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CESTAT Bangalore- Clerical Error in Shipping Bill Not a Ground for Confiscation or Penalty



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In a significant ruling, the Customs, Excise & Service Tax Appellate Tribunal (CESTAT), Bangalore, has set aside the confiscation and penalty imposed on M/s. Avasarala Technologies Ltd., a 100% Export Oriented Unit (EOU). The case revolved around alleged discrepancies in the export of engineering equipment, specifically parts of rubber processing machines. The judgment highlights the importance of distinguishing between clerical errors and intentional misdeclarations in export documentation.

Background of the Case

The appellant, Avasarala Technologies Ltd., had filed three shipping bills for the export of parts of rubber processing machines. During the examination of goods, discrepancies were noted in two shipping bills (Nos. 4375372 and 4375056). Against the declared 43 sets of parts, only 15 sets were found, resulting in a shortage of 28 sets. Additionally, a weight discrepancy of 353 kgs was observed. This led to the issuance of a show-cause notice proposing confiscation of goods under Section 113(h)(i) of the Customs Act, 1962, and the imposition of penalties under Section 114(iii).

The adjudicating authority confiscated the goods valued at Rs. 12,98,464, imposed a fine of Rs. 3 lakhs in lieu of confiscation, and levied a penalty of Rs. 2 lakhs. The Commissioner (Appeals) upheld this decision, prompting the appellant to approach the Tribunal.

Arguments Presented

The appellant, represented by their Chartered Accountant, argued that the discrepancies were the result of a clerical error by the dispatch team. They emphasized that:

1. The shortage was due to a miscommunication between the logistics and accounts departments, leading to an incorrect packing list.
2. The jurisdictional Central Excise authorities confirmed that the missing 28 sets were still under process in the factory and had not been cleared for export or diverted to the Domestic Tariff Area (DTA).
3. There was no intention to misuse the EOU facility, as the appellant had achieved positive Net Foreign Exchange (NFE) and fulfilled their export obligations.

The appellant also contended that the confiscation under Section 113(h)(i) was unwarranted, as the provision applies only when goods are physically entered for exportation. Since the discrepancy was due to a clerical error and not a deliberate act, the penalty under Section 114(iii) was also unjustified.

Tribunal's Findings

After hearing both sides, the Tribunal observed the following:

1. The shortage of 28 sets was a result of an internal error by the dispatch team, as evidenced by the appellant's letters and the Central Excise authorities' report.
2. There was no evidence of diversion of goods to the DTA or any fraudulent intent.
3. The miscommunication between departments and the subsequent clerical error could not be construed as a deliberate act warranting confiscation or penalty.

The Tribunal concluded that the confiscation of goods and the imposition of penalties were unwarranted. The impugned order was set aside, and the appeal was allowed with consequential relief.

Key Takeaways

This judgment underscores the importance of intent in cases involving discrepancies in export documentation. While exporters must exercise due diligence in ensuring accurate documentation, genuine clerical errors should not be equated with fraudulent activities. The Tribunal's decision reinforces the principle that penalties and confiscations should be imposed only when there is clear evidence of intent to evade or violate the law.

Conclusion

The ruling in favor of Avasarala Technologies Ltd. is a reminder of the need for balanced adjudication in customs matters. It highlights the importance of distinguishing between human errors and deliberate violations, ensuring that businesses are not unduly penalized for genuine mistakes. This case serves as a precedent for similar disputes, emphasizing the role of evidence and intent in determining the outcome of such cases.

Source: CESTAT Bangalore

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**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
BANGALORE**

REGIONAL BENCH - COURT NO. 3

CUSTOMS APPEAL NO.21115 OF 2017

(Arising out of Order-in-Appeal No.97/2017 dated 18.04.2017 passed
by the Commissioner of Customs (Appeals), Bangalore)

M/s. Avasarala Technologies

Ltd.,

No.60, K. Choodahalli Somanahalli Gate
26th KM Kanakapura Road,
Bangalore-560 082.

Appellant(s)

VERSUS

**Commissioner of Customs-
Bangalore-cus,**

C.R. Building, Queens Road,
P.B. No.5400,
Bangalore.

Respondent(s)

APPEARANCE:

Mr. Akbar Basha, Chartered Accountant for the Appellant

Mr. Maneesh Akhoury, Asst. Commissioner (AR) for the Respondent

CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)

Final Order No. 21609 /2025

DATE OF HEARING: 06.08.2025

DATE OF DECISION: 13.10.2025

PER : D.M. MISRA

This is an appeal filed against Order-in-Appeal No.97/2017 dated 18.04.2017 passed by the Commissioner of Customs (Appeals), Bangalore.

2. Briefly stated the facts of the case are that the appellant is an 100% EOU engaged in export of engineering equipments of various types. They have filed three shipping bills No.4375372, 4375056 and 4377936, all dated 11.03.2013 for export of parts of rubber processing machines. During the course of

examination of goods, it was found that in Shipping Bill No.4377936, they proposed to clear 7 numbers of chariot assembly whereas in the other shipping bills Nos.4375372, 4375056, it was proposed to clear 43 sets of parts of rubber processing machinery. On examination, it was found that against the 43 sets of parts, only 15 sets were found, leaving a shortage of 20 sets of parts in shipping bill No.4375056 and 8 sets of parts in shipping bill No.4375372. Also, on weighing of goods, it was noticed that there was a shortage of 353 kgs. in respect of the said shipping bills. On completion of investigation, show-cause notice was issued on 10.10.2013 proposing confiscation of the goods under Section 113h(i) and penalty under Section 114(iii) of the Customs Act, 1962. On adjudication, the goods were directed to be confiscated covered under the two shipping bills, totally valued at Rs.12,98,464/- under Section 113h(i) of the Customs Act, 1962; imposed a fine of Rs.3.00 lakhs in lieu of confiscation; imposed penalty of Rs.2.00 lakhs under Section 114(iii) of the Customs Act, 1962. Aggrieved by the said order, appellant filed appeal before the learned Commissioner(Appeals) who in turn rejected their appeal. Hence, the present appeal.

3.1. At the outset, the learned Chartered Accountant for the appellant has submitted that they have been clearing the goods only for export purposes and there is no DTA clearance. Through their letter dated 12.04.2013, they intimated the details of value of import and export and NFE achieved, which was positive and export obligations were also achieved. There is no intention to mis-use the EOU facility. He has submitted that a reference to the Central Excise Department under whose jurisdiction the unit falls was made and by the Customs authorities. The Central Excise Divisional Office in response to the said query through letter dated 22.03.2013, informed that on a detailed scrutiny of the finished goods production report

maintained by the assessee and also from the ER2 returns filed by them in the month of March 2013, only 15, it revealed that only 15 sets of goods were cleared and not 43 sets; that the excess 28 sets which were wrongly declared in the invoices are still found to be under process in the factory. Thus, the error in the invoices have been accepted by the jurisdictional Divisional Officer on the basis of records produced by the appellant. Thus, the finding in the impugned order that 66% of shortage cannot be treated as mere mistake but positive act on the part of the appellant cannot be sustained. Further, he has submitted that confiscation under Section 113(h)(i) of the Customs Act, 1962 is bad in law as the said provision is not applicable to the present case since it is applicable only to the circumstances where the goods entered for exportation. In the present case, assuming it is only mis-declaration of quantity by mistake / error, there is no physical entry of goods for exportation. Thus, when there is no goods entered for exportation, the question of confiscation does not arise. In support, they relied on the following judgments:-

- i. Best International Vs. CC [2004(178) ELT 278 (Tri. Chennai)]
- ii. Zenith Rubber & Plastic Works Vs. CC [2009(238) ELT 646 (Tri. Mum.)]

3.2. Learned Chartered Accountant has also submitted that imposition of penalty under Section 114(iii) of the Customs Act, 1962 is unwarranted, since the appellant has made a clerical error by wrongly mentioning the quantity of items exported and there is no omission nor any misdeclaration on the part of the appellant. In support, they referred to the following judgments:-

- i. Allseas Marine Contractors SA Vs. CC [2011(272) ELT 619 (Tri. Bang.)]
- ii. Gitanjali Gems Ltd. Vs. CC [2011(264) ELT 574 (Tri. Mum)]
- iii. Surbhit Impex P. Ltd. Vs. CC [2012(283) ELT 556]
- iv. Kirti Sales Corporation Vs. CC, Faridabad [2008(232) ELT 151 (Tri. Del.)]

4. Learned AR for the Revenue has reiterated the findings of the learned Commissioner(Appeals).

5. Heard both sides and perused the records.

6. The short issue involved in the present appeal is whether the quantity noticed to be short against invoice Nos. 96 & 97 relating to Shipping Bills No. 4375372 & 4375056 are liable to be confiscated under Section 113(h)(i) of the Customs Act, 1962 and penalty imposed under Section 114(iii) of the Customs Act, 1962 is justified.

7. Undisputed facts of the case are that instead of export of 43 sets of items against the said two shipping bills, only 15 sets have been proposed to be cleared. Explaining the error, it was stated by the appellant through their letters dated 16.03.2013, 18.03.2013 and 22.03.2013 that it was due to mistake occurred on the part of the dispatch team which packed only 15 items instead of 43 items that were supposed to be shipped. It was contended that since the dispatch team had forwarded the wrong packing list, which were prepared in advanced supposed to be shipped, the error has occurred. Therefore, there was miscommunication between logistic department and accounts department in the preparation of the invoice. Also, it is on record that after the discrepancy was noticed by the Customs on verification, the matter was referred to the jurisdictional Central Excise authorities who in their report dated 23.07.2013 categorically stated that there was no clearance of balance items in the DTA and the shortage of 28 sets are under process in the factory. In these circumstances, the shortage of 66% in the total export quantity mentioned in the export invoices relating to the shipping bills are nothing but error occurred on the part of the appellant's internal dispatch team and no intention can be attributed for such mistake. Therefore, the direction for

confiscation of the goods and imposition of penalty on the appellant is unwarranted; accordingly, not sustainable. In the result, the impugned order is set aside and the appeal is allowed with consequential relief, if any, as per law.

(Order was pronounced on 13.10.2025)

(D.M. MISRA)
MEMBER (JUDICIAL)

Raja...