CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD

REGIONAL BENCH - COURT NO. – I

Customs Appeal No. 30356 of 2024
(Arising out of **Order-in-Original** No.VIZ-CUSTM-000-COM-001-2024-25 dated 25.04.2024 passed by Pr. Commissioner of Customs, Visakhapatnam)

M/s Vishnu Chemicals Ltd., .. **APPELLANT**
Plot No.29,
JN Pharma City,
Parawada, Visakhapatnam,
Andhra Pradesh – 531 201.

VERSUS

Pr. Commissioner of Customs Visakhapatnam - Customs .. **RESPONDENT**
Customs House,
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035.

APPEARANCE:
Shri S. Jai Kumar, Advocate for the Appellant.
Shri Kakarala Prasanth Kumar, Authorized Representative for the Respondent.

CORAM: HON'BLE Mr. A.K. JYOTISHI, MEMBER (TECHNICAL)
HON'BLE Mr. ANGAD PRASAD, MEMBER (JUDICIAL)

FINAL ORDER No. A/30494/2026

Date of Hearing: 13.08.2026
Date of Decision: 03.09.2026

[ORDER PER: ANGAD PRASAD]

The present appeal is directed against the Order-in-Original No. VIZ-CUSTM-000-COM-001-2024-25 dated 25.04.2024 (impugned order) passed by the Principal Commissioner of Customs, Visakhapatnam, whereby, demand of IGST amounting to Rs. 5,77,38,576/- has been confirmed under Section 28(8) of the Customs Act, 1962 along with interest under Section 28AA. The imported goods have also been held liable to confiscation under Section 111(o), redemption fine of Rs. 4,00,00,000/- has been imposed

under Section 125 and penalty under Section 114A has been imposed equivalent to the duty together with interest.

2. The facts, in brief, are that the appellant is engaged in the manufacture and export of Basic Chromium Sulphate, Chromic Acid and Chrome Oxide Green. During the period from 13.10.2017 to 10.01.2019, the appellant imported inputs under four Advance Authorisation and claimed exemption from IGST under Notification No. 18/2015-Cus dated 01.04.2015, as amended by Notification No. 79/2017-Cus dated 13.10.2017. Notification No. 79/2017-Cus introduced, inter alia, a pre-import condition for availing exemption from IGST in respect of imports under the Advance Authorisation Scheme. The said condition continued till it's omission by Notification No. 01/2019-Cus dated 10.01.2019.

3. The Directorate of Revenue Intelligence entertained the view that in respect of certain imports made against the Advance Authorisations, exports of finished products had preceded the corresponding imports of raw materials and, therefore, the appellant had violated the pre-import condition. A Show Cause Notice dated 10.02.2021 proposed recovery of IGST amounting to Rs. 7,44,39,300/- in respect of 70 Bills of Entry.

4. The Adjudicating Authority after considering the material before him, recomputed the demand at Rs. 5,77,38,576/- and confirmed the same along with interest, confiscation, redemption fine and penalty as noticed above.

5. Learned Counsel for the appellant submits that the impugned order cannot be sustained. It is contended that the export obligations under the impugned Advance Authorisations have already been fulfilled and Export Obligation Discharge Certificates (ECODs) have either been issued or the authorisations have been redeemed/closed by the DGFT. According to the

appellant, there is no allegation of diversion of imported material or failure to discharge export obligation.

6. Learned Counsel further submits that even assuming that the pre-import condition stood violated in respect of some quantity of imported material, the Adjudicating Authority has erroneously quantified the demand of authorisation-wise so-called “last raw-material” basis, instead of examining each raw material and each Bill of Entry separately.

7. It is specifically submitted that the appellant itself had quantified, without prejudice, the IGST at Rs. 1,78,38,015/-, whereas the Adjudicating Authority confirmed Rs. 5,77,38,576/-. It is contended that the appellant’s calculation is itself conservative since in some cases, the entire quantity covered by the Bills of Entry was taken although only a part thereof could be said to relate to export made prior to import.

8. It is also submitted that Advance Authorisation Nos. 910065678 and 910065924 were clubbed under para 4.38 of the Handbook of Procedures and were required to be treated as one authorisation for all proposes. Likewise, another authorisation was stated to have been clubbed with a connected authorisation. According to the appellant, the Adjudicating Authority failed to give effect to the legal consequence of such clubbing.

9. The appellant has also challenged the demand on limitation and submitted that all Advance Authorisation numbers were reflected in the relevant Bills of Entry and Shipping Bills and there was no suppression of any material fact. It is further submitted that the dispute arose during a short and admittedly contentious period when the pre-import condition was introduced and later withdrawn.

10. As regards interest, confiscation, redemption fine and penalty, Learned Counsel submits that during the relevant period Section 3(12) of the Customs Tariff Act, 1975 incorporated provisions of the Customs Act only in relation to recovery of duties and taxes and did not provide the substantive machinery for levy of interest, confiscation, redemption fine and penalty in relation to IGST levied under Section 3(7) of the Customs Tariff Act. Reliance is placed upon AR Sulphonates Pvt Ltd., Vs Union of India [2025 (4) TMI 578 (Bombay HC)], GTN Engineering (India) Ltd., Vs Pr. CC (Adjudication) [2026 TAXSCAN (CESTAT) 161 (Mum)], Chiripal Poly Films Ltd., Vs CC, Ahmedabad [2024 (22) Centax 245 (Tri-Ahmd)], Sakar Industries Pvt Ltd., [2024 (10) TMI 1141 - CESTAT Ahmedabad] and Suryadev Alloys and Power (P) Ltd., Vs Pr. Commissioner of Customs (Audit), Chennai [2025 (8) TMI 1356 – CESTAT, Chennai]. The Bombay High Court decision and Tribunal decisions relied upon by the appellant concern this pre-import-condition controversy.

11. Learned AR for the Revenue reiterates the impugned order, inter alia, submitted that the pre-import condition was mandatory and its validity has been conclusively upheld by the Hon’ble Supreme Court in Union of India Vs Cosmo Films Ltd., [2023 (5) Centax 286 (SC)]. Learned AR therefore submits that the appellant, having admittedly exported finished goods prior to import of corresponding inputs in certain cases, was not entitled to IGST exemption in respect of such imports. The validity of the pre-import condition for the relevant period stands settled by the Supreme Court.

12. We heard both the sides and perused the records with submissions.

13. The first issue which arises for consideration is whether the appellant can claim unconditional IGST exemption merely because the export

obligation under the Advance Authorisation has subsequently been discharged.

14. This question cannot be answered in favour of the appellant in absolute terms. The Hon'ble Supreme Court in the case of Union of India Vs Cosmo Films Ltd., supra, upheld the pre-import condition applicable during the relevant period. Therefore, the fulfilment of the export obligation by itself cannot erase the actual breach of the specific pre-import condition where such breach is otherwise established.

15. The subsequent regularisation mechanism is equally significant. Pursuant to the judgment in Cosmo Films, CBIC issued Circular No. 16/2023-Cus dated 07.06.2023, and DGFT thereafter issued Trade Notification No. 07/2023-24. The Trade Notice expressly states that imports under the Advance Authorisation Scheme made from 13.10.2017 up to and including 09.01.2019 which could not satisfy the pre-import condition may be regularised by making payment as prescribed under the Customs circulars.

16. Consequentially, the appellant's contention that the entire demand must necessarily disappear because EODCs has been issued cannot be accepted as a blanket proposition. At the same time, the Adjudicating Authority was required to determine the actual quantity of imports which failed the pre-import condition and to give effect to the regularisation mechanism contemplated by Circular No. 16/2023-Cus.

17. On examining the impugned order and the applicant's tabulation, we find considerable force in the challenge to the quantification of demand. The pre-import condition cannot be examined in the abstract for the entire Advance Authorisation without correlating the individual raw material, its

import, the corresponding exported product and the chronology relevant to that particular material.

18. The appellant has illustrated that under Advance Authorisation No. 910065659 Chrome Ore was first imported on 30.11.2017 whereas the first export of the finished product using Chrome Ore took place on 04.12.2017. If that factual position is correct, there would be no violation of the pre-import condition qua that quantity merely because some other inconsequential materials like pellets etc., covered by the same Advance Authorisation was imported at a later date.

19. The finding that export should be treated as satisfying the pre-import requirement only when at least one consignment of every raw material in an Advance Authorisation has already been imported requires re-consideration. Such an approach may artificially deny exemption even in respect of a raw material which had admittedly been imported before its corresponding export. The violation has to be determined having regard to the actual import-export correlation and the wording of the applicable notification and adjudication. Likewise, the plea concerning clubbing of Advance Authorisation cannot be ignored. Where the competent DGFT authority has permitted clubbing and the relevant procedure provides that the clubbed authorisations shall be treated as one authorisation for the prescribed proposes, the Customs Authorities are required to take the legal effect of such clubbing into account while quantifying the liability. The impugned order does not satisfactorily deal with this aspect.

20. We, therefore, find that the figure of Rs. 5,77,38,576/- cannot be sustained merely on the basis of the methodology adopted in the impugned order without a fresh Bill of Entry/raw material-wise exercises.

21. We now turn to the levy of interest, confiscation, redemption fine and penalty. The Bombay High Court in the case of AR Sulphonate Pvt Ltd., supra, examined the statutory framework governing imports which violated the pre-import condition prior to the subsequent legislative amendment. The decision is directly relevant to the appellant's contention concerning absence of statutory authority for consequential levy of interest and penal consequences during the relevant period.

22. The Ahmedabad Tribunal in the case of Chiripal Poly Films Ltd., supra, has also held, in the context of the very same pre-import-condition dispute, that in the absence of a specific statutory provision authorising levy of interest in IGST paid through the regularisation procedure, such interest could not be sustained. The same decision dealt with redemption fine and penalty flowing from the alleged violation. We find these authorities applicable to the present dispute, which pertains to the period 2017-19. The Revenue cannot impose a fiscal or penal liability merely by borrowing machinery provisions, unless the substantive statute creating the levy so authorises.

23. Accordingly, the demand of interest under Section 28AA, confiscation under Section 111(o), redemption fine of Rs. 4,00,00,000/- under Section 125 and penalty under Section 114A, as imposed in the impugned order in relation to the IGST liability arising from breach of the pre-import-condition, cannot be sustained.

24. The equal penalty under Section 114A also cannot be sustained. Apart from the statutory issue noticed above, the case arises from interpretation and implementation of a temporary pre-import-condition which remained in force only from 13.10.2017 to 09.01.2019 and thereafter became subject

matter of extensive litigation culminating in Cosmo Films Ltd., supra. The records, according to the appellant, disclosed the Advance Authorisation numbers in the Bills of Entry and Shipping Bills. These circumstances do not justify sustaining the penalty in the manner imposed.

25. As regards limitation, we find that the matter can appropriately be left open in view of the order of remand on quantification of IGST payable for not meeting pre-import condition. Nevertheless, while re-determining liability, the Adjudicating Authority shall specifically examine whether the ingredients necessary for invocation of the extended period were alleged in the Show Cause Notice and established on evidence. Mere breach of the pre-import condition by itself cannot automatically be equated with suppression or wilful misstatement.

26. In so far arguments put forth by Learned AR, we find that he has mainly emphasised that in terms of judgment of Hon'ble Supreme Court in the case of Cosmos Films Ltd., supra, validity of pre-import condition during the disputed period cannot be questioned and it has attained finality. We agree with this submission. However, what we cannot agree is that when the Department has issued 16/2023 post this judgment, which provides for re-assessment, it is obvious that in relation to said issue Department's interpretation was not to invoke penal provisions as has been invoked and confirmed by the Adjudicating Authority. Department's circulars have a binding effect on the Department unless it is patently unconstitutional or ultra vires. The withdrawal of pre-import condition is intended to restore the condition prevailing before the introduction of said condition and it only shows that during the disputed period it was valid, however, the fact remains that this issue was under litigation and thus this only supports the

contention of the appellant that there was no deliberate intent to not to pay the applicable IGST.

27. In view of the foregoing discussion, we hold that the appellant cannot claim complete immunity from payment of IGST merely on the ground that the import obligation under the Advance Authorisations was subsequently fulfilled. To the extent the pre-import-condition was factually violated, the IGST is required to be regularised in accordance with the procedure prescribed pursuant to Cosmo Films Ltd. The DGFT Trade Notice specifically recognises regularisation of such imports through the procedure laid down in Circular No. 16/2023-CUS. We also note that Adjudicating Authority has, while confirming the demand under Section 28(8) of Customs Act also ordered for re-assessment of impugned Bill of Entries by the appraising group for recovery of differential duty and interest. We find that the order of confirming of differential duty, imposition of penalty, interest, confiscation etc., are not sustainable and therefore liable to be set aside. However, in so far as direction of re-assessment in concerned, it is sustainable and the same has to be done by the appraising group after taking into account our observations and findings as well as directions given below. Therefore, the order at para 106 (ii) of the impugned order is modified to that extent and the quantification made in the impugned order at Rs. 5,77,38,576/- cannot be sustained. The matter requires fresh determination on re-assessment of Bill of Entry-wise and raw material-wise basis after taking into consideration:

- The actual date of import of each raw-material and the corresponding exports;
- The quantities actually attributable to exports made prior to import;
- The effect of clubbing of Advance Authorisation permitted by DGFT;
- The EODCs/redemption certificates issued by DGFT;

- The appellant's self-computation of liability of IGST at Rs. 1,78,38,015/-; and

the procedure prescribed in Circular No. 16/2023-CUS, including consequential entitlement of input tax credit in respect of said payment in accordance with law will also be permissible to the appellant.

28. Accordingly, the impugned Order-in-Original dated 25.04.2024 is set aside to the extent of quantification of the IGST payment and interest and the matter is remanded to the Appraising Authority for limited purpose of re-quantification in the above terms on re-assessment and no interest shall be leviable thereon.

29. The demand of interest under Section 28AA, confiscation under Section 111(o), redemption fine of Rs. 4,00,00,000/- under Section 125 and penalty imposed under Section 114A are also set aside.

30. The concerned Authority shall undertake the re-quantification after granting reasonable opportunity of hearing to the appellant and shall permit the appellant to produce the relevant Bills of Entry, Shipping Bills, EODCs, clubbing orders, consumption records and other documents necessary for proper correlation.

31. Therefore, the appeal is partly allowed and partly remanded in terms of above.

(Pronounced in the open court on 03.09.2026)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

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