
	<p>कार्यालय: प्रधान आयुक्त सीमा शुल्क, मुन्द्रा, सीमा शुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421</p> <p>OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE, MUNDRA PORT, KUTCH, GUJARAT-370421 PHONE:02838-271426/271423 FAX:02838-271425 Email:adj-mundra@gov.in</p>	
File No.	: GEN/ADJ/COMM/119/2023-Adjn-O/o Pr Commr-Cus - Mundra	1353
Order-in-Original No.	: MUN-CUSTM-000-COM-011-24-25	
Passed by	: K. Engineer Principal Commissioner of Customs, Customs House, AP & SEZ, Mundra.	
Date of order and Date of issue	: 15.05.2024 15.05.2024	
SCN No. & Date	: SCN No. GEN/ADJ/COMM/119/2023-Adjn dated 17.05.2023, issued by Commissioner of Customs, Customs.	
Noticee(s) / Party / Importer	: M/s HCP Plastene Bulkpack Ltd. (earlier known as M/s Gopala Polypplast), Plot No.485, Santej-Vadsar Road, At Po. Santej, Tal. Kalol, Dist.-Gandhinagar, Gujarat- 382721	
DIN	: 20240571MO000000E861	

1. यह अपील आदेश संबंधित को निःशुल्क प्रदान किया जाता है।

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

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम (1)6 के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 129 A (1) के अंतर्गत प्रपत्र सीए-3 में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है -

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:

“केन्द्रीय उत्पाद एवं सीमा शुल्क और सेवाकर अपीलीय प्राधिकरण, पश्चिम जोनल पीठ, 2nd फ्लोर, बहुमाली भवन, मंजुश्री मील कंपाउंड, गिर्धनगर ब्रिज के पास, गिर्धनगर पोस्ट ऑफिस, अहमदाबाद-380 004” “Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench, 2nd floor, Bahumali Bhavan, Manjushri Mill Compound, Near Girdharnagar Bridge, Girdharnagar PO, Ahmedabad 380 004.”

3. उक्त अपील यह आदेश भेजने की दिनांक से तीन माह के भीतर दाखिल की जानी चाहिए।

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

4. उक्त अपील के साथ 1000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, दंड या शास्ति रुपये पाँच लाख या कम माँगा हो -/5000 रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, शास्ति या दंड पाँच लाख रुपये से अधिक किंतु पचास लाख रुपये से कम माँगा हो 10,000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, दंड व्याज या शास्ति पचास लाख रुपये से अधिक माँगा हो। शुल्क का भुगतान खण्ड पीठ बेंच आहरित ट्रिब्यूनल के सहायक रजिस्ट्रार के पक्ष में खण्डपीठ स्थित जगह पर स्थित किसी भी राष्ट्रीयकृत बैंक की एक शाखा पर बैंक ड्राफ्ट के माध्यम से भुगतान किया जाएगा।

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. उक्त अपील पर न्यायालय शुल्क अधिनियम के तहत -/5 रुपये कोर्ट फीस स्टाम्प जबकि इसके साथ संलग्न आदेश की प्रति पर अनुसूची- 1, न्यायालय शुल्क अधिनियम, 1870 के मद सं 6-के तहत निर्धारित 0.50 पैसे की एक न्यायालय शुल्क स्टाम्प वहन करना चाहिए।

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 paise only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.

6. अपील ज्ञापन के साथ ड्यूटी /दण्ड /जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये। Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo. अपील प्रस्तुत करते समय, सीमा शुल्क) अपील (नियम, 1982 और CESTAT (प्रक्रिया (नियम, 1982 सभी मामलों में पालन किया जाना चाहिए।

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

7. इस आदेश के विरुद्ध अपील हेतु जहाँ शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहाँ केवल जुर्माना विवाद में हो, न्यायाधिकरण के समक्ष माँग शुल्क का 7.5% भुगतान करना होगा।

An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

BRIEF FACT OF THE CASE

During the analysis of wrong availment of exemption of IGST for the goods imported claiming benefit under Notification No. 021/2015-Cus dtd.01.04.2015 (Advance Authorisation Scheme for Deemed Exports), it revealed that M/s HCP Plastene Bulkpack Ltd. (earlier known as M/s Gopala Polyplast Limited), Plot No. 485, Santej-Vadsar Road, At Po. Santej, Tal. Kalol, Dist.-Gandhinagar, Gujarat-382721 (IEC-0392049856) (in short "the importer" or "the auditee" or "M/s HCP") had imported goods availing Notification No. 21/2015-Cus dated 01.04.2015 for exemption from payment of whole of Customs duty and Notification No. 18/2015-Cus. dated 01.04.2015 for exemption from payment of IGST in 10 Bills of Entry. Inexplicably, two separate notifications have been simultaneously claimed for exemption from BCD and IGST. The details of such Bills of Entry, wherein they have simultaneously claimed Notification No. 21/2015-Cus dated 01.04.2015 for exemption from payment of whole of Customs duty and Notification No. 18/2015-Cus. dated 01.04.2015 for exemption from payment of IGST, are as mentioned in Table below:

Sl. No	BE No.	BE Date	Name of Importer	IGST Payable (INR)
1	6912709	01.01.2022	M/s. HCP Plastene Bulkpack Ltd.	25,96,657.91
2	7059846	13.01.2022	(Earlier known as M/s. Gopala Polyplast Limited)	
3	4103268	27.05.2021	M/s. Gopala Polyplast Limited (Now M/s. HCP Plastene Bulkpack Ltd)	99,38,866.85
4	5414545	13.09.2021		
5	5414589	13.09.2021		
6	5428319	14.09.2021		
7	5796695	11.10.2021		
8	5892798	19.10.2021		
9	6010659	27.10.2021		
10	6241560	13.11.2021		
			Total	1,25,35,523.91

2. From the provisions of Notification No. 021/2015-Cus dtd. 01.04.2015 and Notification No. 018/2015-Cus dtd. 01.04.2015 and the provisions of Foreign Trade Policy and as per the conditions laid down in both the aforesaid Notifications, it was noticed that an importer, who has been granted Advance Authorisation in the respective Notification, can avail the benefit of the said Notification only. Notification No.018/2015-Cus dtd.01.04.2015 is applicable for advance licenses for physical

exports, whereas Notification No.021/2015-Cus dtd. 01.04.2015 is applicable for advance licenses for deemed exports.

3. As the goods were imported claiming benefit of Notification No. 021/2015-Cus dtd. 01.04.2015, which is applicable for advance licenses for deemed exports, therefore, the exemption of IGST under Notification No. 018/2015-Cus dtd. 01.04.2015, which is applicable for advance licenses for physical exports, can not be permitted and thus, it appears that IGST was wrongly exempted and was not paid in respect of the above-mentioned ten (10) Bills of Entry.

4. Accordingly, pre-notice consultative letters dated 27.05.2022, 03.06.2022, 15.06.2022 & 17.06.2022 vide F. No. S/01-37/PCA/MISC/2021-22 were issued to the Importer under provision to Section 28(1) (a) of Customs Act, 1962. The importer contested the merits of issue vide letter dated 22.06.2022 and did not pay the IGST along with interest. The submission/reply dated 22.06.2022 of importer was examined and it was found that the their submissions were not sustainable.

5. In view of above, a show cause notice F.No. GEN/ADJ/COMM/119/2023-Adjn dated 17.05.2023 was issued to M/s HCP Plastene Bulkpack Ltd. (earlier known as M/s Gopala Polyplast), Plot No.485, Santej-Vadsar Road, At Po. Santej, Tal. Kalol, Dist.-Gandhinagar, Gujarat- 382721 (IEC-0392049856) wherein they were called upon to show cause in writing to the Commissioner of Customs, Mundra having office at 1st Floor, Customs House, 5B, Port User Building, Mundra port, Mundra (Kuchchh), within 30 days from the receipt of this Notice as to why :-

- (i) The IGST total amounting to Rs. 1,25,35,523.91 (Rupees One Crore Twenty Five Lakh Thirty Five Thousand Five Hundred Twenty Three & Paise Ninety One only) **(as detailed in table at Para 5 of Show Cause Notice)** leviable on the impugned goods and not paid by M/s HCP Plastene Bulkpack Ltd. (earlier known as M/s Gopala Polyplast) should not be demanded and recovered from them in terms of Section 28(4) of the Customs Act, 1962 read with Section 5 of Integrated Goods and Service Tax Act, 2017 along with applicable interest under Section 28AA of the Customs Act, 1962 read with Section 50 of the Central Goods and Service Tax Act, 2017.
- (ii) All the goods imported vide 10 Bills of Entry **(as detailed in table at Para 5 above)**, which were self-assessed and have already been cleared, having assessable value of Rs. 6,96,41,804/- **(Rupees Six Crore Ninty Six Lakhs Forty One Thousand Eight Hundred Four only)** should not be held liable to confiscation under Section 111 (m) and 111(o) of the Customs Act, 1962. However, the said goods are already cleared and are not available for confiscation.
- (iii) Penalty should not be imposed under Section 112(a) and/or 114A of the Customs Act, 1962 of Customs Act, 1962 in respect of each of Bill of Entry.

WRITTEN SUBMISSION

6. The importer filed the written submission dated 15.04.2024, their pointwise submissions are as under: -

6.1. The Noticee has rightly availed the benefit of IGST under Notification No. 18/2015-Cus. dated 01.04.2015 for impugned goods

6.1.1. It is submitted that Notification No. 18/2015-Cus. dated 01.04.2015 exempts materials imported into India against a valid Advance Authorisation issued by the Regional Authority (hereinafter referred to as 'RA') in terms of Para 4.03 of the Foreign Trade Policy.

6.1.2. The Notification exempts payments from whole of the duty of customs leviable thereon which is specified in the First Schedule to the Customs Tariff Act, 1975 and, additional duty leviable thereon under sub-section (1), (3) and (5) of Section 3, integrated tax liable thereon under sub-section (7) of the section 3, goods and service tax compensation cess leviable 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 of the Customs Tariff Act, 1975.

6.1.3. The benefit of the exemption notification is however subject to certain conditions provided under the Notification. Condition (viii) of the Notification states that the export obligation specified in the Advance Authorisation (both in value and quantity terms) is to be discharged within the period specified in the said Authorisation or within such extended period as may be granted by the RA by exporting resultant products, manufactured in India which are specified in the said Authorisation.

6.1.4. Proviso 2 to Condition (viii) states that the export obligation shall be fulfilled by physical exports or by making domestic supplies in case of following- 1. Supply of goods by a registered person against Advance Authorisation; 2. Supply of capital goods by a registered person against Export Promotion Capital Goods Authorization; 3. Supply of goods by a registered person to Export Oriented Unit.

6.1.5. It is submitted that Notification No. 18/2015-Cus. dated 01.04.2015 thereby covers both physical exports as well as domestic supplies (deemed supplies) under Advance Authorisation. Therefore, Notification 18/2015-Cus. dated 01.04.2015 is to be read together with Notification 21/2015-Cus. dated 01.04.2015 which covers Advance Authorisation for deemed supplies.

6.1.6. It is humbly submitted that Notification 18/2015-Cus. dated 01.04.2015 cannot be interpreted strictly and should be read in conjunction with the condition which covers both physical and domestic supplies.

6.2. Notification No. 21/2015-Cus. dated 01.04.2015 ought to be harmoniously interpreted and read in consonance with Notification No. 18/2015-Cus. dated

01.04.2015, as objective of both the Notifications is to provide exemption to goods imported into India for manufacture of final goods which are to be exported

6.2.1. It is submitted that Notification No. 21/2015-Cus. dated 01.04.2015 exempts materials required for the manufacture of final goods when imported into India, against a valid Advance Authorisation for deemed export issued by RA in terms of Para 4.05(c)(iii) of the Foreign Trade Policy.

6.2.2. Para 7.01 provides that "deemed exports" refer to those transactions in which goods supplied do not leave the country, and payment of such supplies is received either in Indian rupees or in a free foreign exchange. Further, the categories of supply are also specifically provided in Chapter 7 of FTP.

6.2.3. Further Para 7.02 of FTP provides categories of supply. For ease of reference the same is extracted below-

7.02 Categories of Supply

Supply of goods under following categories (a) to (d) by a manufacturer and under categories (e) to (h) by main / sub-contractors shall be regarded as "Deemed Exports":

A. Supply by manufacturer:

- (a) Supply of goods against Advance Authorisation / Advance Authorisation for annual requirement / DFIA;
- (b) Supply of goods to EOU / STP / EHTP / BTP;
- (c) Supply of capital goods against EPCG Authorisation;
- (d) Deleted

6.2.4. It is submitted that the supplies made by the Noticees are very well covered by

(a), i.e., supply of goods against Advance Authorisation.

6.2.5. It is further submitted that the Noticees have manufactured the final goods in terms of the definition of the term "Final Goods" as provided in clause 2(III) of the Notification dated 01.04.2015. The same is supported by the Chartered Accountant Certificate confirming the supplies made by the Noticees. Copy of the Chartered Accountant Certificate dated 15.05.2024 is marked and enclosed as Annexure-7.

6.2.6. The Notification exempts from whole of the duty of customs leviable thereon under the First Schedule to the Customs Tariff Act, 1975 and from the whole of the additional duty leviable thereon under sub-section (1), (3) and (5) of the 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 of the said Customs Tariff Act. The benefit of the exemption notification is however subject to certain conditions provided in the Notification.

6.2.7. It is submitted that the objective of the Notification No. 21/2015-Cus. dated 01.04.2015 and Notification No. 18/2015-Cus. dated 01.04.2015 is to provide exemption to goods imported in India for manufacture of final goods which are to be exported. Therefore, both the notifications ought to be interpreted harmoniously and read in consonance with each other.

6.2.8. It is further submitted that Policy Circular No. 01/2024 dated 12.04.2024 provides clarification on discharge of export obligation of AA bearing Customs Notification No. 18/2015-Cus. as amended and Customs Notification No. 21/2015-Cus. as amended, both dated 01.04.2015 by making physical exports or by making domestic supplies.

6.2.9. The Policy circular specifically provides that an AA holder for deemed exports has an option to fulfill their export obligation either by way of supplies made to categories covered under Para 7.02(A) or by making physical exports.

6.2.10. Reliance in this regard is placed on the decision of In Re: Saraswati Exports, (2002) 143 E.L.T. 469 (G.O.I.), wherein it was observed that where there is any ambiguity in law, the intention of the legislation is to be seen before coming to any conclusion. Relevant part of the decision is extracted below for ease of reference-

"11. When there is any ambiguity in law, the intention of the legislation is to be seen before coming to any conclusion. The facility of drawback is given to the exporter because they are earning valuable foreign exchange to the country. Drawback is an incentive given by the Central Govt. by giving back duties paid on the inputs used in the manufactures of exported goods. When the sale proceeds are not realised, the reason because of which the exporter gets drawback facility itself gets nullified. Hence, Govt. has amended Sec. 75 of Customs Act, 1962 making realization of sale proceeds as the condition for drawback. Against this background it will be incorrect to argue that this amendment was made only for custom duty portion and not for central excise component because non-realization of export proceeds will amount to loss of revenue for Govt. either on the customs or on the excise front. Hon'ble Supreme Court in the case of LIC v. Escorts had held that while interpreting provisions of statutes harmoniously the interpretation which advances object of the enactment should be adopted."

(Emphasis Supplied)

6.2.11. Further, it is submitted that the notifications were introduced with the intent to provide benefit to the exporters, therefore in spirit of beneficial legislation, exemption should be made available to the Noticees.

6.2.12. It is also submitted that Notification No. 48/2017- Central Tax dated 18.10.2017, notified further supply of goods under deemed exports. The said notification at S. No. 1, specifically covers supply of goods by a registered person

against Advance Authorisation. Therefore, the intention of the legislation has always been to provide the benefit for imports made under AA.

6.2.13. Further, Notification No. 53/2015-2020 dated 10.01.2019 extended the benefit of IGST and Compensation Cess on deemed supplies till 31.03.2019 by amending Para 4.14 of the FTP.

6.2.14. The same is also reflected from Para 4.14 of the FTP wherein details of duties exempted are specifically provided. Notification No. 66/2015-2020 dated 01.04.2022 amends the above Para 4.14 of FTP to extend the benefit of exemption from IGST and Compensation Cess up to 30.06.2022 for imports made under AA.

6.2.15. It is submitted that the imports made by the Noticees are covered by the above notification dated 18.10.2017 and hence are very well entitled to the same.

6.2.16. The above notifications therefore depict the intention of the legislation to provide benefit of the exemption from payment of IGST and Compensation Cess wherein the imports are made under AA.

6.2.17. Reliance in this regard is placed on the decision of Southern Boilers and Equipments P. Ltd. v. Commr. of C. Ex., Chennai I-II, 2017 (345) E.L.T. 536 (Tri.-Chennai), wherein the Hon'ble Tribunal had granted the benefit of exemption to the Appellants in a case involving interpretation of notification in the spirit of beneficial legislation.

6.2.18. Reliance is also placed on the following decisions providing relief to the assessee in cases involving beneficial legislation-

□ ICI India Ltd. v. Commissioner of Central Excise, Ranchi, 2005 (191) E.L.T. 329 (Tri.-Kolkata)

□ Amrutanjani Ltd. v. Commissioner of Central Excise, Chennai, 2001 (128) E.L.T. 244 (Tri.-Chennai)

□ Commr. of C. Ex. and Cus., Surat v. Shriram Refrigeration Industries, 1999 (112) E.L.T. 511 (Tribunal)

6.2.19. Hence it is submitted that exemption from payment of integrated tax liable under sub-section (7) of section 3 of the Customs Tariff Act, 1975 is available under both the Notification No. 18/2015-Cus dated 01.04.2015 and Notification No. 21/2015-Cus. dated 01.04.2015.

6.2.20. Without prejudice to above, it is submitted that the situation in the instant case is revenue neutral as Noticee are eligible to take the credit of IGST if liable to be paid. Therefore, there is no loss to the revenue in the current scenario wherein the Noticees have availed the benefit by duty free import of the subject goods.

6.2.21. Reliance in this regard is placed on the following decisions-

□ Steel Authority of India vs. Collector of Central Excise, 1997 (90) E LT 287

□ Tvl Kasi and Sethu Vs. The Deputy Commercial tax Officer, 2003 (131) STC 73 Mad

□ Income Tax Officer Vs. Bachu Lal Kapoor, 1966 (60) ITR 74

□ CCE Vs. Special Steel Ltd. - 2015 (329) ELT 449 (T)

6.2.22. In view of above decisions and observations made by the authorities, it is submitted that there is no loss to the government on account of IGST on the imports.

6.3. Conditions under Advance Authorisation No. 0811000651 dated 15.02.2021 issued to the Noticee under Notification No. 21/2015-Cus. dated 01.04.2015 allows utilization of the exempted imported goods in accordance with Notification 18/2015. Cus dated 01.04.2015

6.3.1. It is submitted that the Noticee was issued the License No. 0811000651 for Advance Authorisation in terms of Notification No. 21/2015-Cus. dated 01.04.2015 on 15.02.2021 for imported PP Granules and exporting Polypropylene Woven Fabrics.

6.3.2. The benefit under the license is provided subject to conditions mentioned in the condition sheet. The condition sheet for the impugned license specifically states that the exempt goods imported against this Advance Authorisation shall be only be utilized in accordance with the provisions of Paragraph 4.12 and Paragraph 4.16 of the Foreign Trade Policy 2015-2020 and other provisions and relevant Customs Notification including Notification No. 18/2015 dated 01.04.2015 (for physical exports), 21/2015-dated 01.04.2015 (for deemed exports), 22/2015 dated 01.04.2015 (for Advance Authorisation for prohibited goods), and 20/2015 (for Annual Advance Authorisation) as the case may be, as amended from time to time.

6.3.3. It is clear goods imported duty free under the impugned the Advance Authorisation License issued to the Noticees can be utilized for both physical and deemed exports. Therefore, it is submitted that even though the license has been issued under Notification 21/2015-Cus. dated 01.04.2015, it is to be read in accordance with Notification 18/2015-Cus. dated 01.04.2015.

6.3.4. Henceforth, the Noticees have rightly availed the benefit of IGST exemption under Notification 18/2015-Cus. dated 01.04.2015 even though the license was issued under Notification 21/2015-Cus. dated 01.04.2015.

6.4. The importer in their written submission has submitted that impugned goods are not liable for confiscation under Section 111(m) or 111(o) of the Customs Act, 1962. They have referred the provisions of Section 111(m) or 111(o) of the Customs Act, 1962 and relied on following case law:-

- Nitish Tools Vs. CC - 2009 (237) ELT 482 (T),
- Handtex Vs. CC - 2008 (226) ELT 665 (T) and CC Vs. Sree Nakoda Impex - 2004 (177)ELT 349 (T).

➤ Kirti Sales Vs. CC – 2008 (232) ELT 151 (T)

6.5. The importer have submitted that penalty are not imposable on them under the provisions of Section 112(a) and/or Section 114A of the Customs Act, 1962. They have referred relevant provisions and relied on following case laws:-

Whiteline Chemicals v. Commissioner of C. Ex., Surat [2008 (229) E.L.T. 95 (Tri. – Ahmd.)],

Vadilal Industries Ltd. v. Commissioner of C. Ex., Ahmedabad 2007 (213) E.L.T. 157 (Tri. – Ahmd.),

E.9. Digital Systems vs. Commissioner of Customs, [2003 (154) ELT 71],

Goodyear (India) vs. CCE, [2003 (157) ELT 560]

Anand Metal Industries vs. CCE, [2005 (187) ELT 119]

6.6 The importer have also contested the proposal of imposition of penalty under Section 114AA of Customs Act, 1962 relying on following case laws:-

➤ Collector of Central Excise V/s H.M.M. Limited 1995 (76) ELT 497 (SC),
Commissioner of Central Excise, Aurangabad V/s Balakrishna Industries
2006 (201) ELT 325 (SC)

➤ Commissioner of Central Excise & Customs V/s Nakoda Textile Industries
Ltd reported in 2009 (240) ELT 199 (Bom.)

➤ Hindustan Steel Ltd. v. State of Orissa [1978 (2) ELT (J159) (SC)]

➤ Trade Wings Ltd V/s Commissioner of Customs, Mumbai reported in 2009
(243) ELT 439 (Tri.-Mumbai),

➤ Commissioner of Customs (EP) V/s P.D. Manjrekar reported in 2009 (244)
ELT 51 (Bom.),

➤ Mahindra and Mahindra Limited v. Union of India, 2022 (10) TMI 2022, the
Hon'ble Bombay High Court held that there is no substantive

6.6. Interest not imposable under Section 28AA of the Customs Act, 1962 read with Section 50 of the Central Goods and Service Tax Act, 2017

6.6.1. The demand of duty is not maintainable hence demand of interest is not sustainable. The Hon'ble Supreme Court of India in Prathibha Processors vs. Union of India, 1996 (88) E.L.T. 12 (S.C.), has held that when the principal amount (duty) is not payable due to exemption, there is no occasion or basis to levy any interest either.

6.6.2 Thus, from the above referred to principle that interest is necessarily linked to the duty payable. The Noticees humbly submit that once the duty itself cannot be demanded, the corresponding interest is also held to be not payable. The above referred to case is followed by the Hon'ble Supreme Court in the case of Commissioner of Customs, Chennai vs. Jayathi Krishna, and Co., 2000 119 ELT 4 SC. That interest cannot be demanded when duty demand is not sustainable has also been upheld in several High Court and Tribunal decisions.

6.6.2 Reliance is also placed on the decision of Mahindra & Mahindra Limited (supra), wherein the Hon'ble High Court of Bombay had held that there is no

substantive provision in Section 3 of the Customs Tariff Act, 1975 that provides for payment of penalty or interest on duty other than basic custom duty, and therefore, in absence of such a specific provision for levy of interest or penalty, same cannot be charged.

6.6.3 Therefore, the proposal to levy interest under Section 28AA of the Customs Act, 1962 and Section 50 of the Central Goods and Services Tax Act, 2017 is liable to be dropped and set aside.

6.7 In view of above submissions, the importer has requested to drop all the proceedings initiated vide Show Cause Notice dated 17.05.2023.

PERSONAL HEARING

7. Following the principles of natural justice and the provisions laid down in Customs Act, 1962, opportunity of personal hearing in the case was given to the Noticees on 28.02.2024, 03.04.2024 & 18.04.2024.

7.1. 1st PH and 2nd PH on 28.02.2024 and 03.04.2024:

7.1.1 No one appeared in the personal hearing fixed on 14.02.2024 and 03.04.2024.

7.2. 3rd PH on 18.04.2024:

7.2.1 Ms. Shruti Khanna, Advocate appeared in the personal hearing conducted today on behalf of Noticee before me. She reiterated written submission filed in the matter. She stated that the intension of both the notifications are to grant exemption on import of goods intended for purpose of export. She submitted that they have fulfilled their export obligation. She requested to drop the proceedings initiated in the show cause notice.

DISCUSSION AND FINDINGS

8. I have carefully gone through Show Cause Notice; relied upon documents, legal provisions, submissions made by the Noticees and the records available before me. The main issues involved in the above cases which are required to be decided in the present adjudication are as below: -

- (i) Whether the IGST total amounting to Rs. 1,25,35,523.91 (Rupees One Crore Twenty Five Lakh Thirty Five Thousand Five Hundred Twenty Three & Paise Ninety One only) (as detailed in table at Para 5 of show cause notice) leviable on the impugned goods and not paid by M/s HCP Plastene Bulkpack Ltd. (earlier known as M/s Gopala Polyplast) is liable to be demanded and recovered from the importer in terms of Section 28(4) of the Customs Act, 1962 read with Section 5 of Integrated Goods and Service Tax Act, 2017 along with applicable interest under Section 28AA of the Customs Act, 1962 read with Section 50 of the Central Goods and Service Tax Act, 2017.
- (ii) Whether all the goods imported vide 10 Bills of Entry (as detailed in table at Para 5 of Show cause Notice), which were self-assessed and have already been cleared, having assessable value of Rs. 6,96,41,804/- (Rupees Six

Crore Ninty Six Lakhs Forty One Thousand Eight Hundred Four only) are liable for confiscation under Section 111 (m) and 111(o) of the Customs Act, 1962

(iii) Whether M/s HCP Plastene Bulkpack Ltd. (earlier known as M/s Gopala Polyplast) is liable to penalty under Section 112(a) and/or 114A of the Customs Act, 1962 of Customs Act, 1962 in respect of each of Bill of Entry.

9. After having framed the main issues to be decided, now I proceed to deal with each of the issues herein below. The foremost issue before me to decide in this case is as to whether the IGST along with applicable interest are liable to be recovered from M/s HCP.

10. I find that M/s HCP had obtained Advance Authorization for import of goods under the provisions of Notification No. 021/2015-Cus dtd.01.04.2015 (Advance Authorisation Scheme for Deemed Exports) which does not exempt the IGST on importation of goods. However, M/s. HCP has imported goods covered under 10 Bills of Entry wherein they have simultaneously also availed the benefit of Notification No. 018/2015-Cus dtd. 01.04.2015(Advance Authorisation Scheme for physical export).

10.1 For better understanding of the said two notifications viz. 021/2015-Cus dtd.01.04.2015, 018/2015-Cus dtd. 01.04.2015 both amended from time to time and Foreign Trade Policy(FTP), 2015-20 permitting import of the materials under Advance Authorization, it will be imperative to take a cursory look on both the notifications no. 021/2015-Cus. dtd.01.04.2015 and 018/2015-Cus dtd. 01.04.2015 along with relevant paragraphs of FTP .

10.1.1. Notification No. 021/2015-Cus dtd.01.04.2015 reads as under:-

Notification No. 21/ 2015 – Customs

New Delhi, the 1 st April, 2015.

G.S.R. 257 (E)- 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 required for the manufacture of the final goods when imported into India, from whole of the duty of customs leviable thereon under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as Customs Tariff Act) 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, except to the extent specified in para 2 to this notification, subject to the following conditions, namely :-

(i) **that the importer has been granted Advance Authorisation for deemed export by the Regional Authority in terms of paragraph 4.05(c)(iii) of the Foreign Trade Policy permitting import of the said materials (hereinafter referred to as the said authorisation);**

(ii) **that the said authorisation is produced before the proper officer of customs at the time of clearance for debit;**

(iii) **that the said authorisation contains endorsements specifying, inter alia, -**

(a) the description, quantity and value of materials allowed to be imported under the said authorisation; and

(b) the description and quantity of final goods to be manufactured out of, or with, the imported materials :

Provided that in respect of inputs referred in paragraphs 4.12(i) and 4.12(ii) of the Foreign Trade Policy, the material permitted to be imported in the said authorisation shall be of the specific name or description or quantity, respectively, as the material used in the manufacture of the final goods supplied. The authorisation holder shall declare these particulars on the documents like ARE-3 and Central Excise Certified Invoice;

(iv) that in respect of imports made before the discharge of export obligation, the importer at the time of clearance of the imported materials executes a bond with such surety or security, in such form and for such sum as may be specified by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, binding himself to pay on demand an amount equal to the duty leviable, but for the exemption contained herein, on the imported materials in respect of which the conditions specified in this notification are not complied with, together with interest at the rate of fifteen per cent per annum from the date of clearance of the said materials;

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10.1.2 The above notification no. No. 21/2015-Cus., dated 01.04.2015 was amended vide notification No. 26/2017-Cus., dated 29-6-2017 to the following extent:

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 under section 9A" shall be substituted.

(ii) in condition (x), in the first proviso, for the words "relevant Central Excise notifications" the words "relevant goods and services tax provisions" shall be substituted.

10.1.3. Further, the Notification No. 21/2015-Cus. dated 01.05.2015, amended vide Notification No. 79/2017-Cus., dated 13-10-2017 to the following extent:

In the said notification,

(a) in the opening paragraph, for the words, figures, and letters "safeguard duty leviable thereon under section 8B and anti-dumping duty leviable thereon under section 9A" the words, figures and letters "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 paragraph 2, for the words "safeguard duty, transitional product specific safeguard duty and anti-dumping duty", the words "safeguard duty, transitional product specific safeguard duty, countervailing duty and anti-dumping duty" shall be substituted.

10.1.2. From the above provisions of Notification No. 21/2015 dated 01.04.2015 as amended from time to time, it is clear that exemption is granted to the material required for the manufacture of the final goods when imported into India, from whole of the duty of Customs leviable thereon under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and 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, countervailing duty leviable thereon under Section 9 and anti-dumping duty leviable thereon under Section 9A of the Customs Tariff Act subject to the conditions laid down under the said notification.

10.1.3. Further, one of the conditions of the subject notification is that the importer has been granted Advance Authorisation for deemed export by the Regional Authority in terms of Paragraph 4.05(c)(iii) of the Foreign Trade Policy (FTP) permitting import of the said materials.

10.1.3.1 Paragraph 4.05(c)(iii) of the Foreign Trade Policy states as under:

"(c) Advance Authorisation shall be issued for:

(iii) Supply of goods to the categories mentioned in paragraph 7.02 (b), (c), (e), (f), (g) and (h) of this FTP."

10.1.3.2 Paragraphs 7.02 (b), (c), (e), (f), (g) and (h) of the Foreign Trade Policy read as under:

"Categories of Supply:

Supply of goods under following categories (a) to (d) by a manufacturer and under categories (e) to (h) by main/sub-contractors shall be regarded as "Deemed Exports":

A. Supply by manufacturer:

(b) Supply of goods to EOU/STP/EHTP/BTP;

(c) Supply of capital goods against EPCG Authorisation;

B. Supply by main/sub-contractor(s):

(e) (i) Supply of goods to projects financed by multilateral or bilateral Agencies/Funds as notified by Department of Economic Affairs (DEA), MoF, where legal agreements provide for tender evaluation without including customs duty.

(ii) Supply and installation of goods and equipment (single responsibility of turnkey contracts) to projects financed by multilateral or bilateral Agencies/Funds as notified by Department of Economic Affairs (DEA), MoF, for which bids have been invited and evaluated on the basis of Delivered Duty Paid (DDP) prices for goods manufactured abroad.

(iii) Supplies covered in this paragraph shall be under International Competitive Bidding (ICB) in accordance with procedures of those Agencies / Funds. (iv) A list of agencies, covered under this paragraph, for deemed export benefits, is given in Appendix 7A.

(f) (i) Supply of goods to any project or for any purpose in respect of which the Ministry of Finance, by erstwhile Notification No. 12/2012 -Customs dated 17.3.2012, as amended from time to time, had permitted import of such goods at zero customs duty (with exemption of both BCD and CVD) subject to conditions specified therein and which are continued under the Customs Notification No. 50/2017-Customs dated 30.6.2017 with exemption of zero

basic customs duty and subject to conditions mentioned in the said new notification. Benefits of deemed exports shall be available only if the supply is made under procedure of ICB.

(ii) Supply of goods required for setting up of any mega power project, as specified in the list 31 at Sl. No. 598 of Department of Revenue Notification No. 50/2017-Customs dated 30.6.2017, as amended from time to time and subject to conditions mentioned therein, shall be eligible for deemed export benefits provided such mega power project conforms to the threshold generation capacity specified in the above said Notification.

(iii) For mega power projects, ICB condition would not be mandatory if the requisite quantum of power has been tied up through tariff based competitive bidding or if the project has been awarded through tariff based competitive bidding.

(g) Supply of goods to United Nations or International organization for their official use or supplied to the projects financed by the said United Nations or an International organization approved by Government of India in pursuance of section 3 of United Nations (Privileges and Immunities Act), 1947. List of such organization and conditions applicable to such supplies is given in the Customs notification no. 84/97-Customs dated 11.11.1997, as amended from time to time. A list of Agencies, covered under this paragraph, is given in Appendix-7B.

(h) Supply of goods to nuclear power projects provided:

(i) Such goods are required for setting up of any Nuclear Power Project as specified in the list 32 at Sl. No. 602, Customs notification no. 50/2017-Customs dated 30.6.2017, as amended from time to time and subject to conditions mentioned therein.

(ii) The project should have a capacity of 440 MW or more.

(iii) A certificate to the effect is required to be issued by an officer not below the rank of Joint Secretary to Government of India, in Department of Atomic Energy.

(iv) Tender is invited through National competitive bidding (NCB) or through ICB."

10.2 The Notification No. 18/2015-Cus dtd.01.04.2015 reads as under: -

Notification No. 18/ 2015 – Customs

New Delhi, the 1 st April, 2015.

G.S.R. 254 (E).- 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, subject to the following conditions, namely :-

(i) that the said authorisation is produced before the proper officer of customs at the time of clearance for debit;

(ii) that the said authorisation bears,-

- (a) the name and address of the importer and the supporting manufacturer in cases where the authorisation has been issued to a merchant exporter; and
- (b) the shipping bill number(s) and date(s) and description, quantity and value of exports of the resultant product in cases where import takes place after fulfillment of export obligation; or
- (c) the description and other specifications where applicable of the imported materials and the description, quantity and value of exports of the resultant product in cases where import takes place before fulfillment of export obligation;
- (iii) that the materials imported correspond to the description and other specifications where applicable mentioned in the authorisation and are in terms of para 4.12 of the Foreign Trade Policy and the value and quantity thereof are within the limits specified in the said authorisation;
- (iv) that in respect of imports made before the discharge of export obligation in full, the importer at the time of clearance of the imported materials executes a bond with such surety or security and in such form and for such sum as may be specified by the Deputy Commissioner of Customs or Assistant Commissioner of Customs; as the case may be, binding himself to pay on demand an amount equal to the duty leviable, but for the exemption contained herein, on the imported materials in respect of which the conditions specified in this notification are not complied with, together with interest at the rate of fifteen per cent per annum from the date of clearance of the said materials;
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10.2.1 The above notification no. No. 18/2015 dated 01.04.2015 was amended vide Notification No. 26/2017-Cus., dated 29-6-2017 to the following extent:

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 under section 9A" shall be substituted;

10.2.2. Further, the Notification No. 18/2015 dated 01.05.2015 amended vide Notification no. 79/2017-Cus., dated 13-10-2017 to the following extent:

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 cess leviable 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 cess* leviable 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 cess* leviable 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 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 shall be available up to the 31st March, 2018."

10.02.03. Further, the Notification No. 18/2015 dated 01.05.2015, further amended vide Notification no. 1/2019-Cus., dated 10-1-2019 to the following extent:

In the said notification,-

(a) after condition (vi), the following conditions shall be inserted, namely :-

"(vi)(a) that in respect of imports made after the discharge of export obligation in full, if facility of input tax credit under relevant Goods and Services Tax law on inputs used for manufacture and supply of goods exported has been availed, then the importer shall, at the time of clearance of the imported materials, furnish a bond to the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, binding himself, to use the imported materials in his factory or in the factory of his supporting manufacturer for the manufacture and supply of taxable goods (other than nil rated or fully exempt supplies) and to submit a certificate from a chartered accountant within six months from the date of clearance of the said materials, that the imported materials have been so used;

Provided that if the importer pays integrated tax and the goods and services tax compensation cess leviable on the imported materials under sub-section (7) and sub-section (9) respectively of section 3 of the said Customs Tariff Act on the imported materials but for the exemption contained herein, then such imported materials may be cleared without furnishing a bond specified in this condition;

(vi)(b) that in respect of imports made after the discharge of export obligation in full, and if facility of input tax credit under relevant Goods and Services Tax law has not been availed on inputs used in the manufacture and supply of goods exported and the importer furnishes proof to this effect to the satisfaction of the Deputy Commissioner of Customs, or the Assistant Commissioner of Customs, as the case may be, then the imported materials may be cleared without furnishing a bond specified in condition (vi)(a);"

(b) in condition (viii), for the second proviso, the following proviso shall be substituted, 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 cess leviable thereon under sub-section [7] and sub-section [9] respectively of section 3 of the said Customs Tariff Act, has been availed, the export obligation shall be fulfilled by physical exports or by making domestic supplies mentioned at serial numbers 1, 2 and 3 of the Table contained in notification No.48/2017-Central Tax, dated the 18th October, 2017 [published vide number G.S.R. 1305(E), dated the 18th October, 2017];"

(c) condition (xii) shall be omitted.

10.2.4. By virtue of Notification No. 018/2015-Cus dtd. 01.04.2015 as amended from time to time, exemption is granted to the materials imported into India against a valid Advance Authorisation issued by the Regional Authority in terms of para 4.03 of the Foreign Trade Policy (Not para 4.05 (c) (iii)) 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 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 service tax compensation cess leviable 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 of the Customs Tariff Act, 1962 subject to the conditions laid down under the said notification.

10.2.5. Paragraph 4.03 of the Foreign Trade Policy states as under:

"Advance Authorisation:

(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."

10.3. From the conditions mentioned Paragraph 4.05(c)(iii) read with Paragraph 7.02 of Foreign Trade Policy, it is amply clear that benefit of Advance Authorisation under the provisions of Notification No.021/2015-Cus dtd. 01.04.2015 is applicable for deemed exports only, whereas conditions mentioned in Paragraph 4.03 of the Foreign Trade Policy benefit of Advance license under the provisions of Notification No. 018/2015-Cus dtd.01.04.2015 is applicable to importer for physical exports.

10.4. From the provisions of Notification No. 021/2015-Cus dtd. 01.04.2015 (Advance Authorisation for deemed exports) and Notification No. 018/2015-Cus dtd. 01.04.2015 (Advance Authorisation for physical exports) and the provisions of Foreign Trade Policy as mentioned above and as per the conditions laid down in both the aforesaid Notifications, it is crystal clear that an importer, who has been granted Advance Authorisation in the respective Notification, can avail the benefit of the said Notification only and that for the goods imported claiming benefit of Notification No. 021/2015-Cus dtd. 01.04.2015, when the goods imported are meant for Deemed Exports, IGST is not exempted.

10.5. I find that before implementation of GST, Directorate General of Foreign Trade vide Trade Notice No. 11/2018 dated 30-6-2017 had made aware to all the Advance License holders that "Under the GST regime, no exemption from payment of Integrated GST and Compensation Cess would be available for imports under Advance Authorisation". For sake of clarity said Trade Notice is produced below:-

Subject: Important FTP provisions in the context of the implementation of the GST regime applicable w.e.f. 01.07.2017

The chapter wise provisions of the FTP 2015-20:

General Provision:

- With effect from July 1, 2017, the term "Central Excise Authority" used in foreign Trade Policy 2015-20 and Foreign Trade procedures 2015-20 should be read as "Jurisdictional Customs Authority".

Chapter 2:

Changes in IEC notified through Trade Notice NO.09/2018 dated 12.06.2017

Chapter 3

- The Duty Credit Scripts (issued under Chapter 3 of the FTP) cannot be used for payment of IGST and GST compensation cess in imports, and CGST, SGST, IGST and GST compensation cess for domestic procurement.

Chapter 4:

- Under the GST regime, no exemption from payment of Integrated GST and Compensation Cess would be available for imports under Advance Authorisation.

- Importers would need to pay IGST and take input tax credit as applicable under GST rules. • However, imports under Advance Authorisation would continue to be exempted from payment of Basic Customs Duty, Additional Customs Duty specified under Section 3(1), 3(3) and 3(5) of the Customs Tariff Act, Education Cess, Anti-dumping Duty, Safeguard Duty and Transition Product Specific Safeguard Duty, wherever applicable.

- Applicable GST would need to be paid while making local procurement, using an invalidation letter of Advance Authorisation, DFIA. Recipient of goods can take Input Tax Credit (ITC) of the GST paid on such local procurement. This Input Tax Credit can be utilized as per GST rules. • Advance Release Order facility shall not be available for procurement of inputs under Advance Authorization scheme except for inputs listed in Schedule 4 of Central Excise Act, 1944 read with The Taxation Laws (Amendment) Act 2017 No 18 of 2017, with effect from July 1, 2017. RAs are directed not to issue ARO except for Schedule-4 items as stated above.

- Imports/exports under the replenishment schemes for the Gems and Jewellery sector covered under chapter 4 of FTP and HBP shall be subject to Customs Notification issued/ to be issued in this regard.

Chapter 5:

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10.5.1 Hon'ble Apex Court in case of Union of India V/s. Cosmo Films Ltd. (2023) 5 Centax 286 (S.C.) / 2023 (385) E.L.T. 66 (S.C.) has taken a reference of Trade Notice No. 11/2018 dated 30-6-2017 and has observed as under: -

"49. It is important to notice, at this stage, that exporters were made aware of the changes brought about due to the introduction of GST, through a trade notice, (Trade Notice 11/2017, dated 30-06-2017). To the extent it is relevant to the present case, is extracted below:

"Trade Notice 11/2017

Subject: Important FTP provisions in the context of the implementation of the GST regime applicable w.e.f 1-7-2017

Under the GST regime, no exemption from payment of integrated GST and Compensation Cess would be available for imports under Advance Authorisation.

The chapter wise provisions of the FTP 2015-20:

General Provision:

Chapter 4

Under the GST regime, no exemption from payment of integrated GST and Compensation Cess would be available for imports under Advance Authorisation.

Importers would need to pay IGST and take input tax credit as applicable under GST rules.

However, imports under Advance Authorisation would continue to be exempted from payment of Basic Customs Duty, Additional Customs Duty specified under section 3(1), 3(3) and 3(5) of the Customs Tariff Act, Education Cess, Anti-dumping Duty, Safeguard Duty and Transition Product Specific Safeguard Duty, wherever applicable.

Applicable GST would need to be paid while making local procurement, using an invalidation letter of Advance Authorisation IDFA. Recipient of goods can take Input Tax Credit (ITC) of the GST paid on such local procurement.

This Input Tax Credit can be utilized as per GST rules.

Advance Release Order facility shall not be available for procurement of inputs under Advance Authorization scheme except for inputs listed in Schedule 4 of Central Excise Act, 1944 read with The Taxation Laws (Amendment) Act 2017 No 18 of 2017, with effect from July 1, 2017. RAs are directed not to issue ARO except for Schedule-4 items as stated above.

Imports/exports under the replenishment schemes for the Gems and Jewellery sector covered under chapter 4 of FTP and HBP shall be subject to Customs Notification issued/to be issued in this regard."

50. The public notice clearly forewarned that AAs and their utilisation would not continue in the same manner as the AA scheme was operating hitherto. This trade notice has escaped the attention of the High Court, since there is no advertence to it in the impugned order, or a discussion about it. Likewise, the HBP was amended, and paragraph 4.27 (d) was inserted, which stated that duty free authorisation for inputs subject to 'pre-import condition' could not be issued. The said clause is as follows:

"(iv) No Duty Free Import Authorisation shall be issued for an input which is subjected to pre-import condition."

51. By virtue of the trade notice, exporters were made aware of the fact that under the GST regime, no exemption from payment of IGST and compensation cess would be available for imports under AA. Importers had to pay IGST and take input tax credit as applicable under GST rules.

52. It is a matter of law that FTAs are statutory and are framed by the Union, exercising its powers under Section 5 of the FTAA 29. On the other hand, the HBP does not have the status of rules or regulations. It merely contains guidelines. In Hindustan Granites v Union of India³⁰ this court observed that: "Handbook of Procedure merely implements the policy. It does not prevent the Central Government from changing the policy."

10.5. The introduction of the GST regime resulted in a substantial and fundamental overhaul of the indirect tax structure, at the State and Central levels. The GST regime is based on the idea of removing cascading effect of the taxes. The cascading effect of taxes mean levy of tax on tax. The GST is levied on the net value added portion and not on the entire transaction value as the taxpayer would enjoy input tax credit. Barring few indirect taxes, all the major indirect taxes levied by the Central and State governments are subsumed into the GST. Consequently, taxpayers and suppliers are untroubled about paying multiple indirect taxes under different laws. In the GST framework, simple rules have been prescribed to utilize the cross-sectional credit of input taxes. A trader who could not claim credit of tax paid on services, can seek and get credit on goods as well as services. This framework of seamless credit was introduced to safeguard that taxes on supplies are paid to the extent of value additions and not liability- and to avoid double taxation.

10.5.1. Before the introduction of the GST regime, imports allowed under Advance Authorizations were exempt from payment of many duties. Thereafter, CVD and SAD were subsumed in IGST. Under Section 3 of the Customs Tariff Act, 1975, IGST was made payable at specified rates upon imports. 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. Such exemption was allowed indirectly by allowing refund of IGST paid at the time of imports under Advance Authorisation (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. 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. For sake of clarity Notification No. 33/2015-20 dated 13.10.2017 which amended the Para 4.14 of Foreign Trade Policy 2015-20 is produced hereunder:-

"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, Transition Product Specific Safeguard Duty, wherever applicable. Import against supplies covered under paragraph 7.02 (c), (d) and (g) of FTP will not be 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 of 1975), as may be provided in the notification issued by Department of Revenue, and such imports shall be subject to pre-import condition."

10.6. The importer in their submission have argued that Notification No. 21/2015-Cus. dated 01.04.2015 ought to be harmoniously interpreted and read in consonance with Notification No. 18/2015-Cus. dated 01.04.2015, as objective of both the Notifications is to provide exemption to goods imported into India for manufacture of final goods which are to be exported. They have placed reliance in the following case Laws:-

- (i) M/s. Himadri Specialty Chemical Ltd. vs. Pr. Commr. of Customs, Visakhapatnam, 2024 (4) TMI 383- CESTAT Hyderabad
- (ii) Saraswati Exports, (2002) 143 E.L.T. 469 (G.O.I.)
- (iii) Southern Boilers and Equipment's P. Ltd. v. Commr. of C. Ex., Chennai I-II, 2017 (345) E.L.T. 536 (Tri.-Chennai)
- (iv) ICI India Ltd. v. Commissioner of Central Excise, Ranchi, 2005 (191) E.L.T. 329 (Tri.-Kolkata)
- (v) Amrutanjan Ltd. v. Commissioner of Central Excise, Chennai, 2001(128) E.L.T. 244 (Tri.-Chennai)
- (vi) Commr. of C. Ex. and Cus., Surat v. Shriram Refrigeration Industries, 1999 (112) E.L.T. 511 (Tribunal)
- (vii) Steel Authority of India vs. Collector of Central Excise, 1997 (90) E LT
- (viii) 287
- (ix) Tvl Kasi and Sethu Vs. The Deputy Commercial tax Officer, 2003 (131)
- (x) STC 73 Mad
- (xi) Income Tax Officer Vs. Bachu Lal Kapoor, 1966 (60) ITR 74
- (xii) CCE Vs. Special Steel Ltd. - 2015 (329) ELT 449 (T)

10.6.1. I have examined the submissions of importer and have carefully gone through the case laws relied upon by them. I find that all the case laws relied upon by M/s. HCP, except sr. no. (i), are of pre-GST era, hence case-laws (Sr, No. ii to xii) relied by the importer have no precedential relevance with the present case. So far as order of Hon'ble Tribunal in case of M/s. Himadri Specialty Chemical Ltd. V/s. Pr. Commr. of Customs, Visakhapatnam, 2024 (4) TMI 383- CESTAT Hyderabad is concerned, the Tribunal has set aside the order of Commissioner of Customs, Visakhapatnam on the grounds of revenue neutrality and invocation of extended period in that case. I find that the Hon'ble Tribunal has not appreciated the fact that it is a settled legal position that any exemption notification has to be strictly interpreted and it is obligation of the importer/beneficiary to satisfy the terms and conditions of the Exemption Notification. Further, the said order is still within the period of review and cannot be construed to have reached finality. The following judicial pronouncements made by the Apex Court however are of direct relevance :

- The Hon'ble Supreme Court in the case of Commissioner of Customs(Import) Vs Dilip Kumar and Company, in the Civil Appeal No. 3327 of 2007 held that exemption notification should be interpreted strictly.
- The Hon'ble Supreme Court, in the case of Novopan India Ltd., Vs Collector of Central Excise and Customs, reported in 1994 (73) E.L.T. 769 (S.C.) held that "Exemption being in the nature of exception to be construed strictly at the stage of determination whether assessee falls within its terms or not and in case of doubt or ambiguity, benefit of it must go to the State".
- The Hon'ble Supreme Court, in the case of BOI India Ltd Vs State of Jharkhand, reported in 2009(237) ELT 7 (SC), held that "For purpose of claiming exemption from payment of tax/special rate of tax applicable to a commodity, assessee must bring on record sufficient materials to show that it comes within the purview of notification".
- The Hon'ble Supreme Court, in the case of Star Industries Vs Commissioner of Customs (Import) Raigad, reported in 2015 (324) E.L.T. 656 (S.C.), held that exemption notifications have to be construed strictly and if there is some doubt, benefit thereof shall not ensure to assessee but would be given to Revenue.
- The Hon'ble Supreme Court, in the case of M/s. Gammon India Ltd., Vs Commissioner of Customs, Mumbai reported in 2011(7) TMI 17-SC, held that since the language condition of the exemption notification is clear and unambiguous, there is no need to resort to the interpretative process in order to determine whether the said condition is to be imparted strict or liberal construction.
- Hon'ble Supreme Court in the case of Hotel Leela Venture Ltd. Vs. Commr. of Customs (General), Mumbai [2009(234) ELT-389(SC) held that the burden was on the appellant to prove that the appellant satisfies the terms and conditions of the Exemption Notification. It is well settled that Exemption Notification have to be read in the strict sense.

- Hon'ble Supreme Court in the case of Krishi Upaj Mandi Samiti v/s. CCE reported in 2022 (58) GSTL 129 (SC) held that law of the issue of interpretation of taxing statute has been laid down in catena of decisions that plain language capable of defined meaning used in a provision has to be preferred and strict interpretation has to be adopted except in cases of ambiguity in statutory provisions.
- Hon'ble Supreme Court in the case of Uttam Industries V/s. CCE reported in 2011 (265) ELT 14(SC) held that it is well settled law that exemption notification should be construed strictly and exemption notification is subject to strict interpretation by reading it literally.

10.6.2. I, further find support from the judgment dated 30.08.2018 of Hon'ble Apex Court the case of COMMISSIONER OF CUSTOMS (IMPORT), MUMBAI ...APPELLANT(S) VERSUS M/S. DILIP KUMAR AND COMPANY & ORS. (CIVIL APPEAL NO. 3327 OF 2007) wherein the Constitutional bench has held that the benefit of ambiguity in exemption notification cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue/state. Exemption notifications are subject to strict interpretation. The Relevant Para the said judgement is reproduced hereunder;

"41. After thoroughly examining the various precedents some of which were cited before us and after giving our anxious consideration, we would be more than justified to conclude and also compelled to hold that every taxing statute including, charging, computation and exemption clause (at the threshold stage) should be interpreted strictly. Further, in case of ambiguity in a charging provisions, the benefit must necessarily go in favour of subject/assessee, but the same is not true for an exemption notification wherein the benefit of ambiguity must be strictly interpreted in favour of the Revenue/State."

10.6.3. In view of above judicial pronouncements, I find that there is no force in above contentions of the importer. The Advance license was issued for importation of goods under the Notification No. 21/2015-cus dated 01.04.2015 and so they were bound to abide by the conditions laid down in said notification and by way of availing IGST exemption under Notification No. 18/2015-cus dt. 01.04.2015 simultaneously they have breached settled laws.

10.7. The importers have argued that the benefit of exemption under Notification No. 18/2015 dt. 01.04.2015 is admissible to them. This argument cannot be accepted as exemption benefit cannot be extended on the basis of assumption or presumption. Their eligibility to claim IGST exemption under CN 18/2015 dt. 1.4.2015 is totally irrelevant here as the Advance Authorization was issued under CN 21/2015 dt. 1.4.2015 and hence bringing any analogy between Notfn 21/2015-Cus dt. 1.4.2015 and 18/2015-Cus dt. 1.4.2015 is totally irrelevant once the License is issue by DGFT under 21/2015. Since the Advance Authorization was issued under CN 21/2015 dt. 1.4.2015, I am confined to examine their eligibility of IGST exemption only with reference to CN 21/2015 dt. 1.4.2015. Assuming that this contention of the notice was valid, the correct way for them should have been to approach DGFT for modification of their license with retrospective effective for the

bills cleared. Having failed to do so, it cannot be the case that Customs should examine and consider their logic against the provisions of the license.

10.8. In view of above discussion and findings, I hold that the IGST exemption availed by the M/s. HCP under Notification No. 18/2015 dt. 01.04.2015 is liable to be denied and duty amounting to Rs. 1,25,35,523.91/- short paid by them is liable to be recovered in terms of Section 28(8) read with Section 28(4) of Customs Act, 1962.

Applicability of extended period under section 28(4) of the Customs Act, 1962

11. I find that the demand in the present show cause notice has been raised under the provisions of Section 28(4), therefore, it is imperative to examine whether the section 28(4) of Customs Act, 1962 has been rightly invoked or not. The relevant legal provisions of Section 28(4) of the Customs Act, 1962 are reproduced below: -

"28. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.—

(4) Where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,—

(a) collusion; or

(b) any willful mis-statement; or

(c) suppression of facts."

by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been [so levied or not paid] or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

The term "relevant date" For the purpose of Section 28 *ibid*, has been defined in Explanation 1, as under:

Explanation 1 . - For the purposes of this section, "relevant date" means,-

(a) in a case where duty is [not levied or not paid or short-levied or short-paid], or interest is not charged, the date on which the proper officer makes an order for the clearance of goods;

(b) in a case where duty is provisionally assessed under section 18, the date of adjustment of duty after the final assessment thereof or re-assessment, as the case may be;

(c) in a case where duty or interest has been erroneously refunded, the date of refund;

(d) in any other case, the date of payment of duty or interest.

11.1. I find that with the introduction of self-assessment and consequent upon amendments to Section 17 of the Customs Act, 1962 w.e.f. 08.04.2011, it was the obligatory on the part of the importer to declare the correct and true declaration. The Advance Authorization was issued by the DGFT specifically for availing the benefit available under notification No. 21/2015 only however the importer mis-declared a wrong notification no. 18/2015 in the Bills of Entry with sole intension to evade the payment of IGST. This mis-declaration of Notification by importer has

resulted into short payment of IGST amounting to Rs. 1,25,35,523.91. I find that by not disclosing the true and correct facts to the proper officer, at the time of clearance of imported goods, the importer appears to have indulged in mis-declaration and mis-classification by way of suppression of facts and wilfully mis-declared and mis-classified the imported goods with intent to evade the payment of applicable IGST. Thus, the importer has contravened the provisions of Section 46(4) & 46(4A) of the Customs Act, 1962, in as much as they have mis-classified and mis-declared the goods imported by them, by suppressing the true and actual description of the goods, while filing the declaration seeking clearance at the time of importation of impugned goods. **Section 17 (1) & Section 2 (2) of the Customs Act, 1962 read with CBIC Circular No. 17/2011- Customs dated 08.04.2011** cast a heightened responsibility and onus on the importer to determine duty, classification etc. by way of self-assessment. The importer, at the time of self- assessment, is required to ensure that he declared the correct classification, applicable rate of duty, value, benefit of exemption notifications claimed, if any, in respect of the imported goods while presenting the Bill of Entry.

11.2. The facts and evidences placed before me clearly state that the Importer was wilfully indulged in mis-stating and suppressing the fact that by mentioning incorrect notification No. 18/2015 dated 01.04.2015 whereas the Advance Authorization was issued for availment of duty/tax benefit under the Notification No. 21/2015 dt. 01.04.2015. As the importer has deliberately evaded the Customs Duty by suppressing material facts, extended period of demand of duty as laid down under Section 28(4) of the Customs Act, 1962 is clearly attracted in the instant case. I find that the Importer has breached the trust reposed on him after introducing of self-assessment. I hold that there is no flaw in invoking Section 28(4) of Customs Act, 1962 to demand the duty in the present case.

Confiscation of the goods under section 111 (m) and 111 (o) of the customs act, 1962:

12. As far as confiscation of goods are concerned, I find that Section 111 of the Customs Act, 1962, defines the Confiscation of improperly imported goods. The relevant legal provisions of Section 111(m) and 111(o) of the Customs Act, 1962 are reproduced below: -

(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54;

(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;

12.1 On plain reading of the above provisions of 111(m) of the Customs Act, 1962 it is clear that goods which are imported by way of mis-declaration will be liable to confiscation, whereas Section 111(o) of the Customs Act, 1962 provides for confiscation of any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed. It has already been discussed in paras supra that the Importer had mis-stated the facts and has availed exemption of IGST which was not available to them in terms of Notification No. 21/2015-cus dated 01.04.2015 as the Advance Authorisation was issued to them for availment of duty exemption under said notification only. Therefore, I, find that impugned goods are liable for confiscation under the provisions of Section 111(m) and Section 111(o) of Customs Act, 1962.

12.2. The importer in their submissions have contested the proposal of confiscation of goods in the Show cause notice and have relied on following case laws:-

- Nitish Tools Vs. CC - 2009 (237) ELT 482 (T)
- Handtex Vs. CC - 2008 (226) ELT 665 (T)
- Kirti Sales Vs. CC - 2008 (232) ELT 151 (Tri- Delhi)

12.2.1. I find that Hon'ble Apex court in the case of Shri OM Prakash Bhatia V/s. Commissioner of customs, Delhi[2003 (155) E.L.T. 423 (S.C.)] has held that any goods which have been imported/ exported under the **conditions prescribed for import or export of goods are not complied with, it would be considered to be prohibited goods**. The relevant portions of the said order is as under:-

8. Further, Section 2(33) of the Act defines "prohibited goods" as under :-

"prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with."

9. From the aforesaid definition, it can be stated that (a) if there is any prohibition of import or export of goods under the Act or any other law for the time being in force, it would be considered to be prohibited goods; and (b) **this would not include any such goods in respect of which the conditions, subject to which the goods are imported or exported, have been complied with. This would mean that if the conditions prescribed for import or export of goods are not complied with, it would be considered to be prohibited goods**. This would also be clear from Section 11 which empowers the Central Government to prohibit either 'absolutely' or 'subject to such conditions' to be fulfilled before or after clearance, as may be specified in the notification, the import or export of the goods of any specified description. The notification can be issued for the purposes specified in sub-section (2). **Hence, prohibition of importation or exportation could be subject to certain**

prescribed conditions to be fulfilled before or after clearance of goods. If conditions are not fulfilled, it may amount to prohibited goods. This is also made clear by this Court in *Shekih Mohd. Omer v. Collector of Customs, Calcutta and Others* [(1970) 2 SCC 728] wherein it was contended that the expression 'prohibition' used in Section 111(d) must be considered as a total prohibition and that the expression does not bring within its fold the restrictions imposed by clause (3) of the Import Control Order, 1955.

12.2.2. A review petition was also filed before the Supreme Court against the above order. The Hon'ble Court was pleased to dismissed the Review Petition (C) No. 1282 of 2003 with following observations:[*Om Prakash Bhatia v. Commissioner - 2003 (158) E.L.T. A177 (S.C.)*]:

*"Delay condoned.
We have gone through the review petition and its connected documents.
We find no ground to entertain the review petition which is, accordingly,
dismissed."*

12.2.3 Further, Hon'ble High Court of Madras in case of *MALABAR DIAMOND GALLERY P. LTD. Versus ADDL. DIR. GENERAL, DIRECTORATE OF REVENUE INTELLIGENCE, CHENNAI* [2016 (341) E.L.T. 65 (Mad)] as observed as under: -

38. Before advertng to the rival contentions of both parties, it is relevant to have a cursory look at the provisions of the Customs Act, 1962. As per Section 2(33) of the Customs Act, "prohibited goods" means, any goods the import or export of *which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with.*

39. Positively, prohibited goods are defined, as goods, import or export of which, *should be subject to any prohibition under this Act or any other law for the time being in force. Negatively, Section 2(33) of the Act, also states that goods are not prohibited goods, when import or export of which, does not include any such goods, in respect of which, the conditions subject to which the goods are permitted to be imported or exported have been complied with.* The expression "subject to any prohibition under this Act or any other law for the time being in force and compliance of the conditions, subject to which, the goods are permitted to be imported or exported, are the determining factors, to understand and to give effect to the meaning of the words, "prohibited goods".

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76. A conjoint reading of Sections 2(33), 11 or 11A of the Act and other provisions in the Customs Act, 1962, and any other law, for the time being in force, would also make it clear that importation of goods, defined as illegal or prohibited or without complying with the conditions, or in violation of statutory provisions in the Customs Act, 1962 or any other law for the time being in force and in all cases, whether there is either total prohibition or restriction, in the light of the judgment of the Apex Court in Om Prakash Bhatia's case, such goods should fall within the definition of prohibited goods. When import is in contravention of statutory provisions, in terms of Sections 11 or 11A of the Customs Act, 1962 or any other law, for the time being in force and when such goods squarely fall within the definition "illegal import", or the other provisions in the statute, dealing with prohibition/restriction, the same are to held as, "prohibited goods" and liable for confiscation.

12.2.4. In view of above settled proposition of law, I find that the said goods were imported by obtaining an Advance Authorisation under the provisions of Notification No. 21/2015-Customs dt. 01.04.2013 whereas the importer did not pay the IGST which was a condition laid down in the said notification. This violation of condition has held the goods as Prohibited Goods and liable for confiscation. Therefore, I hold that the impugned goods are liable for confiscation under Section 111(m) and 111(o) of Custom Act, 1962.

12.3. As the impugned goods are found to be liable for confiscation under Section and 111(m) and 111(o) of the Customs Act, 1962, I find that it necessary to consider as to whether redemption fine under Section 125 of Customs Act, 1962, is liable to be imposed in lieu of confiscation. The Section 125 ibid reads as under:-

"Section 125. Option to pay fine in lieu of confiscation.—(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods 1[or, where such owner is not known, the person from whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit."

12.3.1. A plain reading of the above provision shows that imposition of redemption fine is an option in lieu of confiscation. It provides for an opportunity to owner of confiscated goods for release of confiscated goods, by paying redemption fine. I find that redemption fine can be imposed in those cases where goods are either physically available or the goods have been released against appropriate bond binding concerned party in respect of recovery of amount of redemption fine as may be determined in the adjudication proceedings. I place reliance on the judgment of Hon'ble Apex Court in the case of Weston Components Ltd. Vs. Commr. of Customs, New Delhi (2000 (115) E.L.T.278(S.C.) wherein the Hon'ble Apex Court has held as under:

"It is an admitted fact that the goods were released to the appellant on an application made by it and on the appellant executing a bond. Under

these circumstances if subsequently it is found that the import was not valid or that there was any other irregularity which would entitle the customs authorities to confiscate the said goods, then the mere fact that the goods were released on the bond being executed, would not take away the power of the customs authorities to levy redemption fine”.

12.3.2. M/s. HCP have imported the goods under the scheme of Advance Authorization by execution of Bond, therefore, redemption fine under Section 125 of Customs Act, 1962 is liable to be imposed in lieu of confiscation on such goods.

13. Imposition of Penalty on M/s. HCP under Section 112(a) and/or 114A, of Customs Act, 1962.

13.1. In above paras, I have hold that M/s. HCP has suppressed the facts to the department and has willfully evaded the Customs Duty by way of fraud, collusion and willful mis-statement, therefore, liable to pay duty under Section 28(8) read with Section 28(4) of the Customs Act, 1962.

13.2. I find that section 114A stipulates that the person who is liable to pay duty by reason of collusion or any wilful mis-statement or suppression of facts as determined under Sub Section 8 of Section 28 of Customs, 1962, is also be liable to pay penalty under section 114A. I find that for these acts and omissions, the importer is liable for penal action under Section 114A of the Customs Act, 1962.

13.3. However, I find that as per 5th proviso of section 114A, penalties under section 112 and 114A are mutually exclusive. When penalty under section 114A is imposed, penalty under section 112 is not imposable.

13.4. I find that there is a mandatory provision of penalty under section 114A of customs act, 1962 where duty is determined under Sub Section (8) of Section 28 of customs act, 1962. Therefore, I refrain from imposing penalty under section 112(a) of Customs Act, 1962.

14. In view of above discussion and findings, I pass the following order: -

ORDER

- (i) I confirm the demand of IGST total amounting to Rs. 1,25,35,523.91 (Rupees One Crore Twenty Five Lakh Thirty Five Thousand Five Hundred Twenty Three & Paise Ninety One only) (as detailed in table at Para 5 of Show Cause Notice) leviable on the impugned goods and not paid by M/s HCP Plastene Bulkpack Ltd, (earlier known as M/s Gopala Polypplast) under Section 28(8) read with Section 28(4) of the Customs Act, 1962 read with Section 5 of Integrated Goods and Service Tax Act, 2017 and order to recover the same along with applicable interest under Section 28AA of the Customs Act, 1962 read with Section 50 of the Central Goods and Service Tax Act, 2017.
- (ii) I hold that the goods imported vide 10 Bills of Entry (as detailed in table at Para 5 of Show Cause Notice) having assessable value of Rs. 6,96,41,804/- (Rupees Six Crore Ninty Six Lakhs Forty One Thousand Eight Hundred Four only) are liable to confiscation under Section 111 (m) and 111(o) of the

Customs Act, 1962. However, I give M/s. HCP an option to redeem the goods on payment of Fine of Rs. 75,00,000/- (Rs. Seventy-Five Lakh Only) under Section 125 of the Customs Act, 1962.

(iii) I impose a penalty of Rs. 1,25,35,523.91 (Rupees One Crore Twenty Five Lakh Thirty Five Thousand Five Hundred Twenty Three & Paise Ninety One only) plus penalty equal to the applicable interest under Section 28AA of the Customs Act, 1962 payable on the Duty demanded and confirmed at (i) on M/s HCP Plastene Bulkpack Ltd. (earlier known as M/s Gopala Polyplast) under the provisions of Section 114A of Customs Act, 1962;

(iv) I refrain from imposing penalty on M/s HCP Plastene Bulkpack Ltd. (earlier known as M/s Gopala Polyplast) under the provisions of Section 112(a) of the Customs Act, 1962 for the reasons discussed above.

This OIO is issued without prejudice to any other action that may be taken against the claimant under the provisions of the Customs Act, 1962 or rules made there under or under any other law for the time being in force.

(K. Engineer)

Pr. Commissioner of Customs
Custom House, Mundra.

F.No. GEN/ADJ/COMM/119/2023-Adjn
DIN:- 20240571MO000000E861

Date:- 15.05.2024

To
By Speed Post/E-mail

M/s HCP Plastene Bulkpack Ltd. (earlier known as M/s Gopala Polyplast),
Plot No.485, Santej-Vadsar Road,
At Po. Santej, Tal. Kalol,
Dist.-Gandhinagar, Gujarat- 382721.

Copy to:

Copy for information and further necessary action / information/ record to:

- The Chief Commissioner of Customs, CCO, Ahmedabad.
- The Deputy/Assistant Commissioner (Import Assessment Group, 2G, Legal/Prosecution), Customs House, Mundra
- The Deputy/Assistant Commissioner (Recovery/TRC), Customs House, Mundra.
- The Deputy/Assistant Commissioner (EDI), Customs House, Mundra.
- Notice Board.
- Guard File

ORIGINAL / DUPLICATE / TRIPLICATE / QUADRUPLICATE

TR6/GAR 7 Challan No. Import/MPSEZ/ /16-17
(Treasury Rule 92/Receipt & Payment Rules 26)