

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH,
COURT NO. I

CUSTOMS APPEAL NO. 50231 OF 2025

[Arising out of the Order-in-Original No. 08, 09 & 10/2024-Comm. Customs, Jodhpur, HQ – Jaipur dated 30/07/2024 passed by The Commissioner of Customs, Jodhpur, Jaipur.]

M/s Abhishek Exports,
H-208, Udyog Vihar, Sukher,
Udaipur.

.....Appellant

Versus

**Commissioner of Customs,
Jodhpur Headquarters,**
NCRB, Statue Circle, C-Scheme,
Jaipur.

....Respondent

**WITH
CUSTOMS APPEAL NO. 50242 OF 2025**

[Arising out of the Order-in-Original No. 08, 09 & 10/2024-Comm. Customs, Jodhpur, HQ – Jaipur dated 30/07/2024 passed by The Commissioner of Customs, Jodhpur, Jaipur.]

M/s Abhishek Exports,
H-208, Udyog Vihar, Sukher,
Udaipur.

.....Appellant

Versus

**Commissioner of Customs,
Jodhpur Headquarters,**
NCRB, Statue Circle, C-Scheme,
Jaipur.

....Respondent

**WITH
CUSTOMS APPEAL NO. 50243 OF 2025**

[Arising out of the Order-in-Original No. 08, 09 & 10/2024-Comm. Customs, Jodhpur, HQ – Jaipur dated 30/07/2024 passed by The Commissioner of Customs, Jodhpur, Jaipur.]

M/s Abhishek Exports,
H-208, Udyog Vihar, Sukher,
Udaipur.

.....Appellant

Versus

**Commissioner of Customs,
Jodhpur Headquarters,**
NCRB, Statue Circle, C-Scheme,
Jaipur.

....Respondent

**WITH
CUSTOMS APPEAL NO. 50192 OF 2025**

[Arising out of the Order-in-Original No. 13, 14, 15, 16 & 17/2024-Comm. Customs, Jodhpur, HQ – Jaipur dated 30/07/2024 passed by The Commissioner of Customs, Jodhpur, Jaipur.]

M/s Jain Grani Marmo (P) Ltd.,Appellant
NH-8, Sukher,
Udaipur.

Versus

Commissioner of Customs,Respondent
Jodhpur Headquarters,
NCRB, Statue Circle, C-Scheme,
Jaipur.

**WITH
CUSTOMS APPEAL NO. 50194 OF 2025**

[Arising out of the Order-in-Original No. 13, 14, 15, 16 & 17/2024-Comm. Customs, Jodhpur, HQ – Jaipur dated 30/07/2024 passed by The Commissioner of Customs, Jodhpur, Jaipur.]

M/s Jain Grani Marmo (P) Ltd.,Appellant
NH-8, Sukher,
Udaipur.

Versus

Commissioner of Customs,Respondent
Jodhpur Headquarters,
NCRB, Statue Circle, C-Scheme,
Jaipur.

**WITH
CUSTOMS APPEAL NO. 50212 OF 2025**

[Arising out of the Order-in-Original No. 13, 14, 15, 16 & 17/2024-Comm. Customs, Jodhpur, HQ – Jaipur dated 30/07/2024 passed by The Commissioner of Customs, Jodhpur, Jaipur.]

M/s Jain Grani Marmo (P) Ltd.,Appellant
NH-8, Sukher,
Udaipur.

Versus

Commissioner of Customs,Respondent
Jodhpur Headquarters,
NCRB, Statue Circle, C-Scheme,
Jaipur.

**WITH
CUSTOMS APPEAL NO. 50213 OF 2025**

[Arising out of the Order-in-Original No. 13, 14, 15, 16 & 17/2024-Comm. Customs, Jodhpur, HQ – Jaipur dated 30/07/2024 passed by The Commissioner of Customs, Jodhpur, Jaipur.]

M/s Jain Grani Marmo (P) Ltd.,Appellant
NH-8, Sukher,
Udaipur.

Versus

Commissioner of Customs,Respondent
Jodhpur Headquarters,
NCRB, Statue Circle, C-Scheme,
Jaipur.

**WITH
CUSTOMS APPEAL NO. 50227 OF 2025**

[Arising out of the Order-in-Original No. 13, 14, 15, 16 & 17/2024-Comm. Customs, Jodhpur, HQ – Jaipur dated 30/07/2024 passed by The Commissioner of Customs, Jodhpur, Jaipur.]

M/s Jain Grani Marmo (P) Ltd.,Appellant
NH-8, Sukher,
Udaipur.

Versus

Commissioner of Customs,Respondent
Jodhpur Headquarters,
NCRB, Statue Circle, C-Scheme,
Jaipur.

**WITH
CUSTOMS APPEAL NO. 50211 OF 2025**

[Arising out of the Order-in-Original No. 11 & 13/2024-Comm. Customs, Jodhpur, HQ – Jaipur dated 30/07/2024 passed by The Commissioner of Customs, Jodhpur, Jaipur.]

M/s Pacific Industries Ltd.,Appellant
Village Bedia, Sapetia Road,
Udaipur.

Versus

Commissioner of Customs,Respondent
Jodhpur Headquarters,
NCRB, Statue Circle, C-Scheme,
Jaipur.

**AND
CUSTOMS APPEAL NO. 50311 OF 2025**

[Arising out of the Order-in-Original No. 11 & 13/2024-Comm. Customs, Jodhpur, HQ – Jaipur dated 30/07/2024 passed by The Commissioner of Customs, Jodhpur, Jaipur.]

M/s Pacific Industries Ltd.,
Village Bedia, Sapetia Road,
Udaipur.

.....Appellant

Versus

**Commissioner of Customs,
Jodhpur Headquarters,**
NCRB, Statue Circle, C-Scheme,
Jaipur.

....Respondent

APPEARANCE:

Shri B.L. Narasimhan, Shri Anurag Kapur, Shri Ashwin Sundaram and Shri Arya Tiwari, Advocates for the appellant.
Shri Rakesh Agarwal, Authorized Representative for the Department

CORAM:

**HON'BLE JUSTICE MR. DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)**

FINAL ORDER NO. 50325-50334/2026

**DATE OF HEARING : 27.11.2025
DATE OF DECISION: 09.03.2026**

P.V. SUBBA RAO

M/s Abhishek Exports¹, M/s. Jain Grani Marmo (P) Ltd.² and M/s. Pacific Industries³, the three appellants, filed these ten appeals to assail the Orders passed by the Commissioner of Customs, Jodhpur which are as follows:

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- 1. Abhishek**
 - 2. Jain**
 - 3. Pacific**

	Appeal	Appellant	Impugned order	Period	Duty confirmed under proviso to section 28(1) (Rs.)	Penalty under section 114A (Rs.)	Redemption fine (Rs.)
1	C/50231 /2025	Abhishek Exports	8/2024 dated 30.7.2024	Nov 05 to Apr 06	87,30,126	87,30,126	1,25,00,000
2	C/50242 /2025	Abhishek Exports	9/2024 dated 30.7.2024	May 06 to Sep 06	65,20,262	65,20,262	80,00,000
3	C/50243 /2025	Abhishek Exports	10/2024 dated 30.7.2024	Oct 06 to Feb 07	71,92,535	71,92,535	1,20,00,000
4	C/50192 /2025	Jain Grani Marmo (P) Ltd,	13/2024 dated 30.7.2024	Sep 05 to Apr 06	24,60,516	24,60,516	30,00,000
5	C/50194 /2025	Jain Grani Marmo (P) Ltd,	14/2024 dated 30.7.2024	May 06 to Sep 06	15,40,012	15,40,012	20,00,000
6	C/50212 /2025	Jain Grani Marmo (P) Ltd,	15/2024 dated 30.7.2024	Oct 06 to Feb 07	90,45,231	90,45,231	1,25,00,000
7	C/50213 /2025	Jain Grani Marmo (P) Ltd,	16/2024 dated 30.7.2024	Dec 09 to Mar 15	26,85,50,625	26,85,50,625	8,00,00,000
8	C/50227 /2025	Jain Grani Marmo (P) Ltd,	17/2024 dated 30.7.2024	Apr 15 to Mar 17	23,65,252	23,65,252	30,00,000
9	C/50211 /2025	Pacific Industries Ltd.	11/2024 dated 30.7.2024	Jul 06 to Nov 06	1,48,19,881	1,48,19,881	2,00,00,000
10	C/50311 /2025	Pacific Industries Ltd.	12/2024 dated 30.7.2024	Dec 06 to Jan 07	63,42,322	63,42,322	1,00,00,000

2. We have heard learned counsels for the appellants and learned authorized representative for the Revenue and perused the records.

3. The appellants were, during the relevant period, 100% Export Oriented Units⁴ engaged in production of marble slabs/tiles permitted by the Development Commissioner as per Chapter 6 of the Foreign Trade Policy 2004-2009 and the

4. EOU

Handbook of Procedures. EOUs are allowed to import capital goods and inputs duty free and are expected to export their final products. While the intention of permitting operation of a 100% EOU is encouraging export of the final products, paragraph 6.8 of the Handbook of procedures allows some sale of finished products, rejects, waste, scrap, remnants and by products in the Domestic Tariff Area⁵ subject to some limitations. By Notification No. 24 (RE-2005)/2004-2009 dated 31.8.2005, the Directorate General of Foreign Trade⁶ excluded 'marble' from the list of items which could be sold by an EOU in DTA.

4. The appellants filed writ petitions before High Court of Rajasthan at Jodhpur challenging the DGFT notification dated 31.8.20205. The High Court issued a stay order permitting DTA sales on payment of full duties as per paragraph 6.8 (a) and 6.8(h) of the Foreign Trade Policy subject to final decision.

5. It must be pointed out at this stage, that when goods manufactured in an EOU are sold in DTA, since they are manufactured within India, no customs duty can be charged and only central excise duty can be charged. Usually, central excise duties are charged as per the central excise tariff. However, as per the proviso to section 3 of the Central Excise Act, 1944⁷ - the charging section- the duties of excise payable on DTA sales by EOU shall be equal to the customs duties

5. DTA

6. DGFT

7. Excise Act

leviable on such products. Relevant portion of section 3 of the Excise Act is reproduced below:

Section 3. Duties specified in the First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 to be levied.-

(1) There shall be levied and collected in such manner as may be prescribed,-

(a) a duty of excise to be called the Central Value Added Tax (CENVAT), on all excisable goods(excluded goods produced or manufactured in special economic zones) which are produced or manufactured in India as, and at the rates, set forth in the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986);

(b) a special duty of excise, in addition to the duty of excise specified in clause (a) above, on excisable goods (excluding goods produced or manufactured in special economic zones) specified in the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) which are produced or manufactured in India, as, and at the rates, set forth in the said Second Schedule:

Provided that the duties of excise which shall be levied and collected on any excisable goods which are produced or manufactured,-

(i) in a Free Trade Zone and brought to any other place in India; or

(ii) by a hundred per cent export-oriented undertaking and brought to any other place in India,

shall be an amount equal to the aggregate of the duties of customs which would be leviable under the Customs Act, 1962 (52 of 1962), or any other law for the time being in force, on like goods produced or manufactured outside India if imported into India, and where the said duties of customs are chargeable by reference to their value, the value of such excisable goods shall, notwithstanding anything contained in any other provision of this Act, be determined in accordance with the provisions of the Customs Act, 1962(52 of 1962) and the Customs Tariff Act, 1975 (51 of 1975).

Explanation 1.-Where in respect of any such like goods, any duty of customs leviable for the time being in force is leviable at different rates, then, such duty shall, for the purposes of this proviso, be deemed to be leviable at the highest of those rates.

Explanation 2.-In this proviso,-

(i) ***

(ii) "hundred per cent export-oriented undertaking" means an undertaking which has been approved as a hundred per cent export-oriented undertaking by the Board appointed in this behalf by the Central Government in exercise of the powers conferred by section 14 of the Industries (Development and

Regulation) Act,1951 (65 of 1951), and the rules made under that Act;

6. Some partial exemption notifications were issued to DTA sales but insofar as the stay order of the High Court permitting clearance of marble slabs to DTA by the appellant is concerned, it was subject to payment of full duties. The appellants paid central excise duties equal to the applicable customs duties as per the proviso to section 3 of the Excise Act and sold the goods in DTA and this fact is not in dispute.

7. Writ petitions were filed by various other parties also in different High Courts assailing the DGFT notification dated 31.8.2005 prohibiting DTA sales of marble slabs. The notification was finally upheld by the Supreme Court in **Hindustan Granites** versus **UOI**⁸ by an order and judgment dated 3.4.2007. Consequently, the High Court disposed of the writ petitions of the appellants by order dated 13.8.2007. Thus, the decision was against the appellants on merits.

8. Meanwhile, show cause notices were issued to the appellants by the department alleging that duty free marble blocks imported by them have not been used for export but were used to manufacture finished products which were cleared and sold in DTA in violation of paragraph 6.8 of the FTP and the customs notification. It was also alleged that the appellants ought to have exported tiles made out of the marble

8. 2007 (211) E.L.T. 3 (S.C.)

blocks and only thereafter could they have cleared marble slabs to DTA to the extent of 50% of the FOB value of the exports.

9. The appellants resisted the proposals in the SCN which were, however, confirmed in the impugned orders as detailed above.

Submissions on behalf of the appellants

10. Learned counsels for the appellants made the following submissions:

(i) The appellants had cleared finished products to DTA after paying full duties of excise equivalent to the aggregate duties of customs as per the proviso to section 3(1) of the Excise Act.

(ii) The High Court had, by stay orders, specifically allowed clearance of marble to DTA upon full payment of duty. Once the excise duty has been paid in full on the finished product, customs duty cannot be demanded on the imported marble blocks. Reliance is placed on the following decisions:

(a) **Sarla Performance Fibres** versus **Commissioner of Central Excise, Customs and Service Tax**⁹

(b) **Commissioner of Central Excise, Surat** versus **Sanjari Twisters**¹⁰ upheld by the

9. CESTAT, Ahmedabad Final Order A/10537-10538/2015 dated 24.2.2015

10. 2009 (235) E.L.T. 116 (Tri - Ahmd)

Supreme Court in **Commissioner of Central Excise, Surat** versus **Sanjari Twisters**¹¹

- (iii) Extended period of limitation cannot be invoked in this case as there is no element of collusion or wilful misstatement or suppression of facts in the case. All facts were known to the department and to the party.
- (iv) The restriction on sale in DTA was due to the DGFT notification dated 31.8.2005 which was challenged by the appellants before High Court.
- (v) All clearances were done as per the stay orders granted by the High Court.
- (vi) The marble blocks were not liable to confiscation under sections 111 (d) and 111(o) of the Customs Act because their import was not prohibited nor was any condition for their import violated.
- (vii) The marble blocks were also not liable to confiscation as they were not available for confiscation. Therefore, no redemption fine could have been imposed in lieu of confiscation.
- (viii) Interest under section 28AB/section 28AA was not recoverable because the duty itself was not payable.
- (ix) Penalty under section 114A is not imposable because there is no evidence of collusion, wilful misstatement or suppression of facts.
- (x) All appeals may be allowed and the impugned orders may be set aside.

Submissions on behalf of Revenue

11. 2010 (255) E.L.T. A15 (S.C.)

11. Learned authorized representative for the Revenue vehemently supported the impugned order and submitted as follows:

- (i) The exemption notification available to the marble blocks imported by EOUs is subject to some conditions which must be strictly interpreted. Reliance is placed on the following decisions:
 - (a) **Krishi Upaj Mandi Samiti versus Commissioner of Central Excise and Service Tax, Alwar**¹²
 - (b) **Commissioner of Central Excise, Salem versus CESTAT Chennai**¹³
- (ii) The appellant had not furnished information of clearances to the department which provided a ground for invoking extended period of limitation. Reliance is placed on **BPL Indian Ltd. versus CCE Cochin**¹⁴
- (iii) When the correct facts were not disclosed, extended period of limitation can be correctly invoked. Reliance is placed on **Tyco Submarine Systems Ltd. versus Commissioner of Customs, Nhava Sheva**¹⁵

Findings

12. We have considered the submissions advanced by both sides and perused the records. The questions which fall for consideration in these appeals are:

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- 12. 2022(58) G.S.T.L. 129 (S.C.)
 - 13. 2019 (366) E.L.T. 647(Mad.)
 - 14. 2002(143) E.L.T. 3 (S.C.)
 - 15. 2005(185) E.L.T. 101 (Tri.-Mum.)

- (i) Can the demand of duty with consequential interest on imported marble be confirmed in the facts of these cases?
- (ii) Could extended period of limitation been invoked?
- (iii) Were penalties under section 114A correctly imposed in these cases?
- (iv) Were the redemption fines in lieu of confiscation of the goods under section 111(d) and 111(o) been imposed correctly in these cases?

Duties of customs on the imported marble blocks

13. There is no dispute that the imported marble blocks were chargeable to customs duties but for the exemption under Notification No. 52/2003-Cus dated 31.3.2003 available to EOUs. There is no dispute that the appellants were EOUs. During the relevant period and further up to 8.4.2011 (when section 17 of the Customs Act was amended introducing self-assessment), all Bills of Entry had to be assessed by the proper officer and goods had to be cleared. Evidently, if the goods were cleared allowing the benefit of Notification No. 52/2003-Cus dated 31.3.2003, the proper officers must have considered and decided that the appellants were entitled to the benefit of this notification.

14. However, this notification comes with certain conditions including the conditions that:

- (i) The importer has been authorized by the Development Commissioner to establish the EOU;

- (ii) The unit carries on the manufacture under customs bond;
- (iii) The importer executes a bond with the Assistant Commissioner of Customs binding himself to, *inter alia*, to dispose of the goods or services, the articles produced, manufactured, processed and packaged in the unit, or the waste, scrap and remnants arising out of such production, manufacture, processing or packaging in the manner provided in the Export Import Policy and in case of failure to do so, pay the duty on demand.

15. There is no dispute that the Development Commissioner authorized the appellants to set up EOUs and that they had executed bonds and had carried out the manufacture in the bonded premises. The only dispute is regarding the disposal of the final products, viz., marble slabs. As per the notification 31.8.2005 issued by the DGFT under FTP, marble slabs could not be cleared to DTA. The appellants challenged the notification and the High Court stayed the notification partly allowing the appellants to clear marble slabs to DTA subject to payment of full excise duty, which, as per the proviso to section 3 of the Excise Act, is equal to the customs duties leviable on marble slabs if they were imported. The Supreme Court has in **Hindustan Granites**, upheld the notification dated 31.8.2005. All exports were made in the intervening period when the High Court had allowed DTA clearances of marble slabs. Thus, there was no violation of the FTP by the appellants in clearing goods to DTA during the relevant period.

If Revenue was aggrieved of the stay orders of the High Court permitting DTA clearances, they could have appealed to the High Court or Supreme Court to get the stay orders vacated.

16. The next question would be whether there will not be any loss of Revenue because no customs duty was paid on the imported marble blocks but they were used for clearing goods to DTA. In the stay orders, the High Court had given a conditional relief and the appellants were required to pay full duties which, in view of the proviso to section 3 of the Excise Act were equal to the customs duties payable on the marble slabs if such slabs themselves were imported. No exemption or abatement were allowed by the High Court. The net effect of the DTA clearances of the marble slabs as per the stay orders of the High Court was that instead of paying customs duties on the imported marble blocks (raw material), the appellants had paid central excise duties equal to the customs duties payable on marble slabs (final products). Needless to say that value of finished products of any industry will be more than the value of raw material. Thus, viewing from any angle, we do not find any scope of loss of revenue; it was only received as central excise duty instead of as customs duties.

17. In the case of **Sanjari Twisters**, a coordinate bench of this Tribunal rejected the department's appeal against the order of the Commissioner in which he confirmed the demand of Excise duty on the final products cleared by the 100% EOU

but dropped the demand of customs duty on the raw materials used. Revenue's Civil Appeal against this decision of the Tribunal was disposed of by the Supreme Court condoning the delay but dismissing the appeal on merits. This decision squarely applies to this case.

18. As we have found in favour of the appellants on the question of demand of duty on merits, we need not look into the question of limitation. The demands of duty along with interest need to be set aside.

Penalty under section 114A

19. Section 114A provides for mandatory penalty equal to the duty under certain conditions. It reads as follows:

Section 114A. Penalty for short-levy or non-levy of duty in certain cases. -

Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (8) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined:

Provided that where such duty or interest, as the case may be, as determined under sub-section (8) of section 28 , and the interest payable thereon under section 28AA , is paid within thirty days from the date of the communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the duty or interest, as the case may be, so determined:

Provided further that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso :

Provided also that where the duty or interest determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, for the purposes of this section, the duty or

interest as reduced or increased, as the case may be, shall be taken into account:

Provided also that in case where the duty or interest determined to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, the benefit of reduced penalty under the first proviso shall be available if the amount of the duty or the interest so increased, along with the interest payable thereon under section 28AA , and twenty-five percent of the consequential increase in penalty have also been paid within thirty days of the communication of the order by which such increase in the duty or interest takes effect :

Provided also that where any penalty has been levied under this section, no penalty shall be levied under section 112 or section 114 .

Explanation . - For the removal of doubts, it is hereby declared that -

(i) the provisions of this section shall also apply to cases in which the order determining the duty or interest sub-section (8) of section 28 relates to notices issued prior to the date on which the Finance Act, 2000 receives the assent of the President;

(ii) any amount paid to the credit of the Central Government prior to the date of communication of the order referred to in the first proviso or the fourth proviso shall be adjusted against the total amount due from such person.

20. As we have found that the duty could not have been demanded, penalty under section 114A also needs to be set aside.

Confiscation of goods and imposition of redemption fine

21. The goods were held in the impugned order to be liable to confiscation under section 111(d) and 111(o) of the Customs Act and redemption fines were imposed in lieu of the confiscation under section 125 of the Customs Act as the imported marble blocks were not available. These sections read as follows:

Section 111. Confiscation of improperly imported goods, etc. -
The following goods brought from a place outside India shall be liable to confiscation: -

(d) **any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act** or any other law for the time being in force;

(o) any goods **exempted, subject to any condition, from duty or any prohibition** in respect of the import thereof under this Act or any other law for the time being in force, **in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer**;

Section 125. Option to pay fine in lieu of confiscation.

(1) **Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods or, where such owner is not known, the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit:**

Provided that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, no such fine shall be imposed:

Provided further that, without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges payable in respect of such goods.

(3) Where the fine imposed under sub-section (1) is not paid within a period of one hundred and twenty days from the date of option given thereunder, such option shall become void, unless an appeal against such order is pending.

Explanation .-For removal of doubts, it is hereby declared that in cases where an order under sub-section (1) has been passed before the date on which the Finance Bill, 2018 receives the assent of the President and no appeal is pending against such order as on that date, the option under said sub-section may be exercised within a period of one hundred and twenty days from the date on which such assent is received.

22. Section 111(d) provides for confiscation of goods imported in violation of any prohibition imposed under the

Customs Act or any other law for the time being in force. Import of marble blocks was, admittedly restricted as per the FTP and they could be imported only on a licence from the DGFT. The appellants were issued permission by Development Commissioner to import marble blocks into their EOUs. It is for this reason, they were cleared by the proper officer at the time of import. Else, he would have seized them and taken action at that time itself. It may be reiterated that during the relevant period all imports had to be assessed by the proper officer and there was no self-assessment. The case of the department before us is that since the marble blocks were not used to manufacture and export slabs as required by the EOUs but were instead cleared to DTA, the imported marble blocks were essentially imported in violation of the restriction. This argument holds no water as the clearances to DTA were, in pursuance of the High Court's orders. Therefore, section 111(d) of the Customs Act will not apply to these cases.

23. Section 111(o) provides for confiscation of the goods if they are exempted subject to some conditions and the conditions are violated. The conditions in question are that the goods will be used as per the FTP read with the DGFT notification dated 31.8.2005 which was ultimately upheld by the Supreme Court, it means that the marble slabs manufactured out of imported marble blocks cannot be sold in DTA. The appellants had sold them in the DTA. But it must be

remembered that section 111(o) also comes with a caveat 'unless the proper officer sanctions the non-fulfilment of the condition'. In these cases, the High Court itself has allowed the clearance of goods to DTA and therefore, section 111(o) cannot also apply to these imports. Therefore, the finding that the imported goods were liable to confiscation under section 111(d) and 111(o) cannot be sustained.

24. It must also be pointed out that the imported goods had already been used to manufacture slabs and hence they were not liable to confiscation at all. Therefore, they could not have been confiscated because as per section 126 if they are confiscated, they vest in the Central Government and it is the responsibility of the adjudicating authority, which in this case, is the Commissioner to take possession of the goods. This section reads as follows:

Section 126. On confiscation, property to vest in Central Government. -

(1) When any goods are confiscated under this Act, such goods shall thereupon vest in the Central Government.

(2) The officer adjudging confiscation shall take and hold possession of the confiscated goods.

25. Redemption fine under section 125 is not an imposition but only an option as can be seen from the text of the section. It is open to the owner of the goods to not opt for it or to opt for it. The only exception is where the goods had been seized but they were provisionally released on execution of a bond. One of the conditions of such bonds will be that if they are, at the time of adjudication, confiscated, the owner would pay the

redemption fine in lieu of confiscation. It is on this undertaking in the bond, the goods are provisionally released and therefore, it becomes obligatory for the owner of the goods to pay redemption fine. In all other cases, redemption fine is only an option.

26. For the sake of clarity, if we had upheld the confiscation of the goods and the appellants did not opt to redeem them, the Commissioner would be in an impossible position of having burdened himself with the responsibility of taking possession of the goods as they would vest in the Central Government.

27. Any adjudicating authority confiscating any goods under the Act will be concomitantly taking upon himself or herself the statutory responsibility of taking possession of the confiscated goods as per section 126.

28. As far as the owner of the goods is concerned, he is free to choose whether to redeem the goods on paying redemption fine or not. Even without these appeals, the appellants in these appeals could have written to the Commissioner indicating that they DO NOT OPT for redemption under section 125 of the Act which would have put the Commissioner in the impossible situation indicated above. Even if the owner does not indicate an option, the option itself will become void after 120 days unless an appeal is pending. **In short, taking possession of the confiscated goods is an obligation on the adjudicating authority but paying redemption fine and**

redeeming the goods is a choice of the owner of the goods except where the goods were provisionally released on bond.

29. To sum up:

- (i) The demand of duties of customs from the appellants on the imported marble blocks with interest cannot be sustained on merits;
- (ii) The penalties imposed under section 114A of the Customs Act cannot be sustained;
- (iii) The imported marble blocks were not liable to confiscation on merits under section 111(d) and 111(o) of the Customs Act;
- (iv) The imported marble blocks were also not liable to confiscation because they were not available;
- (v) If any goods are confiscated, they vest in the Central Government and the adjudicating authority has a statutory responsibility under section 126(2) of the Customs Act to take possession of the confiscated goods; thus, the adjudicating authority takes upon himself or herself the responsibility of taking possession of the goods which he or she is confiscates;
- (vi) The owner of the goods has no obligation to pay redemption fine or redeem the goods as redemption is only an option under section 125 the Customs Act; the only exception is where the goods which were seized were provisionally released on bond in which case, redemption fine can be imposed in lieu of confiscation.

30. The appeals are allowed and the impugned orders are set aside with consequential reliefs to the appellants.

(Order pronounced in open court on 09/03/2026.)

**(JUSTICE DILIP GUPTA)
PRESIDENT**

**(P.V. SUBBA RAO)
MEMBER (TECHNICAL)**

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