CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

CUSTOMS APPEAL NO. 20295 OF 2025

(Arising out of Order-in-Original Sl. No.543/2024-25 AP & ACC dated 20.12.2024 passed by the Commissioner of Customs, Bengaluru)

M/s. Bharat Electronics Limited **.....Appellant**
Naval Systems R & FCS Jalahalli Post,
Bengaluru - 560 013.

VERSUS

Principal Commissioner of Customs **.....Respondent**
Airport and Air Cargo Complex (AP and ACC),
Review Section, Devanahalli,
Bengaluru -560 300.

APPEARANCE:

Shri G. Shivadass, Senior Advocate, Shri Rishab. J, Ms. Shradha Rajgiri and Ms. Sneha Suresh, Advocates for the Appellant

Shri M. Sreekanth, Authorized Representative for the Department

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MRS R. BHAGYA DEVI, MEMBER (TECHNICAL)

Date of Hearing: 05.05.2026
Date of Decision: 05.05.2026

FINAL ORDER No. 20607/2026

JUSTICE DILIP GUPTA:

M/s. Bharat Electronics Limited[1] has assailed the order dated 20.12.2024 passed by the Principal Commissioner adjudicating the show cause notice dated 11.01.2024 issued to the appellant. The Principal Commissioner has upheld the demand of Integrated Goods and Service Tax[2] in respect of Bill of Entry dated 06.02.2021 and has ordered for its recovery from the appellant under section 28(4) of the Customs Act, 1962[3]. The goods imported have also been confiscated but option has

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1. the appellant
2. IGST
3. the Customs Act

been given to redeem the same on payment of redemption fine. Penalty has also been imposed upon the appellant under section 114A of the Customs Act.

2. It transpires from the record that the appellant is a Public Sector Undertaking engaged in the manufacture of a wide range of electronic products and systems for the Army, Navy, and the Air Force. The appellant was nominated by Ministry of Defence as a lead integrator for the Long Range Surface-to-Air Missile System[4] which would be installed on board Navy ships as defence equipment.

3. The appellant imports LRSAM System from Israel Aerospace Industries[5] for further supply to M/s. Mazagon Docks Ship Builders Ltd., Mumbai and M/s. Garden Research Ship Builders and Engineers, who built ships for Navy, Ministry of Defence. LRSAM System consists of Multi-Function Surveillance and Threat Alert Radar[6] and Weapon Control System[7] embedded with the different hardware and operational software. The operational software is called "EMI/EMC Analysis Software" and its main function is to verify the performance integrity and proper co-existence of MFSTAR & LRSAM system with various other systems installed on-board.

4. The appellant issued a Purchase Order to IAI of item with description "EMI & EMC MIL-STD 461F" by Purchase Order dated 19.11.2018. Subsequently, an Invoice No. 396001257 dated 26.01.2021 was raised by IAI on the appellant. The appellant through a Bill of Entry dated 06.02.2021 also imported a customized "Software EMI & EMC MIL-STD 461F," which is stored in a CD. The appellant sought exemption from

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4. LRSAM System
5. IAI
6. MFSTAR
7. WCS

payment basic customs duty and IGST on the imported CD, in terms of Serial No. 21 of Notification No. 19/2019-Cus. dated 06.07.2019[8].

5. Upon investigation by the DRI, the Pune Regional Unit, by letter dated 28.10.2022, communicated to the appellant that the benefit of exemption availed by the appellant for import of Software in the CD under the Exemption Notification, is ineligible as the description 'Software' is not specified under Serial No. 21 of the said Notification. The appellant, in response to the letter dated 16.11.2022, clarified that the Software imported in the CD forms an integral part of the LRSAM system, which is used for manufacturing of LRSAM System in India. In terms of Serial No. 21 of the Exemption Notification, as amended by Notification No. 03/2020 dated 02.02.2020, the entire LRSAM 'system' would qualify for exemption from payment of customs duty and IGST. Accordingly, the said software falling under Chapter 85, being parts of the same, would also qualify for the same exemption.

6. However, on the basis of the aforementioned investigation, the appellant was issued a show cause notice dated 11.01.2024 under section 28(4) of the Customs Act on the ground that as the imported software is not an integral part of LRSAM System and the Certificate issued by Joint Director of Ministry of Defence of description 'EMI & EMC MIL-STD 461-DF' was in the form of an analysis report and not supply of software, the benefit of exemption availed by the appellant in terms of Serial No. 21 of the Exemption Notification would not be available to the appellant. Accordingly, the show cause notice proposed a demand of IGST on the imported software of Rs. 29,35,76,400/- in terms of section 28(4) of the Customs Act, along with applicable interest and penalty.

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8. the Exemption Notification

7. The appellant filed a detailed reply dated 12.12.2024 to the show-cause notice contending that the imported software is correctly classifiable under Chapter 85 and qualifies for exemption under Serial No. 21 of the Exemption Notification, as it satisfies both the classification and description specified therein. Further, the imported software is an integral part of the LRSAM System which is imported for defence purposes and as per Serial No. 38 of the Certificate issued by the Joint Secretary of Ministry of Defense dated 28.10.2010, the said software is certified to have been imported exclusively for defence purposes. The appellant also contended that the extended period of limitation could not have been invoked.

8. The Principal Commissioner did not accept the submissions made by the appellant and passed an order dated 18.12.2024 confirming the demand proposed in the show cause notice with interest under section 28AA and penalty under section 112 of the Customs Act by invoking the longer period of limitation under section 28(4) of the Customs Act on the following grounds:

(i) Exemption given in the Exemption Notification is restricted only to goods of the description specified in the same and not to goods of description "Software" imported by the appellant since the same do not find place in the Entry 21(II) and (III) of the Notification;

(ii) Further, since the EMI/EMC software is embedded in the LRSAM System at the time of import of the system, there is no isolated requirement for the appellant to import the software separately. Hence, the concept of composite supply would not apply in the present matter;

(iii) The appellant only supplied P17A – EMI/EMC test analysis report to M/s. MDS and not the software per se. Accordingly, the imported Software is for the own use of the appellant to provide product support service and not intended to be used by the defence as mandated by the Exemption Notification;

(iv) From the Certificate issued by the Joint Secretary, Ministry of Defence, for customs duty and IGST exemption, it appears that the description "EMI/EMC MIL STD 461F" at Serial No. 38 was for compliance of said standard which is in the form of an Analysis Report. Hence, there is no mention of item of description "Software" in the Certificate issued by the Joint Secretary; and

(v) The imported software is not eligible for Basic Customs Duty by exemption in terms of the exempted Notification which exempts goods under Heading 8523.

9. Shri G. Shivadass, learned senior counsel for the appellant assisted by Shri Rishad. J, Ms. Shradha Rajgiri, Ms. Sneha Suresh submitted that the order passed by the Principal Commissioner deserves to be set aside both on merits and limitation. Learned senior counsel submitted that the extended period of limitation could not have been invoked in the facts and circumstances of the case.

10. Shri M. Sreekanth, learned authorized representative appearing for the department, however, supported the impugned order and submitted that not only the Principal Commissioner was justified in confirming the demand of duty, but even otherwise, the Principal Commissioner was justified in invoking the extended period of limitation.

11. The submissions advanced by the learned senior counsel for the appellant and the learned authorized representative appearing for the department have been considered.

12. The first issue that requires to be determined is whether the extended period of limitation was correctly invoked in the facts and circumstances of the case because if this issue is decided in favour of the appellant, it would not be necessary to decide the main issue on merits.

13. To appreciate this contention, it would be appropriate to first refer to the relevant portion in the show cause notice that deals with the invocation of the extended period of limitation. This is contained in paragraph 10.3 of the show cause notice. It mentions that the "Software" was embedded into the LRSAM System. Subsequently, the appellant imported the CD purportedly as an integral part of LRSAM System. In terms of Military Equipment Requirement Procedure the Joint Secretary, Ministry of Defence issued the Certificate for customs duty and IGST exemption for "Analysis Report/Compliance Report" and not for procurement of "Software" and there is no specific entry or description of goods "Software" in Serial No. 21(II) of the Exemption Notification. Thus, in order to avail the benefit of the Exemption Notification, the appellant purposefully mis-declared the product as an integral part of the LRSAM System. It, therefore, appeared that appellant had wilfully mis-declared the facts regarding the usage and description of the imported goods and claimed the benefit of the Exemption Notification. Thus, as the appellant mis-represented facts with the sole intention of evading duty, the extended period of limitation under section 28(4) of the Customs Act would be applicable.

14. The appellant filed a detailed reply to the show cause notice and contended that the extended period of limitation could not have been invoked.

15. The Principal Commissioner, however, did not accept the submissions made by the appellant for not invoking the extended period of limitation and the relevant portion of the order is contained in para 16.1 of the order. The Principal Commissioner has basically reiterated the allegations made in the show-cause notice.

16. Learned senior counsel for the appellant submitted that the Principal Commissioner committed an error in holding that the extended period of limitation was correctly invoked in the facts and circumstances of the case. Learned senior counsel pointed out that the appellant is a Public Sector Undertaking under the Ministry of Defence and the import of software pertains to LRSAM System and MFSTAR for defence purposes and it cannot be said that the appellant had any intention to evade payment of duty. Learned senior counsel pointed out that the appellant was under a bona fide belief that import of software qualifies for exemption under the Exemption Notification and as the appellant had not suppressed any information with intent to evade payment of duty, the extended period of limitation could not have been invoked in the facts and circumstances of the case.

17. Learned authorized representative appearing for the department, however, supported the impugned order and submitted that the CD imported by the appellant was never supplied to the Ministry of Defence and, therefore, it cannot be said that the said CD pertains to LRSAM System and MFSTAR for defence purpose.

18. The submissions advanced by the learned senior counsel for the appellant and the learned authorized representative appearing for the department on the issue relating to invocation of extended period of limitation have been considered.

19. Exemption Notification provides that the goods of the description specified in Column (3) of the Table when imported into India by Ministry of Defence or Defence Forces or the Defence Public Sector Units or other Public Sector Units or any other entities for Defence Forces, shall be exempt from whole of duty of customs. The relevant portion of Serial No. 21 of the Table is reproduced below:

Sl. No.	**Chapter or Heading or Sub-heading or tariff item**	**Description of goods**
(1)	(2)	(3)
21.	84, 85, 90 or 9306	(I) The following goods, namely, - xxx (II) Long range Surface to Air Missile System (LRSAM) (III) xxx

20. It is not in dispute that earlier also, the appellant had imported parts and department had granted exemption from payment of duty under the Exemption Notification. It is also not in dispute that the LRSAM System was already embedded with the “Software” when it was initially imported by the appellant. The dispute is with regard to the subsequent CD imported by the appellant. According to the appellant, the said CD has to be retained by the appellant for providing support services. Thus, merely because the appellant had retained the CD and had not supplied it to the Ministry of Defence cannot be made a ground to deny exemption from payment of duty under the Exemption Notification.

21. A perusal of the relevant Bill of Entry at page 122 of the Appeal Memo shows that the appellant had given the Customs Tariff Item Number

of the product and also stated that it would be "Software EMI & EMC MIL STD 461F". The invoice number is relatable to the purchase order. It cannot, therefore, be doubted that the appellant had indicated that the CD which was imported was for the purpose of LRSAM System. It cannot also be said that the appellant had mis-represented or concealed any material facts from the department. Nothing prevented the Customs Officer from calling information from the appellant, in case he had any doubts. Merely because it was a case of self-assessment does not mean that the extended period of limitation could have been invoked.

22. For invoking the extended period of limitation, it has not only to be shown that there was a deliberate mis-statement or mis-representation of facts, but it has to be established that the same was be with an intention to evade payment of duty.

23. The appellant is a Public Sector Undertaking engaged in the manufacture of wide range of electronic products and systems for Army, Navy and Airforce. The appellant was also nominated by the Ministry of Defence as lead integrator for LRSAM System, which have to be installed on Navy Ships as defence equipment. Merely because the software was embedded in the system would not mean that providing a CD containing the software at a subsequent stage for providing support system to the LRSAM System would dis-entitle the appellant to claim exemption from payment of customs duty under the Exemption Notification. The invocation of extended period of limitation is, therefore, not justified. It needs to be noted that the entire demand that has been confirmed is for the extended period.

24. The grounds for imposing penalty under section 114A of the Customs Act are the same grounds enumerated for invoking the extended

period of limitation. As the extended period of limitation could not have been invoked in the present case, the imposition of penalty under section 114A of the Customs Act is not justified.

25. In this view of the matter, it would not be necessary to examine the other contentions raised by the learned senior counsel for the appellant on merits.

26. The impugned order dated 20.12.2024 passed by the Principal Commissioner is, accordingly, set aside for the reason that the extended period of limitation contemplated under section 28(4) of the Customs Act could not have been invoked. The appeal is, accordingly, allowed.

(Order dictated and pronounced in Open Court)

(JUSTICE DILIP GUPTA)
PRESIDENT

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

Rv , Shreya