CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
New Delhi

PRINCIPAL BENCH – COURT NO.1

Customs Appeal No. 50011 Of 2023

[Arising out of Order-in-Original No. DLI/CUS/PREV/SKR/Pr. Commr./03/2022-23 Dated 26.09.2022 passed by the Principal Commissioner of Customs (Preventive), New Delhi-110037]

PMI Electro Mobility Solution Private Limited : Appellant
Plot No. 39 & 26, Industrial Area
Dharuhera, Distt. Rewari, Haryana

Vs

Principal Commissioner of Customs (Preventive), New Delhi : Respondent
Near IGI Airport, New Delhi-110037

APPEARANCE:

Mr. Naveen Mullick & Mr. Parth Mullick, advocates for the appellant

Mr. Nikhil Mohan Goyal and Mr. Ranjan Prakash, authorised representatives of the department

CORAM :
HON'BLE DR. RACHNA GUPTA, OFFICIATING PRESIDENT
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

FINAL ORDER No. 51596/2026

Date of Hearing:01.09.2026

Date of Decision:12.10.2026

HEMAMBIKA R. PRIYA

The present appeal has been filed by M/s PMI Electro Mobility Solution Private Limited[1] to assail the Order-in-Original No. DLI/CUS/PREV/SKR/Pr. Commr./03/2022-23 Dated 26.09.2022 wherein the Principal Commissioner confirmed the differential duty of Rs. 1,06,69,156/-under Section 28(4) read with Rule 8 of the IGCR

1 **The appellant**

Rules, 2017, ordered recovery of interest under Section 28AA, appropriated Rs. 25,00,000/- already deposited, and imposed penalty under Section 114A.

2. The brief facts of the case are that the appellant was engaged in the manufacture of electrically operated vehicles (electric buses). The parent company, M/s PMI Coaches Pvt. Ltd., which holds more than 50% of the appellant share, was engaged in the fabrication of bus bodies. The appellant holds ICAT/NATRIP (Government of India) authorisation for the manufacture of Electric and Hybrid Electric Vehicles. The Appellant imported various parts of electric buses viz. Lithium-ion Battery Pack, AC/DC Motor, AC/DC Motor Controller, AC/DC Converter, Brake System for recovering. Electric Compressor, etc. required for the manufacture of E-buses. The appellant imported the said parts at a concessional/Nil rate of duty after availing the benefit of exemption under Sr. No. 528 and 528A of Notification No. 50/2017-Cus dated 30.06.2017. The condition No. 9 to the Exemption Notification requires that "the importer follows the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017. In compliance, the appellant submitted intimations dated 18.03.2020 and 28.04.2020 to the jurisdictional Deputy/Assistant Commissioner, EPC, Faridabad, under the IGCR Rules, 2017, intimating the import of the battery pack, DC motor, AC/DC converter, electric compressor and brake system of electric bus, and furnished the continuity bond with surety/security. The appellant has two units taken on rent at Plot Nos. 39 and 26, Industrial Area, Dharuhera, District Rewari, Haryana from M/S PMI Coaches Pvt. Ltd. The imported

material was received and put to use at Plot No. 26, where the appellant was manufacturing buses through PMI Coaches. On receipt of an order dated 18.01.2019 from Himachal Road Transport Corporation (HRTC) for supply of 20 electric buses, the appellant placed a Purchase Order dated 06.06.2019 and imported the components vide Bill of Entry No. 4700062 dated 30.08.2019. Simultaneously, it entered into a Memorandum of Understanding (MOU) dated 01.10.2019 with M/s PMI Coaches under which M/s PMI Coaches carried out the fabrication/manufacture of the 20 electric buses from the imported components and other components such as tyres supplied by the appellant at Plot No. 26, under the supervision and control of the appellant. Thereafter, the fully-built buses were returned to the appellant, which was then supplied to HRTC. The department issued show cause notice dated 29.07.2021 alleging that the imported items sent by the appellant to M/s PMI Coaches were sold and not sent on job-work basis, so that the imported components were 'cleared as such' and the substantive condition of Sr. No. 528/528A was not fulfilled, which was in violation of Rule 7(2) of the IGCR Rules, 2017. Vide the impugned order, the Principal Commissioner denied the exemption under Sr. No. 528/528A in respect of Bill of Entry No. 4700062 dated 30.08.2019, confirmed the differential duty of Rs. 1,06,69,156/-under Section 28(4) read with Rule 8 of the IGCR Rules, 2017, ordered recovery of interest under Section 28AA, appropriated Rs. 25,00,000/- already deposited, and imposed penalty under Section 114A. Against the said order, the appellant has filed the present appeal.

3. Learned counsel for the appellant submitted that the impugned order is a verbatim reproduction of the SCN dated 29.07.2021. He contended that the Adjudicating Authority had mechanically extracted the allegations, charges and reasoning of the show cause notice and adopted them as the findings, without independently analysing the facts, the evidence on record, or the detailed submissions raised by the appellant in their replies dated 16.12.2021 and 15.09.2022. He submitted that it is a settled principle that the Show Cause Notice is the foundation in the matter of levy and recovery of duty, penalty and interest, and that the adjudicating authority cannot verbatim reproduce the contents of the Show Cause Notice in the Order-in-Original. Learned counsel relied on the judgement of the Hon'ble High Court of Madras in **Senthil Kumar** vs. **Commissioner of Customs, Chennai[2].**

3.1 Learned counsel further submitted that the sole foundation of the impugned order is an alleged violation of Rule 7(2) of the IGCR Rules, 2017. He submitted that Rule 7(2) applies only where the importer seeks to "also clear the unutilised or defective imported goods" with the permission of the jurisdictional Deputy Commissioner of Customs where the imported goods shall be put to use for manufacture of goods. The term "clear" in Rule 7(2) means removal of the imported material from the premises where such stocks, lying unutilised or defective, have been received under Rule 6(1) for intended use in the manufacture of the end product. In the present case, there was neither any "unutilised" nor any "defective" stock, and

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2 W.P. 21639/2025 dated 22.08.2025

there was no "clearance" or "removal" of the imported goods at all. Firstly, the arrangement was one of contract manufacturing under the MOU, under which the goods were supplied to M/s PMI Coaches for job work and not sold. Secondly, and in any event, the Appellant and M/s PMI Coaches shared the same premises, i.e. Plot No. 26, and therefore, the imported goods were never physically removed from the premises where they were received and put to use. Thirdly, the appellant had duly informed the Department of its intention, filed the information/intimations, executed the Continuity Bond and filed the Quarterly Returns. Learned counsel submitted that there was

3.2 Learned counsel further submitted that the impugned order had proceeded on the grounds that the importer must itself physically manufacture the end product, and that engaging a contractor/job worker disentitles the importer from the exemption. He submitted that no such condition existed in Notification No. 50/2017-Cus or in the IGCR Rules 2017. The Notification only required that the imported goods be used in the manufacture of electrically operated vehicles, and it nowhere required that the importer manufacture the goods. To read in such a condition was impermissible, as the exemption notification must be construed strictly and the Court/Tribunal cannot supply words that the legislature/executive has not used. Learned counsel relied on the judgments in **Union of India** versus **Intercontinental (Indla)**[3] and **Tata Teleservices Ltd.** versus **Commissioner of Customs**[4] wherein, it was held that no additional conditions or restrictions can be imposed in the Notification. Learned counsel contended that even

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3 2008 (226) ELT 16 (SC)
4 2006 (194) ELT 11 (SC)

under the erstwhile Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996- which contained an express condition requiring the importer to use the imported goods in the manufacture of goods "in his factory", the Courts have extended the benefit even where the manufacture was carried out through a job worker or otherwise not strictly at the importer's own factory, so long as the substantive purpose was achieved. In support of his submission, learned counsel relied upon the following decisions:-

- **Tamil Trading Corporation versus Commissioner of Central Excise, Tuticorin[5],**
- **Finolex Cables versus Commissioner of Central Excise, Goa[6]**
- **FDC Limited versus Commissioner of Central Excise, Belapur[7]**

He submitted that even under the stricter 1996 IGCR Rules which had an express "in his factory" condition, the benefit was not denied, then a fortiori, under the IGCR Rules, 2017 - which carries no such condition, the benefit cannot be denied to the Appellant. In fact, the same principles have also been applied in the context of IGCR, 2017 in **M/s Godrej Consumer Products Ltd.** versus **Commissioner of Customs (Air), Chennai[8].** In any event and without prejudice to the above, it is evident from the subsequent amendment made to the IGCR Rules, 2017 that sending goods outside the premises to a job worker is completely permissible, and if goods may be sent outside to a job worker, there can be no objection where the job worker operates

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5 2006 (198) E.LT. 539 (Tri. - Chennal)
6 2017 (358) E.L.T. 990 (Tri. - Mumbai)
7 2017 (357) E.L.T. 464 (Tri. - Mumbal)
8 2025 (12) TMI 610 - CESTAT CHENNAI

within the importer's own premises. This fact of permissibility of getting manufacture undertaken from a job-worker is expressly recognized in the Circular dated 17.05.2021. Thus, where the Circular is beneficial and clarifies the position, the same has to be applied retrospectively has held in **Suchitra Components** versus **Commissioner of Central Excise[9].**

3.3 Learned counsel further contended that the entire edifice of the SCN and the Impugned Order rests on the fact that GST invoices were raised between the Appellant and M/s PMI Coaches, from which it is inferred that there was a "sale" of the imported components. Learned counsel contended that the invoices were raised in respect of a supply of services in the nature of contract manufacturing/job work. He submitted that the definition of "supply" and "services" under the GST law was wide and the movement of goods for job work under cover of a tax invoice did not, in law, constitute a "sale" of those goods. For moving the goods to the job worker, the appellant had the option under the GST law of using either a delivery challan (without payment of GST) or a tax invoice (on payment of GST). The Appellant chose to move the goods under a tax invoice and discharged GST and that choice of documentation did not convert a job-work transaction into a sale, nor did it alter its essential character. Learned counsel drew attention to MOU dated 01.10.2019 which was the contractual arrangement which unambiguously establish a principal manufacturer-contractor relationship and not a buyer-seller relationship. It was submitted that the appellant had manufactured the electric buses

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9 2007 (1) TMI 4 (SC)

through PMI Coaches using the imported goods, which is not disputed in the impugned order or the show cause notice. Learned counsel submitted that the extended period under Section 28(4) can be invoked only where duty had escaped by reason of collusion, wilful mis-statement or suppression of facts. In the present case, the appellant had filed all requisite intimations under the IGCR Rules, furnished the continuity bond, and duty complied with the prescribed procedure. Thus the dispute was a purely interpretational one and did not involve any of the ingredients of Section 28(4). Since the transaction was one of job work and not of sale, the allegation of clearance 'as such' and non-disclosure did not apply. It is settled that suppression must be deliberate and that, in the absence of fraud, collusion or wilful mis-statement, the extended period cannot be invoked. In support of his submissions, learned counsel relied on the following judgments:-

- **Pushpam Pharmaceuticals Co. versus Commissioner of Central Excise[10]**
- **Anand Nishikawa Co. Ltd. versus Commissioner of Central Excise[11]**
- **Easland Combines versus Commissioner of Central Excise[12]**
- **Uniworth Textiles Ltd. versus Commissioner of Central Excise[13]**

In view of above submissions, learned counsel prayed that the invocation of the extended period and the demand founded upon it, are therefore liable to be set aside.

4. Learned Authorized Representative for the Department submitted that it was an undisputed fact that the appellant had

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10 1995 (78) E.L.T. 401 (SC)
11 2005 (7) SCC 749
12 2003 (3) SCC 410
13 2013 (288) E.L.T. 161 (SC)

imported Lithium-ion Battery Pack, AC/DC Motor Controller, AC/DC Converter, Brake System for recovering, Electric Compressor etc. on concessional rate of duty after availing benefit of S.No. 528 and 528A of Notification No. 50/2017-Cus dated 30.06.2017, as amended. They had submitted the Bond and surety/security to the AC/DC, EPZ, Faridabad as per the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017. The said document clearly mentioned that the goods would be consumed as per condition to S.No. 528 & 528A of Notification No. 50/2017-Customs dated 30.06.2017 read with notification No. 68/2017-Cus (N.T.) dated 30.06.2017 failing which they were liable to pay the duty foregone at the time of import along with interest as applicable. Before importing the goods, the appellant importer intimated the jurisdictional Assistant/Deputy Commissioner of Customs, EPC Faridabad that they would manufacture the e-vehicle from the imported goods in the factory premises but after importing the said goods they sold- out/ cleared the same to M/s PMI Coaches Pvt. Ltd. on the strength of sale invoices without informing to the jurisdictional AC/DC of Customs, EPC Faridabad.

4.1 Learned Authorized Representative further submitted that the search dated 26.06.2020 revealed that the premises of the importer was found to be under construction since December 2019, and no manufacturing activity was being carried out at the premises. Further, Shri Sourabh Rawat, Assistant Manager of the appellant firm had accepted in his statement dated 26.06.2020 that since civil expansion work at the registered premises of the appellant was under progress

since December 2019. Therefore, he stated that the appellant had removed the capital goods from this premises to other premises i.e. plot No. 26 Industrial Area, Dharuhera, Rewari and they had not received any imported material at the registered premises of the appellant and the same were received at another plot No. 6 Industrial Area, Dharuhera, Rewari where manufacturing activity were carried out with the help of imported materials. No manufacturing activity was undertaken in the registered premises of the Appellant. The imported goods were sold by the Appellant to M/s PMI Coaches Pvt. Ltd. through 10 tax invoices and after manufacturing, the complete 20 battery operated buses were sold back by M/s PMI Coaches Pvt. Ltd. to the Appellant through tax invoice dated 18.10.2019. Thus, it was evident that instead of the appellant importer, the manufacturing activity of bus was undertaken by some M/s PMI Coaches Pvt. Ltd. which was a clear violation of the condition of the notification. Learned AR submitted that Shri Sourabh Rawat in his statement dated 13.08.2020 had clearly admitted that they sold out those imported materials on the strength of tax invoices on the cost of value to M/s PMI Coaches Pvt. Ltd. Shri Aman Garg, Executive Director of the Appellant in his statement dated 08.09.2020 stated that they had not taken any permission from AC/DC of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacturing of goods. Both the companies i.e. M/s PMI Coaches Pvt. Ltd. and M/S PMI Electro Mobility Solution Pvt. Ltd. were independent legal entities and both were registered with independent legal names. Both the companies have separate PAN and filed separate ITR, and

have separate IEC code. He submitted that the appellant sold the imported goods to M/s PMI Coaches Pvt. Ltd. by issuing invoice, by receiving payment and by paying GST on this transaction, the ownership of the imported goods has also been transferred to M/s PMI Coaches Pvt. Ltd. by the importer-appellant. Therefore, the contention of the importer that they had sent the imported goods to their related company for manufacturing of the complete vehicles on job work basis and violation is only technical in nature was not correct. Rule 7(2) of the Customs (Import of Goods under Concessional rate of Duty) Rules, 2017, clearly mention that unutilized or defective goods may be cleared into domestic market on payment of duty foregone at the time of import with the permission of the jurisdictional AC/DC of the Customs having jurisdiction over the premises where the goods are put to use. In case of failure, the amount of duty shall be recovered under Rule 8 of the said Rules by invoking the bond submitted by the importer. In this case, the goods were cleared as such into domestic market through sale to PMI Coaches without the permission of the AC/DC and without payment of duty foregone at the time of import. The said facts were neither informed by the importer through any letter nor was it mentioned in their quarterly return. As per the return, the importer had shown utilisation of the imported goods in manufacturing of buses which were cleared by them. Shri Aman Garg, Executive Director of the appellant has stated in his statement dated 08.09.2020 had also stated that they had sold the goods as such.

4.2 Learned Authorized Representative further contended that from the facts of the case and statement of the employees of the appellant,

it was clear that the appellant had sold the goods as such without undertaking any manufacturing activity at their registered premises which was mandated as per condition of the Notification No. 50/2017 read with Notification No. 68/2017. They had also submitted bond/surety at the time of import where it was clearly mentioned by them to follow the conditions of import and recovery of duty may be done in case of violation of condition of the notification. The activity of the importer was not even intimated to the jurisdictional AC/DC, therefore, there was clear suppression which resulted in revenue loss to the Government. Hence, the provisions of section 28(4) of the Customs Act, 1962 have rightly been invoked. The exemption notification clearly stipulates that the concession is available subject to the condition of manufacture of specified final products. Strict compliance with condition of the notification of Exemption Notification is a 'Sine qua non' for the exemption claimed as has been held by Hon'ble Supreme Court in the case **of M/s Eagle Flask Industries Ltd.** versus **Commissioner**[14].

5. We have heard the learned counsel for the appellant and the learned AR for the Department and perused the records. The issue before us is whether the appellant has violated the provisions of the IGCR 2017 or not. Before we consider the issue, we need to understand the provisions of IGCR, 2017. The IGCR Rules, 2017 was introduced vide Notification No. 68/2017-Customs (N.T.) dated 30.06.2017, framed under Section 156 read with Section 25(1) of the Customs Act, 1962. They apply where a duty exemption under Section

14 2004 (171) ELT 296 (SC)

25(1) is conditional on end use of the imported goods, for the manufacture of a commodity or provision of output service. The Rules operationalise verification of that condition in lieu of a bespoke end-use certification procedure. The procedural architecture of the said Rules worked in the following manner:

- Prior intimation of intent to import (Rule 4)
- Intimation of receipt of goods at the manufacturing/service unit (Rule 5)
- Continuity bond with security
- Case-by-case permission for re-export or domestic clearance of unutilised/defective goods (Rules 6-7)
- Quarterly returns

5.1 Functionally, the IGCR turned a 'conditional exemption' into a tracked regime, i.e., the concession is available only if the procedural chain of intimation bond records returns end use is maintained. In the instant case, the following are the admitted facts:

i. Appellant filed the intimations dated 18.3.20 and 28.4.20 before the jurisdictional AC/DC

ii. The Bond with surety/security was submitted

iii. Returns were filed regularly

5.2 Ld Counsel submitted that as the appellant was unable to complete the order received for 20 electric buses from Himachal Road Transport Corporation, hence they entered into an MOU with M/s PMI Coaches for fabrication/manufacture of the 20 electric buses at the appellant's premises from the imported components. It has also been submitted that the entire manufacture/fabrication was under the supervision and control of the appellant. Ld AR has submitted that the

appellant had sold the imported components to PMI Coaches and had raised GST invoices for such sale. This was in clear violation of Regulation 7 of IGCR, 2017. Further, Learned AR submitted that the electric buses were not manufactured by the appellant, as required under the IGCR, 2017. In order to appreciate the submissions of the Department, it would be appropriate to reproduce the said Regulation hereinafter.

"7. Re-export or clearance of unutilised or defective goods.

(1) The importer who has availed the benefit of an exemption notification shall use the goods imported in accordance with the conditions specified in the concerned exemption notification within six months from the date of import and with respect to unutilised or defective goods so imported, the importer has an option to either re-export such goods or clear the same for home consumption within the said period.

(2) The importer who opts to re-export such goods as specified in sub-rule (1), shall record the details of necessary export documents in the monthly statement:

Provided that the value of such goods for re-export shall not be less than the value of the said goods at the time of import.

(3) The importer who opts to clear the unutilised or defective goods for home consumption as specified in sub-rule (1), shall pay the duty along with interest on the common portal and the particulars of such clearance and the payment of duty shall be recorded by the importer in the monthly statement.

(4) The importer has an option to clear the capital goods imported, after having been used for the specified purpose, on payment of duty equal to the difference between the duty leviable on such goods but for the exemption availed and that already paid, if any, at the time of importation, along with interest, at the rate fixed by the notification issued under section 28AA of the Act, on the depreciated value allowed in straight line method, as specified below, namely: -

(i)	*for every quarter in the first year*	*@ 4%;*

(ii)	*for every quarter in the second year*	*@ 3%;*
(iii)	*for every quarter in the third year*	*@ 3%;*
(iv)	*for every quarter in the fourth and fifth year*	*@ 2.5%;*
(v)	*and thereafter for every quarter*	*@ 2%.*

Explanation. - (i) For the purpose of computing rate of depreciation for any part of a quarter, a full quarter shall be taken into account.(ii)The depreciation shall be allowed from the date when the imported capital goods have come into use for the purpose as specified in the exemption notification upto the date of its clearance. (5) The importer shall, in relation to sub-rule (4) record the particulars of such clearance and payment of duty in the monthly statement.]"

5.3 A perusal of the said Regulation, it is seen that sub-Rule (1) places a primary obligation on the importer to use the imported goods within the 6 months of import. However, for the unutilized or defective goods, the regulation provides an option of re-export or clearance for home consumption. In the instance case, it has been alleged that the appellant has sold the imported goods to PMI Coaches. Hence, as the regulations do not provide any option for sale of such imported goods, hence, the appellant had violated the Regulations. Learned counsel submitted that the appellant had adopted the issuance of tax invoices for moving the imported components. However, there was not physical movement of the imported components since the buses were fabricated at the appellant's own factory viz., Plot No. 26, Industrial Area, Dehradun.

We find that the appellant had entered into an MOU with their sister concern M/s PMI Coaches for fabrication of the electric buses. It is also an admitted fact that both the appellant and M/s PMI coaches shared the same manufacturing premises. We note that Sr. No. 528/528A of Notification No. 50/2017-Cus dated 30.06.2017 grants the exemption subject to condition No. 9. The relevant entry is reproduced below:-

S. NO.	**Description of goods**	**Chapter/ Heading**	**Standard Rate**	**Condn. No.**
528	The following goods for use in the manufacture of Electrically operated vehicles, including two and three wheeled electric motor vehicles, namely (i) Battery charger (ii) AC or DC Motor (iii) AC or DC motor controller (iv) Power Control Unit (inverter, AC/DC converter, condenser) (v) Energy monitor (vi) Contactor (vii) Brake system for recovering (viii) Electric Compressor (ix) E-Drive assembly (x) On board charger (xi) E-compressor (xii) Charging Gun	Any chapter	Nil	9
528A	Battery pack for use in the manufacture of electrically operated vehicle or hybrid vehicle	8507	15%	9

5.4 In the instant case, it is seen that the appellant followed the procedure as detailed in the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017[15]. The imported components were used in the manufacture of electric buses which was subsequently supplied to Himachal Road Transport. The only procedural lapse noted is that the appellant entered into a business arrangement with PMI Coaches for fabrication/manufacture and the imported goods was shown as sold to the job worker. That was merely a business arrangement, but there is no allegation that the imported

15 IGCR, 2017

goods was not used for the purpose it was imported. We note that the Tribunal has repeatedly treated IGCR obligations as procedural or facilitative, especially where the importer's substantive entitlement is not in doubt. We draw support from the decisions of coordinate Benches.

5.5 The Tribunal in the case of **Tamil Trading Corporation** versus **Commissioner of Central Excise, Tuticorin**[16] held as under:-

> **"6.** We have gone through the records of the case carefully. The Customs Notification No. 21/2002-Cus. provides concessional rate of duty for imported Crude Palm Oil for the manufacture of refined oil. Condition 5 of the Notification stipulates that the importer follows the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996. Before the introduction of the above Rules in 1996, each Notification was having end-use condition and the importer was normally required to produce the end-use certificate. However, the above rules were framed as an improvement over the earlier procedure. The above Rules are applicable to an importer who intends to avail of the benefit of an exemption Notification and where the benefit of such exemption is dependent upon the use of imported goods covered by the Notification for the manufacture of any excisable commodity. As per Rule 3 *a manufacturer intending to avail the benefit of the exemption notification shall obtain a Registration from the Assistant Commissioner of Central Excise having jurisdiction over his factory*. Lower authorities have done their job by a very literal interpretation of Rule 3. Their argument is that the Rule 3 uses the expression "*his factory*". In other words the lower authorities interpret that the importer should own a factory and he has to use the imported material only in *his factory*. Otherwise, the importer would not be entitled for the concessional assessment under the above Notification. If the importer uses the imported goods in a factory belonging to some other person he would not be entitled for the concessional assessment. The Tribunal's decision in the *Panacea Bio-tech Ltd.* case relied on by the Commissioner has broadly followed the above line of argument. In our view, the above approach is not at all in consonance with the philosophy of liberalisation and globalisation embraced by the Government of India in all its policies relating to Customs, Excise and Foreign Trade as revealed in a plethora of policy documents, legislation, and procedures. In the Exim Policy actual user includes a person who utilises the imported goods for his own use in another unit including a jobbing unit. Gujarat High Court in the case law cited by the ld. Advocate has clearly spelt

16 2006 (198) ELT 539 (Tri.-Chennai)

out that for excise purposes manufacturer includes a person who gets his goods manufactured from the facilities owned by another person. The Board's Circular dated 6-2-2002 enables a manufacturer to send duty free goods received to another manufacturer having registration for carrying of repairs/re-conditioning etc. In the above said Circular the Board has clarified that the goods received duty free can be removed to another eligible manufacturer under the Central Excise (Removal of Goods under the Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001. However, the recipient manufacturer would require Registration under Rule 3 of the said Rules. In our view, denial of Registration under Rule 3 of the Customs (Import of Goods at Concessional Rate of Duty for Manufacturer of Excisable Goods) Rules, 1996 to the importer on the ground that he does not have own a factory in which the imported goods are to be used is very much against the Exim Policy, Board's Circular and the Hon'ble Gujarat High Court interpretation of manufacturer under Section 2(f) of the Central Excise Act, 1944. There is nothing strange or illegal in a person utilising the manufacturing facilities of another. In order to be a manufacturer one need not own a factory. The practice of more than one manufacturer using a factory is recognised as can be seen in the SSI Notification with regard to clubbing of clearances. The expression "*his factory*" should be interpreted to mean the factory where the importer wants to utilise the imported goods in terms of the Notification. The Department can not insist on ownership of the factory and deny *registration* for the purposes of the Notification. The Tribunal, in the case of *Commissioner of Central Excise, Bangalore* v. *Electronic Research Ltd*. cited by the ld. Advocate, has held that literal meaning of statute should be abandoned if it leads to unjustified results. In that case, goods imported under Concessional rate of duty for use in one factory were transferred to the factory of the importer at another place under certain circumstances. The Commissioner (Appeals) decided in favour of the importer. Revenue came in appeal before the Tribunal. The Tribunal held that the importer was entitled to exemption as neither the Rules nor the Notifications itself prohibited such transfer. The above decision was held in the context of the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996. The ratio of the above decision is applicable to the present case also. The fact that Chennai Commissionerate has permitted Registration in respect of the importer who does not own the factory where the imported Crude Palm Oil is utilised is also supporting the appellants' case. Hence we allow the appeal with consequential relief, if any."

5.6 The Mumbai Bench of Tribunal in **FDC Limited** versus **Commissioner of Central Excise, Belapur**[17] observed as under:-

> **"4.** We have carefully considered the submissions made by both sides and perused the records. The issue in dispute lies in a narrow compass that imported goods under exemption notification carrying condition of end use. Under Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996 whether goods can be used in the importer's own factory or also can be used in the job worker factory. There is no dispute the goods were used on behalf of the appellant in their loan licensee (job work factory) on behalf of the appellant only. The ownership of goods remained with the appellant right from import of the goods up to the use in the final product. In this position, in our view the imported goods used for the specified purpose, the condition of end use stands complied with. The whole objective of the duty free imported bulk drug is that it should be used in the manufacture of life saving drugs or medicine. In our view, if this condition is fulfilled while the ownership of the goods is with appellant, it can be said condition of the end use is satisfied. This issue has come up in the case of *Tamil Trading Corporation Ltd.* (supra), wherein the Tribunal has passed the following order :
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> "We have gone through the records of the case carefully. The Customs Notification No. 21/2002-Cus. provides concessional rate of duty for imported Crude Palm Oil for the manufacture of refined oil. Condition 5 of the Notification stipulates that the importer follows the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996. Before the introduction of the above Rules in 1996, each Notification was having end-use condition and the importer was normally required to produce the end-use certificate. However, the above rules were framed as an improvement over the earlier procedure. The above Rules are applicable to an importer who intends to avail of the benefit of an exemption Notification and where the benefit of such exemption is dependent upon the use of imported goods covered by the Notification for the manufacture of any excisable commodity. As per Rule 3 a manufacturer intending to avail the benefit of the exemption notification shall obtain a Registration from the Assistant Commissioner of Central Excise having jurisdiction over his factory. Lower authorities have done their job by a very literal interpretation of Rule 3. Their argument is that the Rule 3 uses the expression "his factory". In other words the lower authorities interpret that the importer should own a factory and he has to use the imported material only in his factory. Otherwise, the importer would not be entitled for the concessional assessment under the above Notification. If the importer uses the imported goods in a factory belonging to some other person he would not be entitled for the concessional assessment. The Tribunal's decision in the *Panacea Bio-tech Ltd.* case relied on by the Commissioner has broadly followed the above line of argument. In our view, the above approach is not at all in consonance with the philosophy of liberalisation and globalisation embraced by the Government of India in all its policies relating to Customs, Excise and Foreign Trade as revealed in a plethora of policy documents, legislation,

17 2017 (357) ELT 464 (Tri.-Mumbai)

> and procedures. In the Exim Policy actual user includes a person who utilises the imported goods for his own use in another unit including a jobbing unit. Gujarat High Court in the case law cited by the ld. Advocate has clearly spelt out that for excise purposes manufacturer includes a person who gets his goods manufactured from the facilities owned by another person. The Board's Circular dated 6-2-2002 enables a manufacturer to send duty free goods received to another manufacturer having registration for carrying of repairs/re-conditioning, etc. In the above said Circular the Board has clarified that the goods received duty free can be removed to another eligible manufacturer under the Central Excise (Removal of Goods under the Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001. However, the recipient manufacturer would require Registration under Rule 3 of the said Rules. In our view, denial of Registration under Rule 3 of the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996 to the importer on the ground that he does not have own a factory in which the imported goods are to be used is very much against the Exim Policy, Board's Circular and the Hon'ble Gujarat High Court interpretation of manufacturer under Section 2(f) of the Central Excise Act, 1944. There is nothing strange or illegal in a person utilising the manufacturing facilities of another. In order to be a manufacturer one need not own a factory. The practice of more than one manufacturer using a factory is recognised as can be seen in the SSI Notification with regard to clubbing of clearances. The expression "his factory" should be interpreted to mean the factory where the importer wants to utilise the imported goods in terms of the Notification. The Department cannot insist on ownership of the factory and deny registration for the purposes of the Notification. The Tribunal, in the case of *Commissioner of Central Excise, Bangalore* v. *Electronic Research Ltd.* cited by the ld. Advocate, has held that literal meaning of statute should be abandoned if it leads to unjustified results. In that case, goods imported under concessional rate of duty for use in one factory were transferred to the factory of the importer at another place under certain circumstances. The Commissioner (Appeals) decided in favour of the importer. Revenue came in appeal before the Tribunal. The Tribunal held that the importer was entitled to exemption as neither the Rules nor the Notifications itself prohibited such transfer. The above decision was held in the context of the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996. The ratio of the above decision is applicable to the present case also. The fact that Chennai Commissionerate has permitted Registration in respect of the importer who does not own the factory where the imported Crude Palm Oil is utilised is also supporting the appellants' case. Hence we allow the appeal with consequential relief, if any."

5.7 In **Godjrej consumer Products Limited** versus **Commissioner of Customs (Air), Chennai[18],** the Tribunal observed as under:-

> "16. We are of the considered view that on a plain reading of the said condition No.3 and its proviso, we do not and the said condition placing any embargo on the manufacturer importer utilising the services of a job

18 2025 (12) TMI 610-CESTAT CHENNAI

worker to manufacture the products utilising the imported goods. The Public Notice No. 113 (RE-2007)/2004-09 dated 15/2/2008 also corroborates the said view."

17. Furthermore, it is seen that in the decision M/s. Silver Line Plastpack Pvt. Ltd. versus CCE & ST, Bhavnagar, 2015 (10) TMI 2262-CESTAT AHMEDABAD, relied upon by the Appellant, a similar provision as existing in the notification No.32/2005-Cus had come up for analysis before a coordinate bench of this Tribunal and the Tribunal has held that "own use" also means "use by utilising the facilities of the job worker". was also observed that the customs notification does not prohibit processing of the import goods into finished final goods by the job worker. The relevant portions of the decision is reproduced below:

xxxxx xxxxxxx xxxxxxxx xxxxxxx xxxxxx

xxxxx xxxxxxx xxxxxxxx xxxxxxx xxxxxx

18. We find that in this case too, neither the SCN has any allegation that the Appellant has sold the goods to the job worker, nor does the impugned order render such a finding. The citation produced by the Ld. AR. does not indicate any stay of operation of the order and hence the reliance thereon is misconceived. We do not find any persuasive reason to differ from the aforesaid view taken by a coordinate bench of this Tribunal. Therefore, respectfully following the aforesaid decision, we hold that the dispatch of the imported goods by the appellant to the jobworker for manufacture is not violative of the condition (3) of the exemption notification No.73/2006 ibid. We are of the considered view that the impugned order in appeal cannot sustain and is liable to be set aside. Ordered accordingly."

5.8 In **Intas Pharmaceuticals Limited** versus **Commissioner of Customs, Ahmedabad**[19]**,** the Tribunal held as under:-

"12. Considered the rival submissions. We find that matter stand largely covered by the decision in the case of **FDC Limited** versus CCE, Belapur reported in 2017 (357) ELT 464 (Tri. Mumbai) which is in relation to job-work under Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996 only and in which the of Duty following determination was made by the bench;

"4. We have carefully considered the submissions made by both sides and perused the records. The issue in dispute lies in a narrow compass that imported goods under exemption notification carrying condition of end use.

19 2023 (11) CENTAX 24 (Tri.-Ahmd.)

Under Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996 whether goods can be used in the importer's own factory or also can be used in the job worker factory. There is no dispute the goods were used on behalf of the appellant in their loan licensee (job work factory) on behalf of the appellant only. The ownership of goods remained with the appellant right from import of the goods up to the use in the final product. In this position, in our view the imported goods used for the specified purpose, the condition of end use stands complied with. The whole objective of the duty free imported bulk drug is that it should be used in the manufacture of life saving drugs or medicine. In our view, if this condition is fulfilled while the ownership of the goods is with appellant, it can be said condition of the end use is satisfied. This issue has come up in the case of Tamil Trading Corporation Ltd. (supra), wherein the Tribunal has passed the following order:

"We have gone through the records of the case carefully. The Customs Notification No. 21/2002-Cus. provides concessional rate of duty for imported Crude Palm Oil for the manufacture of refined oil. Condition 5 of the Notification stipulates that the importer follows the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996. Before the introduction of the above Rules in 1996, each Notification was having end-use condition and the importer was normally required to produce the end-use certificate. However, the above rules were framed as an improvement over the earlier procedure. The above Rules are applicable to an importer who intends to avail of the benefit of an exemption Notification and where the benefit of such exemption is dependent upon the use of imported goods covered by the Notification for for the manufacture of any excisable commodity. As per Rule 3 a manufacturer intending to avail the benefit of the exemption notification shall obtain a Registration from the Assistant Commissioner of Central Excise having jurisdiction over his factory. Lower authorities have done their job by a very literal interpretation of Rule 3. Their argument is that the Rule 3 uses the expression "his factory". In other words the lower authorities interpret that the importer should own a factory and he has to use the imported material only in his factory. Otherwise, the importer would not be entitled for the concessional assessment under the above Notification. If the importer uses the imported goods in a factory belonging to some other person he would not be entitled for the concessional assessment. The Tribunal's decision in the Panacea Bio-tech Ltd. case relied on by the Commissioner has broadly followed the above line of argument. In our view, the above approach is not at all in consonance with the philosophy of liberalisation and globalisation embraced by the Government of India in all its policies relating to Customs, Excise and Foreign Trade as revealed in a plethora of policy documents, legislation, and procedures. In the Exim Policy actual user includes a person who utilises the imported goods for his own use in another unit including a jobbing unit. Gujarat High Court

in the case law cited by the Id. Advocate has clearly spelt out that for excise purposes manufacturer includes a person who gets his goods manufactured from the facilities owned by another person. The Board's Circular dated 6-2-2002 enables a manufacturer to send duty free goods received to another manufacturer having registration for carrying of repairs/re-conditioning, etc. In the above said Circular the Board has clarified that the goods received duty free can be removed to another eligible manufacturer under the Central Excise (Removal of Goods under the Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001. However, the recipient manufacturer would require Registration under Rule 3 of the said Rules. In our view, denial of Registration under Rule 3 of the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996 to the importer on the ground that he does not have own a factory in which the imported goods are to be used is very much against the Exim Policy, Board's Circular and the Hon'ble Gujarat High Court interpretation of manufacturer under section 2(f) of the Central Excise Act, 1944. There is nothing strange or illegal in a person utilising the manufacturing facilities of another. In order to be a manufacturer one need not own a factory. The practice of more than one manufacturer using a factory is recognised as can be seen in the SSI Notification with regard to clubbing of clearances. The expression "his factory" should be interpreted to mean the factory where the importer wants to utilise the imported goods in terms of the Notification. The Department cannot insist on ownership of the factory and deny registration for the purposes of the Notification. The Tribunal, in the case of Commissioner of Central Excise, Bangalore v. Electronic Research Ltd. cited by the Id. Advocate, has held that literal meaning of statute should be abandoned if it leads to unjustified results. In that case, goods imported under concessional rate of duty for use in one factory were transferred to the factory of the importer at another place under certain circumstances. The Commissioner (Appeals) decided in favour of the importer. Revenue came in appeal before the Tribunal. The Tribunal held that the importer was entitled to exemption as neither the Rules nor the Notifications itself prohibited such transfer. The above decision was held in the context of the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996. The ratio of the above decision is applicable to the present case also. The fact that Chennai Commissionerate has permitted Registration in respect of the importer who does not own the factory where the imported Crude Palm Oil is utilised is also supporting the appellants' case. Hence we allow the appeal with consequential relief, if any." 5. In the case of G.R. International (supra) the Tribunal held that following common law principle that what is done by duly constituted agent will be treated as having done by the principal and thus the condition as to manufacturer set out in Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996 will include the premises of loan licensee. The appellant's case is squarely covered by the aforesaid two decisions. As per

> the above discussion and decisions of the Tribunal cited (supra), we are of the considered view that even though the factory is of the loan licensee but use is on behalf the appellant therefore there is no violation of condition of the Customs Rules, 1996. Since we are deciding the appeal on above discussion and merits of the case, we need not to address other issues raised by the learned Counsel. We therefore set aside the impugned order and allow the appeal."
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> 13. So far as the decision cited by learned AR are concerned, we find that in CCE, Goa v. Cosme Farma Lab Limited reported in 2015 (318) ELT 545 (SC), the question was different and the dispute related to whether the 'manufacturer' 'principal' who is owner and manufacturer in the given facts and circumstances of the matter. Further, in the case of CCE Belapur v. Ferring Pharmaceuticals Pvt. Limited - 2018 (360) ELT 555 (Tri. Mumbai), the single Member Bench in the fact of the case, held that loan licensee to be treated as manufacturer and further in the facts of the issue the cancellation of registration as manufacturer was required. We find that the judgment in the matter FDC Limited versus CCE, Belapur reproduced above more directly deals with the issue in hand and deserves to be followed in the facts of the instant matter."

5.9 We also note that subsequently vide amended IGCR, 2021, the provision of sending the goods to a job worker has been expressly provided for by the Government recognising the business practice.

5.10 In the above context, we note that procedural lapses are errors or deviations from established rules procedure in legal, administrative or business context that do not fundamentally alter the substantive outcome of a case or transaction procedural lapses can be condoned if substantial compliance is met. In the instant case, it is on record that the appellant had two units- Plot 39 & Plot 26 in Dehradun Industrial area. The imported components were in Plot no 26 wherein the electric buses were manufactured & sold to Himachal Road Transport Corporation. There was compliance of the Notification 50/2017-Cus and condition 9. Even though the buses were manufactured on job work, the imported components did not leave the appellant's factory

premises. Hence, we hold that there is substantial compliance of the Notification & duty cannot be demanded.

5.11 In view of the above discussions, we set aside the impugned order & allow the appeal.

(Order pronounced in the open Court on 12.10.2026)

(DR. RACHNA GUPTA)
OFFICIATING PRESIDENT

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

G.Y.