Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad

REGIONAL BENCH-COURT NO. 2

Customs Appeal No. 11958 of 2019- DB

(Arising out of OIO-AHM-CUSTM-000-COM-001-19-20 dated 10.05.2019 passed by Commissioner of Customs-Ahmedabad)

Ratnaveer Stainless Products Pvt Ltd **.....Appellant**
E-77, GIDC, Savli(Manjusar)
Vadodara, Gujarat

VERSUS

Commissioner of Customs-Ahmedabad **.....Respondent**
Custom House,
Near All India Radio Navrangpura,
Ahmedabad, Gujarat

With

Customs Appeal No. 11957 of 2019- DB

(Arising out of OIO-AHM-CUSTM-000-COM-001-19-20 dated 10.05.2019 passed by Commissioner of Customs -Ahmedabad)

Shri Vijay R Sanghvi **.....Appellant**
M/s. Ratnaveer Stainless Products Pvt Ltd,
E-77, GIDC, Savli(Manjusar)
Vadodara, Gujarat

VERSUS

Commissioner of Customs-Ahmedabad **.....Respondent**
Custom House,
Near All India Radio Navrangpura,
Ahmedabad, Gujarat

And

Customs Appeal No. 11936 of 2019- DB

(Arising out of OIO-AHM-CUSTM-000-COM-001-19-20 dated 10.05.2019 passed Commissioner of Customs -Ahmedabad)

Aranamkotte Madhavan Rajan **.....Appellant**
M/s. Suraj Forwaders Pvt Ltd(CHA),
A-204-206, Wall Street II, Ellisbridge
Ahmedabad, Gujarat

VERSUS

Commissioner of Customs-Ahmedabad **.....Respondent**
Custom House,
Near All India Radio Navrangpura,
Ahmedabad, Gujarat

APPEARANCE:

Shri Saurabh Dixit, Advocate and Shri Parth Rachchh, Advocate appeared for the Appellant

Shri Aakash Singh, Superintendent (AR) appeared for the Respondent

CORAM:
HON'BLE MEMBER (JUDICIAL), DR. AJAYA KRISHNA VISHVESHA
HON'BLE MEMBER (TECHNICAL), MR. SATENDRA VIKRAM SINGH

Final Order No. 10338-10340/2026

DATE OF HEARING: 02.12.2025
DATE OF DECISION: 15.05.2026

SATENDRA VIKRAM SINGH

1. M/s. Ratnaveer Stainless Products Pvt. Ltd. (Appellant), Vadodara have imported Hot/ Cold Rolled Stainless Steel flat products falling under Chapter 72 of the Customs Tariff Act, 1975. The DRI had information that certain importers including the present appellant, have evaded Customs duty by claiming wrongful benefit of advance authorisation for payment of Countervailing Duty (CVD) imposed vide Notification 01/2017-Cus. (CVD) dated 07.09.2017 on import of these products from China during the period from 07.09.2017 to 12.10.2017. The exemption from payment of CVD was not available under above said Notification under advance authorisation.

1.1 The DRI officers conducted investigation in the matter by recording statement of Shri Vijay R. Sanghvi, Director of the appellant company on 31.01.2018 and the statement of Mr. Aranamkotte Madhavan Rajan, Director of CHA firm M/s. Suraj Forwarders Pvt. Ltd. on 25.01.2018. Thereafter, they issued a show cause notice to the appellant demanding CVD of Rs.91,53,944/- from them under Section 28(4) of the Customs Act, 1962 along with interest under Section 28AA and penalty under Section 112(a) and/or under Section 112(b), Section 114A and Section 114AA of the Customs Act, 1962. The show cause notice also proposed confiscation of the goods valued at Rs.4,49,35,605/- under Section 111(d) of the Customs Act, 1962. Show cause notice was also issued to Shri Vijay R. Sanghvi, Director of the appellant company and Shri Aranamkotte Madhavan Rajan, Director of CHA firm for imposition of penalty under Section 112 (a) and Section 112(b) and Section 114AA of the Customs Act, 1962.

1.2 The show cause notices were adjudicated by the Commissioner vide impugned order dated 10.05.2019 wherein, he confiscated the goods valued

at Rs.4,49,35,605/- under Section 111(m) of the Customs Act, 1962. He however did not impose any redemption fine as the goods were not physically available. He also confirmed the demand of CVD of Rs.91,53,944/- upon the appellant under Section 28 along with interest under Section 28AA of the Customs Act, 1962 and imposed equal penalty on the appellant under Section 114A. A penalty of Rs.5,00,000/- was also imposed on the appellant under Section 114AA of the Customs Act, 1962. The Adjudicating Authority also imposed penalty of Rs.5,00,000/- on Shri Vijay R. Sanghvi under Section 112(a) and (b) and penalty of Rs.5,00,000/- under Section 114AA of the Customs Act, 1962. He also imposed penalty of Rs.5,00,000/- on Shri Aranamkotte Madhavan Rajan, Director of CHA firm under Section 112(a) and (b) of the Customs Act, 1962.

1.3 Aggrieved with the above order, all the three appellants (Ratnaveer Stainless Products Pvt Ltd, Shri Vijay R Sanghvi and Aranamkotte Madhavan Rajan) filed appeals before this Tribunal.

2. In their appeals, the appellants took following grounds:-

- The issue is whether appellant was legally required to pay CVD on imports of valid inputs against advance authorisation, when such clearances were made against bond executed with the concerned customs authorities who then permitted clearances without payment of CVD. The period involved is from 07.09.2017 (when CVD was introduced vide Notification No.01/2017-Cus) to 13.10.2017 when Notification No.79/2017-Cus was issued amending Notification No. 18/2015-Cus by substituting the list of eligible duties for exemption when imports are made against advance authorisation.
- There is no dispute that they had validly issued advance authorisation, as on the date of import as well as on the date of seeking clearance from customs area, the advance authorisations were used to seek clearance of imported goods without payment of BCD as well as CVD/SAD and Anti

Dumping/ Safeguard duty upto 30.06.2017/ 08.09.2017. They had also executed necessary bond with the customs for allowing clearance of goods against advance authorisation just as per the past practice.

- Specific Notification No. 79/2017-Cus dated 13.10.2017 was issued which amended basic Notification No.18/2015-Cus, so as to include CVD in the list of exempt levies/duties in the said Notification. The Adjudicating Authority has also discussed that CVD was included in the list of exempt duties only w.e.f.13.10.2017 and not prior thereto.
- It is the policy of the Central Government not to tax exports and this is ensured by either refunding / returning the tax/duty levied and collected on goods, which are exported as such or contained in other finished goods which are being exported out of India. The other option is, to exempt such duties/levies at the time of import itself, by sufficiently binding the importer to export the resultant goods produced therefrom.
- When duties such as Anti-Dumping / Safeguard etc. are exempt against Advance Authorization, there is no reason why CVD, which is also levied for similar purposes, should also not be exempt when goods are imported against Advance Authorization. For this reason, within a period of one month from imposing CVD on 7.9.2017, the Central Govt. had amended Para 4.14 of the Foreign Trade Policy, 2015-2020 as well as issued Notification No. 79/2017-Cus dt.13 10. 2017, by using the word "substitution" of the existing provisions. CVD was added to the list of exempt duties against Advance Authorization.
- Hon'ble Apex Court in the case of Belapur Sugar & Allied Indus. Ltd. 1999 (108) E.L.T. 9 (S.C.) has held that retrospective effect to be given when objective of amending Notification is to give incentive for increasing the production of sugar during the lean period. In view of this, Notification dated 13.10.2017 which exempted CVD on imports against advance authorisation should also be given effect from 07.09.2017. They also rely on the decision of CESTAT in the case of

Gwalior Aclobrew P. Ltd. reported at 2014 (309) ELT 692 (Tri-Delhi) as well as in the case of Indian Tobacco Association reported at 2005 (187) ELT 162 (SC). They rely on the following decisions:-

a) WPIL Ltd., Ghaziabad Vs. Commissioner of Central Excise, Meerut, U.P., reported in (2005) 3 SCC 73 = 2005 (181) E.L.T. 359 (S.C.),

b) Collector of Central Excise, Shillong Vs. Wood Craft Products Ltd. reported in (1995) 3 SCC 454 = 1995 (77) E.L.T. 23 (S.C.),

c) Maharaja Book Depot. Vs. State of Gujarat reported in AIR 1979 SC 180,

d) Commissioner of Income Tax I Vs. Gold Coin Health Food Private Limited" reported in (2008) 9 SCC 622,

e) Brij Mohan Das Laxman Das v. Commissioner of Income Tax, Allahabad -(1997) 1 SCC 352,

f) Fosroc Chemicals (I) P. Ltd. 2015(318) ELT 240(Kar).

- The Hon'ble Delhi High Court in the case of Narendra Plastics Pvt. Ltd., 2017 (4) GSTL 439(Del) had considered an identical issue vis-à-vis IGST liability on imports in the context of advance authorization and granted interim relief in such matter. This issue again came up for decision before Hon’ble Delhi High Court, in the case of Jindal Dyechem Industries P. Ltd. reported at 2018 (17) G. S. T. L. 222 (Del.) which held that, *“This Court is of the opinion that since the benefit of exemption in fact existed at that point of time, the most appropriate course would be for the respondent authorities to verify whether as a matter of fact the petitioner in fact fulfilled the export obligations pursuant to the advance license of 18.07.2017. If it did, there is no need for any further action. However, if it did not, then the appropriate and necessary assessment in accordance with law may be resorted to. The respondent shall ensure that further proceedings towards verification and any consequential order shall be completed within four months from today with advance notice and proper opportunity to the petitioner.”*

- Section 111(d) of the Customs Act, 1962 is attracted where any goods are imported contrary to any "prohibition" imposed under any law. There is no any "prohibition" whatsoever in their case and therefore, goods cannot be confiscated.
- Penalty has been imposed on the appellant under Section 112(a) and/or Section 112(b) which is not leviable. Further, they have not suppressed anything or contravened any provision with intent to evade payment of duty, penalty under Section 114A of the Customs Act, 1962 is not imposable on them. Similarly, they have not used any false and incorrect material and therefore, penalty imposed on them under Section 114AA is also not justified.

  In view of the above, the appellant prayed for setting aside the impugned order and allowing their appeal.

2.1 Shri Vijay R. Sanghvi, Director of the appellant company, submitted that he had nothing to gain in personal capacity in the matter. He was not instrumental in claiming exemption by active design to violate any legal provision. This is an interpretation issue and there was a bonafide belief across India in this regard. As such, he is not liable to any penalty either under Section 112(a) and Section 112(b). He has also not submitted or produced any false or incorrect material before the Customs Authorities, and so he is not liable to penalty under Section 114AA. He pleaded for allowing his appeal and setting aside the penalties imposed on him.

2.2 The appellant No.3 (Shri Aranamkotte Madhavan Rajan of CHA firm M/s. Suraj Forwarders Pvt. Ltd.) submitted that he has not done anything in his personal capacity nor has he gained any undue benefit. The issue involves interpretation of Notification and general belief that no duties are to be paid on import of goods under advance authorisation as the purpose was to export goods manufactured out of those inputs. He therefore pleaded that penalty of Rs.5,00,000/- on him under Section

112(a) and Section 112(b) of Customs Act, 1962 is too harsh which may be set aside by allowing his appeal. He cited the following decisions:-

a) Yogesh Mangaldas Bajaj Vs. Commr. of Cus. (NS-II), Nhava Sheva reported at 2017 (358) ELT 721 (Tri. - Mumbai)

b) M/s. Birendra Kumar Gupta Vs. Commr. of Cus. (Prev.), Kolkata reported at 2025 (1) TMI 959-Cestat Kolkata

c) Ashok T. Sadrangani Vs. Commr. Of Cus. (Preventive), Mumbai reported at 2018 (363) ELT 889 (Tri. - Mumbai)

d) Louis Dreyfus Co. India Pvt. Ltd. Vs. Commr. of Cus., Kandla Customs reported at 2024 (388) ELT 507 (Tri.-Ahmd.)

3. During arguments, learned Advocate mentions that CVD on imports made under advance authorisation was imposed vide Notification No.01/2017-Cus. dated 07.09.2017 under Section 9 of the Customs Tariff Act, 1975 but thereafter, Trade Associations made various representations and the Government vide Notification No.79/2017-Cus dated 13.10.2017 exempted the CVD. DGFT also issued Notification No.33/2015-20 dated 13.10.2017 to exempt CVD under advance authorisation. He points out that Notification No.79/2017 dated 13.10.2017 uses the term "Substitution" in the basic exemption Notification which is to be made effective from the retrospective date. On this basis, he argues that the demand raised against the appellant is not sustainable. He relies on the decision of Hon'ble Supreme Court in the case of Tobacco Association reported at 2005 (187) ELT 162-(SC) which had elaborated on the impact of word "Substitution" used in taxing statute. He argues that when a Notification substitutes some words or phrases of an earlier Notification, it is to be given effect from the date of earlier Notification. Taking his point further, he states that CVD was imposed on imports w.e.f. 07.09.2017 and the Government wanted to rectify its mistake which was done by issue of Notification No.79/2017-Cus dated 13.10.2017. Thus, the entire dispute is for a period of about one month only. Therefore, keeping various

decisions of Hon'ble Supreme Court, Hon'ble High Courts and Tribunal in mind, the benefit of exemption of CVD needs to be extended by allowing their appeal and setting aside the demand, interest and penalty. Learned Advocate also submitted copy of the letter from DGFT certifying that export obligation has been discharged in respect of advance authorisations involved in the present matter.

3.1 Learned Advocate specifically referred to the decision of CESTAT Allahabad in the case of M/s.Vishal Metal Industries reported at 2024 (11) TMI 66-CESTAT Allahabad. Regarding penalty on the Director, Shri Vijay R. Sanghvi, and CHA Mr. Aranamkotte Madhavan Rajan, he pleads that both the appellants are not at fault in the present issue as the matter relates to interpretation of Notification and the mistake which began with issue of Notification No.01/2017-Cus dated 07.09.2017, was later rectified by the issue of Notification No.79/2017-Cus. He therefore pleads that both Appellant Nos.2 & 3 are not liable to any penal action and prays for allowing their appeals.

4. Learned AR on the other hand reiterated the findings of the learned Commissioner and also drew attention of the bench towards Notification No.01/2017-Cus (CVD) dated 07.11.2017. He pleads that the wordings and intent of the Notification is very clear for charging CVD on imports made from China against advance authorisations. Therefore, during the intervening period i.e. from 07.09.2017 to 12.10.2017, CVD was chargeable on such imports which has been confirmed by the Commissioner. He pleads for upholding the order of the Commissioner and rejecting the appeals filed by all the three appellants.

5. We have heard the rival submissions. The short issue to be decided in this case is whether CVD is to be collected on imports made against advance authorisation, during the period 07.09.2017 to 12.10.2017. We find that this issue has come up for decision before CESTAT Allahabad in the case of Vishal Metal Industries. Vide Final Order No. 70692/2024 dated 29.10.2024, CESTAT

Allahabad decided the issue in favour of the appellant. In this case, the appellant had paid CVD during the intervening period but subsequently filed refund claim for refund of CVD so paid. It held that the appellant is entitled to refund of CVD along with interest as prescribed by law which they had deposited with the Customs Authorities in view of Notification No.01/2017-Cus. dated 07.09.2017. The relevant paras of the said decision are reproduced below:-

> *"3. Heard both the parties and perused the material on record.*
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> *4. Ld. Counsel for the appellant submits that the impugned order is not sustainable in law as the same has been passed by ignoring the precedent decisions on identical issues. He further submits that appellant imported the goods under Advance Authorization Scheme for processing and manufacturing of goods meant for export and there is no duty on export of goods. He further submits that under Advance Authorization Scheme, raw material can be imported without payment of all kind of customs duty and this has been done for increasing the export of goods. He further submits that levy of CVD under Section 9 on goods imported under Advance Authorization Scheme was never the intention of the government and same has been rectified vide Notification No. 79/2017-Cus dated 13.10.2017.*
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> *4.2 He further submits that Foreign Trade Policy (FTP) 2015-2020 was notified by Trade Notification No. 1/2015-2020 dated 01.04.2015 and Notification No. 18/2015-Cus dated 01.04.2015 was issued to regularize FTP and enabling the duty of raw material under Advance Authorization Scheme. He further submits that levy of CVD under Section 9 is completely against the government intention and object of the whole scheme and upon the representation made by various Associations, government has rectified its mistake and exempt the goods from payment of CVD vide Notification No. 79/2017-Cus dated 13.10.2017.*
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> *5. He further submits that the Ld. Commissioner (A) did not consider the judgment of Delhi High Court and held that the Notification does not indicate any retrospective application. He further submits that Hon'ble Delhi High Court in case of M/s Priyanka India Private Limited and others W.P.(C) 9898/2017 has granted benefit of the same Notification to the import made prior to 13.10.2017 by giving retrospective effect. He further submits that in the present case the appellant has already exported the goods and has submitted proof of export i.e. Export obligation discharge certificate issued by DGFT. He further submits that when the goods has been exported and all conditions are fulfilled, then the appellant is entitled to refund in view of judgment dated 16.08.2018 of Hon'ble Delhi High Court cited (Supra). He further submits that this issue is no more res integra and squarely covered by following judgments of various High Courts:*
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> *(i) Jindal Dyechem Industries Pvt. Ltd. reported as 2018 (17) GSTL 222.*
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> *(ii) M/s Narendra Plastic Private Limited Vs. Union of India 2017 (4) GSTL 439 (Del).*
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> *(iii) M/s JTL Infra Limited Vs Union of India 2019 (29) GSTL 303 (Del)*
>
> *(iv) M/s Prince Spintex Pvt. Ltd. Vs Union of India reported as 2020 (35) GSTL 261 (Guj)*

(v) Sanathan Textile Pvt. Ltd. Vs. Union of India, 2023 (68) GSTL 246 (Bombay).

9. After considering the submissions of both the parties and perused the material on record, I find that the appellant is engaged in manufacturing of Stainless Steel coils against Advance Authorisation Scheme for the purpose of manufacturing and therefore export of the same as per the Advance Authorization Scheme and also the Foreign Trade policy all kinds of duties leviable under Custom Tariff Act are exempted. Further, I find that the Government of India vide Notification No. 1/2017-Customs dated 07.09.2017 imposed CVD @ 18.95% under Section 9 of Customs Tariff Act, but thereafter, trade associations made various representations and thereafter, the government vide Notification No. 79/2017-Cus dated 13.10.2017 exempted the CVD. DGFT also issued Notification No. 33/2015-2020 dated 13.10.2017 to exempt CVD under Advance Authorization Scheme. In fact, the government rectified its mistake vide Notification No. 79/2017-Cus dated 13.10.2017 exempted the CVD. The question arose before the various High Courts regarding the retrospective applicability of Notification No. 79/2017 and the various High Courts in various decisions cited (Supra) granted the benefit of Notification in similar circumstances. The refund has been rejected on the ground that the applicant was not the party in the said case before the High Court as held that Notification No. 79/2017 dated 13.10.2017 has retrospective applicability.

10. I have gone through the judgments cited (Supra) and is of the considering opinion that the appellant is entitled to the refund of the CVD in view of the law laid down by the various judgments of the High Courts cited (Supra); therefore, I allow the appeal of the appellant and hold that the appellant is entitled to refund claim of CVD amounting to Rs. 16,31,373/- along with interest as prescribed by law. Appeal is accordingly allowed on the above terms."

5.1 Since the issue is no more res-integra, we find no reason to differ with the above finding. Accordingly, we allow all the three appeals and set aside the impugned order.

6. Appeals allowed.

(Pronounced in the open court on 15.05.2026)

(DR. AJAYA KRISHNA VISHVESHA)
MEMBER (JUDICIAL)

(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)

Bharvi