DIN-20240871ML000000B1AE
OIO No. KND-CUSTM-000-COM-08-2024-25

**OFFICE OF THE COMMISSIONER**

**CUSTOM HOUSE, KANDLA**

**NEAR BALAJI TEMPLE, NEW KANDLA**

**Phone : 02836-271468/469 Fax: 02836-271467**

| **DIN-20240871ML000000B1AE** | | |
|---|---|---|
| A | File No. | GEN/ADJ/COMM/684/2023-Adjn-O/o Commr-Cus-Kandla |
| B | Order-in-Original No. | KND-CUSTM-000-COM-08-2024-25 |
| C | Passed by | M. Ram Mohan Rao, Commissioner of Customs, Custom House, Kandla. |
| D | Date of Order | 06.08.2024 |
| E | Date of Issue | 06.08.2024 |
| F | SCN No. & Date | S/43-01/SIIB/Pre-Import/2020-21/Coromandel dated 31.08.2023 |
| G | Noticee / Party / Importer / Exporter | M/s. Coromandel International Limited, Coromandel House, 1-2-10, Sardar Patel Road, Secunderabad, Telangana-500003 |

1. This Order - in - Original is granted to the concerned free of charge.

2. Any person aggrieved by this Order - in - Original may file an appeal under Section 129 A (1) (a) of Customs Act, 1962 read with Rule 6 (1) of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -3 to:

**Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench,**

2nd Floor, Bahumali Bhavan Asarwa,

Nr. Girdhar Nagar Bridge, Girdhar Nagar, Ahmedabad - 380004

3. Appeal shall be filed within three months from the date of communication of this order.

4. Appeal should be accompanied by a fee of Rs.1000/- in cases where duty, interest, fine or penalty demanded is Rs. 5 lakh (Rupees Five lakh) or less, Rs. 5000/-in cases where duty, interest, fine or penalty demanded is more than Rs. 5 lakh (Rupees Five lakh) but less than Rs.50 lakh (Rupees Fifty lakhs) and Rs. 10,000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 50 lakhs (Rupees Fifty lakhs). This fee shall be paid through Bank Draft in favour of the Assistant Registrar of the bench of the Tribunal drawn on a branch of any nationalized bank located at the place where the Bench is situated.

5. The appeal should bear Court Fee Stamp of Rs.5/- under Court Fee Act whereas the copy of this order attached with the appeal should bear a Court Fee stamp of Rs.0.50 (Fifty paisa only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.

6. Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.

7. While submitting the appeal, the Customs (Appeals) Rules, 1982 and the CESTAT (Procedure) Rules, 1982 should be adhered to in all respects.

8. An appeal against this order shall lie before the Appellate Authority on payment of 7.5% of the duty demanded wise duty or duty and penalty are in disupte, or penalty wise penalty alone is in dispute.

**BRIEF FACTS OF THE CASE:-**

Directorate of Revenue Intelligence, Kolkata Zonal Unit informed that M/s. Coromandel International Limited, IEC No.-0988002639 (here-in-after referred to as "the importer/noticee"), having its office situated at Coromandel House, Secunderabad, Telangana-500003 were involved in the import of various duty free goods under Advance Authorization scheme issued under Chapter 4 of the Foreign Trade Policy (FTP-2015-20), in contravention to the conditions imposed vide Notification No. 18/2015-Customs dated 01.04.2015 as amended by Notification No. 79/2017-Customs dated 13.10.2017. The importer did not comply with the pre-import condition, as laid down in Customs Notification No. 79/2017 dated 13.10.2017. The matter was referred to Custom House, Kandla for further investigation.

**2.** As per the said information, "the importer" was importing various duty-free materials in terms of Notification No. 18/2015-Customs dated 01.04.2015 as amended by Notification No. 79/2017-Customs dated 13.10.2017. As per Notification No. 18/2015-Customs dated 01.04.2015, goods were exempted from whole of the duties of Customs specified in the first schedule of the Customs Tariff Act, 1975 and from the whole of additional duty, safeguard duty, anti-dumping duty leviable thereon respectively under Section 3,8, 9A of the Customs Tariff Act, 1975, subject to certain conditions mentioned in the said Notification. The Notification No.18/2015-Customs dated 01.04.2015 was later amended vide Notification No. 79/2017-Customs dated 13.10.2017 wherein a new condition no. (xii), which stipulated that the exemption from Integrated Tax and the goods and services tax compensation cess leviable thereon under Sub-section (7) and Sub-section (9) of Section 3 of the said Customs Tariff Act, 1975, shall be applicable subject to a 'pre-import condition', was inserted. Pre-import condition simply means that the goods should be imported prior to commencement of export of finished goods, so as to enable the person to manufacture finished goods from the said imported goods/raw materials, and the same should be subsequently exported under the same Advance Authorization for discharge of Export Obligation.

**3.** Based on the above intelligence, further information was gathered and the importer was asked to submit the details of import and export vide 02 (two) Advance Authorization Licenses (hereinafter referred to as AA) issued to the importer by Additional Director General of Foreign Trade (hereinafter referred to as DGFT). While executing such imports, "the importer" availed the benefit of exemption extended by Notification No. 18/2015-Customs dated 01-04-2015, as amended by the Notification No. 79/2017 dated 13-10-2017, and did not pay any Customs duty in the form of Integrated Goods & Service Tax (IGST) leviable under Sub-section (7) of Section 3 of the Customs Tariff Act, 1975, on such raw materials at the time of import. However, such exemption was extended to them subject to condition that the person willing to avail such benefit should comply with the "pre-import" condition as envisaged vide Notification No. 79/2017 dated 13-10-2017. It appeared that the importer availed the

benefit of such exemption from payment of IGST on the goods so imported, leviable in terms of sub-section 7 of Section 3 of the Customs Tariff Act, 1975, by deliberately suppressing the fact of non-compliance of pre-import condition laid down in the subject notification. Their deliberate act of omission and/or commission by resorting to suppression of material facts from the customs authority, appeared to have resulted in non-payment of duty of Customs in the form of Integrated Goods and service tax to the extent of Rs. 2,67,56,106/- which appeared to be recoverable under Section 28(4) of the Customs Act, 1962, alongwith applicable interest, and also appeared to attract provision of section 111(o) of the Customs Act, 1962 making the goods liable for confiscation and the company liable to penalty under section 114A of act ibid.

**4.** Summons were issued to the importer. The authorized representative of the importer, Shri Deepak Pandurang Mane, Senior Manager (Logistics) of M/s. Coromandel International appeared on 28.01.2021 and tendered his statement. During the course of statement, he interalia, submitted that-

(i) He had been working as a Senior Manager (Logistics) in M/s. Coromandel International limited and looking after day to day customs work related to export.

(ii) M/s. Coromandel International Limited was engaged in manufacturing of Insecticides, Fungicides & Herbicides namely Mancozeb Technical, Acephate etc. out of the raw materials namely Etyhylene diamine, Carbon Disulphide, Sodium Lingo Sulphonate etc. for the manufacturing activity.

(iii) During the period 13.10.2017 to 10.01.2019, their company imported goods under Advance Authorisations at Kandla port and availed exemption of IGST alongwith other exemptions in accordance with the Exemption Notification No. 79/2017-Customs dated 13.10.2017 under 8 Bills of Entry mentioned as under:-

| **Sr.No** | **BE No.** | **BE date** | **AA no.** | **Date of License** |
|---|---|---|---|---|
| 1. | 7916755 | 05.09.2018 | 310822434 | 19.07.2018 |
| 2. | 8184626 | 24.09.2018 | 310822437 | 19.07.2018 |
| 3. | 8439500 | 12.10.2018 | 310822437 | 19.07.2018 |
| 4. | 8741085 | 05.11.2018 | 310822434 | 19.07.2018 |
| 5 | 9175237 | 08.12.2018 | 310822437 | 19.07.2018 |
| 6. | 9293379 | 17.12.2018 | 310822434 | 19.07.2018 |
| 7. | 9384680 | 24.12.2018 | 310822437 | 19.07.2018 |
| | | | 310822434 | 19.07.2018 |
| 8. | 9469835 | 31.12.2018 | 310822437 | 19.07.2018 |

(iv) On being asked about the fulfillment of pre-import & physical export conditions in respect of import done as per Bill of Entries mentioned at table-I,

he stated that his company has fulfilled the pre-import and physical export conditions laid down under Notification No. 79/2017-Customs dtd. 13.10.2017.

(v) On being asked about the documentary evidences with respect to fulfillment of pre-import & physical export conditions, he submitted two annexures namely "Annexure-A & Annexure-B" regarding statement of export made under Advance Authorisation no. 310822434 and 310822437 both dated 19.07.2018.

(vi) Further, on being asked that date of filing of first Bill of Entry no. 7916755 was 05.09.2018 and the date of filing of first shipping Bill no. 7443808 was 07.09.2018 in respect of Advance Authorisation no. 310822434 dated 19.07.2018, how could it be possible that the same raw material was used in the production of exported goods and shipping bills filed on the very next day of out of charge, he stated that they interpret the pre-import condition as filing of shipping bill date should be later than Bill of Entry date under which Advance Authoriation has been used for exemption of duty. On the basis of this, they filed shipping bill 7443808 dated 07.09.2018 without receiving the imported goods physically into the factory premises.

(vii) On being asked, whether the same process has been followed in respect of all imports done as per Table-I, he stated that their company followed the same process in respect of 8 Bills of entry as per Table-I.

(viii) vide letters dated 28.01.2021, Shri Deepak Mane also submitted the statement of exports of corresponding Advance License duly signed in Annexure-A and Annexure-B for advance license no. 0310822434 dated 19.07.2018 and 0310822437 dated 19.07.2018 respectively (RUD-3).

**5.** M/s. Coromandel International Ltd. has wrongly availed IGST exemption by availing benefit of Notification No. 79/2017-Customs dated 13.10.2017 for the period 13.10.2017 to 10.01.2019 in respect of 8 Bills of Entry (RUD-2) against 2 Advance Authorizations as per below mentioned tables-

**TABLE-II**

| **Sr.No** | **BE No.** | **BE date** | **AA no.** | **Date of License** | **Assessable Value (in Rs.)** | **IGST saved (in Rs.)** |
|---|---|---|---|---|---|---|
| 1. | 7916755 | 05.09.2018 | 310822434 | 19.07.2018 | 26592000 | 5712120 |
| 2. | 8184626 | 24.09.2018 | 310822437 | 19.07.2018 | 18902067 | 4129020 |
| 3. | 8439500 | 12.10.2018 | 310822437 | 19.07.2018 | 16651774 | 3539160 |
| 4. | 8741085 | 05.11.2018 | 310822434 | 19.07.2018 | 20227925 | 3941411.14 |
| 5 | 9175237 | 08.12.2018 | 310822437 | 19.07.2018 | 19822545 | 3862423.08 |

| | | | | | | |
|---|---|---|---|---|---|---|
| 6. | 9293379 | 17.12.2018 | 310822434 | 19.07.2018 | 13498793 | 2645640 |
| 7. | 9384680 | 24.12.2018 | 310822437 | 19.07.2018 | 13498793 | 2645640 |
| | | | 310822434 | 19.07.2018 | | |
| 8. | 9469835 | 31.12.2018 | 310822437 | 19.07.2018 | 1322540 | 280692 |
| | | | | Total | 13,05,16,437 | 2,67,56,106.48 |

**6. SHOW CAUSE**

**6.1** Therefore, M/s. Coromandel international Limited, were called upon to Show Cause as to why:

a) Duty of Customs amounting to Rs. 2,67,56,106.48/-(Rupees Two Crore Sixty Seven Lakhs Fifty six Thousand One Hundred and six only) in the form of IGST saved should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962 read with the provisions of Section 143(3) of the Customs Act, 1962 alongwith interest under Section 28AA of the Customs Act, 1962.

b) Subject goods having assessable value of Rs. 13,05,16,437/- (Rupees Thirteen Crore Five Lakhs Sixteen Thousand Four Hundred and Thirty Seven only) imported through Kandla Port under the subject Advance Authorizations shall not be held liable for confiscation under Section 111(o) of the Customs Act, 1962

c)Penalties should not be imposed upon them under Section 114A of the Customs Act, 1962

d) Bonds executed by them at the time of import should not be enforced in terms of Section 143(3) of the Customs Act, 1962 for recovery of duty and interest thereupon.

**Defence Submission:-**

**7.** The notice vide their submission sent vide email dated 25.06.2024, interalia, submitted that:-

(i) Extended period cannot be invoked as the notice proposed the demand under wilfull suppression of facts.

(ii) Department has not established with positive act undertaken by them for suppressing the facts.

(iii) All the documents such as Bills of Entry, Shipping Bill etc. were available with the department which revealed whether they had violated the pre-import condition or not. Hence suppression of facts cannot be challenged.

(iv) Extended period cannot be invoked when there were already notices issued by the department from jurisdiction of two different ports on same matter but for imports made in those ports.

(v) Extended period cannot be invoked in cases involving interpretation of law as Hon'ble Gujarat High Court has struck down notification as ultra vires before the interference by the Hon'ble Supreme Court.

(vi) Proposed demand cannot sustain as the matter is revenue neutral.

(vii) The Bills of Entry in the impugned notice were finally assessed and accordingly, the goods were cleared for home consumption.

(viii) As Bill of Entry being an appealable order, it can only be challenged by filing an appeal. In the case of ITC limited vs. Commissioner of Central Excise, [2019 (368) ELT 216 (Supreme Court), it has been held that the order of self assessment is also an assessment order appealable by any person, the Revenue as well as the assessee.

(ix) A notice issued in this regard proposing the demand, in the absence of appeal against the bill of entry, is not sustainable.

(x) Public Notice issued by DGFT vide No. 40/2013 dated 12.02.2024 extending the clubbing of Advance Authorization Licences. They are in the process of availing the benefit of clubbing of authorizations of 9 licences which includes the subject two licenses.

(xi) Goods are not liable for confiscation as the Hon'ble Gujarat high Court had struck down the notification as ultravires before the interference by the Hon'ble Supreme Court.

(xii) They acted bonafide, therefore penalty under Section 114A is not attracted.

(xiii) They have relied upon the matter of Mahindra and Mahindra Ltd. Vs UoI to argue that interest and penalties are not attracted.

**Personal hearing**

**8.** Opportunity of Personal hearing was granted to them on 20.06.2024. Shri H S Prasad, Senior General Manager, Indirect taxation, appeared for personal hearing and opposed the notice on the grounds of limitation/extended period and w.r.t the penalties proposed. He referred to various case laws and DGFT Circular regarding clubbing of licenses.

**Discussion and Findings:-**

**9.** I have carefully gone through the entire case, show cause notice dated 31.08.2023, written submissions filed by the importer and all the materials available on record.

**10.** In the present proceedings, the issues that are to be decided by me, are:-

(i) Whether the importer, during October 13, 2017 to January 9, 2019 was eligible to claim exemption of Integrated Goods and Services Tax ("IGST") on input imported into India for the goods to be exported from India, on the strength of respective advance authorizations, without fulfillment of mandatory "pre-import" condition;

(ii) if not, whether such differential duty amounting to Rs. 2,67,56,106.48/- is liable to be recovered from them under Section 28 of the Customs Act, 1962 alongwith interest thereon under section 28AA ibid;

(iii) whether extended period is invokable in the instant case.

(iv) whether clubbing of advance authorization is allowed in case of subject goods.

(v) whether such goods having IGST assessable value of Rs. 13,05,16,437/- are liable for confiscation under section 111(o) of the Customs Act, 1962; and

(vi) whether the noticee is liable for penalty under Section 114A of the Customs Act, 1962.

**11.** I find that Specific Intelligence was gathered by DRI, Kolkata that M/s. Coromandel International Limited, IEC No.- 0888007817 has contravened the provisions of Section 17, 46 of the Customs Act, 1962, and also the provisions of Customs Notification No. 18/2015-Cus dated 01-04-2015, as amended by the Customs Notification No. 79/2017 dated 13-10-2017, read with provisions of Para 4.03, 4.13 & 4.14 of the Foreign Trade Policy (2015-20), as amended by the DGFT Notification No. 33/2015-20 dated 13-10-2017, issued in terms of the provision of Para 4.13 of the Foreign Trade Policy (2015-20), as they imported various input materials through Kandla port, without payment of duty of Customs under cover of 08 (Eight) Bills of Entry under the cover of 2 (two) Advance Authorizations, on the strength of the subject notification and availed benefit of exemption from payment of IGST on the goods so imported, leviable in terms of Sub-section (7) of Section 3 of the Customs Tariff Act, 1975, by deliberately suppressing the fact of non-compliance of pre-import condition laid down in the subject notification. The details of 08 Bills of Entry under the cover of 02 Advance Authorisation during the relevant period are as under:-

**Table-III**

| **Sr.No** | **BE No.** | **BE date** | **AA no.** | **Date of License** |
|---|---|---|---|---|
| 1. | 7916755 | 05.09.2018 | 310822434 | 19.07.2018 |
| 2. | 8184626 | 24.09.2018 | 310822437 | 19.07.2018 |
| 3. | 8439500 | 12.10.2018 | 310822437 | 19.07.2018 |
| 4. | 8741085 | 05.11.2018 | 310822434 | 19.07.2018 |
| 5 | 9175237 | 08.12.2018 | 310822437 | 19.07.2018 |

| | | | | |
|---|---|---|---|---|
| 6. | 9293379 | 17.12.2018 | 310822434 | 19.07.2018 |
| 7. | 9384680 | 24.12.2018 | 310822437 | 19.07.2018 |
| | | | 310822434 | 19.07.2018 |
| 8. | 9469835 | 31.12.2018 | 310822437 | 19.07.2018 |

The importer had filed total 08 (Eight) Bills of entry during the period 13.10.2017 to 10.01.2019 from Kandla Port under the respective Advance Authorization and saved IGST thereon. The details of the IGST saved by them in respect of Bills of entry filed during the period 13.10.2017 to 10.01.2019 from Kandla Port corresponding to above mentioned Advance Authorization are as follows:-

**Table-IV**

| **Sr.No** | **BE No.** | **BE date** | **AA no.** | **Date of License** | **Assessable Value (in Rs.)** | **IGST saved (in Rs.)** |
|---|---|---|---|---|---|---|
| 1. | 7916755 | 05.09.2018 | 310822434 | 19.07.2018 | 26592000 | 5712120 |
| 2. | 8184626 | 24.09.2018 | 310822437 | 19.07.2018 | 18902067 | 4129020 |
| 3. | 8439500 | 12.10.2018 | 310822437 | 19.07.2018 | 16651774 | 3539160 |
| 4. | 8741085 | 05.11.2018 | 310822434 | 19.07.2018 | 20227925 | 3941411.14 |
| 5 | 9175237 | 08.12.2018 | 310822437 | 19.07.2018 | 19822545 | 3862423.08 |
| 6. | 9293379 | 17.12.2018 | 310822434 | 19.07.2018 | 13498793 | 2645640 |
| 7. | 9384680 | 24.12.2018 | 310822437 | 19.07.2018 | 13498793 | 2645640 |
| | | | 310822434 | 19.07.2018 | | |
| 8. | 9469835 | 31.12.2018 | 310822437 | 19.07.2018 | 1322540 | 280692 |
| | | | | Total | 13,05,16,437 | 2,67,56,106.48 |

**12.** Before proceeding further, it is important to discuss the facts, provisions of the relevant notifications and timeline of the events/case laws in the instant case.

**12.1** In terms of the Foreign Trade (Development & Regulation) Act, 1992("FTDRA") the Central Government ("Union") had been framing, from time to time, Export-Import Policies or Foreign Trade Policies (FTPs) for the development, regulation andcontrol of imports and exports in the country. The Union Government announced duty exemption schemes as well. One among these was the Advance Authorisation scheme. To regulate and guide the procedure to be followed for implementing the provisions of the FTP and therules framed thereunder, the Director General of Foreign Trade ("DGFT") notified the Hand Book of Procedure, chapter 4 of which prescribed the procedure for availing dutyexemption/remission schemes. By paragraph 4.27, exports

in "anticipation of authorisation" were permitted, so as not to create hindrances and delays inexecution of export orders. Exemption of various customs duties (BCD, CVD, SAD, Safeguard Duty and ADD)were provided in Notification no. 18/2015-Cus dated 01.04.2015. Various notifications were issued by the Government of India at the material time incorporating certain amendments in the parent Notification no. 18/2015-Cus dated 01.04.2015. The details of all the notifications amending parent notification 18/2015-Cus dated 01.04.2018 are summarized below:-

| Sr.No. | Notification No. and Date | Remarks |
|---|---|---|
| 1. | 18/2015-Cus dated 01.04.2015 | Exempted BCD, CVD, SAD, Safeguard Duty and ADD |
| 2. | 26/2017-Cus dated 29.06.2017 | Amended 18/2015-Cus by Exempting BCD, safeguard duty and ADD |
| 3. | 79/2017-Cus dated 13.10.2017 | Amended 18/2015-Cus by exempting IGST (inserted Pre-import and Physical exports condition) till 31.03.2018 |
| 4. | 35/2018-Cus dated 28.03.2018 | Amended 18/2015-Cus by extending exemption of IGST till 01.10.2018 |
| 5. | 66/2018-Cus dated 26.09.2018 | Amended 18/2015-Cus by extending exemption of IGST till 31.03.2019 |
| 6. | 01/2019-Cus dated 10.01.2019 | Amended 18/2015-Cus by removing pre-import condition |
| 7. | 08/2019-Cus dated 25.03.2019 | Amended 18/2015-Cus by extending exemption of IGST till 31.03.2020 |
| 8. | 18/2020-Cus dated 30.03.2020 | Amended 18/2015-Cus by extending exemption of IGST till 31.03.2021 |
| 9. | 23/2021-Cus dated 31.03.2021 | Amended 18/2015-Cus by extending exemption of IGST till 31.03.2022 |
| 10. | 19/2022-Cus dated 31.03.2022 | Amended 18/2015-Cus by extending exemption of IGST till 30.06.2022 |
| 11. | 37/2022-Cus dated 30.06.2022 | Omitted the clause (xiii) by extending the exemption in perpetuity |

At the time, ***Notification No. 18/2015-Customs dated 1.04.2015 exempted payment of basic customs duty ("BCD"), additional duty (countervailing duty ("CVD"), special additional duty ("SAD")), safeguard duty and anti-dumping duty on inputs imported against a valid Advance Authorisation***. The relevant para is reproduced herein below:-

> "In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts materials imported into India

> against a valid Advance Authorisation issued by the Regional Authority in terms of paragraph 4.03 of the Foreign Trade Policy (hereinafter referred to as the said authorisation) from the whole of the duty of customs leviable thereon which is specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and from the whole of the additional duty, safeguard duty, transitional product specific safeguard duty and anti-dumping duty leviable thereon, respectively, under sections 3, 8B, 8C and 9A of the said Customs Tariff Act….."

The Notification No. 18/2015-Cus dated 01.04.2015 was amended by Notification No. 26/2017-Cus dated 29.06.2017 as given below:-

> In the said notification, in the opening paragraph,-
> (i) for the words, figures and letters "from the whole of the additional duty, safeguard duty, transitional product specific safeguard duty and anti-dumping duty leviable thereon, respectively, under sections 3, 8B, 8C and 9A", the words, figures, letters and brackets "from the whole of the additional duty leviable thereon under sub-sections (1), (3) and (5) of section 3, safeguard duty leviable thereon under section 8B and anti-dumping duty leviable thereon undersection 9A" shall be substituted;
> (ii) in condition (x), in the first proviso, for the words"relevant Central Excise notifications" the words "relevantgoods and services tax provisions" shall be substituted.

**12.2** The GST regime was introduced with effect from 01.07.2017. Before the introduction of the GST regime, imports allowed under AAs were exempt from payment of many duties. Thereafter, CVD and SAD were subsumed in IGST. Under Section 3 of theCustoms Tariff Act, 1975, IGST was made payable at specified rates uponimports. However, ***a major change that was brought into the policy was to not allow exemption from payment of IGST directly at the time of import under AA.*** However, such exemption from IGST was allowed indirectly by allowing refund of IGST paid at thetime of imports under AA within a specified time. The importers, therefore, started paying IGST on goods imported under AA with effect from 1.7.2017, and were getting outright exemption from BCD, ADD, safeguard duty, etc., and IGST paid was refunded. The legislative intent was clear in imposing IGST on all imports made under AAs, on or after 1.7.2017, without differentiating between the status of such authorisations, whether or not it was issued prior to or after introduction of GST. It was a policy decision, which could have been reversed or altered only by the GST Council. However, due to problems in Goods and Service Tax Network (GSTN), the committed refund of IGST was getting delayed. This resulted in blocking of working capital for many business houses. To obviate this problem, the GST Council allowed exemption from IGST when imported under AAs. The Directorate General of Foreign Trade("DGFT") accordingly, issued Notification No. 33/2015-20 dated 13.10.2017 which was backed by Customs Notification No. 79/2017 dated 13.10.2017, issued by the Department of Revenue, amending the Notification No. 18/2015-Customs, dated 1.4.2015. However blanket exemption was not extended and the exemption from the

IGST leviable under Section 3 (7) was available and subject to ***two specific conditions***. The conditions were (i) export obligation was to be fulfilled through **physical exports** only; and (ii) the exemption was subject to '**pre-import condition'**. The relevant Paras are reproduced herein below:-

> In the said notification, in the opening paragraph,-
>
> (a) for the words, brackets, figures and letters "from the whole of the additional duty leviable thereon under sub-sections (1), (3) and (5) of section 3, safeguard duty leviable thereon under section 8B and anti-dumping duty leviable thereon under section 9A", the words, brackets, figures and letters "from the whole of the additional duty leviable thereon under sub-sections (1),(3) and (5) of section 3, integrated tax leviable thereon under sub-section (7) of section 3, goods and services tax compensation cessleviable thereon under sub-section (9) of section 3, safeguard duty leviable thereon under section 8B, countervailing duty leviable thereon under section 9 and anti-dumping duty leviable thereon under section 9A" shall be substituted;
>
> (b) in condition (viii), after the proviso, the following proviso shall be inserted, namely:-
>
> *"Provided further that notwithstanding anything contained hereinabove for the said authorisations where the exemption from integrated tax and the goods and services tax compensation cessleviable thereon under sub-section (7) and sub-section (9) of section 3 of the said Customs Tariff Act, has been availed, the export obligation shall be fulfilled* ***by physical exports only****;";*
>
> (c) after condition (xi), the following conditions shall be inserted, namely :-
>
> *"(xii) that the exemption from integrated tax and the goods and services tax compensation cessleviable thereon under sub-section (7) and sub-section (9) of section 3 of the said Customs Tariff Act shall be subject to* ***pre-import condition****;*
>
> *(xiii) that the exemption from integrated taxand the goods and services taxcompensation cessleviable thereon undersub-section (7) and sub-section (9) ofsection 3 of the said Customs Tariff Act shallbe available up to the 31st March, 2018.".*

**12.3** Here, it is pertinent to note that the IGST exemption at the time of import against Advance authorization in terms of Notification No. 79/2017-Cus dated 13.10.2017 was restored temporarily up to 31.03.2018 by suitable amendment to the parent notification No.18/2015-Cus that was further extended up to 01.10.2018 vide notification no 35/2018-Cus dated 28.03.2018. Further the exemption from IGST was extended upto 31.03.2019, 31.03.2020, 31.03.2021, 31.03.2022 and 30.06.2022 vide

Notification No. 66/2018-Cus dated 26.09.2018, 08/2019-Cus dated 25.03.2019, 18/2020-Cus dated 30.03.2020, 23/2021-Cus dated 31.03.2021, 19/2022-Cus dated 30.06.2022 respectively. This shows that the exemption to IGST and compensation cess on imported goods under AAs was completely unavailable with the advent of GST regime and the same was temporarily restored through an array of notifications, mentioned above, issued under DGFT and Customs with conditions and with sun set clauses. However, this sun set clause (xiii) was eventually omitted vide Notification No. 37/2022-Cus dated 30.06.2022. The intentions of the government was therefore clear and there was no ambiguity that the blanket allowing of IGST exemption on imports against AAs was not desirable in the new GST regime and would have had adversative effect on revenue. Interestingly and pertinently, the unavailability of the said exemption during the period 01.07.2017 to 12.10.2017 has not been agitated by the noticee.

Together with the amendment of the exemption notification (18/2015-Cus read with 77/2019, by Notification No. 33/2015-2020 (dated 13-10-2017), paragraph 4.14 of the Foreign Trade Policy (2015-20) was also amended to read as follows:

> "4.14: Details of Duties exempted.
>
> Imports under Advance Authorisation are exempted from payment ofBasic Customs Duty, Additional Customs Duty, Education Cess, Anti dumping Duty, Countervailing Duty, Safeguard Duty, Transition Product Specific Safeguard Duty, wherever applicable. Import against supplies covered under paragraph 7.02 (c), (d) and (g) of FTP will notbe exempted from payment of applicable Anti-dumping Duty,Countervailing Duty, Safeguard Duty and Transition Product Specific Safeguard Duty, if any. However, imports under Advance Authorisation for physical exports are also exempt from whole of the integrated tax and Compensation Cess leviable under sub-section (7) and sub-section(9) respectively, of section 3 of the Customs Tariff Act, 1975 (51 of1975), as may be provided in the notification issued by Department of Revenue, and such imports shall be subject to pre-import condition."

**12.4** In exercise of powers conferred under paragraph 1.03 of the Foreign Trade Policy 2015-2020, the Director General of Foreign Trade (DGFT) has notified the Handbook of Procedures by a Public Notice dated 1st April, 2015. Paragraph 4.27 thereof provides for “Exports in Anticipation of Authorisation” and “Inputs with pre-import conditions” to the extent the same is relevant for the present purpose, reads as:

> “4.27 **Exports/Deemed Export supplies in anticipation or subsequent to issue of an Authorisation**.

(a) Exports / Deemed Export supplies made from the date of EDI generated file number for an Advance Authorisation, may be accepted towards discharge of EO. Shipping Bills / Tax Invoices should be endorsed with File Number or Authorisation Number to establish co-relation of exports / Deemed Export supplies with Authorisation issued. Export/Deemed Export supply document(s) should also contain details of exempted materials/inputs consumed and technical characteristics of export and import items, as the case may be.

(b) If application is approved, authorisation shall be issued based on input/ output norms in force on the date of receipt of application by Regional Authority. If in the intervening period (i.e. from date of filing of application and date of issue of authorisation) the norms get changed, the authorization will be issued in proportion to provisional exports / Deemed Export supplies already made till any amendment in norms is notified. For remaining exports, Policy / Procedures in force on date of issue of authorisation shall be applicable.

(c) The export of SCOMET items shall not be permitted against an Authorisation until and unless the requisite SCOMET Authorisation is obtained by the applicant.

(d) Inputs with pre-import condition shall not be considered for replenishment against Exports/Deemed Export supplies made before import of such inputs.

The pre-import condition requires the imported materials to be used for the manufacture of finished goods, which in turn are required to be exported towards discharge of export obligation, and the same is possible when the export happens subsequent to the commencement of imports after allowing reasonable time to manufacture finished goods out of the same. Therefore, when the law demands pre-import condition on the input materials to be imported, goods cannot be exported in anticipation of Advance Authorization. **Provisions of Para 4.27(a) & (d),** i.e. export in anticipation of Authorization and the pre-import condition on the input materials are **mutually exclusive** and cannot go hand in hand.

**12.5** Chapter IV of the Foreign Trade Policy 2015-20 provides for "Duty Exemption/Remission Schemes". One of the duty exemption schemes is the Advance Authorisation (AA). Clause 4.03 of the policy makes provision for Advance Authorisation and reads thus:

**Para 4.03 of the Foreign Trade Policy 2015-20 inter alia states that**

a) Advance Authorisation is issued to allow duty free import of input, ***which is physically incorporated in export product*** (making normal allowance for wastage). In addition, fuel, oil, catalyst which is consumed / utilized in the process of production of export product, may also be allowed.

(b) Advance Authorisation is issued for inputs in relation to resultant product, on the following basis:

(i) As per Standard Input Output Norms (SION) notified (available in Hand Book of Procedures);

OR

(ii) On the basis of self declaration as per paragraph 4.07 of Handbook of Procedures.

OR

(iii) Applicant specific prior fixation of norm by the Norms Committee.

OR

(iv) On the basis of Self Ratification Scheme in terms of Para 4.07A of Foreign Trade Policy.

Some other relevant provisions of the Foreign Trade Policy insofar as the issue involved in the present case, are paragraphs 4.13, 4.14 and 4.16, which, as they stood at the relevant time when Foreign Trade Policy 2015-2020 came to be introduced, read as under:

**"4.13 "pre-import condition" in certain cases**

(i) DGFT may, by Notification, impose "pre-import condition" for inputs under this Chapter.

(ii) Import items subject to "pre-import condition" are listed in Appendix 4-J or will be as indicated in Standard Input Output Norms (SION).

(iii) Import of drugs from unregistered sources shall have pre-import condition."

**"4.14 Details of Duties exempted**

Imports under Advance Authorisation are exempted from payment of Basic Customs Duty, Additional Customs Duty, Education Cess, Anti Dumping Duty, Countervailing Duty, Safeguard Duty, TransitionProduct Specific Safeguard Duty, wherever applicable. Import against supplies covered under paragraph 7.02 (c), (d) and (g) of FTP will notbe exempted from payment of applicable Anti-dumping Duty,Countervailing Duty, Safeguard Duty and

Transition Product Specific Safeguard Duty, if any. However, imports under Advance Authorisation for physical exports are also exempt from whole of the integrated tax and Compensation Cess leviable under sub-section (7) and sub-section(9) respectively, of section 3 of the Customs Tariff Act, 1975 (51 of1975), as may be provided in the notification issued by Department ofRevenue, and such imports shall be subject to pre-import condition."

**“4.16 Actual User Condition for Advance Authorisation**

(i) Advance Authorisation and/or material imported under Advance Authorisation shall be subject to ‘Actual User’ condition. The same shall not be transferable even after completion of export obligation. However, Authorisation holder will have option to dispose of product manufactured out of duty free input once export obligation is completed.

(ii) In case where CENVAT/input tax credit facility on input has been availed for the exported goods, even after completion of export obligation, the goods imported against such Advance Authorisation shall be utilized only in the manufacture of dutiable goods whether within the same factory or outside (by a supporting manufacturer). For this, the Authorisation holder shall produce a certificate from either the jurisdictional Customs Authority or Chartered Accountant, at the option of the exporter, at the time of filing application for Export Obligation Discharge Certificate to Regional Authority concerned.

(iii) Waste / Scrap arising out of manufacturing process, as allowed, can be disposed off on payment of applicable duty even before fulfilment of export obligation.”

**13.** The Union Government vide Notification No. 01/2019 dated 10.01.2019 amended the parent Notification No. 18/2015-Cus dated 01.04.2015 and omitted the “pre-import” condition inserted vide 79/2017-Cus dated 13.10.2017. Therefore, for the intervening period between 13-10-2017 to 09-01-2019, all importers were **duty bound to comply with the said "pre-import and physical export" conditions** for availing benefit of exemption of IGST.

**14.** On the similar issue, the Hon'ble High Court, Gujarat in the case of M/s Shri Jagdamba Polymers Ltd. Vs. Union of India and in the case of M/s Maxim Tubes Company Pvt. Ltd. had held that mandatory fulfillment of 'pre-import condition', during October, 2017 to January 9, 2019, incorporated in the Foreign Trade Policy of 2015-2020 ("FTP") and Handbook of Procedures 2015-2020 ("HBP") by Notification No. 33/2015-20 and Notification No. 79/2015- Customs, both dated 13.10.2017, in order to claim exemption of Integrated Goods and Services Tax ("IGST") and GST compensation cess on input imported into India for the production of goods to be exported from India, on the strength of an advance authorization ("AA") was arbitrary and unreasonable.

**15.** However, the aforesaid judgment and order of Hon'ble Gujarat High Court was challenged by the department before Hon'ble Supreme Court and the Hon'ble Supreme Court vide order dated 28.04.2023 passed in the case of Union of India & Ors vs Cosmos Films has over-ruled judgement of the Gujarat High Court and has held that pre-import condition during October-13, 2017 to January 9, 2019, in Advance Authorisation scheme was valid. The order portion provides as under:-

> *"75. For the foregoing reasons, this court holds that the Revenue has to succeed. The impugned judgment and orders of the Gujarat High Court are hereby set aside. However, since the respondents were enjoying interim orders, till the impugned judgments were delivered, the Revenue is directed to permit them to claim refund or input credit (whichever applicable and/or wherever customs duty was paid). For doing so, the respondents shall approach the jurisdictional commissioner, and apply with documentary evidence within six weeks from the date of this judgment. The claim for refund/credit, shall be examined on their merits, on a case-by-case basis. For the sake of convenience, the revenue shall direct the appropriate procedure to be followed, conveniently, through a circular, in this regard.*
>
> *76. The Revenue's appeals are allowed, subject to the above terms"*

I find that this issue is no longer *res-integra* in as much Hoh'ble Supreme Court in the case of Union of India &Ors vs Cosmo Films has over-ruled Judgment of the Hon'ble Gujarat High Court and has held that pre-import condition, during October 13, 2017 to January 9, 2019, in Advance Authorisation Scheme was valid. Therefore, the noticee in the instant case can't rely upon the judgements of the Hon'ble High Court in order to argue that the notification has been struck down by the Hon'ble Court.

**16.** In order to understand the broader meaning of the term "pre-import condition", it is important to reproduce Para 4.03 of FTP (2015-20) and 4.27(d) and 4.38 of the HBP (2015-20), as given below:-

> **Para 4.03 of the Foreign Trade Policy 2015-20 inter alia states that**
>
> a) Advance Authorisation is issued to allow duty free import of input, ***which is physically incorporated in export product*** (making normal allowance for wastage). In addition, fuel, oil, catalyst which is consumed / utilized in the process of production of export product, may also be allowed.
>
> **Para 4.27 (d):Exports/Deemed Export supplies in anticipation or subsequent to issue of an Authorisation**.
>
> (d) Inputs with pre-import condition shall not be considered for replenishment against Exports/Deemed Export supplies made before import of such inputs.
>
> **4.38 Facility of Clubbing of Authorisations**

(iii) ***Clubbing of authorisations covered under Appendix 4 J (inputs with pre-import condition) and authorisations with EOP less than 18 months shall not be allowed***.

Conjoint reading of the above provisions, it is clear that the inputs with pre-import conditions must fulfill, interalia, the following conditions:-

(i) Input materials actually imported were to be physically incorporated in the export goods; and

(ii) Advance Authorisation is issued for inputs in relation to resultant product, on the basis of SION Norms/ self declaration/norms fixed by the Norms Committee/Self Ratification Committee; and

(iii) Inputs shall not be considered for replenishment against inputs procured domestically for Exports in Anticipation of Authorization; and

(iv) Clubbing of Advance Authorisations shall not be considered for Input with pre-import condition.

**16.1** Therefore, the argument of the noticee, that they were eligible for clubbing of Advance authorizations, is not sustainable, as such clubbing is not allowed as per Para 4.38 of the FTP 2015-20. Further the Public Notice No. 40/2023 dated 12.02.2024 referred by the noticee is not applicable in the instant case as the same is issued in respect of FTP 2023 and not FTP 2015-20 relevant in the instant case. It is also important to note that, in general, clubbing of advance authorizations was allowed, however, the same was not allowed in case of imported goods with pre-import condition as such clubbing would be against the very meaning of pre-import condition.

**16.2** In the instant case, I find that the importer has imported raw materials vide 08 Bills of Entry under the cover of 02 Advance Authorisations (AA). I find that the authorized representative of the importer, Shri Deepak Pandurang Mane, Senior Manager (Logistics) of M/s. Coromandel International in his statement dated 28.01.2021, interalia, submitted that-

(i) He had been working as a Senior Manager (Logistics) in M/s. Coromandel International limited and looking after day to day customs work related to export.

(ii) M/s. Coromandel International Limited was engaged in manufacturing of Insecticides, Fungicides & Herbicides namely Mancozeb Technical, Acephate etc. out of the raw materials namely Etyhylene diamine, Carbon Disulphide, Sodium Lingo Sulphonate etc. for the manufacturing activity.

(iii) During the period 13.10.2017 to 10.01.2019, their company imported goods under Advance Authorisations at Kandla port and availed exemption of IGST alongwith other exemptions in accordance with the Exemption Notification No. 79/2017-Customs dated 13.10.2017 under 8 Bills of Entry mentioned as under:-

| Sr.No | BE No. | BE date | AA no. | Date of License |
|---|---|---|---|---|
| 1. | 7916755 | 05.09.2018 | 310822434 | 19.07.2018 |
| 2. | 8184626 | 24.09.2018 | 310822437 | 19.07.2018 |
| 3. | 8439500 | 12.10.2018 | 310822437 | 19.07.2018 |
| 4. | 8741085 | 05.11.2018 | 310822434 | 19.07.2018 |
| 5 | 9175237 | 08.12.2018 | 310822437 | 19.07.2018 |
| 6. | 9293379 | 17.12.2018 | 310822434 | 19.07.2018 |
| 7. | 9384680 | 24.12.2018 | 310822437 | 19.07.2018 |
| | | | 310822434 | 19.07.2018 |
| 8. | 9469835 | 31.12.2018 | 310822437 | 19.07.2018 |

(iv) On being asked about the fulfillment of pre-import & physical export conditions in respect of import done as per Bill of Entries mentioned at above table, he stated that his company has fulfilled the pre-import and physical export conditions laid down under Notification No. 79/2017-Customs dtd. 13.10.2017.

(v) On being asked about the documentary evidences with respect to fulfillment of pre-import & physical export conditions, he submitted two annexures namely "Annexure-A & Annexure-B" regarding statement of Export made under Advance Authorisation no. 310822434 and 310822437 both dated 19.07.2018.

(vi) Further, on being asked that date of filing of first Bill of Entry no. 7916755 was 05.09.2018 and the date of filing of first shipping Bill no. 7443808 was 07.09.2018 in respect of Advance Authorisation no. 310822434 dated 19.07.2018, how could it be possible that the same raw material was used in the production of exported goods and shipping bills filed on the very next day of out of charge, ***he stated that they interpret the pre-import condition as filing of shipping bill date should be later than Bill of Entry date under which Advance Authoriation has been used for exemption of duty. On the basis of this, they filed shipping bill 7443808 dated 07.09.2018 without receiving the imported goods physically into the factory premises.***

(vii) On being asked, whether the same process has been followed in respect of all imports done as per the above Table, he stated that their company followed the same process in respect of 8 Bills of entry as per the said Table.

It is found from the statement and submission of the importer that the imported goods under the said Advance Authorisations were not utilized in the manufacturing of export goods. Shri Deepak Pandurang Mane, in his statement dated 28.01.2021 has categorically admitted that they had filed the shipping Bills without receiving the imported goods physically into the factory premises which shows that

they have replenished the raw material already lying with them with the imported goods which is not allowed with goods required to comply pre-import condition. I find that he had never retracted from the said statement.

**16.3** In this regard, I rely on the following judgements wherein the courts have held the evidentiary value of statements recorded under Section 108 and demand of duty on the basis of such statement:-

**a.** The Hon'ble Supreme Court in the judgement in the case of Bhana Khalpa Bhai Patel v. Asstt. Collector of Customs, Bulsar-1997 (96) E.L.T 211(S.C) has held as under:-

"7. An attempt was made to contest the admissibility of the said statements in evidence. ***It is well settled that statements recorded under Section 108 of the Customs Act are admissible in evidence*** vide Ramesh Chandra v. State of West Bengal, AIR 1970 SC 940 and K.I Pavunny v. Asstt. Collector (HQ), Central Excise Collectorate, Cochin, 1997 (90) E.L.T. 241 (S.C) = (1997) 3 SCC 721."

**b.** The Hon'ble Supreme Court has observed in the case of Naresh J. Sukhwani Vs Union of India reported as 1996 (83) E.L.T 258 and held as under :-

***"4. It must be remembered that the statement made before the Customs officials is not a statement recorded under Section 161 of the Criminal Procedure Code, 1973. Therefore, it is a material piece of evidence collected by Customs official under Section 108 of the Customs Act, 1962.*** *That material incriminates the petitioner inculpating him in contraventions of the provisions of the Customs Act. The material can certainly be used to connect the petitioner in the contravention as much as Mr. Dudani's statement clearly inculpates not only himself but also the petitioner.* ***It can, therefore, be used as substantive evidence connecting*** *the petitioner with the contravention by exporting foreign currency out of India. Therefore, we don't think that there is any illegality in the order of confiscation of foreign currency and imposition penalty. There is no ground warranting reduction of fine."*

**c.** Further, I rely on the order passed by the Hon'ble CESTAT, Mumbai in the case of M/s. S.M. Steel Ropes reported as 2014 (304) E.L.T.591 (Tri. Mumbai), wherein the Hon'ble Tribunal, by referring to various judgements of Hon'ble Supreme court and High Courts, held that

confirmation of duty demand on the basis of voluntary statements is sustainable in law. Relevant Para 5.1 is reproduced as under:-

*"5.1 As regards .....*

*..... The adjudicating authority has confirmed the demand only on the basis of figures given in the statements of Shri Balkrishna Agarwal. In the absence of delivery challans which were recovered and seized at the time of Panchanama proceedings, he has not taken the computation of demands based on such delivery challans as reflected in the annexure to the show cause notice. Therofore, the adjudicating authority has strictly proceeded based on the evidences available which in the present case are the statements of Shri Balkrisha Agarwal. As to the question whether the demands can be confirmed on the strength of confessional statements, this position stands settled by the decision of the Hon'ble Apex Court in the case of K.I pavunny v. Asstt. Cotlector (HQ) Cervtral Excise Collectorate, Cochin- 1997 (90) E.L.T. 241 (S.C.) wherein it was held that confessional statements of accused, if found to be voluntary, can form the sole basis for conviction. Only if it is retracted, the Court is required to examine whether it was obtained by threat, duress or promise and whether the confession is truthful. In the present case, we find that there is no retraction of the confessional statement by Shri Balkrisha Agarwal. As regards the lack of corroborative evidence, it is a settled position of law that "admitted facts need not be proved" as held by the Hon'ble High Court of Madras in the case of Govindasamy Ragupathy- 1998 (98) E.L.T. 50 (Mad). In a recent decision in the case of Telestar Travels Pvt. Ltd. -2013 (289) E.L.T. 3 (S.C.), the Hon'ble Apex Court held that reliance can be placed on statement if they are based on consideration of relevant facts and circumstances and found to be voluntary. Similarly in the case of CCE, Mumbai vs. Kalvert Foods lndia Pvt. Ltd. -2011 (270) E.L.T. 643 (S.C.) the Hon'ble Apex Court held that if the statements of the concerned persons are out of their volition and there is no allegation of threat, force, coercion, duress or pressure, such statements can be accepted as a valid piece of evidence.* ***In the light of the above decisions, we are of the considered***

***view that the confirmation of duty demand based on the voluntary statements of the Managing Partner of the appellant firm is sustainable in law. Consequently the interest and penal liabilities imposed on the appellants would also sustain.***"

It is therefore evident that the goods which were exported under the subject Advance Authorization corresponding to said shipping bills were not manufactured out of duty-free materials imported under the subject Advance Authorization. It is apparent that the noticee either procured duty paid goods/raw material from the local market and manufactured the export goods and when duty free goods were imported under the cover of advance authorization, these goods duty free goods were used as replenishment of the stock of duty paid inputs or utilized the goods imported under other Advance authorization thereby clubbing the Advance authorizations, as stated in the submission. As discussed earlier, in order to follow pre-import condition, an importer has to first import and then physically incorporate the same in the export goods and replenishment is also not allowed. Further, as discussed earlier, clubbing of advance authorization is not admissible in case of imported goods with pre-import condition.

**Quantification of IGST saved**

**17.** I find that the importer during the period 13.10.2017 to 09.01.2019, imported goods vide Eight (08) Bills of Entry under the cover of two Advance Authorizations at Kandla Port and availed exemption of IGST in accordance with the Notification No. 18/2015-Cus dated 01.04.2015 as amended by Notification No.79/2017 – Customs dated 13th October, 2017 mentioned as under:-

**TABLE-V**

| Sr.No | BE No. | BE date | AA no. | Date of License | Assessable Value (in Rs.) | IGST saved (in Rs.) |
|---|---|---|---|---|---|---|
| 1. | 7916755 | 05.09.2018 | 310822434 | 19.07.2018 | 26592000 | 5712120 |
| 2. | 8184626 | 24.09.2018 | 310822437 | 19.07.2018 | 18902067 | 4129020 |
| 3. | 8439500 | 12.10.2018 | 310822437 | 19.07.2018 | 16651774 | 3539160 |
| 4. | 8741085 | 05.11.2018 | 310822434 | 19.07.2018 | 20227925 | 3941411.14 |
| 5 | 9175237 | 08.12.2018 | 310822437 | 19.07.2018 | 19822545 | 3862423.08 |
| 6. | 9293379 | 17.12.2018 | 310822434 | 19.07.2018 | 13498793 | 2645640 |
| 7. | 9384680 | 24.12.2018 | 310822437 | 19.07.2018 | 13498793 | 2645640 |
| | | | 310822434 | 19.07.2018 | | |
| 8. | 9469835 | 31.12.2018 | 310822437 | 19.07.2018 | 1322540 | 280692 |
| | | | | Total | 13,05,16,437 | 2,67,56,106.48 |

In view of the above discussion, I hold that the importer is liable to pay Customs duty equivalent to the IGST saved/foregone amounting to Rs. 2,76,56,106.48/- under the provisions of Section 28 of the Customs Act, 1962 read with Section 3(7) of Customs Tariff Act, 1975.

**18.** I find that the importer has failed to comply with the pre-import condition laid down in the amended Policy as well as the amended Customs Notification. It is also an admitted fact that the Noticee while importing such goods while availing the benefit of exemption from payment of IGST, had the knowledge that either the export goods were manufactured from the inputs imported under other Advance Authorisation or the input material was procured from the domestic market. They knew it well that it was not practicable and possible for them to follow pre-import condition in respect of the said Advance Authorizations. It was also in their knowledge that Para 4.03 of the Foreign Trade Policy(2015-20), *demands physical incorporation of duty free imported materials in the export goods, when such materials were subjected to pre-import condition*. Yet they went on to import such goods availing full benefit of exemption. This was a deliberate act on part of the Noticee. The argument of the noticee that department has not established with positive act for suppressing the facts, has no merit, as the importer, being the multi national company which has footprints across the globe, was well aware of the fact that they were violating pre-import conditions in respect of the imported goods. They simply tried to dodge the investigation by stating that the pre-import condition meant export after import. Their interpretation of pre-import condition is vague and incomplete. It is important to note that pre-import condition not only means export after import but also means the imported goods must be physically incorporated into export goods. Such loose interpretation of a condition of a notification by an importer, who has access to the best of legal advice, is clearly an afterthought to escape the brunt of penal provisions. Further, it is important to note that the conditions of pre-import has been in existence earlier also in respect of other goods.

**18.1** It is also a fact on record that the Noticee did not inform the Customs Authority about the fact of not following such pre-import condition in respect ofthe impugned Advance Authorizations, against which they were claiming exemption. In the regime of self-assessment, it was their duty to claim such exemption only if they were entitled to the same. However, the Noticee did not hesitate to suppress/withheld the fact of not following pre-import condition from the Customs Authority and by taking advantage of the prevalent law of self-assessment in force, which was introduced as a part of trade facilitation, went on to avail the inadmissible benefit of such exemption. Amount of Customs Duty attributable to such benefit availed in the form of exemption of IGST, is therefore, recoverable from them under Section 28(4) of the Customs Act,1962 by invoking extended period of limitation.

Therefore, M/s. Coromandel International Limited, is liable to pay Customs duties amounting to **Rs.2,67,56,106.48/-** in the form of IGST saved in course of

imports of the goods through Kandla Port vide 08 Bills of Entry against 02 Advance Authorisations, under Section 28(4) of the Customs Act, 1962.

**19.** Regarding demand of interest, I find that interest is compensatory in nature, which is imposed on the importer who has withheld the payment of any tax or duty and such liability arises automatically by operation of law. Under the Customs Act, 1962, the liability for payment of interest arises in view of the provisions of Section 28AA of the Customs Act, 1962. Interest is always accessory to the demand of duty as held in case of Pratibha Processors Vs. UOI-1996 (88) ELT 12(SC). Hence, I hold that the amount of Custom duty demanded and confirmed in this order are recoverable from the importer together with interest at appropriate rate in terms of Section 28AA of the Act, ibid.

**20.0 <u>Confiscation of goods under Section 111 and redemption fine under Section 125:-</u>**

**20.1** With regard to confiscation of goods having assessable value of Rs. 13,05,16,437/- imported through Kandla Port under the provisions of Section 111(o) of the Customs Act, 1962, I find that the importer has not observed the condition of "pre-import" as laid down in Notification No. 18/2015-Cus read with Noti. No. 79/2017-Cus while availing the exemption of IGST on imported input materials under Advance Authorisation. Therefore, such non-observance of the condition of the Notification issued under Section 25 of the Notification rendered the goods, having assessable value of Rs. 13,05,16,437/-, liable for confiscation under the provision of Section 111(o) of the Customs Act, 1962. Reliance is placed upon the following case laws to support confiscation under Section 111(o) of the Customs Act, 1962:-

(i) In Union of India Vs Sampat Raj Dugar, 1992 (58) E.L.T. 163 (S.C) while considering the scope and ambit of Section 111(o), Hon'ble Supreme Court has observed as under:-

> *Clause (o) contemplates confiscation of goods which are exempted from duty subject to a condition, which condition is not observed by the importer. Occasion for taking action under this clause arises only when the condition is not observed within the period prescribed, if any, or where the period is not so prescribed, within a reasonable period.*

(ii) In case of MAYA PRESS PRIVATE LIMITED AND ANOTHER Versus COLLECTOR OF CENTRAL EXCISE, ALLAHABAD, 1987 (31) E.L.T. 1026 (Tribunal), It was held that non observance of conditions on which goods exempted from payment of duty attracts the provisions of Section 111(o).

> *Customs - Confiscation - Non-observance of condition on which goods exempted from customs duty - Newsprint - Goods allotted/distributed for printing of newspapers and books etc. but utilised otherwise - Goods liable to confiscation - Clause 10B of the Import (Control)*

*Order, 1955, read with Section 3(1) of the Import and Export (Control) Act, 1947-Section 111(o) of the Customs Act, 1962.*

(iii) SHESHANK SEA FOODS PVT. LTD. Versus UNION OF INDIA, 1996 (88) E.LT. 626 (S.C.)- In this case, Apex Court has observed that;

*Customs jurisdiction to investigate violation of condition of exemption to raw material imported under Advance Licence issued under DEEC Scheme - Search and Seizure - Bond furnished by the importer in pursuance to the Advance Licence - HELD:* ***Section 111(o) of the Customs Act provides for confiscation of exempted goods when condition of exemption not observed*** *- Jurisdiction of licensing authority to investigate the violation of condition of import licence does not preclude - Jurisdiction of Customs authorities to take action when the condition of exemption is violated and the exempted goods diverted for domestic sale etc. - Breach of the terms of exemption also a breach of the condition of import licence - Challenge to powers of Customs authorities search and seize turned down - Sections 110 and 124 of the Customs Act, 1962.*

**20.2 Redemption fine under Section 125 of the Customs Act, 1962:-**

In the instant case, the goods were neither seized nor released provisionally. Therefore, the goods are not physically available for confiscation. However, the provisions of Section 125(1) and Judgements of Hon'ble High Court of Madras and Hon'ble high Court of Gujarat, as discussed below, don't necessitate the requirement of physical availability of goods for confiscation.

**Section 125** of the Customs Act, 1962 provides for an option to pay fine in lieu of confiscation. Relevant paras of Section 125 are reproduced hereunder:-

"Section 125: Option to pay fine in lieu of confiscation:--

(1) **Whenever confiscation of any goods is authorized by this Act**, the officer adjudging it may, in thecase of any goods, the importation or exportation whereof is prohibited under this Act or under anyother law for the time being in force, and **shall**, **in the case of any other goods, give to the owner of the goods** or where such owner is not known, the person from whose possession or custody, suchgoods have been seized, **an option to pay in lieu of confiscation such fine as the said officer thinks fit:**

Provided that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, no such fine shall be imposed.

Provided further that without prejudice to the provisions of the proviso to sub-section (2) of section 115,such fine shall not exceed the market price of the

goods confiscated, less in the case of importedgoods the duty chargeable thereon.

(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner ofsuch goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty andcharges, payable in respect of such goods."

**20.3** It is apparent from the sub-section (1) of Section 125 that whenever confiscation of goods is authorized by this Act, the officer adjudging it shall in the case of goods other than prohibited goods give an option to pay fine in lieu of confiscation. The pre-requisite for making an offer of fine under Section 125 ofthe Act is pursuant to the finding that the goods are liable to be confiscated. In other words, if there is no authorisation for confiscation of such goods, the question of making an offer by the properofficer to pay the "redemption fine", would not arise. Therefore, the basic premise upon which thecitadel of Section 125 of the Act rests is that the goods in question are liable to be confiscated underthe Act. It is clear that the goods, amounting to assessable value of Rs. 13,05,16,437/- imported through Kandla Port, are liable to confiscation under the provision of Section 111(o) of the Customs Act, 1962 as discussed above, therefore the imposition of fine under Section 125 in lieu of confiscation is sustainable even though the goods are not available for confiscation. At the same time, I take into consideration the averments of the notice that these goods have been put to use for effecting exports.

**20.4** In this regard, I rely on the **Judgement of Hon'ble High Court of Madras in the case of M/s. Visteon Automotive Systems vs the Customs, 2017**, wherein the Hon'ble Court in Para 23 categorically held that the physical availability of goods doesn't have any significance for imposition of redemption fine under Section 125, which is reproduced as under:-

> "23. The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act ....", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant.The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the

goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No.(iii)"

**20.5** Further, the above judgement has been relied upon by the Hon'ble High Court of Gujarat in the matter of SYNERGY FERTICHEM PVT. LTD. Versus STATE OF GUJARAT {2020 (33) G.S.T.L. 513 (Guj.)}. The relevant Paras of the said judgement are reproduced hereinbelow:-

"174. The per-requisite for making an offer of fine under Section 130 of the Act is pursuant to the finding that the goods are liable to be confiscated. In other words, if there is no authorisation for confiscation of such goods, the question of making an offer by the proper officer to pay the "redemption fine", would not arise. Therefore, the basic premise upon which the citadel of Section 130 of the Act rests is that the goods in question are liable to be confiscated under the Act. It, therefore, follows that what is sought to be offered to be redeemed, are the goods, but not the improper conduct of the owner to transport the goods in contravention of the provisions of the Act or the Rules. We must also bare in mind that the owner of the goods is liable to pay penalty under Section 122 of the Act. The fine contemplated is for redeeming the goods, whereas the owner of the goods is penalized under Section 122 for doing or omitting to do any act which rendered such goods liable to be confiscated under Section 130 of the Act. In the aforesaid context, we may refer to and rely upon a decision of the Madras High Court in the case of M/s. Visteon Automotive Systems v. The Customs, Excise & Service Tax Appellate Tribunal, C.M.A. No. 2857 of 2011, decided on 11th August, 2017 [2018 (9) G.S.T.L. 142 (Mad.)], wherein the following has been observed in Para-23;

"23. The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act....", brings out the point clearly. ***The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant.*** The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii)."

175. ***We would like to follow the dictum as laid down by the Madras High Court in Para-23, referred to above***.

176. We may also refer to and rely upon a Supreme Court decision in the case of M.G. Abrol v. M/s. ShantilalChhotalal& Co, AIR 1965 SC 197, wherein the Supreme Court dealt with the very same issue and held as under;

"Another contention raised for the respondent is that the Additional Collector could not confiscate the goods after they had left the country and that therefore his order of confiscation of the scrap which according to him was not steel skull scrap was

bad in law. The affidavit filed by the Additional Collector, appellant No. 1, mentions the circumstances in which the scrap exported by respondent was allowed to leave the country. It was allowed to leave the country after the Collector had formally seized it and after the agents of the shipping company had undertaken not to release the documents in respect of the cargo to its consignees. This undertaking meant that the cargo would remain under the control of the customs authorities as seized cargo till further orders from the Additional Collector releasing the cargo and making it available to the consignees by the delivery of the necessary documents to them. The documents were allowed to be delivered to them on the application of the respondents praying for the passing on of the necessary documents to the purchasers of the goods in Japan and on the respondents giving a bank guarantee that the full f.o.b. value to be released from the said parch would be paid to the customs authorities towards penalty or fine in lieu of confiscation that might be imposed upon the respondents by the adjudicating authority. The customs authorities had seized the goods when they were within their jurisdiction. It is immaterial where the seized goods be kept. In the circumstances of the case, the seized goods remained on the ship and were carried to Japan. The seizure was lifted by the Additional Collector only when the respondents requested and gave bank guarantee. "The effect of the guarantee was that in case the Additional Collector adjudicated that part of the goods exported was not in accordance with the licence and had to be confiscated, the respondents, would, in lieu of confiscation of the goods, pay the fine equivalent to the of the bank guarantee. Section 183 of the Act provides that whenever confiscation is authorised by the Act the Officer adjudging it would give the owner of the goods option to pay in lieu of confiscation such fine as the officer thinks fit. This option was extended to the respondent at the stage before the goods were released from seizure. The formal order of confiscation had to be passed after the necessary enquiry and therefore when passed in the present case after the goods had actually left this country cannot be said to be an order which could not be passed by the Customs Authorities. I, therefore, do not agree with this contention."

**20.6** In view of the above discussion, case laws and provisions of Section 125 of the Custom Act, 1962, I find it apt to impose fine in lieu of confiscation under section 125(1) of the Custom Act.

**21. Penalty under Section 114A of the Customs Act, 1962.**

**21.1** With regard to the penalties under Section 114A of the Customs Act, 1962, it is already held that they have not paid the Custom duties amounting to Rs. 2,67,56,106.48/- in the form of IGST saved by way of suppression of facts, therefore, I hold them liable for penalty under section 114A of the Finance Act, 1962 also.

**21.2** Further, I find that the Board vide Circularno. 61/2002-Cus dated 20.09.2002 clarified that while imposing penalty under Section 114A the quantum of penalty must be the amount of duty and interest. The contents of the board Circularno. 61/2002-Cus dated 20.09.2002, is as under:-

"It has been reported that a number of show cause notices were issued proposing the demand of not only duty, but also interest payable in terms of provisions of para 128 of the Hand Book of Procedures (1st April, 1993 - 31st March, 1997). While the Show Cause Notices have quantified/specified the amount of duty, the interest to be demanded has not been specified, although demands have been raised. It has been reported that in all such cases, penalty under section 114A is being imposed equivalent to the amount of duty which stands determined on the date of adjudication order. The

Board has been requested to clarify as to whether mandatory penalty imposed under section 114A of the Customs Act, 1962 would be equal to the amount of duty or it would be equal to duty plus interest. Section 114A provides for levy of penalty equal to the duty or interest payable by a person in cases involving collusion or any willful mis-statement, or suppression of facts by the said person. Conjunction "or" in section 114A seems to be creating confusion at the field level.

2. The matter has been examined in consultation with the Ministry of Law. The Ministry of Law, has stated that Maxwell's Interpretation of Statutes (p-229) while dealing with conjunctions "or" and "and" provides that - "To carry out the intention of the legislature, it is occasionally found necessary to read conjunctions "or" and "and" one for the other." The Hon'ble Supreme Court in a case reported AIR 1957 SC p.699 State of Bombay vs. R.M.D.Chamarbougwala also read the word "or" as "and" to give effect to the clear intention of the legislature. In view of this, the Ministry of Law is of the view that to carry out the intentions of the legislature, it is occasionally found necessary to read the conjunction "or" and "and" one for the other. A Constitutional Bench of the Hon'ble Supreme Court in a case reported in AIR 1963 SC p.1638 T.S.GovindlaljiMaharaj vs. State of Rajasthan has also observed that sometimes "or" must mean "and" as has been mentioned vide para 39 of the said judgment. A copy of the Ministry of Law's opinion is enclosed.

3. In view of the above, **it is clarified that penalty under section 114A of the Customs Act, 1962 should be equivalent to duty and interest**....."

In view of the same, I hold that the importer is liable to pay penalty under Section 114A of the Customs Act equal to the duty plus interest.

**22.** In view of the above discussion and findings, relevant case laws referred and various provisions of the Customs Act, Foreign Trade Act and Foreign Policy, I hereby pass the following order:-

(i) I confirm and order to recover Customs duty amounting to Rs. 2,67,56,106.48/-(Rupees Two Crore Sixty Seven Lakhs Fifty six Thousand One Hundred and six only) in the form of IGST saved in course of imports of the goods through Kandla Port vide 08 Bills of Entry under the cover of subject Advance Authorizations under Section 28(4) of the Customs Act, 1962 read with the provisions of Section 143(3) of the Customs Act, 1962 which provides for recovery of the Customs duty and interest thereupon by way of enforcement of the Bonds executed by them at the time of import.

(ii) I order to recover interest at the applicable rate on the amount of Customs duty of Rs. 2,67,56,106.48/- confirmed above under Section 28AA of the Customs Act, 1962.

(iii) I order to confiscate the subject goods having assessable value of Rs. 13,05,16,437/- (Rupees Thirteen Crore Five Lakhs Sixteen Thousand Four Hundred and Thirty Seven only), imported through Kandla Port under Section 111(o) of the Customs Act, 1962 for non-fulfillment of 'pre-import' condition as enshrined in Customs Notification No. 18/2015-Customs dated 01.04.2015, as amended by Notification No. 79/2017-Customs dated 13.10.2017.

As regards the goods not physically available for confiscation, I impose redemption fine of Rs. 1,30,51,643/-(Rupees One Crore Thirty lakhs Fifty One Thousand Six Hundred and Forty Three only) in lieu of confiscation under Section 125 of the Customs Act, 1962.

(iv) I impose penalty equal to duty confirmed at (i) above plus interest thereon, under Section 114A of the Customs Act, 1962. If the duty and interest as confirmed above is paid within 30 days of communication of this order, the amount of penalty imposed would be 25% of the duty and interest as per the first proviso to Section 114A ibid subject to the condition that the amount of penalty so determined is also paid within said period of 30 days.

(v) I order to enforce the Bond, executed by the importer at the time of import, for the recovery of Customs duty, interest and penalty/fine.

**23.** This order is issued without prejudice to any other action that may be taken against the importer or any other person under the Customs Act, 1962 or any other law for the time being in force.

Signed by M Ram Mohan Rao
Date: 07-08-2024 16:28:56

(M. Ram Mohan Rao),
Commissioner,
Custom House, Kandla

**BY SPEED POST A.D. /BY EMAIL**

To:

M/s. Coromandel International Limited, IEC No.-0988002639

Coromandel House, Secunderabad,

Telangana-500003

**Copy to:-**

1. The Additional Director General, DRI, Zonal Unit, Kolkata
2. The Chief Commissioner, Customs Zone, Ahmedabad for the purpose of Review
3. The Superintendent (TRC/EDI/SIIB), Custom House Kandla, for further necessary action.
4. Guard File