



## ***ALO Law Office- IDT Tax / Arbitration / Litigation***

**Date: 29.04.2025**

### **CESTAT Kolkata Rules in Favor of La Opala RG Ltd. on SHIS Duty Benefit Dispute**

The Customs, Excise, and Service Tax Appellate Tribunal (CESTAT), Kolkata, ruled in favor of M/s. La Opala RG Ltd., quashing a duty demand of nearly Rs. 58 lakh raised by Customs for imports made under the Status Holder Incentive Scrip (SHIS) scheme.

#### **Background:**

M/s. La Opala RG Ltd., a prominent glassware manufacturer, imported key manufacturing inputs such as Crucible Pots, Pot Rings, Abrasive Belts, PVA Wheels, Beveling Cones, and Refractories between December 2012 and February 2015. These imports were made under 12 SHIS scrips via 14 Bills of Entry.

Subsequently, the Directorate of Revenue Intelligence (DRI) issued a Show Cause Notice alleging that:

- The imported items were not capital goods or directly related to previously imported capital goods.
- SHIS scrips were misused to debit duty beyond the permissible 10% of the total scrip value.

The adjudicating authority confirmed a customs duty demand of Rs. 57,94,958 with interest and equal penalty under Section 114A of the Customs Act, 1962.

#### **CESTAT's Key Findings:**

- The Tribunal examined the nature and function of the imported items and held that all items serve essential roles in the manufacturing of glassware.

- Referring to the definition of "capital goods" under FTP para 9.12 and Notification No. 104/2009-Cus., the Tribunal held that the imported goods qualify as capital goods.
- The Tribunal clarified that the definition includes accessories, replacements, and equipment needed directly or indirectly in the manufacturing process.
- Since the imported goods qualify as capital goods, the 10% cap on SHIS scrip usage was held inapplicable.

### **Final Order:**

- The Tribunal set aside the customs duty demand, penalty, and interest.
- It also directed refund of amounts totaling over Rs. 43 lakh that had been appropriated during investigation.
- The appeal by M/s. La Opala RG Ltd. was allowed in full with consequential relief.

### **Conclusion:**

This ruling provides much-needed clarity on the interpretation of "capital goods" under FTP and SHIS-linked imports. The decision is a strong precedent for manufacturers relying on essential process-related equipment to qualify under concessional duty schemes.

*This Article has been written by Shri Ravi Shekhar Jha, Advocate Delhi High Court based on his interpretation of the law. He can be reached at his email id [intelconsul@gmail.com](mailto:intelconsul@gmail.com) or on his Mobile +91-9999005379.*

**Source: CESTAT Kolkata**

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

REGIONAL BENCH – COURT NO. 1

**Customs Appeal No. 75363 of 2018**

(Arising out of Order-in-Original No. KOL/CUS/COMMISSIONER/PORT/50/2017 dated 08.11.2017 passed by the Commissioner of Customs (Port), Custom House, 15/1, Strand Road, Kolkata – 700 001)

**M/s. La Opala RG Limited**

Chitrakoot, 10<sup>th</sup> Floor, 230, A.J.C. Bose Road,  
Kolkata – 700 020

**: Appellant**

**VERSUS**

**Commissioner of Customs (Port)**

Custom House, 15/1, Strand Road,  
Kolkata – 700 001

**: Respondent**

**APPEARANCE:**

Shri Amit Kumar, Advocate,  
Assisted by Shri Dinesh Shaw, Advocate,  
For the Appellant

Shri Ashwini Kr. Choudhary, Authorized Representative,  
For the Respondent

**CORAM:**

**HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)**

**HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)**

**FINAL ORDER NO. 76014 / 2025**

DATE OF HEARING / DECISION: 24.04.2025

**ORDER: [PER SHRI K. ANPAZHAKAN]**

M/s. La Opala RG Limited, Kolkata (hereinafter referred to as the "appellant") has been engaged in the manufacture of Glass & Glassware products, Opal glass, Crystal glass etc., having factories at Madhupur, Jharkhand and at Sitapur, Uttarakhand. For the manufacture of their final products in the factories, the appellant requires goods like crucible pot, abrasive belt, pot ring, PVA wheel, beveling cone and refractories.

1.1. During the period from December 3, 2012 to February 16, 2015, the appellant imported the above mentioned goods vide 14 nos. of Bills of Entry. The Customs authorities upon due verification and assessment allowed importation of the said goods utilizing 12 nos. of Status Holder Incentive Scrips (SHIS).

1.2. Later, the Directorate of Revenue intelligence (DRI) initiate investigation and issued a Show Cause Notice dated 10 September, 2015 alleging that the appellant had contravened the provisions of the Customs Notification No. 104/2009-Cus dated 14.09.2009 read with para 3.16.3 of the FTP and para 3.10.6 of the Hand Book of Procedures, Volume-I for the following reasons: -

- a. by using SHIS for debiting duty against imported goods namely parts/spares/components of capital goods not pertaining to the capital goods imported earlier and
- b. also by using SHIS for debiting duty in excess of the permitted limit of 10 (ten) percent of the total Scrip value and by not submitting the required undertakings.

1.3. It was alleged in the notice that the goods imported by the appellant are neither related to 'Capital goods imported earlier' nor are 'Capital goods' themselves and hence cannot be imported under SHIS scrips by debiting duty from SHIS scrips in excess of the allowable limit of 10% of the total scrip value. It has been alleged that the imported goods are spares and parts and were not allowable for import under the subject SHIS scrips and such excess importations

were prohibited/restricted both under the said promotional scheme, and also by virtue of the conditions laid down under the notification, benefit of which was being availed by the appellant at the time of such importation. In the process, it is alleged that the appellant saved amounts of duty of Rs.53,08,551/- and Rs.4,86,407/-.

2. The said notice was adjudicated by the Commissioner vide Order in Order-in-Original No. KOL/CUS/COMMISSIONER/PORT/50/2017 dated 08.11.2017, wherein the Id. Adjudicating authority has confirmed the duty demand of Rs.57,94,958/-, along with interest thereon. The Ld. Commissioner also appropriated the amount of Rs. 40,29,822/- and Rs.3,17,210/- deposited by the appellant during the course of investigation, against the confirmed demand of Rs.57,94,968/-. Further, a penalty of Rs.57,94,958/- was imposed upon the appellant under Section 114A of the Act.

2.1. Aggrieved against the confirmation of these demands, the appellant has filed this appeal.

3. The Ld. Counsel appearing on behalf of the appellant submits that 'Capital goods', as defined in para 9.12 of the Policy, means 'any' plant, machinery, 'equipment' or 'accessories' required for manufacture or production, 'either directly or indirectly', of goods including those required for replacement, modernisation, technological upgradation or expansion". He submits that the same words contained in the definition of "capital goods" has been mentioned in the notification also. Accordingly, the appellant submits that each of the imported goods namely, Crucible Pot, pot Ring, Abrasive Belt, PVA wheels, Bevelling Cone and Refractories duly satisfies

the said definition of "capital goods" as contained in both the FTP and the said notification. Thus, it is their contention that the imported goods are 'capital goods' themselves and hence the restriction of debiting duty from SHIS scrips in excess of the allowable limit of 10% of the total scrip value is not applicable to the goods imported by them. Accordingly, the appellant contended that the demand of customs duty confirmed in the impugned order is not sustainable.

4. The Ld. Authorized Representative of the Revenue submits that the goods imported by the appellant are not 'capital goods', but are in the nature of parts/spares/components of capital goods. It is therefore argued that the same are not pertaining to the capital goods imported earlier and hence debiting the SHIS scrips in excess of 10% of the value is not permissible. Thus, the Revenue contends that the demand has been rightly confirmed in the impugned order.

5. Heard both sides and perused the appeal records.

6. We have perused the list of items imported by the appellant and their functions. The goods imported by the appellant are Crucible Pot, pot Ring, Abrasive Belt, PVA wheels, Bevelling Cone and Refractories. The functions of each of these goods are as under.

(i) Crucible Pot

A crucible pot is a container that can withstand very high temperatures and is used for glass production. In our furnace there are 12 Pots. Pots are filled up with different chemicals and heated up for 12 hours in night and in a day shift the melted

glass is taken out from the Pot and again it is filled up in the night for melting. The life of a pot varies from 20 to 25 days.

(ii) Pot Ring

A floating Refractory Ring on the surface of the glass melted in a pot to prevent the accumulation of SCUM in the gathering area.

(iii) Abrasive Belt

Abrasive Belt is used for smoothening the outer surface of glass.

(iv) PVA Wheels

PVA wheels is used to remove the joint mark in the product (mainly Cups and Mugs)

(v) Bevelling Cone

It is used for smoothening the top of item from inside.

(vi) Refractories

This is used as replacement of the refractories lining furnace.

6.1. We have perused the definition of 'capital goods' as mentioned in the Notification. For ready reference the said definition is reproduced below:

“Explanation, For the purposes of this notification,-

(i) "Capital goods" means any plant, machinery, equipment or accessories required for manufacture

or production, either directly or indirectly, of goods or for rendering services, including those required for replacement, modernization, technological upgradation or expansion. It also includes packaging machinery and equipment, refractories for initial lining, refrigeration equipment, power generating sets, machine tools, catalysts for initial charge, equipment and instruments for testing, research and development, quality and pollution control. Capital goods may be for use in manufacturing, mining, agriculture, aquaculture, animal husbandry, floriculture, horticulture, pisciculture, poultry, sericulture and viticulture as well as for use in services sector.”

We observe that the same definition is mentioned in para 9.12 of the policy as well.

6.2. From the definition of 'capital goods', we observe that items required for replacement, modernization, technological upgradation or expansion of the plant have also been covered within the ambit of 'capital goods'.

6.3. A perusal of the functions of the above items imported by the appellant indicate that each of the said goods have specific functions, which are essential and they aid in the manufacture of glassware by the appellant. Thus, we observe that all these goods duly satisfy the requirement of being an “accessory” or “equipment” mentioned in the definition of 'capital goods'. We find that these goods are required for “manufacture or production, either directly or indirectly” of glassware by the appellant. Accordingly, we find that the goods imported by the appellant are 'capital goods' themselves and hence the restriction of

debiting duty from SHIS scripts in excess of the allowable limit of 10% of the total scrip value is not applicable to the goods imported by them. Consequently, we hold that the demand of Customs duty confirmed in the impugned order is not sustainable and hence we set aside the same.

6.4. Since the demand of Customs duty is not sustainable, the question of demanding interest or imposing penalty does not arise. Accordingly, the same are set aside.

6.5. From the impugned order, we observe that the Ld. adjudicating authority has appropriated the amount of Rs. 40,29,822/- and Rs.3,17,210/- deposited by the appellant during the course of investigation against the confirmed demand of Rs.57,94,968/-. Since the demand confirmed is not sustained, we hold the amount of duty appropriated against this demand is not warranted.

7. In view of the above, we set aside the impugned order and allow the appeal filed by the appellant with consequential relief, if any, as per law.

(Operative part of the order was pronounced in open court)

Sd/-

**(ASHOK JINDAL)**  
MEMBER (JUDICIAL)

Sd/-

**(K. ANPAZHAKAN)**  
MEMBER (TECHNICAL)