent chartered engineer :*

Provided *further that in the case of, -*

(i) manufacturer-exporter and merchant-exporter having supporting manufacturer(s) or vendor(s);

(ii) import of irrigation equipment for use in contract farming for export of agricultural products; and

(iii) importer rendering services,

the capital goods may be installed at the factory or premises of such other person whose name and address are endorsed on the licence referred to in condition (1) and where the bond for full difference of duty, if necessary, in terms of condition (2), with or without a bank guarantee, as the case may be, is executed by the importer and such other person binding themselves jointly and severally to fulfil the export obligation and all other conditions of this notification and to pay duty with interest at the rate of 15 per cent per annum in case of default;

***Provided** also that agro units located in Agri Export Zones or service providers in Agri export Zones may move the capital goods within the Agri Export Zones under intimation to the jurisdictional Deputy Commissioner of Central Excise or Assistant Commissioner of Central Excise, as the case may be, subject to the condition that the importer shall maintain accurate record of such movement.*

*(6) that the imports and exports undertaken through seaports at Mumbai, Kolkata, Cochin, Magdalla, Kakinada, Kandla Mangalore, Marmagoa, Chennai, Nhava Sheva, Paradeep, Pipavav, Sikka, Tuticorin, Visakhapatnam, Dahej, Mundhra, Nagapattinam, Okha, Bedi (including Rozi Jamnagar), Muldwarka, Porbander, Dharamatar, Vadinar Haldia (Haldia Dock complex of Kolkata port) **[4][**Krishnapatnam **[6][**[12][Ennore (Tamil Nadu), Karaikal (Union territory of Puducherry) and Kattupalli (Tamil Nadu)]**]]** or through any of the airports at Ahmedabad, Bangalore, Bhubaneswar, Mumbai, Kolkata, Coimbatore, Delhi, Hyderabad, Jaipur, Chennai, Srinagar, Trivandrum, Varanasi, Nagpur, Cochin, **Rajasansi (Amritsar), Lucknow (Amausi), [11][**Indore, [14][Dabolim (Goa), Visakhapatnam and Calicut]] or through any of the Inland Container Depots at Agra, Bangalore, Coimbatore, Delhi, Faridabad, Gauhati, Guntur, Hyderabad, Jaipur, Jallandhar, Kanpur, Ludhiana, Moradabad, Nagpur, Pimpri (Pune), Pitampur (Indore), Surat, Tirupur, Varanasi, Nasik, Rudrapur (Nainital), Dighi Pune), Vadodara, Daulatabad (Wanjarwadi and Maliwada), **[7][**Waluj (Aurangabad) , Talegoan(District Pune), Dhannad Rau (District Indore), Kheda (Pithampur, District Dhar) **[8][**Patli (Gurgaon), Irugur Village (Tamil Nadu), Thudiyalur (Tamil Nadu), Chettipalayam (Tamil Nadu) **[5][**Veerapandi (Tamil Nadu) **[9][**Marripalem Village in Taluk of Edlapadu, District Guntur **[10][**Tondiarpet (TNPM), Chennai and Irungattukottai, SIPCOT Industrial Park, Kattrambakkam Village, Sriperumbudur Taluk, Kanchipuram District, Tamil Nadu**]]]]]** Anaparthy (Andhra Pradesh), Salem, Malanpur, Singanalur , Jodhpur, Kota, Udaipur, Ahmedabad, Bhiwadi, Madurai, Bhilwara, Pondicherry, Garhi Harsaru, Bhatinda, Dappar (Dera Bassi), Chheharata (Amritsar), Karur, Miraj, Rewari, Bhusawal, Jamshedpur, Surajpur, Dadri, Tuticorin, Kundli, Bhadohi, Raipur, Mandideep (District: Raisen), **Durgapur (Export Promotion Industrial Park), [15]**[Babarpur, Loni (District Ghaziabad) and Melapakkam Village (Arakkonam Taluk, Vellore District)]or through the Land Customs Station at Ranaghat, Singhabad, Raxaul, Jogbani, Nautanva (Sonauli), Petrapole, Mahadipur, Nepalganj Road, Dawki, Agartala, Sutarkhandi, **Amritsar Rail Cargo and Attari Road**, **Hilli, Ghojadanga and Changrabandha** or Special Economic Zone as specified in the notification issued under section 76A of the Customs Act, 1962 (52 of 1962).*

***Provided** that the Commissioner of Customs may by special order or a public notice and subject to such conditions as may be specified by him, permit import and export through any other sea-port, airport inland container depot or through a land customs station.*

(7) notwithstanding anything contained in condition (4), where the Licensing Authority or Regional Authority grants extension of block-wise period for any block(s) or overall period of fulfilment of export obligation upto a period of two years or regularization of shortfall in export obligation, not exceeding five per cent of such export obligation, the said block-wise period or overall period of export obligation shall be extended or condoned by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be :

***Provided** that in respect of sick unit referred to in the second proviso to condition (2), extension of overall period of export obligation shall not be allowed.*

> ***Provided further*** *that the Regional Authority may grant further extension in the overall period of export obligation upto a period of further two years if the authorisation holder pays fifty per cent differential duty on the unfulfilled portion of the export obligation and agrees to fulfill other conditions as may be specified by the Regional Authority for this purpose."*

5.1 Vide Notification 72/2007-Cus dated 21.05.2007, para 4 was inserted in above notification, which provides that-

> *"[4]. Waiver of Export Obligation may be considered where, because of force majeure or other unforeseen circum-stances/reasons, exporter is unable to fulfil export obligation. Such requests shall be considered by a Committee comprising representative(s) of Department of Commerce and Department of Revenue under Directorate General of Foreign Trade. Decision of this Committee shall be notified by Department of Revenue for implementation."*

5.2 As per the facts, there is no dispute on installation of imported machinery in their premises, unprecedented flood in Surat, in 2006, shifting of imported machinery to the premises of their sister concern after due intimate on to the DGFT authorities. It is also not in dispute that the said embroidery machine(s) got submerged in water and were damaged beyond repair, for which appellants also received insurance claim as well as flood relief assistance from State Government. There is also no dispute that the appellant(s) have failed to fulfil export obligation. As per Condition No.4 of para 2 of the above notification, if the importer fails to fulfil export obligation within the stipulated time, then he is required to pay the customs duty. However, as per condition 7 of para 2, the importer could request DGFT authorities for grating extension of time for completing the export obligation. The provisions regarding waiver of export obligation by a committee comprising of representatives of the Department of Commerce and Department of Revenue under DGFT came into force only w.e.f 21.05.2007. Learned Advocate could not produce any waiver of export obligation either from the above committee or from DGFT authorities. It is also on record that the DGFT authorities have taken cognizance of non-fulfilment of export obligation by the appellant and after following necessary processes, the

Deputy Director, DGFT decided the matter by invoking Section 11(2) of the Foreign Trade (Development & Regulation) Act, 1992. Vide order issued from F. No.52/36/021/0155/AM06 dated 06.02.2019, the Deputy Director General of Foreign Trade imposed a penalty of Rs.47,43,810/- on the firm and it's Director. The relevant portion of his finding is as under:-

> *"The noticee firm failed to submit prescribed documents towards fulfillment of Export Obligation of the license and also did not avail the Personal Hearing granted to them. The noticee firm has been given sufficient opportunity as per principle of natural justice to explain their case in person, but they have not cared to come forward with proper justification for their action. Hence, it is revealed that the noticee had a clear mensrea right from the point of making of application to obtain EPCG Authorisation by misdeclaration in violation of the Rule 14 of the Foreign Trade (Regulation) Rules, 1993. I, therefore, in exercise of powers vested in me under Section 13 of the Foreign Trade (Development & Regulation), Act 1992 make following order by invoking Section 11(2) of the Foreign Trade (Development & Regulation) Act, 1992."*

5.3 During hearing, learned Advocate also took plea that they have filed appeal(s) against the above said order(s), with the office of Additional Director General, Foreign Trade, Mumbai on 25.04.2019 which are pending for decision. However, we find that a prayer has been made therein for setting aside the order dated 06.02.2019 of the Deputy Director, Foreign Trade on the grounds of violation of principles of natural justice. Neither by way of separate application nor in above appeal(s) the appellant(s) have made any request for waiver of export obligation in terms of para 4 of the Notification No.97/2004-Cus as amended.

5.4 Learned Advocate also relied on various decisions in their support which we find, are on different facts. The decision of Hon'ble Bombay High Court in the case of Peekay International Pvt. Ltd. reported at 2022 (382) E.L.T. 497 (Bom.) is on remission of excise duty in respect of export goods that got destroyed in fire at CWC warehouse. In the present case, no such application for remission of duty or even waiver of export obligation is on record and hence, this case has no applicability in the facts of the matter. The decision of Hon'ble Bombay High Court in the case of Union of India Vs. Cus. & C. Ex.

Settlement Commission, Kolkata reported at 2010 (254) E.L.T. 647 (Bom.) is also on different facts. In this case, Settlement Commission had on the application of the importer, waived payment of interest which was challenged by the Union of India on the ground that the Settlement Commission has no powers to grant immunity from payment of interest. While dismissing the petition filed by Union of India, Hon'ble High Court held that the contract in this case stands frustrated and therefore, no useful purpose will be served by setting aside the order of the Settlement Commission and resorting the petition to the file of the settlement commission for consideration of the case. Another decision of CESTAT Mumbai in the case of Welspun Terri Towels reported at 2002 (149) E.L.T. 593 has been cited by the appellant, wherein, the issue was demand of duty on machines which were not used for intended purpose for which was granted. The commissioner had allowed party's request against which revenue filed appeal; same was dismissed on the ground that appeal was filed beyond the period of one year from the date of Commissioner's order.

5.5 Learned Advocate also cited several decisions relating to imposition of penalty by DGFT authorities which are not relevant to the present matter demanding customs duty, interest and penalty. Learned Counsel further made additional submissions vide their letter dated 17.07.2026 mentioning that they also wish to rely on a recent decision of CESTAT Delhi involving similar matter, in the case of Rajdarbar Heritage Ventures Limited Vs. Additional Director General (Adjudication). Vide Final Order No.51005/2026 dated 01.06.2026, the Tribunal has held that where export obligation could not be fulfilled because of situations beyond the control of the appellant, confiscation of machinery under Section 111(o) and imposition of penalty under Rule 112 (a) are not justified. The relevant para 42 and 43 of the said decision are reproduced as under:-

> *"42. Apart from the fact that penalty could not have been imposed upon the appellant under section 112(a) of the Customs Act because of the aforesaid*

three decisions relied upon by learned counsel for the appellant, even otherwise mens rea is required for imposition of penalty as was held by this Tribunal in Meirs Pharma (India) Pvt. Ltd. vs. Commissioner of Customs, Chennai12.The relevant portion of the decision is reproduced below:

> *"7. So far as the confiscation of the goods and imposition of penalty is concerned, it is settled law that mens rea is a necessary requirement for imposition of penalty under Section 112 of the Customs Act, 1962. We have noted above that in the instant case, there was sincere efforts on the part of the appellants to fulfil the export obligations but the circumstances were beyond their control and they could not fulfil the export obligations in spite of their best efforts. It is not the case of the Department that appellants have made any deliberate attempt to avail of the benefit of Notification. The machinery was in fact installed at the factory, as noted by the adjudicating authority, in Para 4 of the impugned order. Production of the goods was also started some time in March, 1994 and they could only meet the export obligation to the extent of 1.5% only. There is no material to doubt their bona fides."*
>
> *(emphasis supplied)*

43. The confiscation of goods under section 111(o) of the Customs Act cannot also be justified as the appellant had reasons beyond his control for not fulfilling the terms of the Notification. Once the goods are not held liable to confiscation, penalty under section 112(a) of the Customs Act cannot be imposed."

5.6 The Tribunal in above Final order has also held that interest liability will not arise in such situations on the ground that the demand of interest has been confirmed by the Additional Director General under the provisions of the Notification and the bond executed by the appellant and not under Section 28AA of the Customs Act, 1962. In the present case, we find that the interest on duty has been demanded under Section 28AA of the Act and therefore, to that extent, the above decision is distinguishable. Moreover, in Rajdarbar case, around 50% export obligation was fulfilled by the unit which is completely absent in this case. In view of the above discussions, we hold that the conditions of Notification No.97/2004-Cus. were quite clear as per which duty concession was given to machinery imported under EPCG Scheme subject to fulfilment of export obligation. It was clearly mentioned therein that failure to fulfil specified export obligation would require payment of duty so saved along with interest. We rely on the decision of Hon'ble Supreme Court in the case of CC (Import), Mumbai Vs. Dilip Kumar & Co. reported at 2018 (361) ELT 577 (SC) wherein, in para 52(a), it has been held that exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification. Similar findings was given by the Hon'ble Apex Court in the case of Commissioner of Central Excise, Surat-I Vs. Favourite Industries reported at 2012 (278) ELT 145 (SC). Therefore, we uphold duty demand and the interest liability on the appellants and set aside confiscation of imported machinery under Section 111(o), redemption fine and the penalty imposed on the appellant(s) under Section 112(a) of the Customs Act, 1962. The impugned orders are modified to the above extent.

6. Both the appeals are partially allowed in above terms.

(Pronounced in the open court on 17.08.2026)

(SOMESH ARORA)
MEMBER (JUDICIAL)

(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)

Bharvi