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

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 75353 of 2018

(Arising out of Order-in-Original No. KOL/CUS/COMMISSIONER/PORT/48/2017 dated 31.10.2017 passed by the Commissioner of Customs (Port), Custom House, 15/1, Strand Road, Kolkata – 700 001)

M/s. Usha Martin Limited **: Appellant**
24, Shakespeare Sarani,
Kolkata – 700 071

VERSUS

Commissioner of Customs (Port) **: Respondent**
Custom House, 15/1, Strand Road,
Kolkata – 700 001

APPEARANCE:

Shri Rahul Dhanuka, 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. 76019 / 2026

DATE OF HEARING: 27.07.2026

DATE OF DECISION: 05.08.2026

ORDER: [PER SHRI ASHOK JINDAL]

The appellant is in appeal against the impugned order whereby Customs duty amounting to Rs. 1,30,06,857/- came to be confirmed against the appellant under Section 28(4) of the Customs Act, 1962, together with applicable interest under Section 28AA and equivalent penalty under Section 114A, on the allegation of wrongful availment of the benefit of Notification No. 104/2009-Cus. dated 14.09.2009, as amended, by utilizing Status Holder Incentive Scrips (SHIS) for import of goods allegedly falling beyond the permissible scope of the said exemption notification.

1.1. The present proceedings are confined only to imports made under seven SHIS licences, corresponding to nine Bills of Entry, concerning certain imported goods, such as "Whims Bottom Parts", "Driving Wheels", "Gaskets" and "Spare Parts for Coke Oven Plant".

2. The facts of the case are that the appellant, namely, M/s. Usha Martin Limited, is engaged, inter alia, in the manufacture of iron and steel products including steel wire ropes, steel wires and allied products. During the Financial Years 2010-11 to 2012-13, the appellant exported goods worth Rs. 13,15,84,13,708/-. Since the appellant was accorded the status of Trading House, the appellant duly applied for SHIS as specified under Chapter 3 of FTP 2009-14 in form ANF 3E with the Jurisdictional / Regional Authority. The appellant was granted SHIS Scrips @1% of the FOB Value of the exports (i.e. Rs. 13,15,84,136/-) in terms of Para 3.16.1 of the FTP 2009-14, which were split into 18 certificates at the request of the appellant. Further, the appellant purchased 2 SHIS Certificates bearing no. 0310713657 and 0310713796 from M/s. UM Cables Ltd involving duty credit of Rs. 26,17,861/- and 16,16,952/- respectively.

2.1. It is borne out from the records that during the relevant period, the appellant effected imports under 31 Bills of Entry by utilizing duty credit available under 15 Status Holder Incentive Scrips (SHIS), issued either by the DGFT, Kolkata in favour of the appellant or validly transferred by other eligible Status Holders, while availing the benefit of Notification No. 104/2009-Cus. dated 14.09.2009, as amended. It is the case of the Revenue that in the case of 7 out of the said 15 SHIS licences, covering 9 Bills of Entry, wherein the appellant had imported goods described as "Whims Bottom Parts", "Driving Wheels", "Gaskets" and "Spare Parts for Coke Oven Plant", classifiable under CTH 84749000, 40169340 and 84179000, the goods imported constituted parts/spares/components of capital goods and duty had been debited in excess of the permissible ceiling of 10% of the value of the respective SHIS scrips, allegedly in contravention of Conditions 4(i) and 4(iii) of Notification No. 104/2009-Cus. No such violation was found in respect of the remaining licences and imports, which do not form the subject matter of the present proceedings.

3. It is the case of the appellant that during the period January, 2013 to November, 2013, it undertook substantial expansion and modernization of its manufacturing facilities, including the setting up Coke Oven Plant, Pellet Plant and modernisation of Arc Furnace, Steel Melting Shop and modernisation of Captive Power Plant required for its manufacturing operations. For the aforesaid projects, the appellant imported various capital goods by utilizing the duty credit available under the SHIS licences in terms of Notification No. 104/2009-Cus. dated 14.09.2009. The details of the goods imported using the 7 SHIS Certificates under dispute are as under: -

SHIS Certificate No. 0210172568 dated 17-01-12				
Bill of Entry	**Item Description**	**Area where utilised**	**Tariff Heading**	**Duty Debit through SHIS Certificate**
9064645 dt. 18-01-13	Set of gaskets and bushings for hydraulic cylinder	Modernisation of Steel Melting Shop	40169340	5,309
	Combined Bearing		84828000	5,342

	Pneumatic Motor (0.176779.W)		85011019	35,634
Total				**46,284**
SHIS Certificate No. 0210172571 dated 18-01-12				
Bill of Entry	**Item Description**	**Area where utilised**	**Tariff Heading**	**Duty Debit through SHIS Certificate**
9064645 dt. 18-01-13	Set of gaskets and bushings for hydraulic cylinder	Modernisation of Steel Melting Shop	40169340	1,01,056
Total				**1,01,056**
SHIS Certificate No. 0210174638 dated 29-02-12				
Bill of Entry No.	**Item Description**	**Area where utilised**	**Tariff Heading**	**Duty Debit through SHIS Certificate**
3651049 dt 28-10-13	Top Bush J5832.04.01.02	Setting up Coke Oven Plant	40169960	45,001
	Main Spring J5802.04.04.05		73209090	8,308
	Quenching Spray Pipe		73269099	2,55,470
	Driven Wheel For Pusher Car		84179000	26,18,660
	Gear Reducer For Pusher Car		84834000	4,29,458
	Coupler		84836090	5,35,865
3716641 dated 05-11-13	Water Cooled Cable (AC21/113198/8500)	Modernisation of Arc Furnace	85444292	4,22,551
Total				**43,15,313**
SHIS Certificate No. 0310713657 dated 29-10-12				
Bill of Entry No.	**Item Description**	**Area where utilised**	**Tariff Heading**	**Duty Debit through**

				SHIS Certificate
3307184 dt 18-09-13	Whims Bottom Part	Setting up of Pellet Plant	84749000	26,17,861
Total				**26,17,861**
SHIS Certificate No. 0310713796 dated 30-10-12				
Bill of Entry No.	**Item Description**	**Area where utilised**	**Tariff Heading**	**Duty Debit through SHIS Certificate**
3307184 dt 18-09-13	Whims Bottom Part	Setting up of Pellet Plant	84749000	16,16,052
Total				**16,16,052**
SHIS Certificate No. 0210184765 dated 27-12-12				
Bill of Entry No.	**Item Description**	**Area where utilised**	**Tariff Heading**	**Duty Debit through SHIS Certificate**
3651049 dt 28-10-13	Driven Wheel For Pusher Car	Setting up Coke Oven Plant	84179000	1,10,719
3307184 dt 18-09-13	Whims Bottom Part	Setting up of Pellet Plant	84749000	20,57,797
Total				**21,68,516**
SHIS Certificate No. 0210184763 dated 27-12-12				
Bill of Entry No.	**Item Description**	**Area where utilised**	**Tariff Heading**	**Duty Debit through SHIS Certificate**
9064645 dt. 18-01-13	Set Of Gaskets And Bushings For Hydraulic Cylinder	Modernisation of Steel Melting Shop	40169340	23,664
	Shock Absorber T271/2 (0.546748.Z)		84839000	10,704

9186228 dt 01-02-13	Te Board Card No.:6RX402.130 LE (893710142)	Modernisation of captive power plant	85049090	9,48,541
9298043 dated 12-02-13	Friction Plate J5802.05.02.00	Setting up Coke Oven Plant	73269099	3,72,417
9316806 dt 14-02-13	Gears Reducer For Quenching Car		84834000	5,61,150
9361003 dt 19-02-13	TM0180-A05-B05-C03-D10 Probe Dia-8M10X1	Setting up of Pellet Plant	90319000	12,820
	Floating Seal Ring For Bearing	Modernisation of blast furnace /2	40169330	85,849
	Yaskawa Varispeed (CIMR-HB4A0112)		85030090	49,633
9519058 dt 08-03-13	Floating Seal Ring For Bearing	Modernisation of blast furnace /2	40169390	54,418
	Hydraulic Cylinder (434827002)	Setting up of Pellet Plant	84122100	22,579
Total				**21,41,775**

4. The appellant asserts that the aforesaid goods constituted capital goods and/or accessories used in the modernization and installation of its manufacturing facilities and relied upon the relevant provisions of the Foreign Trade Policy, Chartered Engineer's Certificates and other technical documents evidencing their installation and use in the manufacturing process.

5. A Show Cause Notice dated 04.11.2015 came to be issued to the appellant by the Directorate of Revenue Intelligence, Kolkata Zonal Unit, alleging that the aforesaid goods imported by utilising, wholly or partly, 7 SHIS certificates, such as "Whims Bottom Parts", "Driving Wheels", "Gaskets" and "Spare Parts of Coke Oven Plant" (hereinafter referred to as "subject goods") classifiable under CTH 84749000,

40169340 and 84179000 were neither related to capital goods imported earlier nor satisfied the conditions stipulated under Notification No. 104/2009-Cus. It was further alleged that the appellant had debited customs duty in excess of the permissible limit of 10% of the value of the original SHIS scrip, thereby contravening Paragraph 3.16.3 of the Foreign Trade Policy, 2009-14 as well as Conditions 4(i) and 4(iii) of Notification No. 104/2009-Cus., as amended. On the aforesaid basis, Customs duty amounting to Rs. 1,30,06,857/- was proposed to be recovered under Section 28(4) of the Customs Act, 1962, together with interest under Section 28AA, equivalent penalty under Section 114A; confiscation of the impugned goods under Section 111(o) of the Act was also proposed.

5.1. The appellant duly replied to and rebutted all the allegations made in the Notice vide its letter dated 05.01.2017 and appeared for personal hearing on 25.08.2017 wherein it tendered written submissions.

5.2. The matter was adjudicated by way of the impugned Order-in-Original dated 31.10.2017, wherein the ld. adjudicating authority confirmed the demand of Rs. 1,30,06,857/- under Section 28(4) of the Customs Act, 1962, together with applicable interest and equivalent penalty under Section 114A. The proposal for confiscation under Section 111(o), however, came to be dropped.

5.3. Against the said order, the appellant is before us.

6. The Ld. Counsel appearing on behalf of the appellant has put forth various submissions in support of his contentions, which are summarized below: -

A. The SHIS Certificates have been legitimately utilized by the Appellant against import of Capital goods during the relevant period and there is no violation of any terms and conditions prescribed vide Notification 104/2009 or the provisions of FTP 2009-14.

(i) At the outset, reference is invited to the definition of capital goods contained in Notification 104/2009, set out here-in-below:

> *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, modernisation, 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 plus one subsequent 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."*

(ii) Para 9.12 of FTP 2009 – 14 defines the term capital goods in an identical manner. While the term accessory has not been defined under Notification 104/2009, the same has been defined under FTP 2009-14 as under:

> *"Para 9.2 of FTP 2009-14*
>
> *"Accessory" or "Attachment" means a part, sub-assembly or assembly that contributes to efficiency or effectiveness of a piece of equipment without changing its basic functions*

(iii) Thus, it is evident that the definition of capital goods is of a wide import and inter-alia includes plant, machinery equipment or accessories which are directly or indirectly required in the manufacturing or production process, including those required for replacement, modernization, technological upgradation or expansion. By virtue of the expression 'accessories', the definition of capital goods has been further enlarged to even include parts, sub-assembly or assembly which contributes to efficiency or effectiveness of a piece of equipment without changing its basic functions. Reference in this regard is invited to judgment of this Tribunal in the case of *CC (Port) vs M/s Cosmic Ferro Alloys Limited [2024 (8) TMI 674]* has observed at para 11.2 and 11.3 that the definition of capital goods is wide enough to include 'spares/part of capital goods' and the restriction of 10% is only with respect to import of components, spares/parts of capital goods imported earlier. It is humbly submitted that such an interpretation advances the objective of SHIS

Scheme as discernible from para 3.16.1 of FTP 2009-14 i.e. promote investment in upgradation of technology in as much as a contrary view would lead to absurdity and would imply that while import of components, spares/parts of capital goods imported earlier is allowed upto a limit of 10% of the value of scrips, import of spares/part of capital goods (not imported earlier) towards upgradation of technology is not permitted. Reference in this regard is invited to judgment of the Hon'ble Supreme Court in the case of *Government of Kerala vs. Mother Superior Adoration Convent [2021 (376) ELT 242 (SC)]* beneficial exemptions are to be construed in accordance with the objective sought to be advanced.

(iv) Further, reliance is placed on the following judgments to substantiate that the definition of "capital goods" under Notification No. 104/2009 is of a wide import:

- *M/s. La Opala RG Limited Vs. Commissioner of Customs (Port) Kolkata [2025 (5) TMI 1735 - CESTAT KOLKATA]*
- *M/s. Jindal Stainless Ltd. Vs. Commissioner of Customs (Port), Kolkata [2025 (3) TMI 855 - CESTAT KOLKATA]*
- *Sree Rayalaseema Hi-Strength Hypo Ltd. Vs. C.C. (Export), Chennai [2016 (333) E.L.T. 360 (Tri. - Chennai)]*
- *CCE, BBSR-I Vs. Indian Charge Chrome Limited [2009 (246) E.L.T. 430 (Tri. - Kolkata)]*
- *Indian Charge Chrome Ltd. Vs. CCE & CUS., BBSR – I [2008(228) ELT 55(Tri. - Kolkata)]*

(v) Furthermore, reliance is also placed on the following judgments to substantiate that the identical definition of "capital goods" as appearing under FTP 2009-14 is of a wide import:

- *Ratnamani Metal and Tubes Limited Versus Commissioner of Customs, Mundra [2022 (9) TMI 1170]*
- *Asia Power Projects Limited vs. Commissioner of Customs, Chennai [2019 (370) ELT 477 (Tri. Chennai)]*
- *GE India Technology Centre vs. Commissioner of Customs [2009 (247) ELT 402 (Tri. Bangalore]*
- *Warburg Pincus India Pvt. Limited vs. Commr. of Cus. (Imports), Mumbai [2017 (358) ELT 1250 (Tri. Mumbai)]*

(vi) In the facts of the present case, the 7 SHIS certificates in dispute have been legitimately utilised by the Appellant for the import of capital goods for setting up and modernisation of various plants, including the Coke Oven Plant, Pellet Plant, Arc Furnace, Steel Melting Shop, Blast Furnace and captive power plant which were key plants/machinery required for manufacture of final products. The impugned order at para 5 states that items imported by the Appellant were parts of machineries for sorting and screening and parts of ovens and furnaces and parts of transformer/inductors, respectively. Therefore, applying the ratio of judgment of this Hon'ble Tribunal in the case of *Cosmic Ferro Alloys Limited (supra),* it is submitted that the goods imported by the Appellant would be eligible for benefit of exemption under Notification No. 104/2009.

(vii) In so far as 10% restriction is concerned, the same applies only to the import of components/spares of capital goods imported earlier, and not to fresh import of capital goods (including accessories) by utilising SHIS. It is an admitted fact that the goods imported by the Appellant did not pertain to capital goods imported earlier and therefore, there is no violation of Notification No. 104/2009.

(viii) Notwithstanding the above and in any event, the goods under dispute would be covered by the expression accessories. The impugned order at para 16 has allegedly observed that the items imported by the Appellant do not have any independent and individual function. The said observation further bolsters the contention of the Appellant that items imported by the Appellant were in the nature of accessories in as much as the same contributed to efficiency or effectiveness of the various plants/machinery where they were used without having its own independent or individual function. Merely describing the imported goods as "parts" in some cases, does not exclude them from the scope of capital goods. The contention of the revenue that only "specialised parts" are covered is without any basis, as no as such distinction exists under the FTP 2009-14.

B. Tariff Classification of the some of the imported items as 'parts' would not ipso facto exclude them from the scope of capital goods if the same is otherwise covered by the definition of capital goods

(i) In this regard, it is submitted that "capital goods" under Notification No. 104/2009 is broad and does not exclude parts, components or spares from its ambit. Further, neither the FTP 2009-14 nor the Notification No. 104/2009 prescribes customs tariff classification as the benchmark for determining whether imported goods qualify as capital goods. The said contention finds supports from the fact that definition of "capital goods" under Rule 2(a) of the CENVAT Credit Rules, 2004 (hereinafter referred to as "CCR, 2004") expressly includes goods falling under Chapters 82, 84, 85, 90 and Heading 6805, thereby covering parts of machinery as well. Thus, tariff classification of the some of the imported items as 'parts' by the Appellant would not ipso facto exclude them from the scope of capital goods if the same are otherwise covered by the definition of capital goods.

C. The entire demand is barred by limitation as the Department has failed to establish alleged suppression and misrepresentation in the instant case, and consequently, the Department cannot impose penalty under Section 114A.

(i) Without prejudice to the foregoing submissions, the Appellant submits that import of subject goods were made during the period January 2013 to November 2013, whereas the Notice has been issued on 04.11.2015 (received on 07.11.2015) invoking extended period under Section 28(4) of the Act.

(ii) In this regard, it is humbly submitted that the extended period of limitation under Section

28(4) and penalty under Section 114A can only be invoked when any duty has not been levied, short-levied or erroneously refunded by reason of collusion, wilful misstatement or suppression of facts on the part of the importer or exporter. In the absence of any such ingredient, the invocation of the extended period and imposing penalty under Section 114A of the Act is not permissible in law. The expression "suppression" implies a deliberate failure to disclose information which one is legally required to furnish, and the burden to establish such mala fide intent lies upon the Department, as held by the Hon'ble Supreme Court in the case of *Uniworth Textiles Ltd. v. CCE [2013 (288) ELT 161]*

(iii) In the facts of the present case, the impugned order observes at para 43 that the Appellant itself declared the goods imported by it as parts and spares. Moreover, the SHIS Scrips were duly presented to the Customs officer at the time of import as required in terms of condition no. 3 appended to Notification No. 104/2009. In spite thereof, the impugned order alleges that the Appellant suppressed the actual nature of goods imported.

(iv) Thus, it is quite evident that the allegation of suppression is wholly unsustainable in as much as the Revenue was in complete know of things and thus the Revenue has failed to discharge its burden.

D. Impugned Order is bad in law and ex-facie illegal in so far as the show cause notice has not been adjudicated within the time limit prescribed under Section 28(9) of the Customs Act

(i) In this regard, it is submitted that in terms of Section 28(9) of the Act, it is mandatory for Adjudicating authority to adjudicate show cause notice issued within six months (in case of normal period of limitation) and within one year (in case of extended period of limitation) from the date of notice. In facts of the present case, the show cause notice was issued on 05.11.2015 and the order was passed on 31.10.2017, i.e. after the expiry of one year as prescribed in Section 28(9) of the Customs Act. Therefore, the impugned Order has been passed in clear violation of Section 28(9) of the Customs and hence, liable to set aside.

(ii) Reference in this regard is invited to the following cases:

- *Swatch Group India Pvt. Ltd. vs. Union of India [(2023) 10 Centax 5 (Del. HC)]*
- *Redtech Network India Private Limited Vs. CST, Kolkata [2025 (3) TMI 1186- CESTAT KOLKATA]*

E. The Appellant has never admitted before the DRI, during investigation, that the goods imported were not capital goods

(i) In this regard, it is submitted that the Appellant never admitted that the goods so imported are parts and not capital goods. The Appellant merely stated that certain goods imported under the SHIS certificates were described as "parts" in the tariff. Accordingly, the observation that the Appellant admitted before the DRI that the imported goods were parts and not capital goods is factually incorrect and wholly unsustainable.

F. Impugned order is unsustainable since no appeal has been filed against Bills of Entry, which is an appealable order

(i) It is a settled principle that self-assessed bill of entry is an order of assessment and is an appealable order under Section 128 of the Customs Act. Hence, a demand cannot be made sans any challenge to the bill of entry. Reliance in this regard is placed on the decision of Supreme Court in the case of *ITC Ltd. Vs. CCE, Kolkata-IV [2019(368) E.L.T. 216 (S.C.)].* Therefore, based on the principle laid down in the above judgement, it is most humbly submitted that the impugned order is bad in law and cannot be sustained since the bill of entries claiming exemption under Notification No. 104/2009 was not challenged by the Revenue.

G. There is no requirement that the accessories have to be imported along with the plant or machinery to qualify for benefit of Exemption Notification No. 104/2009

(i) Exemption Notification No. 104/2009 nowhere stipulates that accessories have to be imported along with the plant or machinery to which they pertain. The only exception pertains to components/spares of earlier imported capital goods, which is not the case in the instant matter. If the contention of Revenue were to be accepted, it would lead to absurd results and defeat the very objective of the SHIS Scheme, i.e., promoting technological upgradation. It cannot be the legislative intent to allow import of capital goods only in single consignments while denying the benefit for larger capital goods imported in multiple consignments. Reliance in this regard is placed on the judgment of CESTAT Chennai in the case of *CC, Chennai Vs. M/s. JSW Steel Ltd. [2016 (340) E.L.T. 262 (Tri. - Chennai)].*

<u>H. The Appellant was not required to furnish any undertaking as stipulated in terms of Condition 5A of Notification No. 104/2009</u>

(i) It has been alleged in the impugned order that the Appellant did not furnish the undertaking as stipulated in terms of Condition 5A of the Notification No. 104/2009, thereby contravening the conditions of Notification No. 104/2009 and which further confirms the evasive intent of the Appellant. In this regard, reference is invited to Condition 5A of Notification No. 104/2009, set out here-in-below for ease of reference:

> *"That the components and spares and parts, for capital goods imported earlier, imported against the said scrip shall be meant for use in the capital goods already*

> *imported and subject to actual user condition and the importer at the time of clearance of the said components and spares and parts, shall furnish an undertaking to this effect to the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, that in case of non-compliance of the said condition, he shall pay on demand an amount equal to the duty leviable, but for the exemption contained herein together with interest at the rate of fifteen percent per annum from the date of clearance of the said materials"*

(ii) From a plain reading of the aforesaid, it is evident that the requirement of furnishing an undertaking arises only in cases involving import of components, spares or parts of capital goods imported earlier. In the present case, it is the Revenue's own admission that the subject goods imported does not pertain to capital goods imported earlier. Therefore, there was no obligation whatsoever to furnish an undertaking under Condition 5A of Notification No. 104/2009. Consequently, the allegation of non-compliance is misconceived, baseless and devoid of merit.

6.1. In view of the submissions hereinabove, the Ld. Counsel for the appellant prayed that the impugned Order-in-Original be set aside and the appeal be allowed with consequential relief(s), if any, in accordance with law.

7. On the other hand, the Ld. Authorized Representative of the Revenue reiterated the findings in the impugned order.

8. Heard the parties and considered their submissions.

9. After hearing the parties, we find that the short issue involved in this matter is: whether the goods, namely, Gaskets, Bushings, Bearings, Gear Reducer for Pusher Car, Main Spring, Whims Bottom Parts, Shock Absorbers, Gear Reducer For Quenching Car, etc., imported by the appellant, shall be covered as "capital goods" under Notification No. 104/2009-Cus. dated 14.09.2009, or not.

10. We find that in the said Notification, an Explanation has been provided, which defines "capital goods" as under: -

> *"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 up gradation 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."*

10.1. On going through the said definition, we find that the same covers all the items in question being accessories required for modernization of the plant of the appellant.

11. It is a fact that the appellant has utilized their Status Holder Incentive Scrips (SHIS) for import of the said goods. Further, the said goods have been imported by the appellant for modernization of their plant. These facts are not in dispute. Whereas the Revenue's case is that the said goods imported by the appellant are spares/parts and that as per the Explanation provided in the said Notification, the appellant can import the said spares/parts up to 10% of the duty scrip amount in their SHIS scrips.

12. We find that the issue as to whether the impugned goods are capital goods or parts thereof has already been examined by this Tribunal in the case of *M/s. Ratnamani Metal and Tubes Limited v. Commissioner of Customs, Mundra [2022 (9) TMI 1170]* wherein the facts of the case are that the appellant purchased a 'Complete Used Stainless Steel Tube Manufacturing Plant' including parts, spares, accessories, tools and tackles thereof and office related furniture and equipment. The Revenue was of the view that the said parts, spares, accessories, tools and tackles were not capital goods. In such circumstances, the Tribunal examined the issue and observed as under: -

> *"5. We have carefully considered the submissions made by both the sides and perused the records. We find that there is no dispute to the use of the subject second hand office furniture/equipment in relation to the manufacturing of goods and hence the subject goods are part of complete stainless steel tube manufacturing plant. The authorities below have nevertheless taken a view that the said goods are not required for manufacture or production of goods and therefore not capital goods in terms of para. 09.08 of Foreign Trade Policy 2015-2020. The said view of the authorities below is bereft of any rational. If the said goods are part of the complete plant and its use in relation to the manufacturing of*

goods is not disputed, they are indeed required directly or indirectly in manufacturing of goods.

6. Upon perusal of the purchase agreement dated 14.10.2019 between the appellant and the seller namely SN Aussenhandel E.K. Germany "used office furniture/equipment" formed part of "Complete Used Stainless Steel Tube Manufacturing Plant". The scope of used tube manufacturing plant under the said agreement, in terms of para. V, included all equipment from its location and further the said office furniture/equipment is listed at sr. 17 of the chartered engineer's certificate dated 28.07.2020. In that view office related furniture/equipment indeed formed part of the said complete plant. Since the said goods formed part of the complete plant and since there is no dispute as to use of the said goods for manufacture or production of stainless steel tubes; it follows that such goods are definitely required directly or indirectly for or in relation to manufacture or production of goods.

7. In this regard, it would be useful to refer to the definition of capital goods as provided in para. 9.08 of Foreign Trade Policy which is reproduced as under:

> *"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, modernisation, technological up-gradation or expansion. It includes packaging machinery and equipment, refrigeration equipment, power generating sets, machine tools, 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.*

It is clear from the above definition of capital goods that any plant, machinery, equipment or accessories required for manufacture or production, either directly or indirectly, of goods would fall within the *scope of capital goods. The scope of word "for manufacture" and "indirectly appearing in the definition of capital goods under the policy is wide and thus use of such goods having indirect nexus with the manufacture or production of goods also qualify as capital goods. This view is supported by the following decisions of Tribunal:*

(i) Asia Power Projects Limited vs. Commissioner of Customs, Chennai - 2019 (370) ELT 477 (Tri. Chennai)

(ii) GE India Technology Centre vs. Commissioner of Customs 2009 (247) ELT 402 (Tri. Bangalore)

(iii) Warburg Pincus India Pvt. Limited vs. Commr. of Cus. (Imports), Mumbai 2017 (358) ELT 1250 (Tri. Mumbai)

8. The ratio of the above decision is that the office furniture, tools etc which are used in relation to the manufacturing plant/services answers "user test" and in view of the wide and inclusive definition of "capital goods" under the Foreign Trade Policy, such goods qualify as "capital goods".

9. Since the subject goods qualify as capital goods in terms of para. 2.31 Sr. No. I (c) of the Policy as discussed herein above; the import was in accordance with the policy. In the circumstances, I am of the clear view that the said goods cannot be held to be liable for confiscation under Section 111(d) of the Customs Act 1962, Consequently, neither redemption fine under section 125 of the Act was warranted nor penalty under Section 112 (a) of the Act was required to be imposed, hence the same cannot be sustained."

12.1. Further, we find that the same issue had also come up before this Tribunal in the case of *Commissioner of Customs (Port), Kolkata v. M/s. Cosmic Ferro Alloys Ltd. [2024 (8) TMI 674 – CESTAT, Kolkata]* wherein this Tribunal observed as under: -

"10. Heard the Ld. Authorized Representative for the Revenue and perused the appeal documents.

11. We observe that the issue to be decided in instant appeal is whether the goods imported by the Respondent vide 10 Bills of Entry are "Spares/Parts' or 'Capital Goods' and whether the Respondent is eligible for the benefit of the Notification No. 104/2009-Customs dated 14-09-2009, amended by Notification No. 42/2012-Customs dated 22-06-2012.

11.1. From the impugned order, we observe that the importer has debited the duty payable for the goods imported, from 3 (three) Status Holder Incentive Scrips (SHIS) and availed the benefit of the Notification No. 104/2009-Customs dated 14-09-2009, as amended. However, Revenue alleged that the Respondent is not entitled for the benefit of the said Notification as they failed to comply with the conditions laid down in the said Notification. The allegation of the Revenue is that the imports are neither related to 'Capital goods imported earlier' nor are 'Capital goods' themselves. and hence cannot be imported under SHIS license by claiming the benefit of exemption given by the said Notification ibid

11.2. We observe that the goods imported are squarely fitting within the definition of 'Capital Goods' as defined in the FTP (2009-14) and Notification104/2009-Customs dated 14-09-2009, as amended. We observe that the definition of 'Capital Goods' is wide enough to cover the imported 'spares/parts of capital goods'. For the sake of ready reference, the definition of "Capital goods" as defined in FTP (2009-14) is reproduced below:

> *"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 up gradation 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."*

> *11.3. We observe that the goods imported by the Respondent are not merely spares/parts as alleged in the Notice. They are 'Capital Goods' as defined in the policy which is reproduced above. Further, we observe that the restriction of 10% is only with respect to import of components, spares/parts of capital goods imported earlier. Thus, import of capital goods (including accessories thereof) which have not been imported earlier, can be imported by utilizing SHIS without any restriction. The import of Parts/Spares/Components in the form of Roller Sets", "Spacers", "Spares for Cold rolling Mills" & "Blades for slitting Machines" falling under Customs Tariff Item Nos. 84559000 & 82089090 respectively come under the ambit of definition of "Capital Goods", which are to be used in the setting up "Cold Roll Forming Mill Lines" for manufacture of 'Engineering goods'. In this regard, we observe that the Respondent has submitted Chartered Engineer's Certificate explaining the use of the imported spares/parts in the plant."*

12.2. Again, in the case of *M/s. Jindal Stainless Ltd. Vs. Commissioner of Customs (Port), Kolkata [2025 (3) TMI 855 - CESTAT KOLKATA]* this Tribunal examined the said issue and held that Work Rolls used in metal rolling mills are 'capital goods' covered within the definition provided under Notification 104/2009-Cus. dated 14.09.2009.

12.3. In the case of *M/s. La Opala RG Limited Vs. Commissioner of Customs (Port) Kolkata [2025 (5) TMI 1735 - CESTAT KOLKATA]* the same issue has once again been examined. This Tribunal in the said case held that crucible pots, pot rings, abrasive belts, PVA wheels, bevelling cones and refractories are 'capital goods'.

13. In these circumstances, by following the decisions of this Tribunal cited hereinabove, we hold that all the items imported by the appellant are not spares/parts but are 'capital goods' covered under Notification No. 104/2009-Cus. dated 14.09.2009.

14. Therefore, we hold that the appellant has correctly availed the benefit of Notification No. 104/2009-Cus. dated 14.09.2009 for import of the said goods. In view of this, no demand of duty is sustainable against the appellant and consequently, no penalty can be imposed on them.

15. Accordingly, we do not find any merit in the impugned order, qua confirmation of the demand of duty, along with interest and imposition of penalty against the appellant, and therefore the same is set aside to this extent.

16. In these terms, we allow the appeal, with consequential reliefs, if any.

(Order pronounced in the open court on **05.08.2026**)

Sd/-
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd