

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT No. III

Customs Appeal No. 41068 of 2015

(Arising out of Order-in-Appeal C.Cus. II No. 401/2015 dated 21.04.2015 passed by Commissioner of Customs (Appeals-II), No. 60 Rajaji Salai, Custom House, Chennai – 600 001)

M/s. Jennex Granite Industries

No. E-16, Phase – II, Expansion-1,
SIPCOT Industries Complex,
Hosur – 635 126.

...Appellant

Versus

Commissioner of Customs

Chennai II Commissionerate,
No. 60, Custom House,
Rajaji Salai,
Chennai – 600 001.

...Respondent

APPEARANCE:

For the Appellant : Ms. Priyadarsini, Advocate

For the Respondent : Mr. N. Satyanarayana, Authorized Representative

CORAM:

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

DATE OF HEARING : 23.09.2025

DATE OF DECISION : 28.11.2025

FINAL ORDER No. 41405 / 2025

Order:-

This Customs Appeal No. C/41068/2015 has been filed by M/s. Jennex Granite Industries (hereinafter referred to as 'Appellant'), against the imposition of penalty of Rs.4,00,000/- (rupees Four Lakhs Only) under Section 112(a) of the Customs Act, 1962 (hereinafter referred to as the 'Customs Act'). Such penalty has been affirmed in the Order-

in-Appeal No.C.Cus II No.401/201 dated 21.04.2015 (the impugned order) issued by the Commissioner (Appeals-II), Custom House, Chennai.

2. Briefly stated the facts germane to this appeal are as follows: -

- i. Appellant, an 100% Export Oriented Unit (EOU) had imported rough granite blocks, but failed to file necessary Bills of Entry under Section 46 of the Customs Act. The imported consignment remained uncleared since 10.09.2013.
- ii. In this backdrop, the custodian of the goods issued a Notice under Section 48 of the Customs Act, on 05.11.2013, which was followed by Notice dated 07.12.2013 calling for clearance of the said goods within a period of 15 days. No reply was filed by the importer as against the said Notices (*supra*).
- iii. Thereafter, in view of the rough granite blocks being a restricted item under the Foreign Trade Policy for 2009-2014, requiring a specific license or import authorization from the Regional licensing authority, a Show Cause Notice dated 23.12.2014 was issued to the Appellants proposing as to confiscation of the goods under Section 111(d) of the

Customs Act, and to impose penalty under Section 112(a) of the Act.

- iv. In response to the notice, the appellant *vide* letter dated 05.01.2015 contended that the goods were shipped without due consent, and that since the supplier only released the ocean freight to the shipping line on 09.12.2013, by which time, the storage charges and shipping liner charges have escalated. Consequently, the Appellants decided to abandon the goods.
- v. The Joint Commissioner of Customs (i.e., the Original Authority) did not accept the reasoning of the Appellant that non-waiver of 100% detention charges by the shipping line as a valid reason allowing the Appellant importer to relinquish/abandon the goods. Furthermore, the Original Authority noted that since the goods were restricted and the Appellant has failed to produce any license under which such import was made, accordingly abandoning/relinquishing the goods cannot be permitted. With regards to the plea that the Appellant is an 100% EOU and accordingly permitted to import even restricted goods without a license, the Original Authority held as under:

"In the instant case, assuming that the importer is a 100% EOU Company and they are permitted to clear even restricted goods without any license subject to the condition that they have to execute a Bond as required under 100% EOU scheme and they have to produce procurement

certificate in support of their clearance under 100% EOU scheme. If they do not clear the goods under the scheme, they cannot abandon the goods by citing their 100% EOU status. In the instant case the importers have decided to abandon the impugned goods and the same cannot come under the preview of 100% EOU scheme."

vi. Accordingly, the Original Authority ordered for absolute confiscation and penalty of Rs.4,00,000/- under Section 112(a) of the Customs Act, 1962.

vii. The Appellant being aggrieved preferred an appeal before the Commissioner (Appeals-II), which came to be dismissed, upholding the order of the Original Authority in toto. Hence the present appeal.

3. The Appellants have submitted that they did not give any consent for shipment of the goods. In the same breath the Appellants have contended that since the cost of importation went up on account of a dispute between the shipping line and supplier, which came to be paid only in 09.12.2013 by the exporter and due to the costs associated with such delay, the cost of import had become uneconomical for the Appellants, finally forcing them to abandon the goods. It is to be observed that this contradictory position negatives their contention regarding the non-consent for the said goods to be shipped.

4. Secondly, according to the appellants, only prohibited goods cannot be imported by EOU and restricted goods are allowed. Therefore, the department was not right in rejecting the request for the abandonment of goods under Section 23(2) of the Act and that the rough granite blocks in question cannot be brought under the scope of prohibited goods. In this context, a reference to Para 6.2(b) of the relevant policy indicates that the EOUs could import goods without payment of duty, provided they are not prohibited items of import in the stated policy.

5. The question is whether prohibition would include restriction also. The expression prohibition not only in the policy but under Section 111(d) of the Customs Act, 1962 would also cover any restriction, whether complete or partial. In this context, reliance is placed on Supreme Court's decision in the case of *Shaikh Mohammed Omar v. CC* reported in *AIR 1971 SC 293 (Alternate citation: 13 E.L.T 1439 (SC))*, which decision was also followed by the government in the case of *Mohammed Hussain* reported in *138 E.L.T 943*, wherein it was held that restricted goods under EXIM policy which is now called Foreign Trade Policy, are prohibited goods for the purpose of the said acts. This Tribunal in the case of *CC v.*

M.R. Exports, reported in 197 E.L.T 523, has also followed the same.

6. It is also seen that Section 3(3) of the Foreign Trade Development Regulation Act, 1992, states that all goods that are prohibited, restricted, or regulated for import and export are deemed to be prohibited goods under Section 11 of the Customs Act.

7. In other words, it is clear that once the goods are restricted either subject to any conditions or otherwise, they become prohibited goods once condition is not complied with. It is not the case of the Appellants that they were not interested in the goods otherwise, but for the escalation in the cost of importation, they would have cleared the goods. No evidence had been submitted to prove that they did not ask for the goods from the suppliers, since the abandonment of the goods before clearance from customs is not an automatic facility and it is subject to proving that otherwise the importation was valid.

8. However, the appellant has relied upon the decisions in the cases of *Peirce Leslie India Ltd. Vs. Collector of Customs, Bangalore* [1995 (77) ELT 161 (Tri.)], *Commissioner of Customs, ICD, TKD, New Delhi Vs. Sewa Rax & Bros.* [2003 (151) EKT 344 (Tri.-Del.)] and *Garima Trade Services Ltd. Vs. Commissioner of Customs, Visakhapatnam* [2002 (146) ELT 150 (Tri.-Chennai)] wherein it was held that penalty is not imposale on the importer in case of abandoning the goods in terms of Section 23(2) of the Customs Act, 1962. I have examined these case laws cited and their applicability to the present facts in this appeal. The allegation here was an attempt was made to import restricted goods and when not cleared for manufacture in an EOU, penalty imposable even when imported goods were abandoned.

9. As no *malafide* can be attributed to the conduct of the appellant, I am of the considered view that the quantum of penalty is disproportionate to the value of the goods abandoned. In view of the above discussion, the penalty imposed of Rs.4,00,000/- is ordered to be reduced to Rs.1,00,000/- under Section 112 (a) of the Customs Act, 1962.

10. Accordingly, the Order-in-Appeal C.Cus. II No. 401/2015 dated 21.04.2015 is modified to the extent of imposing a penalty of Rs.1,00,000/- as above. Thus, the appeal is partly allowed on the above terms.

(Order pronounced in open court on 28.11.2025)

Sd/-

(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

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