CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT No. III

Customs Appeal No. 40250 of 2018

(Arising out of Order-in-Original TCP-CUS-PRV-COM-002-2017 dated 31.10.2017 passed by Commissioner of Customs (Preventive), No. 1, Williams Road, Cantonment, Tiruchirappalli – 620 001)

M/s. Ganges Internationale Private Limited **...Appellant**
No. 163/1, K Sons Complex,
3rd Floor, Broadway,
Chennai – 600 108.

Versus

Commissioner of Customs **...Respondent**
Trichy Commissionerate,
No. 1, Williams Road,
Cantonment,
Tiruchirappalli – 620 001.

APPEARANCE:

For the Appellant : Mr. S. Jaikumar, Advocate
Mr. M. Karthikeyan, Advocate
For the Respondent : Mr. Sanjay Kakkar, Authorised Representative

CORAM:
HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER No. 40301 / 2026

DATE OF HEARING : 17.11.2025
DATE OF DECISION : 26.02.2026

Per Mr. P. Dinesha

This Appeal is filed against Order-in-Original No. TCP-CUS-PRV-COM-002-17 dated 31.10.2017 (issued from File C.No. VIII/10/39/2016-Cus.Adjn) of the Commissioner of Customs (Preventive, Tiruchirappalli) whereby, the Commissioner has, *vide* impugned Order had cancelled Let Export Orders issued for 564 Shipping Bills covering the period from 'Febraury-2008 to September-2011' and directed

reassessment of the same under Section 17 of the Customs Act, 1962 (the Act for short). The Original Authority has also held that the goods exported are liable for confiscation under Sections 113 (d) and 113 (i) of the Act, thereby imposing Penalty both under Sections 114 and 114AA of the Act.

1.2 Facts in brief, which are necessary and relevant for disposal of this appeal, are as follows: -

M/s. Ganges Internationale Private Limited, Chennai – 600 108, the Appellant herein, engaged in the manufacture and export of both Towers for Transmission of Electricity and Telecom Towers, had claimed DEPB benefits for both the items exported under Sl. No. 24 of Product Group Code 61 (Engineering Products) wherein the description of the export product was given as "Galvanised transmission line towers and parts thereof". It is the case of the Revenue that on specific intelligence gathered, DRI, Chennai Zonal Unit registered a case against the Appellant on the ground that the Appellant, by mis-declaring Telecom Towers as Galvanised transmission line towers, had obtained DEPB benefit under the Product Group 61-Sl.No. 24, to which, the Appellant was not entitled to as the DEPB benefit rightly accrued to them only under Product Group 90 – Sl. No. 22D thereby resulting in excess DEPB benefit. The basis for denial of the DEPB benefit as claimed and obtained was that: the

words 'Line' and 'Transmission lines' were generally used in commercial parlance in respect of electrical line and transmission of electricity and it was evident from the definitions under Sections 2 (72) and 2 (16) of the Electricity Act, 2013 that the Transmission Line related to transmitting electricity whereas in this case, it is an admitted fact that the Towers exported were Telecom/Mobile Towers for cellular use and were not certainly Towers for transmission of electricity; as per Standard Input Output Norms (SION), against Sl. No. C220 of Engineering Products, the description of the goods was "Galvanised Transmission Line Towers & parts thereof" as per Public Notice No.44 dated 18.10.2002 issued by the Department of Commerce and the description of the goods was amended as "Galvanised Transmission Line /Telecom Towers & parts thereof" in Public Notice No.55 dated 03.03.2004, which indicated that Transmission Line Towers and Telecom Towers were two different items. It was thus assumed by the investigating agency that the Appellant had obtained DEPB benefit by mis-declaring Telecom Towers exported as Galvanised Transmission Line Towers in the relevant Shipping Bills.

2. Registration of the case as above thus resulted in the Show Cause Notice in F.No.VIII/26/114/2012-DRI-CZU dated 29.07.2016 ('SCN' for short), issued by the ADG, DRI,

Chennai calling upon the Appellant to explain as to why: Let Export Orders issued under Section 51 of the Act in respect of Shipping Bills aggregating to 564 should not be cancelled as having been filed in contravention of Section 50 of the Act; the goods exported under the said 564 Shipping Bills should not be reassessed under Section 17 of the Act by revising the description as Telecom Towers and parts thereof thereby entitling the Appellant to DEPB benefit against Sl.No.22 D of Product Group 90 of DEPB Rate Schedule; the Telecom Towers exported by describing the goods as Galvanised Transmission Line Towers valued totally at Rs.120,90,56,976/- should not be held liable to confiscation under Sections 113(d) & 113(i) of the Act, apart from imposition of penalties, separately, under Sections 114 and 114AA of the Act.

3. Appellant appears to have contested the SCN *vide* its reply, arguing that primarily, the proceedings were barred by limitation since Section 28 of the Act restricted the demand to 5 years; the issue involving determination in this Appeal related to DEPB benefit under erstwhile Foreign Trade Policy (FTP) and only the Director General of Foreign Trade (DGFT) was the competent authority to decide whether the grant of DEPB was correct or not and whose decision was final and binding; the constituent materials for Towers both

the Electricity and Telecom Transmission being one and the same, they had taken up the issue with the Directorate of Drawback, who, *vide* Letter dated 21.09.2017 asked the Appellant to support their claim for re-fixing DEPB rates for Telecom Towers with necessary documents; and the supporting documents called for were being submitted. Appellant requested to keep the proceedings in abeyance till a decision was taken by the DGFT on their representation.

4. The Respondent Commissioner, however, appears to have proceeded with adjudication of the case and confirmed the proposals made in the SCN, by recording the following findings: -

i. Initially, as per Public Notice No.44 dated 18.10.2002 issued by the Ministry of Commerce, Galvanised Transmission Line Towers & parts thereof alone were considered as export products under SION and Telecom Towers were included as export products under SION through an amendment dated 03.03.2004 and the inclusion of Telecom Towers through an amendment indicated that the policy makers differentiated between Transmission Line Towers for power transmission and Telecom Towers for communication;

ii. Determination of the constituent materials or composition of raw materials used in the manufacture

of 2 Transmission Towers requested by the Appellant had no relevance to DEPB eligibility for Telecom Towers;

iii. From the Minutes of Meeting of DEPB Committee, it was clear that the DEPB Committee was not inclined to treat Telecom Towers on par with Transmission Line (for electricity) Towers for the purpose of granting DEPB benefit, in spite of there being a request from the Department of Industrial Policy and Promotion (DIPP) since the 2 Towers in question have different end-use;

iv. The request for keeping the proceedings in abeyance in view of clarification sought by the Appellant from the Appellate Authority *viz.,* Directorate of Drawback cannot be acceded to since the Minutes of DEPB Committee Meeting showed that the request to this effect by two similarly placed units was rejected.

v. M/s. KEC International Limited, Gurgaon who exported Telecom Towers claiming DEPB benefit applicable to Transmission Line Towers as in this case was issued with an Order by the Joint DGFT, Mumbai denying DEPB eligibility to Telecom Towers against Sl.No.24 of Product Code 61 by cancelling the DEPB licenses already granted as being obtained through mis-declaration and whose decision was also upheld by the Additional DGFT, Mumbai.

vi. There is no substance in the argument of the Appellant that the ultimate deciding authority for conferring DEPB benefits is DGFT since the provisions of the Customs Act, 1962 and the FT (D&R) Act, 1992 operate independently and the Department was at liberty to proceed based on available evidence and, further in this case, besides favorable decisions of the DGFT Authorities referred to above, the Department possessed sufficient evidence.

vii. The argument relating to time-limitation under Section 28 of the Act has no force since SCN does not invoke Section 28 of the Act, rather the proceedings initiated are for confiscation under Section 113 and for imposition of penalty under Sections 114 and 114AA for which, there is no time-limit.

viii. Appellant had intentionally mis-declared the goods as Galvanised Transmission Line Towers instead of Telecom Towers in the Shipping Bills so as to avail higher DEPB rate, and, but for the investigation, the fraud would not have come to notice.

5. In the grounds of appeal filed as part of the Appeal Memo, the Appellant has requested for quashing the impugned Order on the following grounds: -

i. There cannot be different DEPB rates for items covered under a single SION – C220 and the impugned Order does not address this question.

ii. Appellant had been exporting for more than a decade galvanized steel structures both for Telecommunication as well as Electricity Transmission purposes and the very fact that the manufacturing processes being one and the same for both the products reinforces their contention that there can't be two DEPB rates against a single SION.

iii. The DIPP, Ministry of Commerce, responding to a reference dated 07.09.2012 of the DGFT, clarified that SION 220 applied to both Transmission Line Towers and Telecom Towers, thereby making both of them eligible to DEPB entry against Sl. No. 24 of Product Code 61.

iv. The Competent authority to decide DEPB rates is DGFT alone and neither the DRI nor the Respondent made any attempt to get clarification on this issue from the DGFT.

v. The reliance placed by the Respondent on the earlier decision of DGFT in an identical case is mis-placed since the decision did not advert to the recommendation of DIPP to treat Telecommunication Towers and Electricity Towers in an identical manner thereby requiring reconsideration.

vi. The Respondent has ordered re-assessment under Section 17 of the Act whereas the Shipping Bills had already been finally assessed and confiscation under Section 113 of the Act & penalty under Sections 114 and 114A of the Act are not independent provisions as they could be invoked only after re-assessment.

vii. There had been many instance wherein the DGFT reversed or revised their earlier decisions depending on empirical data being brought to their notice and the DGFT having entertained the Appellant's request based on documents submitted, the Respondent should have awaited the outcome.

viii. The Appellant had been manufacturing both Telecom Towers and Towers for transmission of electricity by using the same inputs and further being one of the leading exporters of engineering products, the allegation of mis-declaration is without any basis and is hence, incorrect.

6. Shri S. Jaikumar, Ld. Advocate appearing for the Appellant, prayed for setting aside the impugned order of the Respondent-Adjudicating Authority, by presenting oral and written submissions, which are summarized below: -

i. DGFT being the licensing authority, is the proper officer to determine whether the DEPB benefit at a particular rate is available to a product or not and the Customs authorities are bound to act on the basis of the license issued by the DGFT.

ii. Once the licensing authority has held that the goods exported by the Appellant deserve DEPB benefit against Sl.No. 24 of Product Code 61, it is not open to the Customs authorities to dispute the quantum of eligibility under the said Scheme and the following Judgments/ Decisions of the Supreme Court/High Courts/CESTAT support this legal proposition.

S.NO.	ASSESSEE	CITATION	REFERENCE
1.	*Titan Medical System Pvt ltd*	*(2003) 151 ELT 254(S.C.)*	Paragraph 13
2.	*Colour Cottex Pvt. Ltd*	*2025 (6) TMI 368 – CESTAT New Delhi*	Paragraph 14 to 16
3.	*Jeena & Company*	*2024 (1) TMI 834 – Madras High Court*	Paragraphs 14 to 16
4.	*Pankaj Chordia*	*2025 (9) TMI 551 – CESTAT New Delhi*	Paragraphs 20 and 45
5.	*Axiom Cordages Ltd.*	*2020 (9) TMI 478 – CESTAT Mumbai*	Paragraph 13
6.	*Alphonse Joseph*	*2006 (204) E.L.T. 487 (Tri. -Bang.)*	Paragraph 6
7.	*Pradip Polyfills (p) Limited*	*2004 (173) ELT 3 (Bom)*	Paragraph 7
8.	*Adani Exports Ltd.*	*(2024) 17 Centax 295 (Tri-Ahm)*	Paragraph 18

iii. The mere fact that Telecom Towers & parts thereof were added to SION at Sl. No. C220 by a subsequent Public Notice cannot mean that the two products are different for purpose of conferring DEPB benefit under Sl. No. 24 of Product Code 61 since it can also mean

making good an omission or correcting an incorrect entry.

iv. The Respondent Adjudicating Authority without quoting any statutory provision, and by ordering cancellation of Let Export Orders granted under Section 51 of the Act, has assumed the power of *suo moto* revision, which is not permitted in law as the only legal course available to the Respondent was to direct the Lower Authority to file an application to the Appellate Authority to cancel the let export permissions granted through review proceedings.

v. The direction to order re-assessment under Section 17 of the Act, of the goods already exported, is totally misconceived since for purpose of Section 17 read with Section 2 (19) of the Act, 'export goods' did not cover goods which stood already exported.

vi. In terms of Section 124 of the Act, no order of confiscation can be passed without issuing a notice and as confiscation was proposed, it evidently implies that the Department had invoked Section 124 to issue SCN. In the following cases, it has been held that in spite of there being no time-limit prescribed in Section 124 of the Act, the period of limitation stipulated in Section 28 of the Act would apply; the SCN having been issued beyond 5 years, the order for confiscation of goods

under Section 113 of the Act and the consequent imposition of Penalty under Section 114 of the Act are held unsustainable.

a. *M/s. Maersk Line India Private limited [2024 (1) TMI 837]*
b. *M/s. Usha stud & Agricultural Farms (P) Limited [2011 (274) E.L.T. 365]*
c. *Manish Kumar Jain [2025 (6) TMI 204]*

vii. The charge of mis-declaration is factually incorrect since the Appellant had merely adopted the description of the goods as per the Customs Tariff Act, 1975 in the Shipping Bills filed and it is clear from Para. No. 26 of the SCN that the Appellant had declared the goods exported as "Galvanised Transmission Line Towers for telecommunication core network" in the commercial invoices, Packing lists, Certificates of origin, Bills of lading and other export related documents, and hence, the charge of mis-declaration is also baseless and devoid of any merit.

viii. Penalty under Section 114AA of the Act can be imposed only if the exporter intentionally makes a false or incorrect declaration whereas in this case, there is no mis-declaration; and further, major portion of the period in the SCN was under physical examination (till self-assessment was introduced with effect from 08.04.2011).

ix. As per the 27th report of the Standing Committee of finance on the Taxation Laws, the purpose of inserting

Section 114AA of the Act was to penalize exports which merely existed on paper and therefore this penal provision has no application to the facts of this case. This legal position is also clear from the decision of CESTAT, Mumbai in the case of *M/s. Suresh Kumar Agarwal [2024 (6) TMI 779].*

7. *Per contra,* the Ld. Deputy Commissioner Shri Sanjay Kakkar, appearing for the Respondent-Adjudicating Authority stoutly defended the impugned Order and he would also rely on the findings in the impugned order and requested to dismiss the Appeal.

8. We have gone through the Appeal papers and considered the rival contentions. At the outset, we would like to record the fact that the issue arising for our decision in this Appeal is not whether Telecom Towers intended for cellular use fall for classification under a specific Tariff Heading of the Customs Tariff Act, 1975 (CTA for short) or is entitled to the benefit of an exemption Notification issued under the CTA; rather, the issue in dispute is as to whether the Telecom Towers exported by the Appellant are eligible for DEPB benefit against Sl.No.24 of Product Group Code 61 (Engineering Products). Keeping this basic fact in mind, we

proceed to discuss and decide the issue posed for the determination.

9. It is not in dispute that the Appellant has been issued with/is in possession of DEPB scrips issued by the DGFT for Telecom Towers exported by them. There can be no doubt with the factual and legal proposition that the goods once cleared for export by the Customs authorities, the DEPB benefit for the goods exported is granted by the DGFT. Viewed in this context, we find force in the submission of the Appellant that the power to question or deny DEPB benefit for items exported solely rests with the DGFT and not with the Customs authorities. We accept this basic contention for more than one reason. The Customs Department denying benefit of DEPB to a particular item despite there being a valid and subsisting DEPB scrip issued by the DGFT for the item as in this case, in effect, amounts to questioning the validity of the very DEPB scrip issued by the latter and hence, as rightly argued by the Appellant, the proper legal course perhaps to be adopted by the Respondent would have been to address the DGFT for cancellation of DEPB benefit by setting out the facts as to why the benefit extended was incorrect or as to why the product in question does not qualify for higher DEPB benefit. Eschewing this procedure, initiating proceedings unilaterally

for denying/restricting the benefit as done in this case, is to our mind, clearly impermissible in law.

10. The Ld. Advocate for the Appellant by inviting our specific attention to Para 70 of the impugned Order, argued that the Respondent was under the fallacious assumption that the provisions of the Act empowered him to go ahead with the proceedings for denial of DEPB benefit, without waiting for response from/ due regard to the licensing authority- DGFT and such an assumption, unmindful of the illegitimacy of his action resulted in the impugned Order. We have perused para 70 of the impugned Order wherein the Respondent has recorded a finding that the provisions of the Customs Act, 1962 and the provisions of the FT (D&R) Act, 1992 operate independently and hence the Customs department was at liberty to proceed against the Appellant based on available evidence. We find that this finding of the authority is faulty and contrary to the well accepted legal principle that export benefit cannot be denied unilaterally by the Customs authorities. In this connection, we refer to a few binding decisions relied by the Learned counsel for the Appellant.

i. *Commissioner of Customs Vs Adani Exports Limited* reported in *(2024) 17 Centax 295 (Tri. -Ahmd.):* This case pertains to over-valuation of goods exported to fraudulently obtain excess DEPB/DEEC credits and their

subsequent use for duty-free-import causing Customs Duty loss. While rejecting the Appeal filed by the department, the Coordinate Bench at Paras 18 and 19 of the Order observed as under: -

> *"18. ……The department's appeal does not allege that the licences had been cancelled by the Additional Director General of Foreign Trade in the instant case. Clearly, the facts are on record that the DGFT has not cancelled the DEPB credit scrips and same were valid in the eyes of law. The DGFT has still not cancelled or modified the DEPB licences already granted. So it is clear that DGFT does not agree with the contention of the department. We are unable to agree with the allegation of the revenue that the exports have been misdeclared and DEPB scrips have been sought for and obtained fraudulently and imports have been made using invalid DEPB scrips. If it is the case of the department that DEPB scrips are fraudulently obtained by the respondents, it would have been appropriate that the department and customs authorities should have taken steps to get the DEPB scrips cancelled by making reference to the DGFT authorities who issued the scrips. Without taking any such action, to say that the DEPB scrips issued by competent authorities are invalid and fraudulently obtained is not proper and legal….*
> *19. In this circumstance above, we do not agree with the contention of the department that the scrips are invalid. As valid DEPB scrips have been used for import of the goods by the respondents, we do not find any reason for demand of duty or confiscation of the goods, or imposition of penalties..."*

ii. *PRADIP POLYFILS PRIVATE LIMITED Vs UOI 2004 (173) E.L.T. 3 (Bom.):* This is a case where a question arose as to whether the petitioner was entitled to avail the benefit of DEPB scheme for the goods exported. Holding the issue in favor of the Petitioner, the Hon'ble High Court at Para 7 of the judgment has observed as under: -

> *"7. …Under the circumstances, when the DEPB licence is issued by the Licensing authorities specifically holding that the Petitioners are entitled to avail the benefit of the DEPB Scheme in respect of Polypropylene filter plates and accessories, the Customs authorities were, not justified, in rejecting the claim of the Petitioners on the ground that the Articles exported by the Petitioners were not covered*

under Chapter 39 ITC (HS) classification. Whether an item falls under Chapter 39 of ITC classification or not is for the licensing authorities to consider before issuing the licence. Even after the issuance of the licences, the licensing authorities have not taken any steps to declare that the said licences were wrongly issued. Once the 1icensing authorities have held that the export product is covered under the DEPB Scheme and have issued the DEPB licence, it is not open to the Customs authorities to hold that the said export product is not covered under the DEPB Scheme."

iii. *ALPHONSE JOSEPH Vs CCE & C, BANGALORE* reported in *2006 (204) E.L.T. 487 (Tri. -Bang.):* In this case the allegation was that the Appellant availed higher credit of DEPB by mis-declaring the use of preservatives as per SION. While allowing the Appeal, the Coordinate CESTAT Bench at Para 6 has observed as under:

"6. …It is very clear from the above Circular that the Licensing Authority, DGFT only has the power to grant credit at the correct rate as notified. The rates are also notified only by the DGFT. In fact, we have held that it is open for the Customs Authorities to verify the export goods with reference to the declaration submitted by the exporter. Prima facie, when there is misdeclaration, the Customs Authorities are duty bound to inform the DGFT authorities to take necessary action for recovery of the excess credit. In other words, this Bench in the case of Adani Exports cited supra by the learned advocate has held that the power to determine and modify DEPB credit vests only with DGFT Authorities. Customs Authority's duty is to verify the exporters' declaration, quantity and value of export products. Once DGFT decides to grant credit, the Customs Authorities cannot modify the credit. This is not to mean that the exporter should go scot free with the mis-declaration. We only point out that as per Government's policy the jurisdiction to initiate recovery of excess credit lies with the DGFT. This is very clear from the following order of the DGFT in respect of the appellant's one DEPB licence wherein they had held that the appellant is not entitled for higher credit…."

iv. *TITAN MEDICAL SYSTEMS PRIVATE LIMITED VS CC, NEW DELHI* reported in *2003 (151) E.L.T. 254 (SC.):* In this case, proceedings denying exemptions were initiated by

the Customs authorities on the ground that the Appellant had made a misrepresentation to the licensing authority, on the basis of which Advance License had been issued by the Licensing Authority. Allowing the Civil Appeal, the Hon'ble Supreme Court at Para 13 of the judgment observed as under: -

> *"13. …To be noted that the licensing authority having taken no steps to cancel the licence. The licensing authority have 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."*

v. In the case of *M/s. Adyar Gate Hotel Limited Vs CC, Chennai,* reported in *(2025) 32 Centax 279 (Mad.),* the Hon'ble Madras High Court when analyzing the issue whether the Customs department acted within jurisdiction while disallowing the claim for EPCG benefit or not; and the Division Bench of the Hon'ble Madras High Court answered the question of law in favor of the Appellant by observing as under: -

> *"**21**. We test the claim of the present Appellant in the above context.*
>
> *The consistent stand of the Appellant is that it is entitled for concessional rate of duty as the goods imported constitute Capital Goods as per its assessment, supported by the licence issued by the DGFT. This has however been negated by the Departmental authorities, and the question that thus arises is as to whether the Assessing authorities under the Act may adopt a stand diametrically opposed to that taken by the DGFT.*
>
> ***22**. The identical question arose before the Supreme Court in Titan Medical Systems Pvt.Ltd. v. Collector of Customs, New Delhi [2003 (151) E.L.T. 254 (SC)] as to whether, once an advance license had been issued by the licensing*

authority, it is proper for the Customs Department to eschew the same on the premise that the license has been obtained on a misrepresentation of facts.
***23**. The Court noted that any misrepresentation of facts would have resulted in withdrawal/cancellation of the license. Since that had not transpired, the Court held that the Customs authorities had erred in proceedings to take a stand opposed to the stand of the DGFT and DG (Tourism).*
…
***25**. In order to obviate instances where officers of the Customs Department take stands at variance with the DGFT, the CBEC has issued a Circular in 2002 (26.09.2022) making it clear that such divergent views should not be taken and that when duty reduction or exemption had been granted by the DGFT or DG(Tourism), the Customs Department will align with such stand. The aforesaid Circular of the Board is binding upon the officers of all Commissionerates of the Department.*
***26**. In such an it is not open to the Customs Department to dispute classification of the goods imported and the view taken by the Department is diametrically opposed to the licence and the 2002 Circular. Moreover, this position has also been settled judicially as early as in 2003 by virtue of the Judgement in the case of Titan Medical Systems Pvt Ltd., and thereafter again in 2010 in Appu Hotels' case."*

11. We also find that in para 73 (d) of the impugned Order that the Respondent has recorded a finding that the Appellant-exporter had knowingly and intentionally mis-declared the goods in the Shipping Bills as Galvanised Transmission Line Towers instead of as Telecom Towers to avail higher DEPB rate and instead of seeking clarification as to whether Telecom Towers qualified for DEPB benefit against Sl. No. 24 - Product Code 61, the Appellant deliberately mis-declared the goods as Telecom Towers. This finding, to say the least, is nothing but entering into the shoes of the DGFT, as, even if there is any mis-declaration as alleged, but as already observed and dismissed by us,

nothing prevented the Customs Department or the investigating agency to take up the issue with the licensing authority-DGFT seeking cancellation of the higher DEPB benefit granted to the Appellant by setting out the facts with adequate evidence. In fact, para 39 of the SCN reads *"…The DGFT authorities have issued DEPB scrips on the basis of DEPB Serial Nos. claimed by M/s. GIPL on the relevant Shipping Bills which appears to be on the higher side and hence, inadmissible. A copy of this show cause notice is being forwarded to the Additional DGFT, Chennai to restrict the DEPB amounts in respect of the subject shipping bills to the amounts eligible".* We also find that a copy of the SCN has been endorsed to the Additional DGFT, Chennai for information and necessary action. It is thus clear that both the parties know that the power or authority to decide eligibility or otherwise of DEPB benefit at a particular rate to goods exported rested only with DGFT. Under these circumstances, we fail to understand as to how the Commissioner initiated proceedings restricting the DEPB benefit when the DGFT to whom the issue was referred, had not acted upon such reference. This only amounts to jumping the gun in a haste.

12. Further, perusal of the impugned order as well as the Show Cause Notice indicates that the Commissioner has misunderstood 'transmission tower' by referring the

Electricity Act, 2003. It is the case of the Revenue that the word 'transmission' could only be used for the purposes of transmission of electricity alone and hence, it is the case of the Revenue that transmission line tower is different from Telecom Tower and therefore, it cannot be termed as Galvanized Transmission line tower. In this regard, we find it apt to refer to the contention of the appellant, wherein the appellant has been contending that the description of the impugned goods was adopted as provided under Tariff Item No. 7308 2011 under Custom Tariff Act, 1975.

7308		STRUCTURES (EXCLUDING PREFABRICATED BUILDINGS OF HEADING 9406) AND PARTS OF STRUCTURES (FOR EXAMPLE, BRIDGES AND BRIDGE-SECTIONS, LOCK-GATES, TOWERS, LATTICE MASTS, ROOFS, ROOFING FRAME-WORKS, DOORS AND WINDOWS AND THEIR FRAMES AND THRESHOLDS FOR DOORS, SHUTTERS, BALUSTRADES, PILLARS AND COLUMNS), OF IRON OR STEEL; PLATES, RODS, ANGLES, SHAPES, SECTIONS, TUBES AND THE LIKE, PREPARED FOR USE IN STRUCTURES, OF IRON OR STEEL			
7308 10	-	Bridges and bridge-sections :			
7308 10 10	---	Portable bridge	u	15%	-
7308 10 90	---	Other	u	15%	-
7308 20	-	Towers and lattice masts :			
	---	Towers, whether or not assembled :			
7308 20 11	----	For transmission line	u	15%	-
7308 20 19	----	Other	u	15%	-
7308 20 20	---	Lattice masts	u	15%	-
7308 30 00	-	Doors, windows and their frames and thresholds for doors	u	15%	-
7308 40 00	-	Equipment for scaffolding, shuttering, propping or pit-propping	u	15%	-
7308 90	-	Other :			
7308 90 10	---	Beams, channels, pillars and girders prepared for use in structures	u	15%	-
7308 90 20	---	Drop rods	u	15%	-
7308 90 30	---	Hatchway, rails and bulkheads for ships or boats and parts of hull	u	15%	-
7308 90 40	---	Galvanised tension bars	u	15%	-
7308 90 50	---	Structures and super structures for mining	u	15%	-
7308 90 60	---	Truss rods	u	15%	-
7308 90 70	---	Tubular steel poles for electric transmission and distribution lines	u	15%	-
7308 90 90	---	Other	u	15%	-

From the above, we note that the contention of the appellant is right inasmuch as the classification adopted by the appellant (i.e., 7308 2011) and the one proposed by the Revenue (i.e., 7308 2019) for the same description as per the Customs Tariff Act, 1975; the Tariff also does not have words like electricity transmission line tower or telecom tower since it is common for both.

13. Further, even going by the definitions as provided under the Electricity Act, 2003 and the Indian Telegraph Act, 1885, 'Telegraph' means any appliance, instrument, material or apparatus used or capable of use for **transmission** of signs, signals, writings by means of wire could be termed as a transmission line. The only take away from the above definitions is that both the Electricity Act as well as the Indian Telegraph Act recognized **transmission** and hence, the allegation as to misdeclaration by the appellant has no force.

14. In view of the facts on record, that the competent authority, *viz.,* DGFT- the licensing authority has not acted on the reference (SCN) made by the Customs department to deny higher DEPB benefit claimed and availed by the Appellant for restricting the DEPB benefit as alleged in the reference, we have no hesitation to hold that the

proceedings initiated, that culminated in the impugned Order is wholly mis-conceived and hence unsustainable. Though we intend allowing the Appeal on this ground alone, we feel it appropriate to record our observations in respect of other issues which were stoutly contested by the Ld. Counsel for the Appellant during the course of hearing.

15. In terms of Section 51 of the Act, the Proper Officer will permit clearance and loading of goods for exportation if the Duty assessed had been paid. In all the cases covered by the 564 Shipping Bills, Let Export Orders had been issued only after being satisfied with the assessment, needless to say that the Let Export Orders have been passed by the Proper Officers in discharge of their quasi-judicial functions. Hence, as rightly contended by the Counsel for the Appellant, if the Commissioner, on review, found the Order improper, he could have exercised the revisionary power vested in him under Section 129D of the Act and directed the lower adjudicating authority to file an appeal to Commissioner (Appeals) with a prayer for setting aside the LEOs. However, in these cases, the Respondent took up *suo moto* revision, which has no sanction of law. Further, it is all the more relevant to observe here, as rightly argued, that the Respondent had not quoted any statutory provision for cancelling the LEOs. A Co-ordinate Bench of

CESTAT in the case of Axiom Cordages Limited Vs CC, Nhava sheva-II, reported in (2023) 4 Centax 120 (Tri. -Bom.), *vide* Para 10, has made this statutory position clear.

16. We now take up the direction for re-assessment under Section 17 of the Act. The period involved in this case is both prior to and post 08.04.2011 on which date, self-assessment was introduced and necessary changes were made in Section 17 of the Act to align with the self-assessment procedure. In terms of Section 17 (4) of the Act as it stood prior to 08.04.2011, the export goods already permitted for assessment to Duty could be subjected to re-assessment while examining the goods. On and from 08.04.2011, consequent to introduction of self-assessment procedure, Sub-section(4) of Section 17 of the Act empowered the officer to re-assess duty only if self-assessment was not done correctly, and as per Sub-section (5) of Section 17 of the Act, if the re-assessment under Section 17 (4) of the Act is contrary to the self- assessment or in cases where the exporter does not agree with re-assessment, then the proper officer shall issue a speaking order within 15 days from the date of re-assessment. It goes without saying that in both the cases, LEOs will be issued only after re-assessment. Thus, it is clear from the provisions of Section 17 of the Act that re-assessment envisaged therein related to 'export

goods' prior to export and not after export. Therefore, the Respondent clearly exceeded in his jurisdiction in ordering re-assessment of goods which was already exported.

17. Our conclusions above find support from the decision of Co-ordinate Mumbai Bench of CESTAT in *Bimal P. Shah Vs CCP, Mumbai 2025 (394) E.L.T 523,* wherein identical issues arose for consideration. Though the case pertained to import of goods, the conclusions arrived at therein equally apply to the facts of this case. The relevant portions of the decision are extracted below: -

> *"15.1 The importer-appellant has placed the argument that in case of self-assessment of the Bill of Entry, the only recourse available to the department for contesting the said assessment, is by way of filing of appeal under Section 128 of the Act of 1962, before the Commissioner (Appeals), which aspect, admittedly has not been complied with by the department in this case. Thus, it has been submitted that the assessment complete in all respects, cannot be re-opened by the department for confirmation of the duty demand on the importer. In this context, the importer-appellant has relied upon the judgement delivered by the Hon'ble Supreme Court, in the case of ITC Ltd., Vs. CCE, 2019 (368) E.L.T. 216 (SC). We have examined the statutory provision contained in Section 17 of the Act of 1962. Sub-section (1) in said Section 17 has provided for self-assessment of the duty leviable on the imported goods. The self-assessment so made by the importer, can be verified by the department under sub-section (2) and/or sub-section (3). If on verification, the proper officer found that the self-assessment has not been done correctly by the importer, then he may re-assess the duty leviable on such goods and for such purpose, he should pass a speaking order, as contemplated under sub-section (5). We find that in the present case, the department has not taken recourse to the provisions contained in sub-section (2), (3) and (4) of said Section 17. Thus, the assessment done by the importer under sub-section (1) has attained finality and cannot be re-opened by the department. For re-opening the self-assessed bill of entry, the only recourse left to the department is for filing an appeal against such self-assessment, which apparently has not been done in the present case. Thus, the department has precluded from re-opening the already assessed bill of entry*

for confirming the additional duty demand, on the ground that the goods imported by the importer-appellant were not 'the parts of LED TVs', but 'LED TVs' themselves. The law with regard to filing of appeal against the self-assessed bill of entry is no more res integra, in view of the judgement delivered by the Hon'ble Supreme Court in the case of ITC Limited (supra). The relevant paragraphs in the said judgement are quoted herein below:

> *"**18**. It was also urged that Section 27 is a remedy available to the assessee for the refund of duty paid and Section 28 is a remedy available to the Department on the recovery of duty not levied and short levied or erroneously levied. Both the remedies can be availed without filing appeals. It was further urged that no appeal can be filed under Section 128 of the Customs Act against the bill of entry. As the scheme of assessment under Section 17 of the Customs Act is that of self-assessment and only when such a self-assessment is disputed by the proper officer, an order of assessment is passed then he may appeal to the relevant appellate authority within 60 days of the communication of the order. It is only in a situation where speaking order is passed then the assessee is required to file an appeal. Unless a speaking order of assessment is passed, no appeal can lie and the only option for refund of duty paid is to file a refund claim. The bill of entry is merely stamped to allow clearance of the goods. No reasons are provided in the bill of entry on account of which it can be regarded as an order which can be subjected to appeal under Section 128 of the Customs Act."*
>
> *……..*
>
> ***41**. It is apparent from provisions of refund that it is more or less in the nature of execution proceedings. It is not open to the authority which processes the refund to make a fresh assessment on merits and to correct assessment on the basis of mistake or otherwise.*
>
> ***42**. It was contended that no appeal lies against the order of self-assessment. The provisions of Section 128 deal with appeals to the Commissioner (Appeals). Any person aggrieved by any decision or order may appeal to the Commissioner (Appeals) within 60 days. There is a provision for condonation of delay for another 30 days. The provisions of Section 128 are extracted hereunder:*
>
>> *"128. Appeals to Commissioner (Appeals). (1) Any person aggrieved by any decision or order passed under this Act by an officer of customs lower in rank than a Principal Commissioner of Customs or Commissioner of Customs may appeal to the Commissioner (Appeals) within sixty days from the date of the communication to him of such decision or order:*
>>
>> *Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within*

the aforesaid period of sixty days, allow it to be presented within a further period of thirty days.

(1A) The Commissioner (Appeals) may, if sufficient cause is shown, at any stage of hearing of an appeal, grant time, from time to time, to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.

(2) Every appeal under this section shall be in such form and shall be verified in such manner as may be specified by rules made in this behalf."

***43**. As the order of self-assessment is nonetheless an assessment order passed under the Act, obviously it would be appealable by any person aggrieved thereby. The expression 'Any person' is of wider amplitude. The revenue, as well as assessee, can also prefer an appeal aggrieved by an order of assessment. It is not only the order of re-assessment which is appealable but the provisions of Section 128 make appealable any decision or order under the Act including that of self-assessment. The order of self-assessment is an order of assessment as per Section 2(2), as such, it is appealable in case any person is aggrieved by it. There is a specific provision made in Section 17 to pass a reasoned/speaking order in the situation in case on verification, self-assessment is not found to be satisfactory, an order of re-assessment has to be passed under Section 17(4). Section 128 has not provided for an appeal against a speaking order but against "any order" which is of wide amplitude. The reasoning employed by the High Court is that since there is no lis, no speaking order is passed, as such an appeal would not lie, is not sustainable in law, is contrary to what has been held by this Court in Escorts (supra).*

***44**. The provisions under Section 27 cannot be invoked in the absence of amendment or modification having been made in the bill of entry on the basis of which self-assessment has been made. In other words, the order of self-assessment is required to be followed unless modified before the claim for refund is entertained under Section 27. The refund proceedings are in the nature of execution for refunding amount. It is not assessment or re-assessment proceedings at all. Apart from that, there are other conditions which are to be satisfied for claiming exemption, as provided in the exemption notification. Existence of those exigencies is also to be proved which cannot be adjudicated within the scope of provisions as to refund. While processing a refund application, re-assessment is not permitted nor conditions of exemption can be adjudicated. Re-assessment is permitted only under Section 17(3)(4) and (5) of the amended provisions. Similar was the position prior to the amendment. It will virtually amount to an order of assessment or re-assessment in case the Assistant Commissioner or Deputy*

Commissioner of Customs while dealing with refund application is permitted to adjudicate upon the entire issue which cannot be done in the ken of the refund provisions under Section 27. In Hero Cycles Ltd. v. Union of India - 2009 (240) E.L.T. 490 (Bom.) = 2009-TIQL-317-HC-MUM-CUS though the High Court interfered to direct the entertainment of refund application of the duty paid under the mistake of law. However, it was observed that amendment to the original order of assessment is necessary as the relief for a refund of claim is not available as held by this Court in Priya Blue Industries Ltd. (supra).
***45**. ……*
***46**. …….*
***47**. When we consider the overall effect of the provisions prior to amendment and post-amendment under Finance Act, 2011, we are of the opinion that the claim for refund cannot be entertained unless the order of assessment or self-assessment is modified in accordance with law by taking recourse to the appropriate proceedings and it would not be within the ken of Section 27 to set aside the order of self-assessment and reassess the duty for making refund; and in case any person is aggrieved by any order which would include self-assessment, he has to get the order modified under Section 128 or under other relevant provisions of the Act."*

15.2 We also find that by adopting the judgement delivered by the Hon'ble Supreme Court in the case of ITC Ltd. (supra), the Hon'ble Punjab and Haryana High Court, in the case of Jairath International Vs. UOI, 2019 (370) E.L.T. 116 (P & H) have held as under:

*"**16**. We on examination of the scheme of the 1962 Act and in view of the judgment of Hon'ble Supreme Court in case of ITC v. CCE (supra) find that Rule 16 of Drawback Rules, 1995 is also in the nature of execution proceedings thus an officer even higher in rank than proper officer, who framed assessment at the time of export, cannot modify a shipping bill qua value and consequent entitlement of duty drawback while issuing notice or passing order under Rule 16 of the Drawback Rules, 1995. The contention of the counsel for Respondents that as per Valuation Rules, 2007 proper officer has power to re-assess value of goods even though already exported is untenable. As noted in Famina Knit Fab (supra) and hereinabove, Valuation Rules are applicable to 'export goods' and these Rules are not enabling provisions to frame re-assessment. Section 14 empowers to frame Rule to reject declared value and re-determine value of export goods. The Valuation Rules, 2007 are framed in exercise of power conferred by Section 14 of 1962 Act. Rule 1(3) and 8 of Valuation Rules permit to reject value of 'export goods'. As per definition of export goods, the goods which stand exported are not 'export goods' so Valuation Rules, 2007 are not applicable to goods already exported. Valuation Rules, 2007 would come*

into play as soon as the proper officer gets power to reassess already assessed shipping bill. Prior to 8-4-2011, it was proper officer who used to frame assessment and w.e.f. 8-4-2011 he gets first opportunity to doubt the self-assessed value at the time of export and, secondly, he may prefer an appeal before Appellate Authority. A team of Customs officers at the time of export of goods verify different particulars including value declared by an exporter. The declared value may be accepted or re-assessed and in case re-assessed value is not accepted by exporter, proper officer has to pass speaking order. Thus, as per scheme of the 1962 Act, department is not remediless and Courts are bound to interpret law as such. Courts while interpreting law can neither add nor subtract any word from the plain language irrespective of consequences. It is the legislature who has to rectify, repair or amend the law in case any judgment interpreting law is not acceptable or is contrary to intent and purport of enactment.

***17**. On plain reading of Sections 17, 50 and 51 with Valuation Rules, 2007, we find that Respondent is neither vested with power of re-assessment of goods already exported under Rule 16 of Drawback Rules, 1995 nor Valuation Rules, 2007. The goods which stand exported do not fall within ambit of 'export goods' as defined under Section 2(19) of 1962 Act, thus Respondent cannot invoke Rules 6 & 8 of Valuation Rules, 2007. In view of judgment of Hon'ble Supreme Court in the case of ITC v. CCE (supra), we find that shipping bill either self-assessed or assessed by proper officer is amenable to appeal by both sides. Respondent by way of show cause notice under Rule **16** of the Drawback Rules, 1995 cannot modify assessed shipping bill.*

***18**. Therefore, we hold that Respondent in terms of Rule 16 of Drawback Rules, 1995 as well Valuation Rules, 2007 has no power to reassess a shipping bill which was duly assessed by proper officer at the time of export of goods. In the present case, goods in question stood exported thus impugned order is not sustainable in view of our afore stated findings as well."*

15.3 Further, this Tribunal has also considered the similar aspect of filing of appeal against the assessed bill of entry and by relying upon both the above referred judgements, has held in the case of M.K. Shah and Co. Vs. Commissioner of Customs (Airport &Acc), Kolkata - (2023) 2 Centax 34 (Tri.-Cal), as under:

"8. We find that this case against the Customs Broker emanated from a case booked by DRI against the exporter. It forms the basis for this case according to the impugned order as well as both the appeals. Thus, the case booked by DRI provides the context and background to this case. In this case, the Shipping Bills were filed which were provisionally assessed after drawing samples and goods

were allowed to be shipped by the proper officer. Thus, the assessment of the Shipping Bill was not yet complete and would have been completed after tests, enquiries, etc. by the proper officer and finalization of assessment. Evidently, the proper officer himself had doubts about the consignments and drew samples and assessed goods provisionally. Before the goods could he shipped, DRI intervened and again looked into those very goods and concluded that the goods were overvalued to claim fraudulent export benefits. Assessment of Bills of Entry or Shipping Bills, including provisional assessment is a quasi-judicial process by the proper officer and the quasi-judicial order, though not a final assessment order and though not even a speaking order must be respected. Every assessment, including provisional assessment, is appealable by both the Revenue and the exporter to the appellate authority. Assessment of a Shipping Bill or Bill of Entry need not necessarily result in payment of duty. Where the proper officer needs further information or enquiries, he can resort to provisional assessment and thereafter finalise the assessment. In this case, nothing is presented before us to show that the provisional assessment order has been appealed against or modified by the Commissioner (Appeals). Therefore, the provisional assessment order of the proper officer is still valid. We do not find any provision of the Customs Act under which either a provisional assessment or final assessment can be modified by officers of DRI and a different decision taken. In the case of Jairath International v. Union of India 2019 (370) ELT 116 (P&H) this legal position was clarified by the High Court of Punjab and Haryana. In that case, goods were exported on claim for drawback. Thereafter, DRI received intelligence that the exported goods were overvalued to claim ineligible drawback. Accordingly, an SCN was issued proposing to revise the value downwards and recover the excess drawback. Relying on the judgment of the larger bench of the Supreme Court in the case of ITC Ltd. v. CCE 2019 (368) ELT 2016, the Hon'ble High Court of Punjab and Haryana held that once an assessment of a Shipping Bill is done by the proper officer, the value therein cannot be modified even by a higher officer. Relevant extract of paragraph 15 of the judgment is as follows:

> *"We on examination of the scheme of the 1962 Act and in view of the judgment of Hon'ble Supreme Court in case of ITC Ltd. (supra) find that Rule 16 of Drawback Rules, 1995 is also in the nature of execution proceedings thus an officer even higher in rank than proper officer, who framed assessment at the time of export, cannot modify a shipping bill qua value and consequent entitlement of duty drawback while issuing notice or passing order under Rule 16 of the Drawback Rules, 1995."*

In this case, assessment was provisional and not final but provisional assessment is also an assessment and

> *provisional assessment orders are often appealed against. If either the exporter or the Revenue was aggrieved by the Provisional Assessment order, the proper course would have been to file an appeal to the Commissioner (Appeals). Based on the DRI's investigation, action was taken against the appellant Customs Broker by the impugned order which are the subject matter of these two appeals."*

We also note the fact that Civil Appeals filed by the Department challenging the above order / decision were dismissed by the Hon'ble Supreme Court, *vide 2025 (394) E.L.T 451 (S.C)* thereby settling the legal issues beyond any pale of doubt.

18. As we have held above following the ratio laid down in a catena of decisions / orders that only the licensing authority- DGFT is alone competent to say whether DEPB benefit claimed and obtained by the Appellant at the rate termed as higher by the Respondent was correct or not, any decision relating to allegation of mis-declaration or intention to claim higher rate would be within the jurisdictional domain of DGFT alone. Therefore, the impugned Order of the Respondent holding that the license was obtained through mis-declaration suffers from serious legal infirmity and hence, unsustainable.

19. Before parting, we intend making some pertinent observations impinging the proceedings. The DEPB scrips issued to the Appellant can either be used by them, or in the event of the appellant choosing to sell the DEPB scrips, the

same could be used by the buyers. In cases where the scrips were sold to third parties and used by the said buyers for duty payment, Section 28AAA of the Act can be invoked to fasten liability on the exporter. But Section 28AAA of the Act was inserted in the Customs Act 1962 through Finance Act, 2012 effective from 28.05.2012. Prior to the introduction of this statutory provision, the only available option to the department was to locate the buyers of scrips for issuing demand notices. In this case, no data is available as to how many scrips were used by the Appellant and how many scrips were sold by the Appellant for use by third parties despite the SCN stating in Para 39 that it was proposed to recover inadmissible amounts of DEPB utilized by the Appellant and others. Further, exports took place during the period from Febraury-2008 to September-2011, much before the insertion of Section 28AAA of the Act effective from 28.05.2012. Therefore, in this case, in the absence of any recovery proceedings under Section 28AAA of the Act against the Appellant relating to DEPB scrips sold and utilized by third parties, no demand would survive.

20. To conclude, we hold that the Respondent lacked authority to initiate proceedings for cancellation of LEOs and re-assessment in the absence of action by the DGFT with reference to the DEPB scrips issued to the Appellant; no

reassessment order could be issued under Section 17 of the Act dehors review proceedings under Section 129D of the Act; and assessments could be reopened under Section 17 of the Act only for live consignments and not for goods that are exported. This apart, we do not find any other issue/s requiring decision or order.

21. In the result, the Appeal is allowed and the Order of the Respondent is set aside.

(Order pronounced in open court on 26.02.2026)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

MK