
M/s. Super Cassettes Inds. Ltd. And Anr. Vs Commissioner of Customs

Customs Appeal No. 296, 297 of 2006

Court: Customs, Excise And Service Tax Appellate, New Delhi

Date of Decision: Jan. 3, 2025

Acts Referred:

Customs Act, 1962 " Section 25, 25(1), 28, 28AB, 28AAA, 111(o), 112, 112(a), 112(b)#Foreign Trade (Development and Regulation) Act, 1992 " Section 5#Foreign Trade (Regulation) Rules, 1993 " Rules 8, 9, 10

Hon'ble Judges: Dilip Gupta, President (J); P. V. Subba Rao, Member (T)

Bench: Division Bench

Advocate: B.L. Narasimhan, Rubel Bareja, Rajesh Singh

Final Decision: Allowed

Judgement

Dilip Gupta, J

1. Customs Appeal No. 296 of 2006 has been filed M/s. Super Cassettes Inds. Ltd., the appellant to assail the order dated 31.01.2006 passed by the

Commissioner of Customs, New Delhi, the Commissioner, by which the demand Rs. 47,38,817/- on import of capital goods against Export Promotion

Capital Goods License dated 29.12.1994 in terms of the conditions of Notification No. 160/92-Cus dated 20.04.1992, the Notification issued under

section 25 of the Customs Act, 1962, the Customs Act read with the provisions of the Exim Policy in force has been confirmed with interest under

section 28AB of the Customs Act. Penalty of Rs. 5,00,000/- has also been imposed on the appellant under section 112(a) and 112(b) of the Customs

Act read with section 111(o) of the Customs Act.

2. Customs Appeal No. 297 Of 2006 has been filed by Sunil Wadhwani, Director of the appellant, to assail the order dated 31.01.2006 passed by the

Commissioner which has imposed a penalty of Rs. 2,00,000/-upon him under section 112 of the Customs Act.

3. The appellant is engaged in the manufacture of audio cassettes, video cassettes and CDs. The appellant is also engaged in the sale of products for

home consumption as well as exports outside India. In the year 1994, the appellant sought to import certain capital goods required for the

manufacturing of products under the Export Promotion Capital Goods Scheme in terms of the Import Policy 1992-1997.

4. The EPCG License No. P/CG/2133756 dated 29.12.1994, EPCG License dated 29.12.1994 imposed an obligation on the appellant to export

products worth USD \$2,482,135 within five years from the issuance of the License. The appellant also furnished a bank guarantee of Rs. 1,06,07,000/-

equal to 100% of the duty saved. The appellant claims that it manufactured CD-ROMs specified in the EPCG License dated 29.12.1994 and exported

them to fulfill the export obligation stipulated in the License. The said export obligation was fulfilled by the appellant by also exporting the CD-ROMs

through third parties like Sundram Exports, a merchant exporter. Sundram Exports purchased the CD-ROMs from the appellant and exported the

same worth US \$1,945,600. The DGFT, by a letter dated 10.05.1999, confirmed that the appellant had fulfilled their export obligation against EPCG

License dated 29.12.1994. The appellant was, therefore, free from the bank guarantee and the letter of undertaking dated 16.01.1995.

5. The appellant also obtained another EPCG License No. P/CG/2133308 dated 06.07.1994, EPCG License dated 06.07.1994. This License had an

export obligation fulfillment requirement of USD \$6,133,526 to be achieved till 05.07.1999. The period was, however, extended upto 05.07.2000 by the

Directorate General of Foreign Trade, DGFT. Subsequently, it was extended upto 31.03.2001 by Public Notice dated 06.04.1999 by DGFT. This

export obligation was also satisfied by the appellant.

6. The appellant claims that in January 2001, after redemption of the bank guarantee and the letter of undertaking by DGFT in respect of the EPCG

License dated 29.12.1994, the appellant came to know that the export of CD-ROMs by Sundram Exports was being disputed by the Directorate of

Revenue Intelligence on the ground of over-valuation of the export goods. The appellant claims that in pursuance of the Public Notice dated

31.03.2001 issued by DGFT in exercise of the powers conferred under the Exim Policy setting out guidelines for fulfillment of export obligation by the

EPCG License holders where the original export obligation could not be fulfilled, the appellant submitted a letter dated 03.05.2001 to DGFT that as the

export of CD-ROMs worth US \$1,945,600/- made through third party was under dispute, they would fulfill the said obligation once again by fresh

exports in terms of the aforesaid Public Notice. For this purpose, the appellant sought time upto 31.03.2002 and also submitted a fresh bank guarantee

of Rs. 2.55 crore. The DGFT, by a letter dated 13.09.2001, accepted the fresh bank guarantee furnished by the appellant and also accorded extension

of time to the appellant to fulfill the export obligation upto 31.03.2002. The appellant claims to have fulfilled the balance export obligation within the

stipulated time and informed DGFT, which by an order dated 27.05.2003 discharged the appellant from the liability under the bank guarantee dated

27.06.2001 for Rs. 2.55 crore and the letter of undertaking dated 16.01.1995 as the entire export obligation under the EPCG License dated 29.12.1994

had been fulfilled.

7. It needs to be noted that earlier, the Directorate of Revenue Intelligence had conducted an investigation regarding over-valuation of exports made

by Sundram Exports and issued a show cause notice dated 04.12.2000 to the appellant and Sundram Exports, amongst others, proposing to confiscate

the capital goods imported by the appellant under the EPCG License and proposing a duty demand on the ground that CD-ROMs exported by the

appellant through Sundram Exports were over-valued and should not be counted towards the fulfillment of export obligation. The show cause notice

also proposed to demand customs duty in respect of capital goods imported under the second EPCG License dated 06.07.1994.

8. The appellant and Sunil Wadhwani, Director of the appellant, filed replies to the show cause notice and denied that customs duty had been evaded

by them on the import of capital goods. It was stated that EPCG License dated 06.07.1994 was valid for fulfilling export application upto 05.07.1999,

which period was extended initially upto 05.07.2000 by DGFT and thereafter upto 31.03.2001 by Public Notice dated 06.04.1999 issued by DGFT.

The appellant also pointed out that the said EPCG License dated 06.07.1994 was still being utilized and accepted by the customs at the airport for

fulfilling the export obligation and so the show cause notice issued during the validity of the export obligation period of the EPCG License was pre-

mature. It was also stated that earlier they had included the exports made through Sundram Exports in its exports obligations but because of the

seriousness of the allegations made against Sundram Exports, the appellant decided not to take the benefit of these exports. The appellant submitted a

further reply pointing out it had fulfilled the export obligation against the EPCG License dated 06.07.1994 without incorporating the exports of CD-

ROMs made through Sundram Exports and DGFT, by order dated 27.05.2003, discharged the appellant from the liability under the bank guarantee and

the undertaking.

9. In so far as the EPCG License dated 06.07.1994 is concerned, the Commissioner accepted the plea of the appellant that it had discharged the

export obligation within the period extended by DGFT after excluding the exports by Sundram Exports for the reason that the export obligation had

been satisfied before submission of the matter by the appellant before DGFT. However, in respect of the EPCG License dated 29.12.1994, the

Commissioner did not accept the plea of the appellant that it had discharged the export obligation within the period extended by DGFT for the reason

that though the appellant had made further exports to fulfill its obligations under the License within the extended period granted by DGFT after

excluding the export made by Sundram Exports, but this was done by the appellant after it had submitted the matter to DGFT and after the first letter

dated 10.05.1999 had been issued by DGFT discharging the appellant from the export obligation. The Commissioner, therefore, confirmed the demand

in respect of the EPCG License dated 29.12.1994 with penalty and also gave an option to the appellant to redeem the goods on payment of redemption

fine. The relevant portion of the order dated 31.01.2006 passed by the Commissioner in respect of the EPCG License dated 29.12.1994 issued to the

appellant is reproduced below:

“41.12 M/s. Super Cassette Industries Ltd. attempted & succeeded to fraudulently avail benefits under EPCG scheme against the goods

which were exported under DEPB scheme, when they submitted details of export of US\$ 2483877/- (including US\$ 19,45,600.00 FOB

value of the CD ROMs exported by M/s. Sundram Exports Pvt. Ltd. & M/s. Netcompware Pvt. Ltd.) in appendix 10C claiming

fulfillment of export obligations against US\$ 2482135.00 required to be fulfilled under the EPCG Licence P/CG/ 2133756 dated 29.12.94 to

DGFT on 03.07.1998 and requested to discharge the Bank Guarantee and LUT which was accepted by DGFT and their bank guarantee

was released vide letter dated 10.05.1999. M/s Super Cassette Industries Ltd. claimed and availed benefits under EPCG Scheme of the said

export of CD ROMs being declared as “Supporting Manufacturer” in the Shipping Bills. M/s Super Cassette Industries Ltd. being the

actual importer of the capital goods under EPCG Scheme on its own could not fall under the category of “Supporting Manufacturer”

as only the actual importer of capital goods and not the supporting manufactures could take the export value for the purpose of fulfillment

of export obligation and availment of EPCG benefits. The export of CD ROMs could not also fall under the category of third party export in

view of non-fulfilment of conditions mentioned in the Ministry of Finance's Circular No. 120/95-Cus. dated 23.11.95. Thus M/s Super

Cassette Industries Ltd. had wrongly and fraudulently discharged export obligations under the said EPCG Licence by resorting to suppression of facts and willful mis declaration. M/s Super Cassette Industries Ltd., therefore, had not fulfilled the export obligations

against the subject EPCG licence no. P/CG/2133756 dt. 29.12.94 and had thus violated the conditions imposed under the Customs

notification No. 160/92- Cus dated 20.4.92. Their substitution of tainted export by other export towards fulfillment of the export obligation

after the fraud was detected, does not absolve them of the consequences of their complicity in the whole fraud. The said exemption

notification had been issued under Section 25(1) of the Customs Act, 1962. The conditions of discharge of export obligation was in the

nature of post importation condition and was an integral part of the said notification according to which the liability would accrue when

there is failure to fulfill export obligation. When duties of Customs are short levied or non-levied, such duty is demandable under Section 28

of the Customs Act, 1962. However, in the cases of demand arising due to wrong availment of Notification granting exemption casting

continuing obligation after import, customs duty can be demanded independent of the provisions of Section 28 of the Customs Act, 1962.

**** Therefore, the differential duty can be demanded and recovered from them even without invoking the provisions relating to extended

time as provided under proviso to Section 28 of the Customs Act, 1962. M/s. Super Cassette Industries Ltd. had not fulfilled the export

obligation (to the extent of FOB value of CD ROMs i.e. US\$ 19,45,600) which was a condition subject to which the said capital goods

were partially exempted from the Customs duty. Hence proportionate customs duty is demandable and recoverable from M/s. Super

Cassette Industries Ltd. ****

The goods imported under the said EPCG licence are also liable to confiscation under Section 111(O) of the Customs Act, 1962 and they

have rendered themselves liable to penal action under Section 112(a) & (b) of the Customs Act, 1962. In addition interest on said duty is

also recoverable.

(emphasis supplied)

10. In respect of the EPCG License dated 06.07.1994 issued to the appellant, the Commissioner found that the appellant had discharged the obligation

and the relevant portion of the order is reproduced below:

"41.13 Similarly, against export obligation of US\$ 61,33,526/- under EPCG licence no. P/CG/2133308 dated 06.07.94, they made

export of US\$ 58,72,385/- which included US\$ 6,53,600/- on account of CD ROMs exported by M/s. Sundram Exports Pvt. Ltd. but

later on M/s. Super Cassette Industries Ltd. decided not to include the value of CD ROMs exported by M/s. Sundram Exports Pvt. Ltd.

and they fulfilled export obligation within extended period without including the FOB value of CD ROMs. Since in this case the

substitution of exports of CD ROMs in question by other exports for fulfillment of export obligation was made by them within the

original validity period of export obligation before submission of their case to DGFT for discharge of export obligation. I am inclined to

accept their plea in the matter.

(emphasis supplied)

11. The relevant portion of the order passed by the Commissioner in respect of Sunil Wadhvani is as follows:

"42(E)3 All these facts clearly indicate that Shri Sunil Wadhvani Director of M/s. Super Cassette Industries Ltd. entered into conspiracy

in collusion of various persons associated with M/s. Sundram Exports Pvt. Ltd. and M/s. Netcompware Pvt. Ltd. to grossly inflate the export

of CD ROMs by these firms in order to wrongly and fraudulently avail undue export benefits under EPCG and DEPB schemes and

actual involvement of Shri Sunil Wadhvani in the conspiracy is proved beyond doubt. Although the export obligation under both the EPCG

licences were later fulfilled by them without incorporating the FOB value of CD ROMs exported by M/s. Sundram Exports Pvt. Ltd. and

M/s. Netcompware Pvt. Ltd. as intimated by them in their letter dated 06.02.2004, they had attempted to include the FOB value of goods

exported by M/s. Sundram Exports Pvt. Ltd. and M/s. Netcompware Pvt. Ltd. for fulfilling their export obligation against EPCG licence no.

P/CG/2133756 dated 29.12.94 in their application to DGFT.

(emphasis supplied)

12. The operative part of the order dated 31.01.2006 passed the Commissioner in respect of the appellant and Sunil Wadhvani is reproduced below:

“ORDER

I “ XII *****

XIII

i) I confirm the demand of duty of Rs. 47,38,817/-, evaded by M/s Super Cassette Industries Ltd. on import of Capital goods against EPCG

licence No. P/CG/2133756 dated 29.12.94 in terms of the conditions of Notification No. 160/92- Cus dated 20.4.92 (as amended) issued

under Section 25 of the Customs Act, 1962 read with relevant provisions of the Exim Policy in force. The interest as applicable under

Section 28AB of the Act ibid is also to be recovered from them till the recovery of the above demand amount.

ii) I confiscate the Capital goods valued at Rs. 1,13,58,042/- imported against the EPCG licence No. P/CG/2133756 dated 29.12.94.

However, I give an option to M/s Super Cassette Industries Ltd. to redeem the goods on payment of redemption fine of Rs. 11,00,000/-

(Rupees Eleven Lakhs Only).

iii) I also impose a penalty of Rs. 5,00,000/- (Rupees Five Lakhs Only) on M/s Super Cassette Industries Ltd. under Section 112(a) & 112(b)

of the Customs Act, 1962 for their above acts of omission and commission which have rendered the goods liable to confiscation under

Section 111(0) of the Customs Act, 1962.

XV

(v) I impose a penalty of Rs. 2,00,000/- (Rupees Two Lakh Only) on Shri Sunil Wadhvani (noticee No. 7) under Section 112 of the Customs

Act, 1962.

(emphasis supplied)

13. The confirmation of demand of Rs. 47,38,817/- on the appellant in respect of EPCG License dated 29.12.1994 with interest and penalty and with

an option to the appellant to redeem the goods on payment of redemption fine of Rs. 11 lakh and imposition of penalty of Rs. 2 lakhs on Sunil

Wadhwani has been assailed in these two appeals.

14. Shri B.L. Narasimhan, learned counsel for the appellant assisted by Shri Rubel Bareja made the following submissions:

(i) The export obligation under the EPCG License dated 29.12.1994 had been fulfilled by the appellant within the time granted by DGFT and so the

duty demand is not sustainable;

(ii) The DGFT, by a letter dated 10.05.1999, redeemed the bank guarantee and the letter of undertaking furnished by the appellant and released the

appellant of any further export obligation in 1999. Subsequently, DGFT, by a letter dated 27.05.2003, discharged the appellant and Sunil Wadhwani

from their liabilities after the appellant had fulfilled the export obligation, excluding the export made by Sundram Exports, within the time extended by

DGFT. Thus, even if the disputed exports made through Sundram Exports are ignored, the appellant had fulfilled the export obligation against EPCG

License dated 29.12.1994;

(iii) Once DGFT authorities had exercised jurisdiction and was satisfied that the export obligation was fulfilled by the appellant within the stipulated

time and the bank guarantee was redeemed, the customs department will have no jurisdiction to question and sit in judgment over the order passed by

DGFT. In this connection, reliance has been placed on the judgments of the Supreme Court in Titan Medical Systems Pvt. Ltd. vs. Collector of

Customs, New Delhi, 2003 (151) E.L.T. 254 (S.C.), Zuari Industries Ltd. vs. Commissioner of C. Ex. & Customs, 2007 (210) E.L.T. 648 (S.C.), and

Vadilal Chemicals Ltd. vs. State of Andhra Pradesh, 2005 (192) E.L.T. 33 (S.C.). Learned counsel also placed reliance on the judgment of the Delhi

High Court in M/s. Designco and others vs. Union of India, W.P. (C) 14477/2022 decided on 22.11.2024;

(iv) No penalty could have been imposed upon the Director of the appellant;

(v) Goods are not liable for confiscation; and

(vi) The extended period of limitation could not have been invoked nor penalty could be imposed.

15. Shri Rajesh Singh, learned authorized representative appearing for the department, however, supported the impugned order and made the following

submissions:

(i) The order passed by the Commissioner is a reasoned order and does not suffer from any infirmity;

(ii) The facts of the present appeals would indicate that it is a case of fraud and wilful collusion and as fraud vitiates everything, there is no infirmity in

the impugned order. In support of this contention, learned authorized representative placed reliance upon the judgments of the Supreme Court in

Commissioner of Customs vs. Candid Enterprises, 2001 (130) E.L.T. 404 (S.C.) and Commissioner of Customs, Kandla vs. Essar Oil Ltd., 2004 (172)

E.L.T. 433 (S.C.);

(iii) Suppression of material documents would amount to fraud and in this connection reliance has been placed on the judgment of the Supreme Court

in Ashok Leyland Ltd. vs. State of Tamil Nadu and others, 2004 (3) SCC 1; and

(iv) The department need not prove with precision, and proof by preponderance of probability is sufficient. In this connection reliance has been placed

on the decision of the Kolkata Bench of the Tribunal in Arjun Sah vs. Commissioner of Customs (Prev.), Patna, 2021 (375) E.L.T. 241 (Tri.-Kolkata).

16. The submissions advanced by the learned counsel for the appellant and the learned authorized representative appearing for the department have

been considered.

17. What transpires from the aforesaid factual position is that two EPCG Licenses were issued to the appellant for import of certain capital goods

under the Export Promotion Capital Goods Scheme in terms of the Import Policy 1992-1997.

18. The first EPCG License is dated 29.12.1994. It imposed an obligation on the appellant to export products worth US \$2,482,135 within five years

from the date of issue of the EPCG License.

19. The second EPCG License is dated 06.07.1994 under which the appellant was obliged to fulfill export obligation of USD \$6,133,526 by 05.07.1999,

which period was initially extended by DGFT upto 05.07.2000 and later upto 31.03.2001 by Public Notice dated 06.04.1999 issued by DGFT.

20. The dispute in the present appeals is only with respect to the EPCG License dated 29.12.1994 as the Commissioner has found as a fact that the

appellant had fulfilled the export obligation under the EPCG License dated 06.07.1994.

21. In respect of the EPCG License dated 06.07.1994, the Commissioner noticed that initially the appellant had included CD-ROMs exported by

Sundram Exports in the export obligation, but later the appellant made further exports to fulfill the export obligation. In this connection the

Commissioner noticed that the further exports made by the appellant, after excluding the exports made by Sundram Exports, were within the original

validity period of export obligation before submission of their case to DGFT for discharge of export obligation. It is in such circumstances that the

Commissioner held that the appellant had discharged its obligation under the EPCG License dated 06.07.1994.

22. However, in respect of the EPCG License dated 29.12.1994, the Commissioner refused to take into consideration the further exports made by the

appellant to cover up the exports made by Sundram Exports only for the reason that in their first communication to DGFT the appellant had included

the export obligation of Sundram Exports and it is only after the discharge certificate dated 10.05.1999 was issued by DGFT that the appellant took

time from DGFT to make further exports. The Commissioner further held that even though the appellant subsequently fulfilled the export obligation

within the time extended by DGFT, but this would not absolve the appellant as the subsequent export was with fraudulent intention.

23. It not in dispute that the EPCG License is issued by DGFT and it is also not in dispute that DGFT imposed conditions upon the appellant to fulfill

the export obligation within the time stipulated. It is also not in dispute that DGFT, from time to time, extended the period granted to the appellant for

discharging it export obligation. An issue had arisen as to whether the exports made by the appellant through Sundram Exports could also be included

in the export obligation which the appellant had to fulfill. In order to avoid any complication, the appellant made further exports to the extent the

appellant made exports through Sundram Exports. This export obligation, after excluding the exports made through Sundram Exports was fulfilled by

the appellant within the extended period of time granted by DGFT.

24. In respect of EPCG License dated 06.07.1994, the Commissioner accepted the plea of the appellant and discharged the appellant from the

obligation.

25. The dispute is with regard the EPCG License dated 29.12.1994. As noticed above, the appellant had initially fulfilled the export obligation after

including the exports made through Sundram Export and DGFT by a letter dated 10.05.1999 confirmed that the appellant had fulfilled the export

obligation. After the appellant came to know that the export of CD-ROMs made by Sundram Exports was being disputed by the Directorate of

Revenue Intelligence, the appellant made further exports after the initial time granted by DGFT was extended upto 31.03.2002, and fulfilled the export

obligation after excluding the exports made by Sundram Export. In respect of this License, the Commissioner did not accept the plea of the appellant

that it had fulfilled export obligation since the appellant had earlier written to DGFT that it had fulfilled its export obligation and DGFT by a letter dated

10.05.1999 had discharged the appellant from the export obligation.

26. This distinction drawn by the Commissioner in respect of EPCG License dated 29.12.1994 is an artificial distinction which has no bearing on the

discharge obligation of the appellant. So long as the time period for discharging the obligation under the EPCG License dated 29.12.1994 was extended

by DGFT and the appellant fulfilled its obligation under the License before the expiry of the said extended period, it cannot be urged by the custom

authorities that the appellant had not fulfilled its export obligation. It does not matter if the appellant had made further exports to fulfill the export

obligation after discarding the exports made by Sundram Exports. This step was taken by the appellant as a matter of abundant caution when it came

to the knowledge of the appellant that the Directorate of Revenue Intelligence was examining the over-valuation of goods by Sundram Exports. The

finding recorded by the Commissioner that this was done in a fraudulent manner by the appellant is without any basis. In fact, DGFT did not question

this act of the appellant and in fact issued the discharge certificate.

27. This apart, it is DGFT alone which can examine whether the appellant had discharged its export obligation and DGFT, after being satisfied,

discharged the appellant from its obligation by a fresh letter dated 27.05.2003. The Commissioner is, therefore, not justified in holding that since the

DGFT had discharged the appellant from its export obligation by letter dated 10.05.1999, further exports made by the appellant to cover up the exports

made by Sundram Exports would indicate that the appellant had “wrongly and fraudulently discharged export obligations under the EPCG License

by resorting to suppression of facts and wilful mis-declaration”.

28. It is not open to the custom authorities to question the communication dated 27.05.2003 issued by DGFT for discharging the appellant from its

export obligation, after excluding the exports made by Sundram Exports, in the absence of any determination having first been made by DGFT. This is

what has been observed by the Delhi High Court in *Designco* while examining the action initiated by the custom authorities to deprive the benefits

claimed by the writ petitioner under the Merchandise Exports from India Scheme, MEIS. Under the prevailing Foreign Trade Policy of 2015-20, the

Union Government, in order to promote exports of Indian handicrafts, had introduced MEIS. With the avowed objective of providing impetus to such

exports, the Foreign Trade Policy provided incentives for exports of notified goods and products and the calculation of corresponding rewards. In

terms of MEIS, the exporters were also provided duty credit scrips which were transferable. Those duty credit scrips could be used for payment of

basic customs duty, additional customs duty, and central excise duties on domestic procurement of inputs or goods. For the purposes of implementation

of MEIS, a Public Notice was issued by the DGFT specifying the eligible countries to which exports could be made for availing benefits under the

scheme. The Delhi High Court examined the provisions of the Foreign Trade (Development and Regulation) Act, 1992, the FTDR Act alongside the

Foreign Trade Policy as well as the Foreign Trade (Regulation) Rules, 1993, the FTDR Rules and made the following observations:

“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.

107. Section 28AAA would thus have to be interpreted as contemplating a prior determination on the issue of collusion, wilful misstatement

or suppression of facts tainting an instrument issued under the FTDR Act before action relating to recovery of duty could be possibly

initiated. A harmonious interpretation of the two statutes, namely, the Customs and the FTDR Acts leads us to the inescapable conclusion

that the law neither envisages nor sanctions a duality of authority inhering in a separate set of officers and agents simultaneously

evaluating and adjudging the validity of an instrument which owes its origin to the FTDR Act alone. It is these factors, as well as the role

assigned to the DGFT which perhaps weighed upon courts to acknowledge its position of primacy when it came to the interpretation of policy

measures referable to the FTDR Act as well as issues of classification emanating therefrom. *ĀċĀ, ĀċĀ*

(emphasis supplied)

29. The Delhi High Court referred to the views earlier expressed by the Delhi High court in *Simplex Infrastructure Ltd. vs. Union of India and others*,

2014 SCC Online Del 7747 and noticed that the views expressed by the Gujarat High Court in *Alstom India Ltd. vs. Union of India and another* (No.

2), 2014 SCC Online Guj 15952 had been approved. The Delhi High Court also referred to the judgment of the Allahabad High Court in *PTC*

Industries Ltd. vs. Union of India and others, 2009 SCC Online All 2138 and the judgments of the Bombay High Court in *Pradip Polyfils Pvt. Ltd. vs.*

Union of India, (2004) 173 E.L.T. 3 (Bom), *Autolite (India) Ltd. vs. Union of India*, 2003 SCC Online Bom 1313 and *Commissioner of Customs (E.P.)*

vs. Jupiter Exports & Ors., 2007 SCC Online Bom 467. Ultimately, the Delhi High Court held:

“108. ***** We are thus of the firm opinion that it would be impermissible for the customs authorities to either doubt the validity of an

instrument issued under the FTDR Act or go behind benefits availed pursuant thereto absent any adjudication having been undertaken by

the DGFT. An action for recovery of benefits claimed and availed would have to necessarily be preceded by the competent authority under

the FTDR Act having found that the certificate or scrip had been illegally obtained. We have already held that the reference to a proper

officer in Section 28AAA is for the limited purpose of ensuring that a certificate wrongly obtained under the Customs Act could also be

evaluated on parameters specified in that provision. However, the said stipulation cannot be construed as conferring authority on the

proper officer to question the validity of a certificate or scrip referable to the FTDR Act.”

(emphasis supplied)

30. It needs to be noted that in *Titan Medical*, which was considered by the Delhi High Court in *Designco*, the Supreme Court observed as follows:

“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 has taken no steps to cancel the licence. The

licensing authority has 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.”

31. It, therefore, clearly transpires from the aforesaid judgment of the Delhi High Court in *Designco* that custom authorities cannot go behind the

benefits availed, in the absence of any adjudication having been undertaken by DGFT. In other words, an action for recovery of benefits claimed and

availed would have to necessarily be preceded by an order of the competent authority under the FDTR Act that the certificate or script had been

illegally obtained.

32. This judgment, when applied to the facts of the present case, would clearly mean that the custom authorities cannot question the discharge

certificate issued by DGFT in respect of the obligation to be fulfilled by the appellant under EPCG License dated 29.12.1994, unless DGFT itself takes

a prior decision that the appellant had not discharged the obligation under the said EPCG License. In this view of the matter, the custom authorities

could not have questioned the discharge of the export obligation given by DGFT to the appellant in respect of the EPCG License dated 29.12.1994 in

the absence of any prior determination regarding the said License by the DGFT.

33. Once it is held that the custom authorities had no jurisdiction to issue the show cause notice, the confiscation of goods or the imposition of penalty

upon the appellant or upon Sunil Wadhwani, Director of the appellant, does not arise.

34. Thus, for all the reasons stated above, the impugned order dated 31.01.2006 passed by the Commissioner confirming the demand of duty under the

provisions of the Customs Act deserves to be set aside.

35. The order dated 31.01.2006 passed by the Commissioner is, accordingly, set aside and the two appeals are allowed.

(Order pronounced on 03.01.2025)