

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST ZONAL BENCH : AHMEDABAD
REGIONAL BENCH - COURT NO. 3**

CUSTOMS Appeal No. 10027 of 2019-DB

[Arising out of Order-in-Appeal No CCESA-SRT-APPEALS-PS-326-327-2018-19 dated 31.08.2018 passed by Commissioner (Appeals) Excise, Customs and Service Tax-SURAT-I]

Sterling Generators Pvt Limited (EOU)

.... Appellant

Survey No 59, 343/1, Village- Kala, Kherdi,
Khanvel, SILVASSA
DADRA & NAGAR HAVELI

VERSUS

Commissioner CGST & Central Excise, Surat

.... Respondent

Surat Commissionerate
3rd Floor, Magnnus Mall, Althan Bhirad, Canal Road,
Near Atlantas Shopping Mall, Althan, Surat -395017

AND

CUSTOMS Appeal No. 13038 of 2018-DB

[Arising out of Order-in-Appeal No CCESA-SRT-APPEALS-PS-326-327-2018-19 dated 31.08.2018 passed by Commissioner (Appeals) Excise, Customs and Service Tax-SURAT-I]

Nagendra Singh

.... Appellant

Authorised Signatory, M/s. Sterling Generators
Pvt. Limited Survey No 59, 343/1, Village-
Kala, Kherdi, Khanvel, SILVASSA
DADRA & NAGAR HAVELI

VERSUS

Commissioner CGST & Central Excise, Surat

.... Respondent

Surat Commissionerate
3rd Floor, Magnnus Mall, Althan Bhirad, Canal Road,
Near Atlantas Shopping Mall, Althan, Surat -395017

APPEARANCE :

Shri Manish Jain, Advocate for the Applicant
Shri Girish Nair, Assistant Commissioner (AR) for the Respondent

CORAM:

**HON'BLE DR. AJAYA KRISHNA VISHVESHA, MEMBER (JUDICIAL)
HON'BLE MR. S.V. SINGH, MEMBER (TECHNICAL)**

DATE OF HEARING : 28.04.2025

DATE OF DECISION: 26.06.2025

FINAL ORDER NO. 10504-10505/2025**MR. S V SINGH :**

Appellants are 100% EOU and engaged in the manufacture of Diesel Generating sets falling under Chapter 85 of the Central Excise Tariff Act, 1985. They were granted license under Section 58 of the Customs Act, 1962 as private bonded warehouse and permission to manufacture in bond under Section 65 of the said Act. They have executed B-17 bond of Rs. 20 Crores with the department for the same.

2. During audit of their records, CERA, Ahmedabad observed that the unit has imported/ procured DG sets from SEZ unit as well as from M/s. Powerica Limited, a 100% EOU based at Bangalore. Their objection was that the appellant has been granted Letter of Permission (LoP) for manufacturing of DG sets whereas they have imported/ procured DG sets and sold them without undergoing any authorized manufacturing activity. Although, the Letter of Intent (LoI) permits indigenous procurement/ import of DG sets for re-engineering purpose. An EOU needs approval of BOA for carrying out any re-engineering activity as per the policy and merely mentioning of "re-engineering" in the LoI does not make it a permissible activity for an EOU.

2.1 Based on the observations of CERA, the department has issued show cause notice dated 10.01.2014 alleging violation of the conditions of Notification No. 52/2003-Cus dated 31.03.2003 and Notification No. 22/2003-CE dated 31.03.2003 and evasion of Customs as well as Central Excise duty. Vide this show cause notice, Customs duty of Rs. 1,03,72,366/- was demanded from them alongwith interest and penalty under Section 112(b) (ii) read with Section 114A of the Customs Act 1962 besides proposal for confiscation of DG sets so imported, valued at Rs.

4,81,92,702/-under Section 111 of said Act. The Central Excise duty equal to aggregate of Customs duty amounting to Rs. 18,33,541/- was also demanded under Section 11A(4) of Central Excise Act, 1944 alongwith interest on domestic procurement of DG sets. Besides confiscation of domestically procured DG sets valued Rs. 105,65,400/- from M/s. Powerica Limited under Rule 25 of the Central Excise Rules, 2002, imposition of penalty under Rule 25 of the Central Excise Rules, 2002 and under Section 11AC of Central Excise Act, 1944 was also proposed. The show cause notice also proposed penalty on Shri Nagendra Singh, authorised signatory of the appellant under Section 112 of the Customs Act, 1962 and Rule 26 of the Central Excise Rules, 2002.

2.2 This show cause notice was decided by the adjudicating authority vide order dated 20.01.2017 wherein he confirmed the demand of Customs duty alongwith applicable interest and imposed equal penalty under Section 112(b)(ii) of the Customs Act, 1962 read with Section 114A of the said Act. He, however dropped the demand of Central Excise duty and proposal of confiscation of both imported as well as domestically procured DG sets. He imposed a penalty of Rs. 5,18,618/- on Shri Nagendra Singh, Authorised Signatory of the appellant, under Section 112 of the Customs Act, 1962.

2.3 Aggrieved with the above order, the appellant filed appeal before the Commissioner (Appeals), Surat who vide impugned order dated 31.08.2018 upheld the order-in-original passed by lower authority and rejected the appeals filed by the party as well as of Shri Nagendra Singh, authorised signatory. Hence, the present appeals.

3 In appeal filed on 11.12.2018, the appellant took the following grounds:-

(a) The impugned order confirming demand in respect of Customs duty is passed beyond the show cause notice which does not allege that the reimported goods are brought back beyond period of one year.

(b) DG sets (3 in number) have been imported based on procurement certificate issued by the jurisdictional Central Excise officers, Range V, Division – Silvassa III and on the invoice No. 002 dated 24.11.2009 issued by SEZ Biotech Services Pvt. Limited which clearly describes the imported DG sets, as **“rejected DG sets** received under supplier’s invoice No. 10104 to 10108”.

(c) The delay in re-importation beyond the period of one year is a procedural violation. In the context of similarly worded earlier notification, CBEC has permitted re-import of goods vide Circular No. 60/99-Cus dated 10.09.1999. This circular does not provide any time limit, therefore, one year time limit is only procedural. Reliance is placed on the decision in the case of *KAR Mobiles Limited vs. Commissioner – 2006 (206) ELT 198 (Tri.)* which was further upheld by Apex Court reported as 2007 (207) ELT A97 (SC).

(d) No action can be taken by the Customs Authorities without the Development Commissioner first taking any action. They relied upon the following case laws:-

- (i) Premier Granites Limited vs. CC - 2000 (122) E.L.T. 220
- (ii) Vishal Footwear vs. CC - 1999 (114) E.L.T. 60
- (iii) ABN Granites vs. CC - 2001 (133) E.L.T. 483

(e) No duty can be demanded against the EOU as the goods are deposited in warehouse and the duty can be demanded only at the time of de-bonding. Following case laws are relied upon:-

- (i) CC vs. Infosys Technologies Limited 2003 (159) E.L.T. 863 (Tri. Bang.)
- (ii) Ceeta Industries Limited. vs. CC [2004 (165) E.L.T. 333]
- (iii) Asian Latex Limited. vs. CC [2002 (148) E.L.T. 1229]
- (iv) Laskmi Cement vs. CEGAT [1995 (75) E.L.T. 474]
- (v) Yuil Measure (I) Limited. vs. CC [1999 (105) E.L.T. 181]
- (vi) Alankar & Company. vs. CC [2002 (145) E.L.T. 78]
- (vii) Banwarilal vs. CC [2000 (122) E.L.T. 383]

(f) As per Board's Circular No.122/95-Cus dated 28.11.2005, in the matter involving interpretation of statutory provisions or the policy provisions or the scope of notification, department can issue a show cause notice only after referring the matters to CBEC. According to the Board Circular 21/95-Cus. Dated 10.03.1995, the department can issue show cause notice to EOU only on clandestine removal/ non-accountal/ disappearance of goods and the like.

(g) The entire demand is beyond the normal period of limitation and therefore not maintainable. They have re-imported rejected DG sets on 09.12.2009 whereas the show cause notice was issued on 10.01.2014 which is beyond the normal period of limitation. They have regularly filed the ER returns and clearly reflected receipt of DG sets from SEZ as raw materials. The department has not alleged any discrepancy in the statutory records maintained by them. In the following cases, it has been held that where demand is based on

statutory records maintained by the assessee, it cannot lie beyond the normal period of limitation:-

- (i) ITI Limited vs. CCE-2001 (45) RLT 163 (T)
- (ii) Bharat Heavy Electricals vs. CCE-1997 (18) RLT 573 (T)
- (iii) DCM Engineering vs. CCE-2002 (147) ELT 820 (T) - Maintained by Supreme Court at 2003 (153) ELT A301 (SC)
- (iv) Pranav Vikas (I) Limited vs. CCE-2002 (148) ELT 963 (T)
- (v) Asoka Spintex vs. CCE- 2004 (171) ELT 59 (T)
- (vi) IOC vs. CCE- 2003 (55) RLT 732 (T)
- (vii) Air Carrying Corporation vs. CCE - 2008 (229) ELT 80 (T) - Approved by Hon'ble Bombay High Court at 2009 (248) ELT 175

(h) The goods cannot be confiscated under Section 111(o) of the Customs Act, 1962 as this clause is applicable only when a condition of an exemption notification is violated by the importer. In this case, there is no such violation.

(i) Penalty is not imposable under Section 114A of the Customs Act, 1962 as the ingredients required to impose penalty under this Section are not established. It has also been now settled in various cases that where an assessee has acted on bonafide belief, there can be no suppression or willful misstatement and there can be no ground for levy of penalty. They relied on the decision in the case of *Tata Engineering & Locomotive vs. CC – 1991 (56) ELT 812 (Tri.)*.

4. During hearing, learned advocate on behalf of the appellant emphasized the grounds taken by them in their appeal memo. He mentioned that they had supplied 5 DG sets to M/s. SEZ Biotech Services Pvt. Limited on 31.3.2008 out of which 3 DG sets were rejected by the buyer and sent back to them. They applied to the jurisdictional Range

Superintendent for issuance of procurement certificate on the basis of which they re-imported 3 rejected DG Sets under invoice dated 24.11.2009 of M/s. SEZ Biotech Services Pvt. Limited by filing Bill of Entry dated 09.12.2009. They availed benefit of Notification No. 52/2003-Cus dated 31.03.2003. After receiving these 3 rejected DG sets, they re-engineered them and re-assembled into special purpose DG sets as per technical specification provided by the customer and supplied the same. The learned adjudicating authority has dropped the demand of central excise duty on DG sets, procured from M/s. Powerica Limited, Bangalore which too, were re-engineered/ reassembled as per the specifications of the customer and supplied subsequently. In both the cases, DG sets so received were re-engineered and re-assembled and then supplied to the customers. As the condition in both the procurements was same, the department should have given the same treatment but the learned adjudicating authority accepted their contention in respect of domestically procured DG sets from M/s. Powerica and confirmed duty on re-imported DG sets.. Serial No. 7 of the Notification No. 52/2003-Cus. Dated 31.03.2003 permits import of raw materials without imposition of time-limit. The rejected DG sets were nothing but raw material since these on receipt, were re-engineered as per the specification of the customers.

5. Opposing the arguments, learned AR reiterated the findings of the lower authorities and emphasized that the appellant had wrongly availed exemption of duty on import of DG sets from M/s. SEZ Biotech Services Pvt. Limited. These DG sets have been reimported after the prescribed time limit of one year as per Serial No. 15 of the Notification No. 52/2003-Cus dated 31.03.2003. Therefore, the appellant are not entitled to the benefit of this notification and so duty alongwith interest has rightly been confirmed

against them alongwith penalty under Section 112(b)(ii) read with Section 114A of the Act. Regarding penalty on Shri Nagendra Singh, Learned AR high-lighted that Shri Singh has played active role in import of such goods and penalty under Section 112 of the Customs Act, 1962 has rightly been imposed on him. He placed reliance on the following cases:-

- (i) EVM Passenger Car India Pvt. Limited vs. State of Kerala reported at (2023) 13 Centax 169 (Ker.)
- (ii) R. R. Koblerr Overseas P Limited vs. CC, ICD, Tughlakabad, New Delhi reported at 2016 (333) E.L.T. 98 (Tri. - Del.)
- (iii) Union of India vs. Sterlite Industries (I) Limited - (2023) 6 Centax 3 (Mad.)
- (iv) Commissioner of Cus. (Import), Mumbai vs. Dilip Kumar & Company – 2018 (361) ELT 577 (SC)

6. We have gone through the records and heard rival submissions. The brief issue in the matter is contravention of the conditions of Notification No. 52/2003-Cus. dated 31.03.2003 and consequent demand of Customs duty on re-imported rejected DG sets from M/s. SEZ Biotech Services Pvt. Limited. The appellant contends that they had supplied 5 DG sets to M/s. SEZ Biotech Services Pvt. Limited on 27.03.2008 who rejected 3 DG sets on 24.11.2009 on the ground that these are not as per specification. Thereafter, the appellant applied to the jurisdictional Range Superintendent for issue of procurement certificate. After obtaining the said certificate on 04.12.2009, they filed Bill of Entry on 09.12.2009 with the Authorised Officer of Serum Biotech Pharma Park SEZ, Pune claiming benefit of exemption notification No. 52/2003-Cus dated 31.03.2003. Here, a question arises that when the appellant had disclosed full facts by way of enclosing the supplier's invoice alongwith Bill of Entry clearly indicating that rejected DG sets are being sent back to the supplier M/s. Sterling Generators Pvt. Limited, yet the Authorised Officer of the SEZ allowed duty free import. It

was incumbent upon him to examine whether or not conditions of the notification are satisfied in the case. Condition No. 15 of the said notification whose violation is being alleged, should have been seen when the goods were re-imported by the appellant. The department woke up in January 2014 after more than four years from the date of import and issued show cause notice after CERA raised the objection. We further find that in their ER-2 return filed for the month of February 2010 the appellant have indicated receipt of 3 DG sets against "*details of inputs and capital goods received without payment of duty*". In the instant case, we feel that there is no ground for invocation of extended period of limitation. Therefore, without further going into merits of the case, Customs duty confirmed by the lower authorities alongwith interest is held unsustainable. We set-aside the penalty imposed on the appellant under Section 112 read with Section 114A of Customs Act, 1962 and also the penalty on Shri Nagendra Singh, Authorised Signatory of the appellant under Section 112 of the Act.

6. Accordingly, both the appeals are allowed.

(Order pronounced in the open court on 26.06.2025)

(Dr. Ajaya Krishna Vishvesha)
Member (Judicial)

(S V Singh)
Member (Technical)

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