

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT NO. III

Customs Appeal No.40306 of 2020

(Arising out of Order-in-Original TUT-CUSTOM-PRV-COM-010-19-20 dated 10.01.2020 passed by Commissioner of Customs, Custom House, New Harbour Estate, Tuticorin-628 004.)

M/s. Vedanta Ltd.,

(Earlier Known as Sterlite Industries India Ltd),
Sipcot Industrial Complex,
Madurai Bypass Road,
T.V. Puram Post,
Tuticorin-628 002.

....Appellant

Versus

Commissioner of Customs,

Custom House,
New Harbour Estate,
Tuticorin-628 004.

... Respondent

APPEARANCE:

Shri Vishal Agarwal, Advocate for the Appellant

Shri Anoop Singh, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER No.40139/2026**DATE OF HEARING: 28.11.2025**
DATE OF DECISION: 23.01.2026**Per: Shri P. Dinesha**

This Appeal is filed by the importer against the Order-in-Original No.010-19-20 dated 10.01.2020 passed by the Commissioner of Customs, Tuticorin.

2. Brief and relevant facts as could be gathered from impugned Order-in-Original are that the importer, who is engaged in imports of copper concentrates for manufacturing of copper products viz. copper anodes, copper cathodes etc., was alleged to have contravened the provisions of Customs Notification No.96/2009-Cus and Notification No.99/2009-Cus both dated 11.09.2009. It is the case of the Revenue that the importer had failed to comply with the conditions laid down in the Notifications (*supra*) by not discharging their Export Obligation (**EO**) in full, in terms of value and quantity.

3. The core issue revolves around Advance Authorizations bearing Nos. 3510025541 dated 02.01.2009, 3510028373 dated 30.11.2009 and 3510030535 dated 10.06.2010 obtained by the Appellant, whereunder, the Appellant was allowed to import copper concentrate duty free, subject to the condition that the Appellant would export copper anode/anode slime to the extent the export obligation was specified under the said three Advance Authorizations. The fulfillment of export obligation in the said 3 Advance Authorizations was subject to both, quantity and value.

4. The Advance Authorization Scheme is one of the various schemes introduced by the Government, under the Foreign Trade Policy, ('FT' for short) read with the Hand Book of Procedures, ('HBP' for short), for incentivizing exports. Under the Scheme, a manufacturer-exporter is allowed to import without payment of any duties of customs, raw materials as per a fixed Input-Output Norm, subject to fulfillment of export obligation, as prescribed by the Licensing Authority/Regional Authority (DGFT), both in terms of value and quantity, within the stipulated time period. In consonance to the theme and objective of the

Scheme, the Government (Ministry of Finance) has, from time to time, issued Notifications to give effect to the Scheme. The Notifications relevant to the present case are Notification No.96/2009-Cus and No.99/2009-Cus, both dated 11.09.2009.

5. It is undisputed that while the export obligation in terms of quantity was completely fulfilled by the Appellant in respect of two Advance Authorizations dated 30.11.2009 and 10.06.2010, there was however, a shortfall in fulfillment of the export obligation in terms of value. With respect to the Advance Authorization dated 02.01.2009, there was some shortfall in fulfillment of the export obligation both in terms of value and quantity. It is claimed that the shortfall in fulfilling the export obligation with respect to the quantity was regularized by the Appellant in terms of para 4.28 of the FTP (2009-14) / para 4.49 of the FTP (2015-2020) on payment of appropriate Customs duty along with interest under Challans dated 30.06.2017 and 26.07.2017 respectively.

6. The dispute therefore, is with respect to some shortfall in fulfillment of the export obligation in terms of value with

regard to the three Authorizations dated 02.01.2009, 30.11.2009 and 10.06.2010.

7. Para 4.28 of the FTP (2009-14) / para 4.49 of the FTP (2015-2020), which deals with regularization of *bonafide* default in fulfilment of export obligations, both in terms of value and quantity. The above provision provides that in case of there being a *bonafide* default in fulfilment of export obligation in terms of value, the license holder is required to pay an amount equal to 1% of such shortfall in value (FOB) to regularize the same.

8. It appears that Appellant made a written request to the DGFT for regularization of their default in fulfilment of the EO in terms of value *qua* the 3 Advance Authorizations dated 02.01.2009, 30.11.2009 and 10.06.2010; they also appear to have paid the amount equal to 1% of such shortfall in value (FOB) for regularizing the shortfall in fulfilment of EO in terms of value. The DGFT appears to have regularized the above shortfall and accordingly issued the Export Obligation Discharge Certificates (EODC) dated 28.08.2017, 08.08.2017 and 08.08.2017 ('EODC') in terms

of Para 4.49 (b) of HBP (2015-2020), redeeming the said 3 Authorizations.

9. In terms of Para 4.49(b) of the FTP, an EODC is issued by the DGFT only in cases where the EO is fulfilled and a copy of the EODC is, as a practice, forwarded by DGFT to the appropriate Customs Authority. It is also undisputed that the Customs, by their letter dated 26.07.2022 informed the Appellant that the Bonds executed in respect of the 3 Authorizations in question have been cancelled.

10. On 17.07.2019, the DRI issued a Show Cause Notice under Section 124 read with Section 143 of the Customs Act, 1962 to the Appellant alleging shortfall in fulfillment of the EOs *qua* the 3 Advance Authorizations and that the Appellant had violated condition (viii) of Notification No.96/2009-Cus. and condition (ix) of Notification No.99/2009-Cus., which required the Appellant to discharge the EO as specified in the Authorizations (both in value and quantity terms). The Show Cause Notice accordingly hinted that the Appellant was liable to pay the amount of Customs duty attributable to the unfulfilled portion of EO in terms of value and quantity, as the case may be. It appears that the

Appellant filed its detailed reply justifying its claim which is considered in adjudication by the Commissioner.

11. The Show Cause Notice then came to be adjudicated by the Respondent-Commissioner *vide* Order-in-Original No.010-19-20 dated 10.01.2020, whereby he has confirmed the demand of Customs duty along with interest, attributable to the unfulfilled portion of the EO in terms of value *qua* the 3 Advance Authorizations in question. The Order dated 10.01.2020 has also confirmed the amount of Customs duty along with interest, attributable to the unfulfilled portion of EO in terms of quantity *qua* the Authorization dated 02.01.2009; and has appropriated the same against the payments already made by the Appellant. The Respondent has also imposed separate penalties under Section 112(a) of the Customs Act, 1962 *qua* the shortfall in fulfillment of EO in terms of value and in terms of quantity. It is this Order-in-Original dated 10.01.2020 that has been assailed by the Appellant-Importer, in this Appeal before us.

12. We have heard Shri Vishal Agarwal, Ld. Advocate for the Appellant and Shri Anoop Singh, Ld. Joint Commissioner for the Respondent; we have carefully considered the rival

contentions, both verbal and written and the decisions of various judicial fora relied upon during the hearing before us.

13. The issue which arises for consideration is, "*whether the Customs authorities can raise a demand alleging violation of conditions (viii) and (ix) of Notification Nos. 96/2009-Cus and 99/2009-Cus respectively, when undisputedly the Export Obligation has been fulfilled and the DGFT had issued an EODC.*"

14. Before we get into the merits of the Appeal, we find it relevant to make certain observations with regard to facts. The primary contention of the Department is the short fall regarding value and quantity, the recovery could have been at best the duty on the difference / short fall but not the duty in entirety as proposed in the SCN which was subsequently upheld in the impugned order. Secondly, the critical analysis has been made in the impugned order as to the action or inaction about the DGFT in recognizing and issuing EODC which, as categorically held by the Hon'ble Apex Court as well as High Courts, is the exclusive domain of the said DGFT alone. Thirdly, it has been captured in the

Order-in-Original as to the fact of the proper authority issuing EODC at pages 6/7, paragraph 1.15 (viii) & (ix) but the same has not been taken to the logical conclusion, rather has been ignored. Further, there is also an observation on the condition of Notifications having not been fulfilled by the Appellant and the Appellant having not paid the Customs duty but, however, as on the date of passing of the Order-in-Original, the Appellant appears to have paid the duty along with applicable interest and after satisfying, the DGFT had in fact issued EODCs as early as in the year 2017 itself as evidenced by the documents placed at pages 125, 126 & 128 of the Appeal Memo before us. This only shows pick and choose attitude of the Commissioner. Further, at paragraph 4.7 of the Order-in-Original the Commissioner concludes that the *"Issuance of EODC will not absolve them from the non-fulfilment of conditions laid down in the Customs Notifications No.96/2009-Cus. both dated 11.09.2009"*. We are afraid the above conclusion is in stark contrast to the law laid down by the higher courts and the Hon'ble Apex Court. In the case of **Greatship (India) Ltd. Vs Union of India** [2016 (338) ELT 545 (Del.)], the Hon'ble Delhi High Court has held as under :

“26. As already noticed it is the DGFT who issues the HBP. In terms of the FTDR Act, the DGFT is the final authority as far as the interpretation of the FTP is concerned. It is, therefore, not possible to agree with the contention of Mr. Jain that the HBP should give way to the FTP. It is only where the HBP is contrary to or inconsistent with the FTP that the latter will prevail. However, since it is the DGFT who has the final word as regards the FTP, and not the Customs Department or any other authority, and it is the DGFT who issues the HBP as well, the question of the HBP not binding the DoR or the DGFT does not arise.”

Further, at para-31, the Hon’ble High Court has observed as under :

“31. The present case reveals the impasse brought about on account of the inability of two ministries of the Central Government viz., the Commerce Ministry and the Finance Ministry, to reconcile their differences about permitting alienation of goods imported under the SFIS. Just as it is important to protect the revenues of the Central Government it is essential to honour the commitments to importers and exporters in the form of the various measures set out in the FTP which has the force of law having been made in exercise of the powers under the FTDR Act. It is therefore imperative that the FTDR Act, FTR Rules, the FTP, the HBP, the CA and notifications issued under the CA are viewed as forming part of one harmonious statutory scheme. They ought to be operationalised in a manner that is coordinated and harmonious and not at cross-purposes.”

Further, at para-33, the Hon’ble court has held as under :

“33. There is merit in the contention of the petitioner that in the event of conflict of views between two ministries of the Central Government, the view taken by the ministry that is primarily responsible for the policy in question, which in this case is the FTP, should prevail. The SFIS was introduced by the Ministry of Commerce and its instrumentality, i.e., the DGFT has been statutorily entrusted with the final word on the

interpretation of the FTP. The letter dated 6th September, 2013 from the Commerce Secretary to the Revenue Secretary is instructive. It refers to Circular No. 837/14/2006, dated 3rd November, 2006 issued by the C.B.E. & C. under the Ministry of Finance which acknowledged that payment of customs duty could be made by using the duty credit scrips. In particular it was pointed out that the expression “duty free credit scrip” had been used incorrectly and that the correct phrase should have been “duty credit scrips”. It was suggested that the “insistence by C.B.E. & C. that goods imported by use of SFIS scrip may not be alienated unconditionally, even after three years of import, can be attributable to this inadvertent choice of words.” Importantly it was pointed out that “the scrip itself is a benefit that has been ‘earned’”. This also answers the misconception of the DoR that customs duty can only be paid in cash, and that use of duty credit scrips is only ‘revenue foregone’. The position has been explained by the Madras High Court in Tanfac Industries Ltd. (supra), where it was held that the goods cleared by using DEPB scrips for payment of duty should be treated as duty payable goods and not as duty exempted goods.”

15. In the back drop of the ratio in **Greatship (India) Ltd.** (supra), we proceed to analyze the issue in the case on hand and we deem it appropriate to reproduce the text of the said conditions (of Notification Nos.96/2009-Cus. and 99/2009-Cus.) herein below for better appreciation of the dispute:

“that the export obligation as specified in the said authorization (both in value and quantity terms) is discharged within the period specified in the said authorization or within such extended period as maybe granted by the Regional Authority by exporting resultant products, manufactured in India which are specified in the said authorization and in respect of which facility under rule 18 or sub-rule (2) of rule 19 of the Central Excise Rules, 2002 has not been availed.”

16. A perusal of the above condition makes it clear that the EO required to be fulfilled by a license holder is the one which is specified in the Advance Authorization issued by the DGFT, be it in terms of quantity or value or both. In other words, a license holder is required to fulfill only that EO which is specified by the DGFT and the fulfillment of which is acknowledged by the DGFT by issuance of EODC. This is also evident from the definition of 'Export Obligation' under para 9.27 of the FTP (2009-2014), which defines it to mean *"obligation to export product or products covered by Authorization or permission in terms of quantity, value or both, as may be prescribed or specified by Regional or competent authority."*

17. The regularization of *bona fide* default by the DGFT in terms of Para 4.28 (FTP 2009-2014) / Para 4.49 (FTP 2015-2020) has the effect of the EO having been revised and restated. It cannot be disputed that fixing the quantum of EO under the Advance Authorizations, which are the subject matter of the dispute, was the prerogative of the DGFT alone. The fulfillment of EO in terms of quantity and value

having been accepted by the DGFT in the present case, the Customs Commissioner was wrong in holding that there was a violation of conditions No. (viii) and (ix) of Notification Nos. 96/2009-Cus. and 99/2009-Cus. on the part of the Appellant. It is also difficult to countenance that the reasoning of the Respondent to the effect that EO for the purposes of Customs could be different for the purposes of licensing authority, especially when the clause relating to fulfillment of EO in the Customs notification envisages fulfillment of EO with reference to the quantity and value as per the Advance Authorization. In fact, the FTP also allows clubbing of Authorizations for fulfillment of EO, even though the Notification is silent on the same.

18. It is nobody's case that where the Advance Authorizations are clubbed, the fulfilment of EO against an individual Authorization can be separately examined by the Customs authorities and demands be raised in cases where there is a short fall in fulfilment of EO on a standalone basis, which otherwise stood fulfilled as a consequence of clubbing of Authorizations. When the condition relating to fulfillment of EO in the Customs Notification is with reference to what has been specified in the Advance Authorization, the said

condition in the Customs Notification is to be read in the text and context of the provisions of the FTP read with HBP, and not in its isolation.

19. In view of the fact of the DGFT having regularized the shortfall on Appellant's part in fulfillment of the EO in respect of the Authorizations in terms of para 4.28 of HBP (2009-2014) / 4.49 of HBP (2015-2020) and also redeemed all the three Authorizations by way of issuance of the EODCs in terms of para 4.49 (b) of HBP (2015-2020), the demand of Customs Duty on the ground that EO as contemplated under condition Nos. (viii) and (ix) of Notification Nos. 96/2009-Cus and 99/2009-Cus, does not survive. It is useful at this juncture, to refer to and rely on the decision of Apex Court in **Titan Medical Systems Pvt. Ltd. vs. Collector of Customs, New Delhi** [(2002 (11) TMI 108 = 2003 (151) ELT 254 (SC)] and the Apex Court has held at para 13, as under:

“ ---

13. *As regards the contention that the appellants were not entitled to the benefit of the exemption notification as they had misrepresented to the licensing authority, it was fairly admitted that there was no requirement, for issuance of a licence, that an applicant set out the quantity or value of the*

*indigenous components which would be used in the manufacture. Undoubtedly, while applying for a licence, the appellants set out the components they would use and their value. However, the value was only an estimate. It is not the respondents' case that the components were not used. The only case is that the value which had been indicated in the application was very large whereas what was actually spent was a paltry amount. To be noted that the licensing authority having taken no steps to cancel the licence. The licensing authority have not claimed that there was any misrepresentation. Once an advance licence was issued and not questioned by the licensing authority, the Customs authorities cannot refuse exemption on an allegation that there was misrepresentation. If there was any misrepresentation, it was for the licensing authority to take steps in that behalf.
...."*

20. In **Autolite (India) Ltd. Vs Union of India** [2003 (157) ELT 13 (Bom.)], the Hon'ble High Court of Bombay had held that:

"7. Having heard the Counsel on both the sides, we are of the opinion that the Customs authorities below were not justified in refusing to allow the duty free clearance of the goods on the ground that the steel imported by the petitioner is capital goods and capital goods did not fall within the scope of the Notification No. 116/1988. Admittedly, under the advance licence issued, the petitioner was entitled for duty free import of the steel as a material required in the manufacture of export product. Once the Licensing Authority has accepted that the steel is a material required in the manufacture of the export product, it is not open to the Customs Authorities to go behind the licence and deny duty free clearance of the goods. The exemption Notification No. 116/1988, dated 30th March, 1988 specifically states that the materials that are required to be imported for the purpose of manufacture of resultant products shall include such items as are imported into India against the advance licence for subsequent exportation. In the instant case, the licence specifically states that the petitioner is entitled

to import die steel as a material required for the manufacture of resultant products. The Apex Court in the case of Titan Medical Systems Pvt. Ltd. v. Collector of Customs reported in [2003 \(151\) E.L.T. 254](#) (S.C.) has held that once an advance licence is issued and not questioned by the licensing authority, the Customs authorities cannot refuse exemption on an allegations that there was any misrepresentation. In the present case also, the licensing authorities have not found fault with the statement of the petitioner that the die steel is a material required in the manufacture of resultant product and have granted advance licence to the petitioner. Assuming that the licensing authorities have wrongly accepted the statement of the petitioner, so long as the licence is valid and subsisting the import of materials set out in the advance licence are liable to be cleared duty free, under Notification No. 116 of 1988 and the Customs authorities cannot deny duty free clearance of the materials set out in the licence. It is open to the Customs authorities to sit in appeal and hold that the licensing authorities have erroneously endorsed advance licence to permit import of die steel as a material required in the manufacture of the resultant product. In this view of the matter, we are of the opinion that the impugned orders passed by the Customs authorities below cannot be sustained.”

The higher courts have consistently upheld the individuality and jurisdiction of the authorities, viz. DGFT and the DOR and have ruled that the authority or powers of Customs officers can never prevail over DGFT insofar as schemes floated for the benefit of Indian entrepreneurs in import/export activities, which are in consonance with the applicable FTPs. The higher courts have even recognised that it is the licensing authority viz. DGFT that can look into the aspect of fulfilment or otherwise of the particular scheme and no one else; if the Customs department feels aggrieved or feels non-fulfilment of any conditions of such schemes, they

could at best bring the same to the notice of DGFT and request for re-consideration as to the satisfaction or otherwise and nothing beyond this. We are therefore bound to follow the dictum as enunciated in the above decisions.

21. A Co-ordinate Bench in the case of **Hindustan Lever Limited vs. CC (EP) Mumbai** [2012 (281) ELT 241 (Tri-Mum)] has followed the ratio in Titan Medicals [supra] and has held as under:

“--

6.3 *The next issue for consideration is whether once the licensing authority certified that export obligation has been fulfilled whether such certification is final and binding on the Customs authorities? This issue came before this Tribunal in the case of Navjyothi International v. Commissioner of Customs, Chennai, cited supra. In that case the Revenue sought to deny the benefit of Customs duty exemption under Notification No. 30/97-Cus., dated 1-4-1997 and 51/2000-Cus., dated 27-4-2000 under DEEC scheme wherein the importer had undertaken imports under seven quantity based advance licences issued by the DGFT and had fulfilled the export obligation. This Tribunal in that case held as follows:*

“With regard to licence conditions, the licensing authority has certified full discharge of export obligation by the appellants. The adjudicating authority under the Foreign Trade (D&R) Act has found no violation of licence conditions on their part and its order has been accepted by the Revenue. Hence the Revenue cannot be seen to be critical of that order, nor can the DR be heard to argue against it. It goes without saying that the case law cited by Id. SDR cannot improve the

Revenue's case or plight. The Revenue's allegation was that the appellants had violated conditions (vii) and (viii) of Notification 30/97 and similar conditions of Notification 51/2000. But, in this regard, the DGFT's order has taken the wind out of the Revenue's sails. In the result, the charge of breach of conditions of the Customs Notification does not survive."

An identical view was held by this Tribunal in the case of Bharath Steel Corporation v. Commissioner of Customs, Chennai, and Ashok Enterprises v. Commissioner of Customs, Chennai supra. A similar issue came up for consideration before Tribunal in the case of Kukar Sons (Indo-French) Exports Ltd. v. Commissioner of Customs, Jaipur. In that case the Revenue alleged violation of conditions of Notification No. 204/92-Cus. by the appellants as they failed to realise the sale proceeds of exported goods. The DGFT, which is the competent authority in the matter of advance licences, had already redeemed the bank guarantee and legal undertaking furnished by the appellants after considering the fulfilment of export obligation by the assessee. The Tribunal held as follows :

"Once a bank guarantee and legal undertaking has been redeemed by the competent authority and no action is being taken by the competent authority, therefore, we find this finding is not sustainable in view of the decision of the Hon'ble Supreme Court in the case of Titan Medical Systems Pvt. Ltd. (supra). The Hon'ble Supreme Court held that once an advance licence was issued and not questioned by the licensing authority, the Custom authorities cannot refuse exemption on an allegation that there was any misrepresentation. If there was any misrepresentation, it was for the licensing authority to take steps in that behalf."

The ratio decidendi laid down in the above judgments applies to the facts of the present case. In the instant case also, the licensing authority has accepted the fulfilment of export

obligation and have issued export obligation discharge certificates and have discharged the appellants from any further obligation. That being the position, the Customs authorities cannot deny the benefit of Customs duty exemption under the notifications governing the advance licensing scheme. If at all they felt that the appellant had violated any of the terms and conditions of the licences, they should have referred the matter to the licensing authority for appropriate action rather than taking action suo motu.

22. Further, a Co-ordinate Bench has in the case of **Goldfinch Hotels Pvt. Ltd. vs. CC (ACC & Exports) Mumbai** [2015 (328) ELT 282 (Tri.-Mumbai)] has held that Customs authorities cannot deny benefit of exemption by adopting an interpretation of the FTP different from what is being applied by the Licensing authority. This has been rendered by applying the ratio laid down by the Apex Court in the case of **Vadilal Chemicals Ltd. Vs State of Andhra Pradesh** - 2005 (192) E.L.T. 33 (S.C.), relevant extract of the observations of the Tribunal are reproduced herein below:

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25. *It is settled law as held by the Hon'ble Supreme Court in Vadilal Chemicals Ltd. o. State of Andhra Pradesh, 2005 (192) E.L.T. 33 (S.C.) that the State, which is represented by the Departments, can only speak with one voice. The Hon'ble Supreme Court observed thus -*

“23. There is another reason why the action of the DCCT cannot be upheld. The primary facts relating to the processes undertaken by the appellant at its

unit were known to the Department of Industries and Commerce and the DCCT. The only question was what was the proper conclusion to be drawn from these. The Department of Industries and Commerce which was responsible for the issuance of the 1993 G.O. accepted the appellant as an eligible industry for the benefits. Apart from the fact that it can be assumed that the Department of Industries was in the best position to construe its own order, we can also assume that in framing the scheme and granting eligibility to the appellant all the Departments of the State Government involved in the process had been duly consulted. The State, which is represented by the Departments, can only speak with one voice. Having regard to the language of the 1993 G.O. it was the view expressed by the Department of Industries which must be taken to be that voice.”

We find that in the case in hand different yardsticks are being applied by two different wings of the Central Government. The Central Government through Ministry of Commerce has notified the Foreign Trade Policy under the provisions of FTDR Act, 1992, which confers the right of beneficial exemption from payment of Customs duty on fulfilment of conditions mentioned therein, and upon following the procedure published by way of Public Notice in the Handbook of Procedure Neither any condition imposed either in the Foreign Trade Policy or the Handbook of Procedure has been violated by the appellant, nor have any proceedings been initiated against the appellant under the provisions of FTDR Act, 1992. On the other hand another wing of the Central Government through Ministry of Finance, Department of Revenue, seeks to deny the benefit of the exemption by adopting a different interpretation of the provisions of the Policy or on the basis of the Notifications issued under the provisions of the Customs Act, 1962. It is seen that the Ministry of Commerce which was responsible for the issuance of the Foreign Trade Policy was in the best position to construe its own provisions, Public Notices

and the Policy Circulars. It is to be presumed that while formulating the Foreign Trade Policy even the Departments of Revenue must have been duly consulted. Therefore, with regard to the language used in Para 2.4 of the Foreign Trade Policy, it is the view expressed by the Ministry of Commerce, which must be taken to be that voice. Para 2.4 of the FTP reads thus -

“Procedure.

2.4 DGFT may, specify procedure to be followed for an exporter or importer or by any licensing or any other competent authority for purpose of implementing provisions of FT (D&R) Act, the Rules and the Orders made thereunder and FTP.

Such procedures shall be published by means of a Public Notice, and may, in like manner, be amended from time to time.”

It is evident from the above provision of the FTP issued by Central Government by way of a Notification in the Official Gazette, that an exporter or importer or any licensing or any other competent authority (which shall necessarily include the officers of Ministry of Finance/Customs Authorities), would be bound by the procedure specified by DGFT for implementing the provisions of FT (DER) Act, the Rules, the Orders made thereunder and FTP, published by means of a Public Notice. Thus all procedural aspects whether or not notified by the Ministry of Finance, if contrary to what is specified in Public Notice/Handbook of Procedure, would give way to those specified in the Public Notice. The obvious reason for such a provision in the FTP is that the benefits conferred and promised under the FTP issued under FTDR Act cannot be denied either in view of the absence of any Notification or any contrary or ambiguous Notification or Circular issued under the Customs Act, 1962. If the Central Government in its wisdom introduces a beneficial scheme or provision under the FTDR Act, the benefit of such legislation are to be made available by another Department of Central Government namely the Customs Department for which purpose

Notifications and Circulars are issued under the Customs Act, 1962. Neither such Notifications and Circulars can be interpreted to take away the benefit which is otherwise available under the FTP and HBP, nor any further clarification or instructions may be insisted by the Customs Department, when the provisions of the FTP and HBP mandate grant of such benefit. In M Far Hotels Limited v. Union of India, 2011(270) E.L.T. 158 (Ker. HC), despite there being absence of any Notification under the Customs Act to confer the benefit of duty credit otherwise permissible as per the DGFT, the Hon'ble Kerala High Court was pleased to observe that -

“3. During the pendency of this writ petition, the Director General of Foreign Trade has issued Exts. P17 and P18 clarifying the position, as a result of which, the petitioner is entitled to get duty credit in respect of the goods imported under Exts. P9 to P15 referred to above. In view of this clarification, the petitioner is also entitled to avail of the benefit of the duty credit certified under Exts. P5 to P5(d) and P6 licence as well.

4. In the light of Exts. P17 and P18 clarifications issued by the Director General of Foreign Trade, this writ petition is disposed of clarifying that the petitioner will be entitled to duty credit for the goods imported under Exts. P9 to P15 and the Bank guarantees furnished by the petitioner will be returned. It is also declared that the petitioner will be entitled to the benefit of the balance amount of duty credit certified under Exts. P5 to P5(d) and Ext. P6 licence as well.

5. True, the Counsel for the department raised an objection that in the absence of a notification issued by the Customs as a consequence of Exts. P17 and P18, the benefit cannot be claimed at this stage. However, having regard to the fact that the Government of India have issued Exts. P17 and P18, do not think it will be reasonable to require the petitioner to wait until any notification is issued by

*the Customs Department to get the benefit.
Therefore, there is no substance in this objection."*

23. The undisputed fact that EODC is an evidence of fulfillment of EO for all purposes, has been acknowledged and accepted by the CBIC through its Circular No.16/2017-Cus dated 02.05.2017, wherein the Board itself has clarified that any recovery proceedings is to be initiated only if the Assessee fails to submit the EODCs, clearly implying that in case the Assessee submits EODCs, it is to be accepted that the EO stood fulfilled and no proceedings ought to be initiated against such Assessee. The impugned proceedings are contrary to the clarifications issued by the CBIC and thus, the demand so raised is untenable on this count also.

24. In the light of the above factual matrices of the case on hand, we find that the reliance placed by the Commissioner on the judgment of the Hon'ble Supreme Court in the case of **Sheshank Sea Foods Pvt. Ltd. Vs. Union of India** - 1996 (88) ELT 626 (SC)] is misplaced as the same is inapplicable to the facts of the present case. It is settled law that a judgment is a precedent basis of the facts presented therein. **Sheshank Sea Foods Pvt. Ltd. (supra)** was a case where the Assessee had challenged the right of

the Customs to investigate or conduct search and seizure, on the ground that only DGFT had the power to do so, which is not the case at hand. There is no dispute in the instant case that Customs could have examined whether or not the EO as contemplated under condition Nos. (viii) and (ix) of Notifications No.96/2009-Cus and 99/2009-Cus had been complied with or not. The dispute is whether the Customs can take a different view on the condition relating to fulfillment of EO to that of DGFT, especially when the said condition itself provides that what is to be fulfilled is the EO, as specified by the DGFT in the Advance Authorization. The reliance therefore, placed on **Sheshank Sea Foods Pvt. Ltd.** (*supra*) does not further the case of the Respondent.

25. In any case, we find that the demand has been confirmed by the Commissioner-Respondent under Section 143(3) of the Customs Act, 1962, it is an undisputed factual matrix on record that the bonds executed by the Appellant in respect of the three Advance Authorizations dated 02.01.2009, 30.11.2009 and 10.06.2010 have been cancelled by the Customs albeit after passing of the impugned order; since these bonds stand cancelled, we are of the view that no demand could be enforced under Section

143(3) of the Customs Act, 1962. On this ground as well, the demand so confirmed in the impugned order does not survive. When the demand for duty does not survive, there is no question of levy of any interest or penalty upon the Appellant and therefore, there is no question of confiscation in absence of there being any violation of the provisions of Customs Act, 1962 and / or the Notifications issued thereunder.

26. Resultantly, the impugned order is set aside and the Appeal is allowed with consequential benefits, if any, as per law.

(Order pronounced in open court on 23.01.2026)

sd/-
(VASA SESHAGIRI RAO)
Member (Technical)

sd/-
(P. DINESHA)
Member (Judicial)