IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

THE HONOURABLE ACTING CHIEF JUSTICE SRI P.SAM KOSHY

AND

THE HONOURABLE SRI JUSTICE NARSING RAO NANDIKONDA

WRIT PETITION No.27212 of 2026
(CNR No.HBHC010558422026)

DATE OF ORDER: 30.10.2026

Reserved on: 16.09.2026 Pronounced on: 30.10.2026

Uploaded on: 31.10.2026

Between:
M/s. Arka Business Solutions.

...Petitioner

AND

Principal Commissioner of Customs,
GST Bhavan, L.B. Stadium Road,
Basheer Bagh, Hyderabad – 500 004 and 2 others.

...Respondents

ORDER: *(per Hon'ble the Acting Chief Justice P.Sam Koshy)*

Heard Mr. S. Ravi, learned Senior Counsel appearing on behalf of Mr. Karthik Ramana Puttamreddy, learned counsel for the petitioner; and Mr. Dominic Fernandes, learned Senior Standing Counsel for CBIC, appearing for the respondents.

2. The instant Writ Petition under Article 226 of the Constitution of India has been filed by the petitioner challenging the Order-in-Original

No.HYD-CUS-031-ADC-26-27, dated 15.7.2026, passed by respondent No.2, and to set aside the same along with consequential directions of the respondent No.2 confiscating the said goods, as being arbitrary, illegal and without jurisdiction.

3. *Vide* the impugned order, respondent No.2 misinterpreted the threshold of goods imported by the petitioner and confiscated the same for being prohibited goods.

4. The facts of the case are that the petitioner was engaged in the business of importing and selling used Multi-Function Devices (for short 'MFDs'). In the ordinary course of its business, 73 units of used Digital MFDs were purchased by the petitioner from its supplier in U.S.A. under an Invoice and Packing List, both dated 21.04.2026 (collectively filed as Ex.P-2), and were imported into India. Upon arrival of the goods at ICD Thimmapur, Bill of Entry No.9677159, dated 04.06.2026, was filed by the petitioner. The consignment was examined by the Customs authorities on 19.06.2026 in the presence of the petitioner's authorised representative and Customs Broker, and the examination confirmed that the imported goods corresponded substantially with the declaration made in the Bill of Entry. A Chartered Engineer, appointed at the instance of the Customs Department, physically inspected the machines and certified that they were fully functional second-hand capital goods possessing a residual life of more than 6 years and that the goods could not be treated as

hazardous waste or electronic waste. The Chartered Engineer further certified that each of the imported machines weighed substantially more than 80 kilograms, thereby satisfying Clause 8(d) of CRO, 2021, relating to the exemption for Highly Specialised Equipment (for short 'HSE').

5. Notwithstanding the above factual position emerging from the very documents relied upon by the Department, a show cause notice dated 25.06.2026 was issued stating that the petitioner was required to obtain DGFT Authorisation under Para 2.31 of the Foreign Trade Policy, 2023 and also alleging the absence of BIS registration. The show cause notice further proposed confiscation of the imported goods under Sections 111(d) and 111(m) of the Customs Act, 1962 (for short the 'Act'), together with enhancement of the assessable value on the basis of the Chartered Engineer's valuation report.

6. Prior to the issuance of said show cause notice, the petitioner, being aggrieved by the continued detention of the imported goods without issuance of any seizure memo or any communication indicating the reasons for such detention, approached this Court by filing Writ Petition No.19962 of 2026. By order dated 03.07.2026, this Court directed the petitioner to submit its reply to the show cause notice dated 25.06.2026, which had been issued subsequent to the filing of the said Writ Petition, and the adjudicating authority was directed to decide the matter strictly in accordance with law, taking

into consideration the judicial precedents already rendered by this Court in similar matters concerning the import of second-hand MFDs.

7. In compliance with the said order, a reply dated 06.07.2026 was filed by the petitioner to the show cause notice, wherein it was pointed out, *inter alia*:

a) That the imported MFDs constituted Highly Specialised Equipment exempted under Clause 8 of CRO, 2021.
b) That once CRO, 2021 itself ceased to apply, Entry 1(b) of Para 2.31 of the Foreign Trade Policy became inapplicable.
c) That the imported goods consequently fell under Entry 1(d), relating to second-hand capital goods which were freely importable.
d) That the binding judgment of this Court in Writ Petition No.2014 of 2024 squarely governed the controversy.
e) That the Office Memorandum issued by Ministry of Electronics and Information Technology (for short, 'MeitY') dated 22.04.2024 could not override either the statutory notification or the Foreign Trade Policy.
f) That the imported goods had been fully and truthfully declared, and therefore no case under Section 111(m) or Section 112 of the Customs Act was made out.

8. Disregarding the above submissions and the binding judgments cited before him, respondent No.2 passed the impugned Order-in-

Original dated 15.07.2026, holding that, notwithstanding the exemption available under Clause 8 of CRO, 2021, the petitioner was nevertheless required to obtain DGFT authorisation. Proceeding on the said premise, all the imported goods were confiscated under Section 111(d) of the Act, and the declared value was enhanced on the basis of the Chartered Engineer's report.

9. In the impugned order, the petitioner's consignment of 73 units of second-hand MFDs was bifurcated by respondent No.2 into two categories. In respect of 36 units, the goods were held to be "prohibited" under the Foreign Trade Policy, 2023, read with the Electronics and Information Technology Goods (Requirement for Compulsory Registration) Order, 2021, and were confiscated under Section 111(d) of the Act, redemption being permitted only for the limited purpose of re-export on payment of a redemption fine of Rs.1,33,257/- under Section 125(1) of the Act. It was further directed that in the event if the petitioner failed to exercise the option of re-export within the period prescribed under Section 125(3) of the Act, the Customs Authorities were to deform the imported goods beyond use and dispose of the same as scrap, after intimating the MeitY.

10. The decision of respondent No.2 in this regard was based on the premise that the threshold limit of import of 100 units had to be applied across all ports of India and across all importers, an aspect that was never disclosed to the petitioner in the show cause notice,

and which, according to the petitioner, was in any event an unsustainable interpretation. In respect of the remaining 37 units, the goods were confiscated under Section 111(d) of the Act, being treated as "restricted" under the Foreign Trade Policy, but redemption for home consumption was permitted on payment of a redemption fine of Rs.3,95,021/-, being 25% of the re-determined assessable value under Section 125(1) of the Act.

11. The aforesaid bifurcation of the petitioner's single consignment of 73 units was made solely on the basis that 36 units pertained to models which had allegedly crossed the threshold of 100 units per model during the calendar year 2025 on an all-India basis through imports made by various importers, whereas the remaining 37 units related to models which had not crossed such threshold. Proceeding on this premise, the former 36 units were treated by respondent No.2 as ineligible for exemption available under Clause 8 of CRO, 2021, and consequently as "prohibited goods", while a different treatment was extended to the remaining 37 units.

12. The impugned order was stated to proceed on the basis of the Office Memorandum dated 22.04.2024 issued by the MeitY, while overlooking the judgment of this Court in Writ Petition No.2014 of 2024, wherein it was held that, once the imported MFDs satisfied the conditions prescribed under Clause 8 of CRO, 2021, the compulsory registration requirement itself ceased to operate and the import

consequently could not be treated as "restricted" under Entry 1(b) of Para 2.31 of the Foreign Trade Policy.

13. It is the case of the petitioner that the impugned order was *ex facie* contrary to the binding judgments of this Court, and was based on an interpretation of the Foreign Trade Policy and CRO, 2021 that had already been rejected by this Court in identical cases. The challenge was stated to raise a pure question of law and was not merely directed against findings of fact, and that the adjudicating authority having proceeded on an erroneous understanding of the applicable legal provisions. It was further contended that the continued confiscation of the goods was resulting in recurring demurrage and detention charges, causing serious and irreparable financial prejudice, and that, in these exceptional circumstances the availability of an appellate remedy did not bar the exercise of the writ jurisdiction of this Court.

14. Accordingly, notwithstanding the alternative remedy of appeal under Section 128 of the Act, the petitioner approached this Court under Article 226 of the Constitution of India by way of the present Writ Petition, seeking a Writ of Mandamus against the impugned orders.

15. Learned Senior Counsel appearing for the petitioner submitted that respondent No.2 has erred in reckoning imports made by the

unrelated importers during the calendar year 2025 for determining the Petitioner's eligibility under 'Clause 8' of the Electronics and Information Technology Goods (Requirement of Compulsory Registration) Order, 2021 ('CRO, 2021'). The expression "imported in less than 100 units per model per year" cannot be construed as prescribing an industry-wide or all-India cap in the absence of express language to that effect. The impugned interpretation is therefore arbitrary, contrary to the plain language of Clause 8 and liable to be rejected.

16. Learned Senior Counsel appearing for the petitioner further submitted that the petitioner has interpreted the expression "imported in less than 100 units per model per year" in Clause 8 of the CRO, 2021 to apply on a per importer basis which is evident and reasonable. The petitioner has also interpreted the restriction to apply on a pan-India basis irrespective of the port of entry. Accordingly, the petitioner has always conducted its importation within the limit prescribed. Further, when it is analyzed based on each model depending on the manufacturer and the make, the number of MFDs imported by the petitioner would be well within the limit.

17. Learned Senior Counsel appearing for the petitioner contended that the entire reasoning adopted by respondent No.2 proceeds on the assumption that 'notwithstanding the exemption granted under Clause 8 of the CRO, 2021, the petitioner was nevertheless required to obtain

a DGFT Authorization under Entry I(b) of Para 2.31 of the Foreign Trade Policy, 2023. The said finding is directly contrary to the judgment rendered by this Hon'ble Court in Writ Petition No.2014 of 2024 and the subsequent batch of writ petitions, wherein this Hon'ble Court has categorically interpreted the scheme of the CRO, 2021 and the Foreign Trade Policy.

18. Learned Senior Counsel appearing for the petitioner also contended that the respondent No.2 has imported additional eligibility requirements into the statutory notification by relying upon an executive clarification and that it is a settled law that 'executive instructions or office memorandum cannot override, amend or restrict the scope of delegated legislation'. The impugned finding, is therefore contrary to clause 8 of the CRO, 2021, arbitrary and without jurisdiction.

19. On the other hand, the learned Senior Standing Counsel for CBIC submitted that the present Writ Petition is not maintainable and is liable to be dismissed on the ground that the petitioner has an efficacious and specific statutory remedy of appeal under Section 128 of the Act against the impugned Order-in-Original dated 15.07.2026. The impugned order itself specifically informs the petitioner that an appeal lies before the Commissioner (Appeals) under Section 128 of the Act within sixty days and sets out the applicable statutory pre-deposit requirement.

20. Learned Senior Standing Counsel for CBIC further submitted that the petitioner has expressly admitted in the Writ Petition that an alternative remedy under Section 128 of the Act is available, but seeks to bypass the same by describing the impugned order as arbitrary, without jurisdiction, contrary to binding precedents and violative of natural justice. Such labels cannot, by themselves, displace the statutory appellate remedy. The substance of the challenge has to be examined.

21. Learned Senior Standing Counsel for CBIC further submitted that the adjudicating authority considered the MeitY Office Memorandum dated 22.04.2024. It is denied that reliance upon the said Office Memorandum was the sole or independent source of the statutory liability. The adjudicating authority considered the CRO, the FTP, the DGFT Notification No.13/2024-25, dated 20.05.2024, the General Notes to the Import Policy, the Customs Act and the relevant judicial precedents. The petitioner's challenge to the interpretation adopted is a matter for the statutory appellate forum and the allegation that the adjudicating authority erred in reckoning all-India imports is clearly denied. The impugned order expressly records that Para 8 of the CRO is model-specific and that the FTP operates nationally. The adjudicating authority therefore examined all-India import data for the relevant models. The petitioner's contrary

interpretation is a substantive legal contention and cannot be used to establish lack of jurisdiction.

22. According to the learned Senior Standing Counsel for CBIC the ground concerning 100 unit threshold and the treatment of 36 units as prohibited goods is incorrect. The adjudicating authority examined the statutory text, the model-wise all-India data and the relevant policy framework before arriving at its conclusion. The Department do not concede that an error, even if ultimately found by the appellate authority, constitutes a jurisdictional defect.

23. Learned Senior Standing Counsel for CBIC also contended that the ground concerning the MeitY Office Memorandum dated 22.04.2024, is denied and that the said Office Memorandum was considered as relevant material in the context of the HSE exemption and the quantitative threshold. The petitioner’s assertion that the Office Memorandum alone creates the import restriction is not a correct characterization of the impugned order.

24. Learned Senior Standing Counsel for CBIC further contended that the rejection of declared value was not based merely upon the difference between the invoice value and the Chartered Engineer's estimate. The adjudicating authority recorded the specific reasons for doubting the declared value and thereafter followed the sequential valuation mechanism before adopting Rule 9.

25. Lastly, the learned Senior Standing Counsel for CBIC argued that the ground concerning differential redemption fine is also denied. The two categories of goods were found to stand on different legal footing, i.e. 36 units were treated as prohibited / non-compliant with the CRO / FTP framework and were offered redemption only for re-export, whereas 37 units were treated as restricted and were permitted redemption for home consumption. The distinction in the redemption consequences flowed from the adjudicating authority's findings regarding the legal status of the two categories.

26. Having heard the contentions put forth on either side and on perusal of records, the question that falls for our consideration is "whether the quantitative limit of less than 100 units per model per year found in Paragraph 8 of the Electronics and Information Technology Goods (Requirements for Compulsory Registration) Order 2021 as amended by S.O. 1246(E) dated 10.03.2026 with effect from 15.06.2026 can be applied to a consignment covered by a Bill of Entry presented on 04.06.2026 and whether respondent No.2 was justified on that footing in treating part of the consignment as prohibited goods and the rest as restricted goods and in confiscating all of it under Section 111(d) of the Act?"

27. The Department placed its principal reliance on the efficacious remedy of appeal under Section 128 of the Act. The order itself informs the petitioner of the forum and the period of sixty days and

the pre-deposit. Learned Senior Standing Counsel for CBIC urges that labels such as arbitrary or without jurisdiction cannot displace a statutory remedy and that the substance of the challenge must be examined. We accept that proposition and have therefore examined the substance. The rule of alternative remedy is a rule of discretion and not a bar to jurisdiction. It yields where the challenge raises a pure question of law where the impugned order is contrary to a binding decision of this Court or where the delay inherent in the statutory route would defeat the relief.

28. All three features are present here. The controversy turns on the temporal operation of a notification and requires no appreciation of disputed facts. The impugned order proceeds contrary to the judgment of this Court in Writ Petition Nos.2014 and 843 of 2024. The goods have remained at the port since June 2026 and attract recurring demurrage and detention. This Court had also directed in Writ Petition No.19962 of 2026 that the adjudicating authority shall decide the matter in the light of the precedents of this Court on 'second-hand MFDs'. Relegating the petitioner to the appellate forum would defeat that direction and prolong the detention. The preliminary objection is therefore rejected.

29. The Electronics and Information Technology Goods (Requirements for Compulsory Registration) Order, 2021 was issued under the Bureau of Indian Standards Act, 2016. It requires

registration of notified goods and Paragraph 8 as inserted on 01.07.2021, exempts Highly Specialized Equipment from its application. The Foreign Trade Policy, 2023 operates in a connected manner. Entry 1(b) of Para 2.31 makes the import of second-hand goods subject to compliance with the Order of 2021, while Entry 1(d) leaves second-hand capital goods freely importable. This Court held in Writ Petition No.2014 of 2024 and batch that when the imported MFDs satisfy the conditions of Paragraph 8, the compulsory registration requirement ceases to operate. The import then cannot be treated as restricted under Entry 1(b) and falls under Entry 1(d). The petitioner pleaded this in its reply of 06.07.2026. We see no reason to depart from that holding. The relevant paragraph of the said notification reads as under:

> *"**MINISTRY OF ELECTRONICS AND INFORMATION TECHNOLOGYORDER***
>
> *New Delhi, the 10th March, 2026*
>
> *S.O. 1246(E).— In exercise of the powers conferred by sub-section (1) and (2) of section 16 read with subsection (3) of section 25 of the Bureau of Indian Standards Act, 2016 (11 of 2016), and the Central Government beingof the opinion that it is necessary and expedient in the public interest so to do, hereby makes the followingamendments to the "Electronics and Information Technology Goods (Requirements for Compulsory Registration) Order, 2021", notified vide S.O. 1248(E) published in the Gazette of India on 18th March, 2021 and amended fromtime to time.*
>
> *2. In the said Order, Paragraph 8 inserted vide notification No S.O. No 2844 (E) dated 1st July, 2021 shall beread asExemption for Highly Specialized Equipment (HSE): HSE as per the criteria given below shall stand exempted fromapplication of this Order based on*

specific exemption issued by Ministry of Electronics and Information Technologyunder Para 2 of Gazette notification S.O. No 1248(E) dated the 18th March, 2021, as amended by S.O. 1929 (E) dated26th April 2023, provided they are manufactured/ imported in less than 100 units per model per year:

a. Equipment Powered by three phase power supply or

b. Equipment Powered by single phase power supply with current rating exceeding 16 Ampere or

c. Equipment with dimensions exceeding 1.5 m x 0.8 m or

d. Equipment with weight exceeding 80 Kg

***3.** The aforesaid amendment **shall come into effect** from **15th June, 2026.**"*

30. Paragraph 3 of the notification is unambiguous. The amendment takes effect from 15.06.2026. The notification uses no language of retrospective operation and nothing in it supports that reading. A subordinate legislative instrument that fixes its own date of commencement operates from that date. A presumption against retrospectivity attaches to the every legislative measure and it applies with greater force to delegated legislation. A power to legislate retrospectively must be conferred expressly by the parent statute and must be exercised in clear terms. Neither condition is met. The quantitative limit of 100 units per model per year is a new fetter on an exemption. It cannot be applied to a transaction that was complete before 15.06.2026. The Department had not argued that the notification has retrospective effect. They rely instead on the Office Memorandum of 22.04.2024 and on all-India import data for calendar year 2025.

31. The petitioner presented Bill of Entry No.9677159 on 04.06.2026. That date falls eleven days before the amendment came into effect. Under Section 15 of the Act, the relevant date for the rate of duty and the tariff valuation of imported goods entered for home consumption is the date on which the Bill of Entry is presented. The same date must furnish the reference point for testing whether the goods satisfied the conditions of an exemption or the requirements of an import policy. Hence, the position as it stood on 04.06.2026 governs. On that date, Paragraph 8 contained no numerical ceiling as the revised text had not come into force. The later events do not change the position. The examination on 19.06.2026, the show cause notice of 25.06.2026, and the order of 15.07.2026, all relate to goods which had already entered for home consumption. A later date of adjudication cannot bring an earlier import within a notification that did not govern it when the goods arrived. To hold otherwise would make an importer's rights depend on the speed of the Department's own proceedings.

32. Respondent No.2 treated 36 units as prohibited goods because the models allegedly crossed 100 units in calendar year 2025 on an all-India basis across all importers. Our finding is that the numerical limit did not apply to this import disposes of that ground at its root. There are other infirmities. The text relied on speaks of units manufactured or imported per model per year. It does not say that

the limit is an industry-wide cap shared by unrelated importers. The petitioner has read it as a per importer limit and states that its own imports of each model were well within it. A restrictive reading that deprives an importer of an exemption on account of imports made by strangers is not warranted by the text and could not be adopted without clear words. The Department relied on a statement in the impugned order that Paragraph 8 is 'model specific' and that the Foreign Trade Policy operates nationally. That statement explains why model-wise national data were examined. It does not explain why the cap of one importer should be exhausted by the imports of another.

33. The Chartered Engineer appointed at the instance of the Department certified that each machine weighed substantially more than 80 Kg and met the weight criterion of Paragraph 8(d). He also certified that the machines were functional second-hand capital goods with a residual life of over six years and were not hazardous or electronic waste. The Department, therefore, had before it its own expert evidence that the goods qualified as Highly Specialized Equipment. We note that the weight criterion in the notification now relied upon is the same as in 'clause (d)' quoted above and that the Department has disputed neither the weight nor the functionality.

34. The petitioner states without contradiction that the show cause notice did not mention the all-India reckoning of the 100 unit threshold. The importer was told that DGFT authorisation and BIS

registration were absent. It was not told that its eligibility would be tested on the imports of others across all ports. A finding that rests on a basis not put to the 'noticee' offends the principle that a person must know the case he is to meet. The adjudicating authority could not travel beyond the notice. This defect is independent of the main ground and would vitiate the findings on the 36 units even if the numerical ceiling had applied.

35. The 37 units were treated as restricted goods and confiscated under Section 111(d) on the footing that DGFT authorisation was needed despite the exemption in Paragraph 8. That finding is contrary to the holding in Writ Petition No.2014 of 2024 which we have followed. The goods being compliant with Paragraph 8 on the date of import compulsory registration did not apply and Entry 1(b) of Para 2.31 was not attracted. The goods were freely importable under Entry 1(d). The definition of prohibited goods in Section 2(33) excludes goods in respect of which the conditions for import have been complied with. We find no basis on this record for confiscation under Section 111(d). The Customs examination found the goods to correspond substantially with the declaration and no case has been made out under Section 111(m). Nor is there a foundation for penalty under Section 112. The Department also defend the enhancement of the declared value as having followed the sequential valuation scheme before Rule 9 was adopted. Since the confiscation and the redemption

fines cannot survive we need not examine valuation in any detail and leave the petitioner and the Department to their remedies on that aspect.

36. The goods have remained under respondents' port custody for a considerable amount of period and a workable course for their release was indicated by this court in the case of **Arka Business Solutions vs. Supt. of Cus.**[1]. We consider it appropriate to adopt the conditions stated in paragraph 26 of that decision. Those conditions read as under:

> *"**26.** Thus, for all the aforesaid reasons, it is ordered that let the respondent-authorities pass an order on the application filed by the petitioners for provisional release of the goods subject to the conditions that:*
> *(a) The petitioner shall pay/deposit the enhanced duty amount. On receipt of such enhanced duty amount paid by the petitioners, the goods in question shall be released within a period of four (04) weeks thereafter.*
> *(b) For payment of such duty, quantification shall be made by the customs forthwith within one (01) week from the date of receipt of a copy of this order. On receipt of such quantification, the payment shall be immediately made by the petitioners and on receipt of the payment in entirety, the goods shall be released as indicated above at the outer limit of four (04) weeks.*
> *(c) It is made clear that this order will not stand in the way for Customs Department to go ahead with the further proceedings including the adjudication in the manner known to law.*
> *(d) It is further made clear that so far as the condition of the petitioner that demurrage charges till date, for the goods be considered for waiver, in this regard, if any application is filed by*

[1] (2026) 166 GSTR 286

the petitioners seeking such a waiver of demurrage charges, the same shall be considered and decided by the respondents objectively."

37. In light of the foregoing discussion, we hold that the amended Paragraph 8 had no application to the import in question and that the impugned order cannot be sustained. The Order-in-Original No.HYD-CUS-031-ADC-26-27 dated 15.07.2026 passed by respondent No.2 is set aside insofar as it holds the goods to be prohibited or restricted confiscates them under Section 111(d) of the Act and imposes redemption fines and penalty if any. The respondents shall release the goods covered by Bill of Entry No.9677159, dated 04.06.2026, subject to the petitioner fulfilling the conditions prescribed in **Arka Business Solutions** (supra).

38. The instant writ petition therefore stands allowed. The question of law framed is answered in favour of the petitioner and against the respondents.

39. As a sequel, miscellaneous petitions pending if any, shall stand closed. However, there shall be no order as to costs.

P. SAM KOSHY, ACJ

NARSING RAO NANDIKONDA, J

Date: 30.10.2026
GSD