CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

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REGIONAL BENCH – COURT NO. 1
(E-HEARING)

Customs Appeal No.890 Of 2010

[Arising out of Order-in-Original CAO No.75/2010/CAC/CC/SS dated 25.08.2010 passed by the Commissioner of Customs (EP), Mumbai]

M/s Scottish Chemical Industries .... Appellant
407-412, Span Centre, South Avenue,
Santacruz (W), Mumbai-400054

Versus

The Commissioner of Customs
(Export Promotion) ...... Respondent
2nd floor, New Customs House, Ballard Estate,
Mumbai-400001

With

Customs Appeal No.891 Of 2010

[Arising out of Order-in-Original CAO No.75/2010/CAC/CC/SS dated 25.08.2010 passed by the Commissioner of Customs (EP), Mumbai]

M/s Scottish Chemical & Fluxes ...... Appellant
407-412, Span Centre, South Avenue,
Santacruz (W), Mumbai-400054

Versus

The Commissioner of Customs
(Export Promotion) ...... Respondent
2nd floor New Customs House, Ballard Estate,
Mumbai-400001

APPEARANCE:
Shri R.V. Desai, Senior Advocate and Shri Rohit Pardeshi,
Advocate for the Appellant
Shri Mahesh Patil, Authorised Representative for the Respondent

CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE Mr. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER No. 86816-86817/2025

Date of Hearing: 24.07.2025
Date of Decision: 14.11.2025
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P. ANJANI KUMAR:

M/s Scottish Chemical Industries, the appellants, are a manufacturing and exporting Unit; they have been utilizing Advance Licenses, for import of Per Chloro Ethylene (PCE) as input for manufacture and export of HexaChloro Ethane (Hexa) as per SION norms. During the year 1997-2002, the Appellant, imported 5179,374 MTS PC under 9 Licenses; used 4199.099 MT (82%) in own factory for manufacturing Hexa and used 980.275 MT (18%) in sister concern M/s. SCF, which is also in Taloja; goods were moved to M/s. SCF, in terms of Rule 57F (4) and Notification No.214/86, using 249 Job Work Challans issued under stamp and seal of jurisdictional authorities. Export Obligation was fulfilled; Remittances received; DGFT redeemed all 9 Licenses and Customs cancelled the Bonds executed. Revenue issued an SCN dated 30.9.2003 for Rs.1.22 Cr, alleging that the appellants misrepresented before DFGT in obtaining SION; imported excess 980.275 MTs PCE and diverted goods for job work to sister concern. Appellant paid Rs.54.16 Lakhs during investigation; the SCN issued was not adjudicated till 2009, Appellant approached the Hon'ble High Court with a Writ Petition No.2511/ 2009. Hon'ble High Court, vide Order dated 25.1.2010, disposed of the Petition, as Revenue gave undertaking to decide the SCN in a time bound period. Commissioner Export adjudicated SCN; though he did not uphold allegation of excess of import, held that condition of notification Custom Notification 30/97 was violated on ground that job work was without permission and as such goods are to be treated as diverted. He confirmed the demand of Rs.1, 22, 84,534 and equal penalty under Section 114A and penalty of Rs.6 Lakhs on M/s. SCF.

2. Hence, Appeal Nos. C/890/2010 and C/891/2010 were filed by the appellant and Revenue filed an appeal C/974/2010 for enhancing Penalty to include Interest amount in penalty. These three appeals were decided by this Bench vide Final Order No. A/86208-86210/2019 dated 05.07.2019 vide which Appeal No. C/890/2010 was dismissed and Appeal No. C/891/2010 was partly allowed by reducing the penalty imposed while the appeal No. C/974/2010 filed by the Department was also dismissed. The appellants have filed these applications for rectification of mistake on the grounds specified in the applications. The appellant submits that the following are the mistakes apparent on record.

(i) Tribunal did not consider the submissions based on the decision in the case of Mangali Impex & Others wherein it was held that DRI has no jurisdiction.

(ii) Finding in the order that 980.275 MT of inputs imported for replenishment were not received under statutory documents is factually incorrect; it was held that the imported items should have been used in export contrary to the facts of the case that the imports were affected after the completion of the export obligation.

(iii) Moreover, Tribunal misread the statement of Mr. Khandelwal in coming to the conclusion that 156.278 MT of raw material is related to 980.275 MT whereas the same is not related.

2.1. The said application for rectification of mistake was heard by this Bench and vide Miscellaneous Order No. 85256-85257/2024 dated 21.03.2024 was allowed by recalling the Final Order dated 05.07.2019. Accordingly, the Registry has listed the case for hearing before us.

3. Learned Counsel for the appellants reiterates the grounds thereof and the submissions made during the hearing of the original appeal. Gist of his submissions is that the Tribunal did not consider the submissions based on the decision in the case of Mangali Impex & Others wherein it was held that DRI has no jurisdiction; Finding in the Final Order that 980.275 MT of inputs imported for replenishment were not received under statutory documents is factually incorrect; it was held that the imported items should have been used in export contrary to the facts of the case that the imports were affected after the completion of the export obligation and that the Tribunal misread the statement of Mr. Khandelwal in coming to the conclusion that 156.278 MT of raw material is related to 980.275 MT whereas the same is not related. He submits that the Bench may consider to recall the impugned order and remand the matter to Adjudicating Authority and direct to dispose of the matter after the Hon'ble Supreme Court decides the UOI Vs Mangali Civil Appeal as ordered by Mumbai Tribunal in SEAMEC LTD. He relies on the following cases:

- Mangali Impex Ltd (SC) – 2020 (371) ELT A226 and 2016 (335) ELT 605 (Del.)
- Seamec Ltd (Tri-Mum) – 2018 (364) ELT 611 and 2019 (367) ELT A19
- SRF Ltd (Tri-Delhi) – 2019 (367) ELT 457 (Tri. Del.)
- Saurashtra Kutch Stock Exchange (SC) – 2008 (230) ELT 358
- Aditya Birla Novo Ltd. (HC-Kar) – 2021 (378) ELT 42
- Sant Lal Gupta (SC) – 2010 (262) ELT 6
- Suncity Strips and Tubes Pvt Ltd. (SC) – 2022 (379) ELT 417
- Beriwala Impex Pvt. Ltd. (Tri-Kol)- Final Order No.75125/2022 dated 23.02.2022

4. Learned Counsel submits that for the appellants submits, during the hearing and vide written submissions dated 7-3-19 and 18-3-19 that the SCN proceeds on Excess imports than required for export goods; the SION norms have been determined by the DGFT; Commissioner Adjudication has dropped charge of excess import; the adjudicating Authority proceeded on extraneous material declaring Appellant as "Merchant Exporter" and presumes that Sister Concern SCF as "Supporting Manufacturer"; 18% job work by SCF is covered by Condition No (viii) of Custom Notification No.30/97; Appellant is an "Export Manufacture", condition (viii) is not applicable; entire finding and demand confirmed on the basis of Merchant and Supporting Manufacturer basis; as the ownership always remained with the appellants, the view of Learned Commissioner is contrary to Section 5 of India Transfer Property Act, 1882; the Sister Concern SCF is a Manufacturer and also Trader/Importer of PTE Raw Material; (SCN page 63): M/s SCF purchased 1266.211 MT PCE; the alleged 156.278 MT is out of this purchase; statements of, 3 persons out of 7 Purchasers, has no relevance material imported as replenishment under 9 DEEC licenses; Appellants confesses that he sent for job work to SCF-Sister Concern; statutory records also support that of 18% of imported material was sent for job work and returned; Learned Commissioner, though accepted this fact, raised a new ground of Merchant and Supporting Manufacture treating "Appellant – Export Manufacture" as Merchant Manufacture and Job Worker as Supporting Manufacture; in the instant case as against export obligation of 4,500,000 KG, 4,531,226 Kg were Exported; actual User conditions complied with; all Licenses issued on same SION and redeemed and Job work challans contains there Office Seal and acknowledgment.

5. Learned Counsel further submits that a majority of input i.e. 82% was used by them and a mere 18% used in Sister Concern M/s. SCF; Shri Kamal Khandelwal has categorically stated that 980 MT PCE was sent on job work to SCF; Department itself has shown SCF purchased 1266.211 MT of PCE locally during 1997 to 2002 and have also imported 40.504 MT on 5.11.98; Therefore, M/s. SCF sold 156.278 MT PCE, out of this 1306.715 MTs and not out of 980.275 MTs PCE; further, as far as 264.841 MTs sale to SCF is concerned, two traders stated that it was paper transaction out of fear. Department did not Charge these persons for aiding abetting. Some of them could not be traced.

6. Learned Counsel submits further that Exim Policy permits job work; A minor quantity of goods manufactured through job worker as per Para 3.5 of EXIM policy as Actual User; it is not violation of Custom Notification Custom Notification 30/97; taking permission for sending Imported goods as replenishment, for job work (though Assistant Commissioner permitted) is not a mandatory and essential condition; it is procedural, directory or technical condition; therefore there is no breach of condition of notification. Disallowing exemption benefit by misconstruing and on technical ground is defeating and frustrating the purpose, object and spirit of beneficial notification; there is no bar on completing export obligation by the goods sent for job work; there is no mandate that job work cannot be carried out without permission or intimation. He relies on the following cases:

- CC (Prev) Amritsar Vs Malwa Industries Ltd. 2009 (235) ELT 214 (SC)

- CC (Prev) Mumbai vs. M. Ambalal & Co. 2010 (260) ELT 487 (SC)
- Maheshwari Solvent Extraction Ltd Vs CCE, Nagpur 2014 (299) ELT 116 (Tri. Bom)
- Stump Schule & Somappa Ltd. Vs CC (Exports), Chennai, 2005 (190) ELT 257,
- Tetra Pak (I) Ltd. V/s CC Nhava Sheva, 2006 (202) ELT 495

7. Learned Counsel submits also that the condition that merchant exporter needs to declare supporting manufacturer for job work is new being introduced by Commissioner; it was held in CC Delhi V Multivac India Pvt. Ltd 2017 (357) ELT. 1148 (Tri. – Del) that department cannot introduce extraneous condition in the notification; the ratio of CC, Hyderabad vs. Pennar Industries Ltd. 2015 (322) ELT 402 (SC) is not applicable; in the present case replenishments are imported after fulfilling the export obligation where as in Pennar case, no export was made and exempted imports were used in manufacture and sale in the local market. The Commissioner did not consider their submissions that removal for job work is not transfer or diversion and not violation of based Notification No.30/1997; he relies on clarification given by the Office of DGFT and following cases.

- CCE, Hyderabad Vs Sunder Steel 2005 (181) ELT 154 SC
- Navjyothi International Vs CC, Chennai 2004 (177) ELT 875(T)
- Ashok Enterprise V/s. CC Chennai 2005 (186) ELT 497 (T)

8. Learned Authorized Representative for the Revenue submits that the order emphasized that the Actual User condition was not fulfilled, as the raw materials transferred to SCF were not for SCI's; Adjudicating

Authority rightly confirmed the demand based on the violation of the Actual User condition as the appellant did not use 980.275 MT of PCE out of 5179.374 MT of imported PCE in their own factory; the order explicitly states that the facility of transferring duty-free goods for job work is only available to "Merchant Exporters," and SCI, being a "Manufacturer Exporter," was supposed to manufacture the goods themselves; the appellant, as a "Manufacturer Exporter," was obligated to utilize the duty-free imported PCE in its own factory for the manufacture of export goods; Commissioner correctly distinguished the case laws cited by the appellant; the Appellant contends that job work was carried out in accordance with the EXIM Policy, and the license holder (SCI) completed its export obligation, returning the final product (Hexa) to SCI for export; adjudicating authority clearly stated that no records maintained for receipt and dispatch, no proper entries in RG 23A register. No. 214/1986-Central Excise Dated: 25/3/1986 provides detailed process for Exemption to specified items if manufactured in a factory as a job work and used in the manufacture of final products. responsibility to produce evidence that the said supplied goods have been used or removed in the manner prescribed in notification is on the appellant and they have not produced any evidence in support of job work is produced by the Appellants.

9. Learned Authorised Representative submits that the order relies on statements, particularly from Shri Kamal Khandelwal, admitting that excess PCE was diverted to SCF's factory for manufacture and subsequent sale in the domestic market, in violation of advance license conditions; it also notes that the transactions with certain firms for PCE purchases by SCF were "paper transactions" (Refer OIO, Para 8, 16);

while the EXIM Policy may permit job work in certain scenarios, but in this specific case, the job work arrangement between SCI and SCF resulted in a violation because, SCI was a "Manufacturer Exporter" and the provisions for job work transfer of duty-free goods were primarily for "Merchant Exporters"; the PCE transferred to SCF was not ultimately for SCI's "own use" as per the "Actual User" definition, especially since SCF was also selling products manufactured from this PCE in the domestic market; investigation revealed that many "purchases" of PCE by SCF from other firms to account for the diverted PCE were mere "paper transactions" with no actual physical movement of goods; redemption of licenses by DGFT does not automatically nullify customs violations, especially if based on misrepresented facts. Learned Authorised Representative justifies the invocation of extended Period due to "wilful mis-statement" and "suppression of facts" by SCI at several levels, including misrepresenting the amount of raw material required and re-shifting facts about manufacturing in their own factory; the order rightly rejects the contention that imports beyond 5 years fall outside the scope.

10. Heard both sides and perused the records of the case. There are two issues involved in the case for our consideration. The first being the issue of competency of the officers of DRI to issue show cause notice. The appellants have raised the issue relying on the decision in the case of Mangli Impex (supra). We find that the issue has been set to rest by the amendment brought by the Government and the decision of the Hon’ble Apex Court in the case while deciding the Review Petition of the Government in the case of Canon India – 2024 (390) ELT 545 (SC). We find that Hon’ble Apex Court has observed that:

168. ---

(iii). This Court in Canon India (supra) based its judgment on two grounds: (1) the show cause notices issued by the DRI officers were invalid for want of jurisdiction; and (2) the show cause notices were issued after the expiry of the prescribed limitation period. In the present judgment, we have only considered and reviewed the decision in Canon India (supra) to the extent that it pertains to the first ground, that is, the jurisdiction of the DRI officers to issue show cause notices under Section 28. We clarify that the observations made by this Court in Canon India (supra) on the aspect of limitation have neither been considered nor reviewed by way of this decision. Thus, this decision will not disturb the findings of this Court in Canon India (supra) insofar as the issue of limitation is concerned.

(iv) The Delhi High Court in Mangali Impex (supra) observed that Section 28(11) could not be said to have cured the defect pointed out in Sayed Ali (supra) as the possibility of chaos and confusion would continue to subsist despite the introduction of the said section with retrospective effect. In view of this, the High Court declined to give retrospective operation to Section 28(11) for the period prior to 08.04.2011 by harmoniously construing it with Explanation 2 to Section 28 of the Act, 1962. We are of the considered view that the decision in Mangali Impex (supra) failed to take into account the policy being followed by the Customs department since 1999 which provides for the exclusion of jurisdiction of all other proper officers once a show cause notice by a particular proper officer is issued. It could be said that this policy provides a sufficient safeguard against the apprehension of the issuance of multiple show cause notices to the same assessee under Section 28 of the Act, 1962. Further, the High Court could not have applied the doctrine of harmonious construction to harmonise Section 28(11) with Explanation 2 because Section 28(11) and Explanation 2 operate in two distinct fields and no inherent contradiction can be said to exist between the two. Therefore, we set aside the decision in Mangali Impex (supra) and approve the view taken by the High Court of Bombay in the case of Sunil Gupta (supra).

(v) Section 97 of the Finance Act, 2022 which, inter-alia, retrospectively validated all show cause notices issued under Section 28 of the Act, 1962 cannot be said to be unconstitutional. It cannot be said that Section 97 fails to cure the defect pointed out in Canon

India(supra)nor is it manifestly arbitrary, disproportionate and overbroad, for the reasons recorded in the foregoing parts of this judgment. We clarify that the findings in respect of the vires of the Finance Act, 2022 is confined only to the questions raised in the petition seeking review of the judgment in Canon India (supra). The challenge to the Finance Act, 2022 on grounds other than those dealt with herein, if any, are kept open.

(vi) Subject to the observations made in this judgment, the officers of Directorate of Revenue Intelligence, Commissionerates of Customs (Preventive), Directorate General of Central Excise Intelligence and Commissionerates of Central Excise and other similarly situated officers are proper officers for the purposes of Section 28 and are competent to issue show cause notice thereunder. Therefore, any challenge made to the maintainability of such show cause notices issued by this particular class of officers, on the ground of want of jurisdiction for not being the proper officer, which remain pending before various forums, shall now be dealt with in the following manner:

a. Where the show cause notices issued under Section 28 of the Act, 1962 have been challenged before the High Courts directly by way of a writ petition, the respective High Court shall dispose of suchwrit petitions in accordance with the observations made in this judgment and restore such notices for adjudication by the proper officer under Section 28.

b. Where the writ petitions have been disposed of by the respective High Court and appeals have been preferred against such orders which are pending before this Court, they shall be disposed of in accordance with this decision and the show cause notices impugned therein shall be restored for adjudication by the proper officer under Section 28.

c. Where the orders-in-original passed by the adjudicating authority under Section 28 have been challenged before the High Courts on the ground of maintainability due to lack of jurisdiction of the proper officer to issue show cause notices, the respective High Court shall grant eight weeks' time to the respective assessee to prefer appropriate appeal before the Customs Excise and Service Tax Appellate Tribunal (CESTAT).

d. Where the writ petitions have been disposed of by the High Court and appeals have been preferred against them which are pending before this Court, they shall be disposed of in accordance with this decision and this Court shall grant eight weeks' time to the

> respective assessee to prefer appropriate appeals before the CESTAT.
> e. Where the orders of CESTAT have been challenged before this Court or the respective High Court on the ground of maintainability due to lack of jurisdiction of the proper officer to issue show cause notices, this Court or the respective High Court shall dispose of such appeals or writ petitions in accordance with the ruling in this judgment and restore such notices to the CESTAT for hearing the matter on merits.
> f. Where appeals against the orders-in-original involving issues pertaining to the jurisdiction of the proper officer to issue show cause notices under Section 28 are pending before the CESTAT, they shall now be decided in accordance with the observations made in this decision.
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> 169. In view of the aforesaid, we allow the Review Petition No. 400/2021 titled Commissioner of Customs v. M/s Canon India Pvt. Ltd. and the connected Review Petition Nos. 401/2021, 402/2021 and 403/2021 insofar as the issue of jurisdiction of the proper officer to issue show cause notice under Section 28 is concerned. As discussed, the findings of this Court in Canon India (supra) in respect of the show cause notices having been issued beyond the limitation period remain undisturbed.

11. In view of the above, the first premise of the appellants on the jurisdiction of the officers of DRI to issue show cause notice is no longer valid. We find that the officers of DRI have competency to issue show cause notices in view of the above.

12. Coming to the other issue raised by the appellants, we find that the Commissioner Adjudication has dropped charge of excess import; however, the adjudicating Authority proceeded declaring Appellant as "Merchant Exporter" and presuming that Sister Concern SCF as "Supporting Manufacturer". We further find that the issue of merchant-exporter was not raised in the show cause notice; learned Commissioner has raised the issue for the first time in the adjudication which is not

permissible as Commissioner cannot go beyond the show cause notice. We find that the Commissioner held that though the appellants have fulfilled export obligation, have violated the conditions of the Notification No.30/97. Learned Counsel for the appellants submits that it is wrong on the part of the Commissioner to hold that the Job-work undertaken by SCF is covered by Condition No (viii) of Custom Notification No.30/97. We find that Department itself found that the appellant purchased 1266.211 MT of PCE locally during 1997 to 2002 and have also imported 40.504 MT on 5.11.98.

13. We find that the question involved in this case is as to whether manufacturer-importer can send the goods for job-work while importing under Notification No.30/97. Learned Commissioner concluded that there is no mandate for the appellants to send the goods for job-work in terms of the said Notification. We find that learned Counsel for the appellants relies on the judgment of Hon'ble Bombay High Court in the case of Galaxy Surfactants – 2023 (384) ELT 357. This Bench while passing the Final Order dated 05.07.2019 did not have the benefit of this judgment. We find that Hon'ble Bombay High Court held as under:

> **19.** Before proceeding further, it would be apposite to set out the relevant conditions in the said Notification as well as the relevant paragraphs in the EXIM Policy.
> **20.1** Condition (i) and Condition (vii) as contained in the said General Exemption Notification is quoted as under :
> "(i) that the materials imported, are covered by an Actual User Duty Exemption Entitlement Certificate (hereinafter referred to as the said certificate), issued by the Licensing Authority in the form of specified in the schedule annexed to this notification, in respect of the value, quantity, description, quality and technical characteristics.
> (vii) exempt materials shall not be disposed of or utilised in any manner except for utilisation in discharge

of export obligation or for replenishment of such materials and the materials so replenished, *shall not be sold or transferred to any other person."*

20.2 Paragraph 3.4 of the EXIM Policy defines "Actual user" and admittedly as Respondent is an "Actual user (Industrial)", Paragraph 3.5, the same is also quoted as under :

"3.4 "Actual User" means an actual user who may be either industrial or non-industrial.

3.5 "Actual User (Industrial)" means a person who utilises the imported goods for manufacturing in his own industrial unit or manufacturing for his own user in another unit including a jobbing unit."

20.3 Paragraph 3.37 defines 'person' as under :

"3.37 "Person" includes an individual, firm, society, company, corporation or any other legal person."

20.4 Paragraphs 7.4, 7.16, 7.17 of the EXIM Policy with reference to the Duty Exemption Scheme are also usefully quoted as under :

"7.4 (i) Notwithstanding anything contained above, exemption from payment of additional Customs duty and Antidumping duty shall he allowed in respect of Advance Licences, issued with actual user condition to :

(a) Manufacturer exporter;

(b) Merchant exporter where the merchant exporter agrees to the endorsement of the name(s) of the supporting manufacturers) on the relevant DEEC Book.

(ii) *Such advance licences and/or materials imported thereunder shall not be transferable even after completion of export obligation.*

(iii) Such licences shall be issued with a positive value addition without stipulation of minimum value addition as prescribed in paragraph 7.9.

7.16 Licences granted under this scheme shall be subject to the Actual User condition till endorsement of transferability by the licensing authority.

7.17 The licence holder has the option to have the material processed through any other manufacturer including a jobber. However, the licence holder shall solely for the imported items \ and fulfilment of export obligation."

(Emphasis supplied)

21. The said exemption Notification which exempts customs duty on material imported into India against an Advance licence with actual user condition is subject to the condition that the said materials imported are covered by an Actual User Duty Exemption Entitlement Certificate issued by the Licencing Authority as well as the condition that the exempt materials shall not be disposed of or utilized in any manner except for

utilization in discharge of the export obligation or for replenishment of such materials and the materials so replenished shall not be sold or transferred to any other person. This means that the exempt materials can either be utilized for discharge of an export obligation or for replenishment of exempt materials and the exempt materials so replenished cannot be sold or transferred to any other person. It is not in dispute that the export obligation has been met. It has been argued on behalf of Appellant that the exempt materials have been diverted to M-3 unit at Tarapur, instead of V-23 Taloja unit and that, therefore, there has been a transfer resulting in breach of condition (vii). It is not in dispute that the V-23 Taloja unit as well as the M-3 Tarapur unit are units of the Respondent. The Respondent is a 'person' as denned in paragraph 3.37 of the EXIM Policy where a company is also included in the said definition. 'Actual User (Industrial)' is denned to mean a person who utilizes the imported goods for manufacturing in his own industrial unit or manufacturing for his own use in another unit including a jobbing unit. The Respondent is the person and V-23 and M-3 are the units are of the same person viz. the Respondent and if the imported duty free goods are utilized for his own use in another unit (viz. M-3 at Tarapur unit) then going by the definition of 'Actual User (Industrial)' in paragraph 3.5 of the EXIM Policy, the question of transfer to any other person would not arise.

22. Therefore, the question of breach of paragraph 7.4(ii) of the EXIM Policy which clearly provides that Advance Licences and/or materials imported thereunder shall not be transferable even after completion of the export obligation would not arise. Also, the question of breach of paragraph 7.16 of the EXIM Policy which pertains to actual user condition and provides that the licences granted under this scheme are subject to actual user condition till endorsement of transferable by the Licencing Authority would not arise, as there has been no transfer in the instant case as the materials have been received by one of the Units of the Respondent. Paragraph 7.17 of the EXIM Policy relied upon by Mr. Sham Walve, the Learned Counsel for the Appellant, merely provides that the licence holder has the option to have the material processed through any other manufacturer or jobber and that the licence holder shall be solely responsible for the imported items and fulfilment of the export obligation. The Respondent has used the imported material for manufacturing in its own M-3 Unit at Tarapur and there is also no dispute as regards fulfilment of the export obligation. Therefore, in

our view, the contentions of the Learned Counsel for the Appellant appear to be misplaced. The arguments of Mr. Waive with respect to Part A and Part B of the said licences as well as the other arguments on facts do not persuade us to take any other view in the matter.

23. Paragraph 10 of the decision of the Kerala High Court in the case of *Government Wood Works* v. *State of Kerala* (supra), relied upon by the Learned Counsel for the Respondent is also useful and is quoted as under.

"10. The Tribunal seems to have thought that if the other units to which the furniture was supplied were not "branches" of the petitioner, a sale has to be postulated. The Tribunal has in fact mentioned that the other units are not registered as branch units of the petitioner and that the petitioner has not paid renewal fee for registration, for the branches, and has on the other hand, paid renewal fee of Rs. 10 only for itself. Logically, an inference of sale has been drawn. We do not agree with this proposition. The effect of registration is only to enable a dealer to collect the tax payable by him from the purchaser. *It does not have the effect of carving out an independent existence for the registered unit or to delink it from manufactured in the petitioner-unit was transferred to other units of SIDECO. there was no transfer of property in goods from one person to another* and hence no sale liable to tax under the Act. The turnover of Rs. 1,60,746 was therefore, rightly excluded in the original assessment and was wrongly brought to assessment by the order of the Deputy Commissioner."

(Emphasis supplied)

24. We note that the Kerala High Court while considering the units of Petitioner in the decision above observed that the effect of registration was only to enable a dealer to collect tax payable by him to the purchaser, but it did not have the effect of carving out an independent existence for the registered unit or to delink it from the other units for the purposes of the Act. The Hon'ble Court observed that, therefore, when furniture manufactured in the petitioner unit was transferred to other units, there was no transfer of property in goods from one person to another, and hence, no sale liable to tax under the Act.

25. The above decision supports our view, and therefore, there would be no violation of Condition (i) or (vii) of the Notification No. 30/97-Cus., dated 1 April 1997 as amended by Notifications upto No. 63/2004-Cus. as there is no transfer in violation of the actual

> user condition, the discharge of export obligation not being in question.

14. We find that Hon'ble High Court in the case cited above has put to rest the dispute regarding the transferability of material imported under Notification No.30/97 after the completion of export obligation. We find that Hon'ble High Court has held that the raw material imported under the Notification cannot be sold as such but can be transferred for job-work. We find that the appellants are importer-manufacturer-trader and M/s SEF is a sister concern of the appellants and therefore, we find that the sending of the goods for job-work is not in violation of the conditions of the Notification. We also find that it was held similarly in the case of Tetrapack (I) Ltd. – 2005 (190) ELT 257 and 2004 (177) ELT 875. We further find that not taking permission of the Assistant Commissioner of Customs before sending the goods, imported or replenished, is at the most a procedural lapse and duty cannot be fastened on the appellants for this reason.

15. In view of the above, Appeal Nos. C/890/2010 & C/891/2010 are allowed.

(Order Pronounced in the open court on 14.11.2025)

(D.M. MISRA)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

PK