CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL AHMEDABAD

REGIONAL BENCH, COURT NO. 2

CUSTOMS APPEAL NO. 10687 OF 2020

[Arising out of OIA-MUN-CUSTM-000-APP-64-20-21 dated 31/07/2020 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD]

MALANI ENTERPRISE **Appellant**
B-8, Jalkamal Co Op HSG Society Ltd.,
Plot No. 10, GIDC, Ankleshwar
Bharuch, Gujarat

Vs.

COMMISSIONER OF CUSTOMS-MUNDRA **Respondent**
Office of the Principal Commissioner of Customs,
Port User Buld. Customs House Mundra, Mundra
Kutch, Gujarat-370421

Appearance:
Shri Saurabh Dixit, Advocate for the Appellant
Shri Himanshu Nachane, Superintendent (AR) for the Respondent

CORAM:
HON'BLE Dr. AJAYA KRISHNA VISHVESHA, MEMBER (JUDICIAL)

FINAL ORDER NO. 10273/2026

Date of Hearing : 19/01/2026
Date of Decision : 15/04/2026

Dr. AJAYA KRISHNA VISHVESHA

This appeal is directed against the impugned order passed by the learned Commissioner (Appeals) Customs, Ahmedabad dated 31st July, 2020 through which the learned Commissioner (Appeals) rejected the appeal and upheld the Order-in-Original passed by the learned Adjudicating Authority Additional Commissioner Customs House Mundra.

1.1. The facts of the case in brief are that the appellant had imported Technical Grade Urea falling under CTH 32021000 on high sea purchase basis from State Trading Enterprises viz. MMTC etc. without having licence for import of Urea from Director General of Foreign Trade (DGFT). As per condition specified in ITC (HS) code 31021000, prior to 28.04.2015 import of

Urea was allowed through State Trading Enterprises (STE). As the appellant had imported 'Technical Grade Urea', on High Sea Sales basis from MMTC, without having a valid licence issued by DGFT the goods appeared liable for confiscation under Section 111(d) of the Customs Act 1962 and therefore show cause notice was issued proposing for confiscation of 200 MT Technical Grade Urea valued at Rs.50,25,962/- and to impose penalty under Section 112(a)(i) ibid.

1.2 The show cause notice was adjudicated by learned Additional Commissioner, Customs House, Mundra, who held the goods liable for confiscation, but as the goods were not available and not cleared under bond, he had not confiscated it but imposed penalty of Rs.3,50,000/- under Section 112(a)(i) of the Customs Act 1962.

1.3 Being aggrieved from the Order-in-Original passed by the learned Additional Commissioner, the appellant filed appeal before the learned Commissioner (Appeals). The learned Commissioner rejected the appeal and upheld the Order-in-Original passed by the learned Additional Commissioner Feeling aggrieved from the impugned order passed by the learned Commissioner (Appeals) the present appeal has been filed before the Tribunal.

1.4 The issue involved in the present appeal is whether the appellant is liable to be penalized for having filed Bill of Entry for seeking clearance of Technical Grade Urea imported by State Trading Corporation / MMTC and which was procured by the appellant on High Sea Sales basis from them and cleared in the domestic territory.

2. The learned Counsel for the appellant submitted that identical issue was raised in the case of Customs Appeal No. 10704/2020 **Sunita Commercials (P) Ltd** vs. **Commissioner of Customs Mundra** and Customs Appeal No. 10710/202, **Balaji Action Wooddecor (P) Ltd** vs. **C.C. Mundra,** which was decided by the same Adjudicating Authority who passed the order against the

appellant OIO No. MCH/ADC/PSK/42/2019-20 dated 29th July, 2019. The matter in the said case travelled up to CESTAT and the Hon'ble Tribunal vide its final order no. A/10059-10062/2023 dated 17.10.2022 allowed the appeal filed by the said entity, holding that no penalty can be imposed upon persons filing Bill of Entry on urea purchased from STC on High Sea Sales. It was held that when Technical Grade Urea is imported into India, the legal requirement is that the same should be imported by or through STC, which is satisfied in the present case and merely because domestic industry filed the Bill of Entry by procuring the goods on High Sea Sale basis, there is no violation of legal provisions.

2.1 The learned Counsel for the appellant submitted that in view of the decision of CESTAT Ahmedabad in Customs Appeal No. 10704/2020 **Sunita Commercial Pvt Ltd** vs. **CC, Mundra** and Customs appeal No. 10710/2020 **Balaji Actions Wooddecor Pvt Ltd** vs. **CC Mundra**, the appeal is liable to be allowed because the present appeal is fully covered by the order passed by CESTAT Ahmedabad in above mentioned cases.

3. The learned AR for the department reiterated the impugned order passed by the learned Commissioner (Appeals). He has attracted my attention towards para 5 at page 5 and 6 of the impugned order passed by the learned Commissioner (Appeals) in which, he has observed that as per condition specified in ITC (HS) code 31021000, prior to 28.04.2015, import of Urea was allowed through STCs only but the appellant had imported Technical Grade Urea falling under CTH 32021000 on "High Sea Purchase" basis from State Trading Enterprises viz. MMTC etc. without having licence for import of Urea from Director General of Foreign Trade (DGFT). It is also found that it is undisputed fact that direct import of "Technical Grade Urea" was not allowed at the relevant time and the import was allowed through STEs. In the present case, according to the appellant himself, and as evident from the documents submitted by the appellant, the goods were purchased from MMTC on High

Sea Sale basis. The Bills of Entry were filed by the appellant and hence for all purposes, the appellant is considered as importer, as discussed in the impugned order. Thus the adjudicating authority has correctly held that the appellant had violated the policy provision under para 2.11 of the Foreign Trade Policy 2009-14 and the imported goods are liable for confiscation.

3.1 Learned AR also submitted that the Commissioner (Appeals) relied upon the decision in case of **M/s Marico Industries Ltd** vs. **Commissioner of Customs (EP), Mumbai,** which is similar to the present case and the decision would be applicable to it. The goods have been correctly held liable for confiscation by the lower authority. It is found that penalty under Section 112(a) is natural corollary to the confiscation of goods and hence the same is sustainable. The quantum of penalty imposed by the lower authority as shown in the above table is only 6.96% of the value of the imported goods and cannot be considered high.

3.2 The learned AR cited the order passed in **Merico Industries Ltd** vs **Commissioner of Customs (EP) Mumbai** reported in 2007 (209) ELT 403 (Tri. Mumbai) in which it was held by the CESTAT Mumbai that there was Technical Violation as sale was on high sea sale basis and not through STC. If STC had paid duty, it would have been reimbursed to them. Margin of profit as compared to other importers was wiped out as before date of import, goods could be procured freely on high sea sales basis. Confiscation was upheld, however, redemption fine was reduced.

3.3 The learned AR submitted that the impugned order passed by the learned Commissioner (Appeals) has been passed in accordance with the provisions of the Customs Act and Foreign Trade Policy therefore, the impugned order should be upheld and the appeal may be rejected.

4. I have heard the learned Counsel for the appellant and the learned Authorised Representative for the department and perused the records.

4.1 I am of the view that the present appeal is completely covered by the order passed by CESTAT Ahmedabad in Customs Appeal No. 10704 of 2020 **Sunita Commercial Pvt Ltd** vs. **CC, Mundra** and Customs Appeal No. 10710 of 2020 **Balaji Action Wooddecor Pvt Ltd** vs. **CC, Mundra**. In these appeals, CESTAT Ahmedabad has held that when "Technical Grade Urea" is imported into India, the legal requirement is that the same should be imported by or through STC, which is satisfied in the present case and merely because the domestic industries filed the Bill of Entry by procuring the goods on High Sea Sales basis, there is no violation of legal provisions.

4.2 The relevant part of the order passed by CESTAT Ahmedabad in Customs Appeal No. 10704 of 2020 along with Customs Appeal No. 10710 of 2020 (supra) is being reproduced below:-

> *"5. On carefully considering the submissions made by both the sides and upon perusal of the case records, it emerges that the purchase from the foreign suppliers was made by STE viz. MMTC and Indian Potash Ltd and the goods were shipped by the foreign suppliers to MMTC/ Indian Potash Ltd and the Appellants have purchased the said goods on High Seas from the MMTC/Indian Potash Ltd. It can be seen that Heading No.3102 1000 of the ITC (HS) Policy 2009-2015, does not stipulate that Urea was allowed to be imported only by State Trading Enterprises; the said Heading allows import of Urea through STC, MMTC and Indian Potash Limited. Clearly, the word used in the said Heading 3102 1000 is "through" and not "by" STC, MMTC and Indian Potash. In view of above, when the import is allowed "through" STC, MMTC and Indian Potash, it means that so long as the purchase of the Urea from the foreign supplier is effected by STC, MMTC or Indian Potash and payment to foreign supplier is made by STC, MMTC or Indian Potash, who in turn sell the same to a party in India whether on High Seas or otherwise, the import is clearly through STC, MMTC or Indian Potash.*
>
> *5.1 Learned Commissioner (Appeals) clearly erred in holding that under the Import Policy although the STEs who have purchased the Urea from the foreign supplier can sell the same to the Indian buyer after clearance from customs, such sale cannot be permitted on High Seas before clearance of the Urea from customs and that by virtue of purchase of the Urea on High Seas from STE and by filing the Bill of Entry, the Appellants became the importer is irrelevant because there is no bar against the Appellants being the importer so long as*

the import is through STE. There is no restriction in the Policy against State Trading Enterprise making High Seas Sale of Urea which during the relevant period was permitted to be imported through State Trading Enterprise.

5.2 Since the import was made through MMTC/Indian Potash Ltd and was in accordance with Heading No.3102 1000 of the ITC (HS) Policy and the letters of the Government of India, Ministry of Chemical and Fertilizers, the Import was in accordance with law and therefore the goods cannot be held to be liable to confiscation under Section 111(d) of the Customs Act 1962. Consequently, no penalty is imposable on the Appellants under Section 112 of the said Act.

5.3 The Commissioner (Appeals) has erred in not appreciating the permission granted by the Ministry of Chemical & Fertilizers to the Appellant. The very opening sentence of the said letters/ Permission of the Ministry of chemical and Fertilizers has permitted the Appellant to Import the Urea through any STE. The permission to import is addressed and granted to the Appellant and such Import has to be made by the Appellant through any STE, which only means that the STE would purchase the Urea from a foreign supplier and then sell the same to the Appellant on High Seas. This is the only way in which the permission to the Appellant to import through STE can be implemented and operated. Learned Commissioner (Appeals) finding that per condition no. (xiv) of Permissions of the Government of India, Ministry of Chemical and Fertilizers, permission was granted to the Appellant only for domestic purchase of Urea from STE is also erroneous. There is absolutely no such restriction in the said condition no. (xiv). Neither does condition no.(xiv) contain any restriction that purchase shall be made only domestically from STE nor does it prohibit purchase on High Seas. All that condition (xiv) stipulates is that the Department of fertilizers has to be kept informed through the STE from whom the Urea is purchased, about the product being produced from such urea, the quantity required, etc. There is absolutely no stipulation in condition (xiv) that urea has to be purchased from STE only domestically and not on High Seas. On the contrary, the very first para of the said letter grants permission to the Appellant to import the Urea through STE. If as upheld by the Commissioner (Appeals), Appellant was only permitted to purchase domestically from the STE, the letter would not have said that the Appellant is permitted to import through STE. The authorities below have mis-read the Conditions Nos. (v) and (xiv) of the Permission letter dated 15th May 2013 of the Government of India, Ministry of Chemical and Fertilizers and in inferring therefrom that High Seas purchase by Appellant from STE was not permitted as per the said conditions. The said conditions are not related to the Appellant's purchase from STE but are related to the purchases by the end users/ distributors from the Appellant. The meaning of the word "through" used in Heading No.3102 1000 of the ITC (HS) Policy, itself show that when the ITC Policy talks of import through STE, It means Import using the help of STE and not Import by STE.

5.4 Further, as per the regular practice accepted by customs for over several decades in case of imports which are canalized through STEs, the STEs place the order on the foreign supplier and thereafter effect High Seas sale of the same to the Indian Buyers. This is evident from the judgments and Board Circular supra. As laid down in the following judgments, where the import is in accordance with a consistent past practice, the question of confiscation under Section 111(d) and Imposition of penalty under Section 112 of the Customs Act 1962 does not arise:

- *Gujarat State Export Corporation Ltd v UOI-1984 (17) ELT 50*
- *Memon Associates v CC 1988 (34) ELT 367*
- *Trident Agencies v CC-1989 (45) ELT 116*
- *Varson Chemicals P. Ltd v CC-1987 (27) ELT 55*

The judgment in the case of Marico Industries Ltd v CC 2007 (209) ELT 403 relied upon by the Commissioner (Appeals) has no application to the facts of the present case. In that case the importer had directly established the Letter of Credit on the foreign supplier as result of which the import could not even be said to be through STE. Further, the import in that case was against Advance Release Order which is issued for sourcing inputs indigenously instead of importing against Advance License. The provisions relating to procurement of inputs against Advance Release Order which applied in that case did not provide for import through STE.

06. In view of above, Impugned Orders vide which penalty under section 112(a)(1) of the Act on the appellants was upheld cannot be sustained. Accordingly, the impugned orders are set aside. The Appeals are allowed with consequential relief."

4.3 It is pertinent to mention here that the Tribunal has held in the above judgment that the judgment pronounced in the **Merico Industries Ltd** vs. **CC, Mundra** reported in 2007 (209) LT 403 relied upon by the Revenue has no application to the facts of the present case. In that case, the importer had directly established the letter of credit on the foreign supplier as a result of which the import could not even be said to be through STE. Further, the import in that case was against Advance Release Order which is issued for sourcing inputs indigenously instead of import against Advanced Licence. The provisions relating to procurement of inputs against Advanced Release Order which applied in that case did not provide for import through STC.

4.4 I agree with the view taken by the CESTAT Ahmedabad in the above mentioned appeals and therefore, in the light of the above mentioned order, the impugned order passed by the learned Commissioner (Appeals) is not sustainable. It is liable to be set aside, whereas, the appeal is liable to be allowed.

5. Consequently, the appeal is allowed.

(Order pronounced in the open Court on 15.04.2026)

(Dr. AJAYA KRISHNA VISHVESHA)
MEMBER (JUDICIAL)

Dharmi