CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH- COURT NO. I

Customs Appeal No. 50064 of 2020

(Arising out of Order-in-Original No. 14/2019/M.K. Singh/Pr.Commr./ICD-import/TKD

M/s N. V. Distilleries and Breweries Ltd. ....Appellant

Versus

Principal Commissioner, ...**Respondent**
Customs Import,
New Delhi

APPEARANCE:

Ms. Vandana Singh Advocate for the Appellant
Mr. Shiv Shankar, Authorized Representatives of the Department

CORAM:

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

DATE OF HEARING: 13.07.2026
DATE OF DECISION: 15.09.2026

FINAL ORDER NO. 51464/2026

DR. RACHNA GUPTA

M/s N.V Distilleries & Breweries Pvt. Ltd[1], having Importer Exporter Code[2] Number - 059905313, are engaged in the manufacture of Indian Made foreign liquor[3] (IMFL) (non-excisable), Country Liquor[4] (CL) and pet bottles and un-denatured spirit excisable).

2. The Directorate of Revenue Intelligence[5], Chandigarh Regional Unit (hereinafter referred to as 'DRI'), received an

[1] The appellant
[2] IEC
[3] IMFL
[4] CL
[5] DRI

intelligence that the Appellant has violated the condition under para (viii) of the Notification No. 96/2009-Cus dated 11.09.2009, in fulfilling the export obligations against Advance Authorizations. As per said notification the export obligation as specified in the Advance Authorization (both in terms of value and quantity) gets discharged by exporting resultant products manufactured in India which are specified in the said Advance Authorization and in respect of which facility under Rule 18 (rebate of duty paid on materials used in the manufacture of resultant product) or sub-rule (2) of Rule19 of the Central Excise Rules, 2002 (hereinafter called the "Rules") has not been availed. However, the Appellant was observed to have availed the benefit of sub rule (2) of Rule 19 of the CER ,2002 Rules for manufacture of goods being imported inputs to be exported and for fulfilling the export obligations fixed under various Advance Authorizations issued to them. Department observed that in addition to in the duty-free inputs as were imported against the Advanced Authorization the appellant has also used the domestically procured inputs like bottles, caps & labels for manufacture of the IMFL which was subsequently exported. Exports do not of so manufactured goods fulfill of export obligation against Advance Authorizations as it appears to be in direct violation of condition of said Authorizations i.e. no. viii of the Notification no. 96/2009-Cus dated 11.09.2009.

3. It was observed that appellant imported NV flavor vide Bill of Entry no. 7610327 dated 07.08.2012 to manufacture IMFL against Advance Authorization no. 0510326588 dated 04.06.2012 but they failed to fulfill export obligation against this licence even after expiration of obligation period of 36 months. After relentless persuasion by the DRI, the appellant deposited total duty foregone amounting to Rs.17,68,481/- along with interest amounting to

Rs.11.09,346/-in favor of Commissioner, Customs, ICD Tughlakabad, New Delhi on 15.01.2016. The Director General of Foreign Trade, New Delhi had issued redemption certificate in respect of two Advance authorizations nos. 0510299217 dated 10.08.2011 and 0510299218 dated 10.08.2011 on deposit of Customs duty of Rs. 63.864/- along with interest of Rs. 70.467/- totally amounting to Rs. 1,34,331/- on account of some shortfall in fulfillment of export obligation.

4. Customs duty was opined to still be short paid. Hence, the Show Cause Notice[6] bearing no 856/2015 dated 20/10/2016 was served upon the appellant proposing the following: -

i) Customs duty amounting to **Rs.1,93,62,179/-** (Rupees one crore ninety three lakhs sixty two thousand one hundred and seventy nine only), should not be demanded and recovered from appellants by invoking the Bonds executed by them at the time of importing the materials duty free under Advance Authorization in terms of Notification no. 96/2009-Cus dated 11.09,2009 read with Section 28 (4) of the Customs Act, 1962 and by invoking the extended period of limitation in as much as willfully using the duty free material procured under Annexure-45 and deliberately not informing the department about the same

ii) Interest should not be recovered from them on the said Customs duty foregone, under Section 28AA and as undertaken by them under Bonds executed at Customs Port, ICD, Tughlakabad at the time of clearance of import consignments;

[6] SCN

iii) Customs duty of **Rs.94,20,905/-** (Rupees ninety-four lakhs twenty thousand nine hundred and five only should not be demanded and recovered from them by invoking the Bond executed by them at the time of importing the material under Advance Authorization no. 0510326588 dated 04.06.2012 and 0510306911 dated 30.11.2011 read with Section 28 (4) of the Customs Act, 1962 by invoking the extended period of limitation for suppressing the facts of not fulfilling the export obligation.

iv) Interest should not be recovered from them on the said Customs duty foregone, (above, under Section 28AA and as undertaken by them under Bond executed at Customs Port, ICD, Tughlakabad at the time of clearance of import consignments;

v) Amount of **Rs.17.68.481/-** (Rupees Seventeen Lakhs Sixty-Eight Thousand Four Hundred Eighty-One only) deposited by them vide TR-6 challan no. 35052 through demand draft no 885843 dated 15.01.201 6 during investigations should not be appropriated against the duty liability under (iii) above,

vi) Interest of Rs.1102,346/- Rupees Eleven Lakhs Nine Thousand Three Hundred Forty-Six only) deposited vide TR-6 challan no.35052 through demand draft no.885843 dated 15.01.201 6 should not be appropriated against the interest liability as at (iv) above.

vii) Amount of **Rs.63.864/-** (Rupees Sixty-Three Thousand Eight Hundred Sixty-Four only) deposited by them with the DGFT, New Delhi against the admitted shortfall of export obligations in respect of Advance Authorizations no.

0510299217 dated 10.08.2011 and 0510299218 dated 10.08.201 1 should not be appropriated against the duty liability as mentioned in (i) above.

viii) Interest of Rs.70,467/- (Rupees Seventy Thousand Four Hundred Sixty-Seven only) deposited by them to the DGFT, New Delhi against the admitted shortfall of export obligations in respect of Advance Authorizations no. 0510299217 dated 10.08.2011 and 0510299218 dated 10.08.2011 should not be appropriated against the interest liability mentioned in (ii) above.

ix) Penalty should not be imposed under Section 114A of the Customs Act, 1962 for misrepresentation and violation of the said notification.

x) Penalty should not be imposed under Section 114AA of the Customs Act, 1962 for making false/incorrect documents for the export consignments violating the condition of the said notification.

5. The proposal has been confirmed vide OIO No. 14/2019 dated 30/08/2019. Being aggrieved the appellant is before this Tribunal.

6. We have heard Ms. Vandana Singh, the learned counsel for the appellant and Shri. Shiv Shankar, Learned Authorized Representative[7] Supreme Court for the department.

6.1 Learned counsel for the appellant submitted that the present issue pertains to the Advance Authorization Scheme which is a Duty exemption scheme under the Foreign Trade Policy. Duty exemption schemes enable duty free import of inputs required for

[7] AR

export production. Duty Exemption Schemes consist of: (i) Advance Authorization; and (ii) Duty Free Import Authorization (DFIA). The Foreign Trade Policy 2012-13 describes the Advance Authorization Scheme as below:

Advance Authorization *An Advance Authorization is issued to allow duty free import of inputs, which are physically incorporated in export product (making normal allowance for wastage) In addition, fuel, oil, energy, catalysts which are consumed / utilized to obtain export product, may also be allowed. DGFT, by means of Public Notice, may exclude any product(s) from the purview of Advance Authorization*.

7. Learned counsel submitted that it is clear from the above para that, the essential ingredient of the Advance Authorization is that the product or item imported must necessarily be physically incorporated in the product or item which is exported. This definition is the essence of the advance authorization scheme. Admittedly, in the present case, the Appellant imported Vetted Malt Scotch. This imported Vetted Malt Scotch[8] was incorporated into the Indian Made Foreign Liquor which was subsequently exported.

8. Appellant had only imported of only VMS under advance authorization. While glass bottle/cap/ label which are a part of export products; were procured domestically against Annexure-45 under Rule 19 (2) of Central Excise Rules. Since the material procured under Advance Authorization and Annexure-45 are different from one another and glass bottles, cap, labels have not been imported with VMS, the question of dual benefit availed by appellant does not arise.

[8] VMS

Hence, it is clear that appellant has not overruled the Notification No. 96/2009-Customs dated 11.09.2009.

9. Further; it is submitted that to make Indian manufactured products competitive in international market the Government of India is providing relief on the duties suffered by those goods including inputs used in the manufacture of export products. The whole purpose is that taxes should not be exported and they should have to be neutralized by granting benefit of Advance authorization i.e. procurement of material without duty, rebate refund of taxes. The appellant have availed advance authorization for imported VMS & annexure 45 for glass bottles/cap/labels those being procured domestically claiming duty benefit once in all. In case, the appellant did not procure the glass bottles would not have been procured under annexure-45 and procured the same after payment of excise duty, it could have been claimed through duty drawback so it is very clear that there is no revenue loss to Government of India at any stage."

10. Learned counsel impressed upon, the definition of the materials given in the explanation (v) of notification no. 96/2019, which shows that the Legislature has made a differentiation between goods which are required for manufacture of the resultant product and the goods which are used for packaging. Finally submitting that appellant has not violated any condition of the notification that the order under challenges is prayed to be set aside, the appeal is prayed to be allowed. Learned counsel has relied upon the decision of the Honorable High Court Punjab and Haryana in the case of **R.P international vs Union of India reported as 2017 (353ELT 307 Punjab and Haryana).**

11. While rebutting these submissions, learned DR appearing for the department had reiterated the findings arrived at in the impugned order. In addition, it is submitted that present is the case of violation of condition of notification no. 96/2009-CUS dated 11/9/2009.Clause (viii) of the said notification prohibits counting exports made using inputs sourced under Annexure-45 towards fulfillment of obligations under Advance Authorizations. The appellant has wrongfully availed the benefits under Rule 19(2) by using domestically sourced, duty-free goods, in conjunction with imported duty-free materials. Consequently, the exports involving Annexure-45 inputs cannot be considered towards the discharge of export obligations, amounting to a breach of notification conditions.

12. It is further submitted that invalid redemption certificates were obtained by the Appellant through clubbing of advanced authorization based on misleading claims that export involved duty-free inputs sourced under Rule 19(2) CER, 2002. The company representator, Shri K Srinivas in his statement dated 21.12.2015, admitted that exports were attributed to incorrect Advance Authorizations due to lack of clarity, leading to incorrect declarations on shipping bills. He confirmed that inputs from one authorization were used to meet the obligations of another, violating procedural norms.

13. Learned DR further submitted that the exemption notification has to be strictly interpreted and strict compliance thereof has to be made. The decision of Hon'ble Supreme Court in the case of **CCE Chandigarh 1 vs Mahan Diaries reported as 2004 (11) SCC 798**,Another decision of Hon'ble Supreme Court in the case of **Dilip Kumar and company reported as 2018 (361) ELT 577SC** has

been relied upon. With these submissions the order under challenge is prayed to be upheld and the appeal is prayed to be dismissed

14. Having heard both the parties the issue to be adjudicated is observed as follows;

Whether the appellant/importer has failed to fulfill the export obligation against Advance Authorizations and violated the conditions of the Notification no. 96/2009-Cus dated 11.09.2009 and consequently is liable for recovery of Customs duty along with interest and imposition of penalty under section 114A & 114AA of the Customs Act.

15. To adjudicate the same, we have foremost perused the meaning of Advance Authorization notification no. 96 of 2009 which reads as follows.

As per para 1:1:3 of chapter 4 of the Duty Exemption and Remission Schemes, An advance Authorization is issued to allow duty free import of inputs which **physically incorporated** in the manufactured or resultant product which are required to be exported:

i. Physical exports including exports to SEZ
ii. Intermediate supplies
iii. Supply of goods to the categories mentioned in paragraph 8.2 of the Foreign Trade Policy.
iv. Supply to stores on board of foreign going vessel/aircraft

Para 4.1.5 thereof requires that the Advance Authorisation and/or materials imported there will be with actual user condition. Para 4.1.7 requires that Advance Authorisation shall be issued in accordance with policy and procedure in force on Authorisation issue date.

16. The central government being satisfied that it is necessary in the public interest so to do, hereby exempts materials imported into India against Advance Authorisation issued in terms of paragraph 4.1.3 of the Foreign Trade Policy from whole of the duty of customs leviable thereupon which is specified in the first schedule to the Customs Tariff Act,1975 (51 fo 1975) and from whole of the additional duty safeguard duty and anti-dumping duty leviable thereupon subject to following condition:

(vii) "the export obligation as specified in the Advance Authorization (both in-value and quantity terms) is discharged by-exporting resultant products, manufactured in India which are specified in the Advance Authorization and in respect of which facility under Rule 18 (rebate of duty paid on materials used in the manufacture of resultant product) or sub-mule(2) of Rule 19 of the Central Excise Rules 2002 has not been availed".

17. The meaning of material as given in the explanation of said notification is also perused, it reads as follows.

"Materials" means-

(a) raw materials, components, intermediates, consumables, catalysts and parts which are required for manufacture of resultant product,

(b) mandatory spares within a value limit of ten per cent. of the value of the license which are required to be exported along with the resultant product

(c) fuel required for manufacture of resultant product,

(d) packaging materials required for packing of resultant product;

18. It is clear from the above definition, that raw materials and components are covered by sub clause (a) of Explanation (v) which are required for the manufacture of resultant product. The packaging materials required for packing of resultant product is mentioned in sub clause (d) of Explanation (v). Thus, to our opinion the legislature has made a differentiation between goods which are required for manufacture of the resultant product and the goods which are used for packaging. In the instant case, the raw material imported for manufacture of resultant product IMFL (as has been specified in the Authorization) is VMS, Vetted Malt Scotch only. Therefore, the provisions of sub clause 1 (viii) of the Notification will be applicable only to that material. The bottles, caps and labels were used for packing and imported but procured domestically under Annexure 45.

19. The difference between " inputs' under Duty Free Import Authorization in Para 4.2.1 and Advance Authorization in Para 4.1.3 has been explained in the case of **R.PINTERNATIONAL Versus UNION OF INDIA** reported at 2017 (353) E.L.T. 307 (P & H) in the following words:

*"Similarly, so far as the basic Scheme for DFIA in para 4.2.1 and that for Advance Authorization in Para 4.1.3 are concerned, the difference is that whereas the DFIA Scheme permits duty free import of 'inputs' which are "required for production of export product", the "Advance Authorization' allows duty free import of 'inputs', which are **"physically incorporated in the export product"**. The benefit of DFIA ought to have been given its actual meaning to include materials that are required in order to produce the export product, in essence, the duty free import under DFIA cannot be confirmed to only*

such goods which are actually used or physically incorporated in the production of the export product, but would also include goods which, though not used in the production of the export goods are required in order to produce the same."

20. Since, in the present case, it is Advance Authorisation which is in question that the goods/imported inputs which got physically incorporated into resultant product to be exported is relevant, it is clear that the packing material is wrongly held to be at par with imported input (VMS) in manufacture of IMFL, packing material not being physically incorporated in IMFL. Hence, the export thereof is wrongly alleged to be in violation of the Advance Authorisation. The findings of the order under challenge/OIO dated 30.08.2019 are liable to be set aside.

21. Further, coming to the plea of jurisdiction it is observed that Hon'ble Supreme Court, in Civil Appeal No. 1827 of 2018 had dealt with the issue as to whether, after clearance of the goods by the Customs, the proceedings could be initiated by the Directorate of Revenue Intelligence for recovery of duty not paid under Section 28(4) of 'the Customs Act 1962. It was held vide order dated 09.03.2021 that the proceedings initiated by Additional Director General of DRI by issuing demands are thus liable to be set aside. However, while reviewing the said decision in review petition no. 400 of 2021 in the aforesaid Civil Appeal vide judgment dated 07.11.2024 Hon'ble court held that officers of Directorate of Revenue Intelligence (DRP) when appointed as officers of customs and assigned the relevant functions of a "proper office" are competent to issue Show Cause Notices for recovery of custom duty under section28 of the Customs Act, 1962. The judgment dated 09.03.2025 was reversed

holding that said judgment overlooked relevant notification/circulars particularly Notification no. 44/2011 which assigned functions under Section 17 and 28 of the Customs Act to DRI offices. It also held that the earlier judgment incorrectly linked assessment under Section 17 of the Customs Act with recovery of short-period duty under section 28 thereof which are distinct statutory functions. In the light of this discussion the plea of jurisdiction of DRI officers to issue sent to the appellant is rejected. Hence, SCN is denied to be set aside for want of jurisdiction.

22. In totality of above discussion though the preliminary issue of jurisdiction is decided against the appellant but in light of discussion on merits of the appeal, as above, we hereby set aside the impugned order dated 30.08.2019. Consequently, the appeal stands allowed.

(Order pronounced on 15.09.2026)

(RACHNA GUPTA)
OFFICIATING PRESIDENT

(HEMAMBIKA R. PRIYA)
MEMBER TECHNICAL

swati