

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
NEW DELHI  
PRINCIPAL BENCH, COURT NO. 1**

**CUSTOMS APPEAL NO. 50622 OF 2024**

[Arising out of Order-in-Appeal No. IND-EXCUS-000-APP-303-2023-24 dated 28.02.2024 passed by the Commissioner (Appeals) Customs, CGST & Central Excise, Indore]

**K. A. ENTERPRISES**

**.....APPELLANT**

35/1, Industrial Premises, Sanwer Road,  
Gram-Jakhiya Tehsil-Sanwar,  
Indore, MP-453555

Vs.

**COMMISSIONER OF CUSTOMS**

**.....RESPONDENT**

B-Zone, 3<sup>rd</sup> Floor, Village-Piplyakumar  
Nipaniya, Indore-452010

**Appearance:**

Dr Prabhat Kumar and Shri Pralabh Mathur, Advocates for the appellant

Shri Shiv Shankar, Authorised Representative for the Respondent

**CORAM:**

**HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT**

**HON'BLE MR. P. V. SUBBA RAO, MEMBER ( TECHNICAL )**

**FINAL ORDER NO. 50701 /2026**

**DATE OF HEARING : 11/02/2026**

**DATE OF DECISION :10/04/2026**

**P.V.SUBBA RAO**

1. M/s K.A. Enterprises<sup>1</sup> filed this appeal to assail the Order dated 28.02.2024 passed by the Commissioner(Appeals), Customs CGST & Central Excise, Indore in which he upheld the order of the Additional Commissioner dated 13.01.2023 confirming demand of Rs.31,40,636/- as duty of customs under

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**1 Appellant**

section 28(4) of the Customs Act, 1962<sup>2</sup> invoking extended period of limitation and imposing an equal amount as penalty under section 114A of the Act.

2. We have heard learned counsel for the appellant and the learned authorized representative appearing for the Revenue and perused the records.

3. The imports in this case were made during the period October 2018 to June, 2021. The appellant manufactures sanitary napkins falling under the Tariff Heading 9619. For this purpose, it imported super absorbent polymers falling under **Customs Tariff Item<sup>3</sup> 3906 90 90** and untreated fluff pulp falling under **CTI 4703 21 00**. Both these goods were imported by the appellant during the relevant period claiming concessional rate of duty under Notification No. 50/2017-Cus dated 30.06.2017, as amended. To avail concessional rate of duty under this exemption notification, the importer had to follow the procedure prescribed under "Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017"<sup>4</sup>. These rules would apply to importers who wish to import goods for use for specified purposes under any exemption notification which is available subject to the condition that these rules are followed. According to the appellant, it had followed these rules and availed the benefit of the Exemption Notification. According to the department, the appellant had not followed the procedure

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**2 Act**  
**3 CTI**  
**4 IGCR Rules**

prescribed under IGCR rules and, therefore, it was not entitled to the benefit of the exemption notification and differential duty must be paid. In particular, the allegation is that the appellant had violated rule 5 and rule 6 of IGCR Rules. These Rules read as follows:

**“Rule - 5. Procedure to be followed.**

(1) The importer who intends to avail the benefit of an exemption notification shall provide information

(a) in duplicate, to the Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service, the estimated quantity and value of the goods to be imported, particulars of the exemption notification applicable on such import and the port of import in respect of a particular consignment for a period not exceeding one year; and

(b) in one set, to the Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs at the Custom Station of importation.

(2) The importer who intends to avail the benefit of an exemption notification shall submit a continuity bond with such surety or security as deemed appropriate by the Deputy Commissioner of Customs or Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service, with an undertaking to pay the amount equal to the difference between the duty leviable on inputs but for the exemption and that already paid, if any, at the time of importation, along with interest, at the rate fixed by notification issued under section 28AA of the Act, for the period starting from the date of importation of the goods on which the exemption was availed and ending with the date of actual payment of the entire amount of the difference of duty that he is liable to pay.

(3) The Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service, shall forward one copy of information received from the importer to the Deputy Commissioner of Customs, or as the case may be, Assistant Commissioner of Customs at the Custom Station of importation.

(4) On receipt of the copy of the information under clause (b) of sub-rule (1), the Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs at the **Custom Station of importation** shall allow the benefit of the exemption notification to the importer who intends to avail the benefit of exemption notification.”

**Rule - 6.Importer to give information regarding receipt of imported goods and maintain records.**

(1) The importer shall provide information of the receipt of the imported goods in the premises, where the imported goods shall be put to use for manufacture of goods or job work or for rendering output service within two days (excluding holidays, if any) of such receipt to the Jurisdictional Customs Officer.

(2) The importer shall maintain an account in such manner to clearly indicate the quantity,-

- i. and value of goods imported;
- ii. of imported goods consumed;
- iii. of goods sent for job work, nature of job work carried out;
- iv. of goods received after job work;
- v. of goods re-exported, if any, under rule 7; and
- vi. remaining in stock, according to bills of entry, and shall produce the said account as and when required by the Deputy Commissioner of Customs, or, as the case may be, the Assistant Commissioner of Customs having jurisdiction over the premises or where the imported goods shall be put to use for manufacture of goods or for rendering output service.

(3) The importer shall submit a quarterly return, in the form appended to these rules to the Deputy Commissioner of Customs, or, as the case may be, the Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service, by the tenth day of the following quarter.?"

4. On going through the records of the appellant, it was observed by the department that the appellant had imported 452 MTs of untreated Fluff Pulp but had filed declaration for only 150MT of pulp under Rule 5 of the IGCR Rules through an application dated 15.10.2018. According to the department, as per Rule 5 of IGCR the estimated quantity and value of the goods to be imported must be intimated by the importer to the Deputy Commissioner or Assistant Commissioner who has jurisdiction over the premises of the factory with a copy to the Deputy Commissioner or Assistant Commissioner of Customs at the port of importation.

5. Consequently, according to the Revenue, the appellant had imported excess quantity of untreated fluff pulp. Therefore, a show cause notice dated 31.01.2022 was issued to the appellant proposing to recover the differential duty with interest and to impose penalties under section 114A of the Act.

6. These proposals were resisted by the appellant but the proposals were confirmed by the Additional Commissioner as follows:

#### **ORDER**

- (i) The differential duty amounting to Rs. 31,40,636/- (Rupees Thirty One Lakhs Forty Thousand Six Hundred and Thirty Six Only) is confirmed and to be recovered from the Noticee under the provisions of Section 28(4) of the Customs Act, 1962;
- (ii) The duty amounting to Rs. 6,78,305/- (Rupees Six Lakhs Seventy Eight Thousand Three Hundred and Five only) is dropped.
- (iii) I order for recovery of interest on the duty short paid under the provisions of Section 28AA of the Customs Act, 1962;
- (iv) I impose a penalty of Rs. 31,40,636/- (Rupees Thirty Lakhs Forty Thousand Six Hundred and Thirty Six Only) under the provisions of Section 114A of the Customs Act, 1962, upon Noticee.

7. The order of the Additional Commissioner has been upheld by the Commissioner (Appeals) in the impugned order.

#### **Submissions on behalf of the appellant**

8. Learned counsel for the appellant made the following submissions:

- (i) The impugned order is improper and of illegal and was passed without considering the appellant's submissions and the demand is liable to be set aside.

- (ii) Duty demand based on the allegation of excess imports without following the IGCR Rules is unfounded. The appellant had complied with all requirements and availed concessional rate of duty.
- (iii) The appellant had fully complied with the IGCR Rules 2017 by filing the requisite declaration.
- (iv) It is not necessary to declare the actual import quantity of import under Rule 5 of IGCR Rules. Therefore, there was no violation of these rules.
- (v) The appellant fully complied with the IGCR Rules and submitted required intimation to the jurisdictional officer including estimated quantity, value, etc. The jurisdictional officer forwarded the intimation to the customs authorities and no objections were raised at any of the time.
- (vi) Procedural lapses, if any, cannot be a ground to deny the substantive benefit of the exemption.
- (vii) The demand under section 28(4) of the Act with interest under section 28AA of the Act is not sustainable.
- (viii) If imports are made following IGCR rules, and, thereafter, duty and interest, if any, is recoverable under Rule 8 of the IGC Rules only if goods were not used as per declaration or were not exported and were also not cleared under Rule 7.

Therefore, section 28(4) of the Act will not apply to this case.

- (ix) The demand is time barred as show cause notice was issued on 31.01.2022 beyond the normal period of limitation and there was no suppression of facts and all relevant information was provided by the appellant.
- (x) For this reason penalty is imposable on the appellant under section 114A.

### **Submissions of the Revenue**

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

- (i) Non compliance of Rule 5 of the IGCR Rules is established. This rule requires prior intimation of the estimated quantity and value of the imports to the jurisdictional Assistant Commissioner along with a continuity bond. The appellant filed applications for a lesser quantity. Therefore, there was a violation of Rule 5 of IGCR Rules.
- (ii) In the Bills of Entry, the appellant declared compliance with Notification No. 50/2017 while suppressing excess quantities imported. Therefore, invoking extended period of limitation under section 28(4) of the Act is correct. In view

of the above, the appeal may be dismissed and the impugned order may be upheld.

10. We have considered the submissions advanced by both sides and perused the records.

11. There is no dispute about the nature of the goods imported, the conditions subject to which the exemption notification was available and that the Notification was available to the products manufactured by the appellant. The only point of dispute is if the appellant had imported quantities of goods in excess of what was declared under rule 5 of the IGCR Rules.

12. The scheme of IGCR Rules is simple. If an importer wants to avail the benefit of exemption notification, he should give a declaration to the Jurisdictional Assistant Commissioner or Deputy Commissioner of Customs giving the estimated quantity and value of the goods to be imported and the purpose for which they are to be used along with a copy to the Assistant Commissioner or Deputy Commissioner at the port of importation. Sub-rule 3 of Rule 5 states that the Deputy Commissioner or Assistant Commissioner who has jurisdiction over the factory shall forward one copy of information received to the Assistant Commissioner at the Customs Station of importation. On receipt of this copy of this information filed by the importer through the jurisdictional Assistant Commissioner or Deputy Commissioner, the Assistant Commissioner of Customs at the station of importation shall allow the benefit of the exemption

Notification. Sub rule 2 of Rule 5 also provides for execution of a bond or a continuity bond with surety or security with the jurisdictional Assistant Commissioner or Deputy Commissioner. In short, the importer has to submit an application in duplicate to the Jurisdictional Assistant Commissioner and also execute a bond. A copy of that application is sent by the jurisdictional Assistant Commissioner to the Assistant Commissioner at the port of importation. The Assistant Commissioner at the port of importation—who is otherwise responsible for collection of the customs duty before releasing the goods—allows the concessional duty under the exemption on the strength of application received from the jurisdictional Assistant Commissioner. The jurisdictional Assistant Commissioner, in turn, ensures that the goods are used for the purpose. For this purpose, a bond is executed with him.

13. Rule 8 of IGCR Rules provides for recovery of duty if the importer fails to use the goods for the purpose indicated. In this case, there is no dispute that the goods were used for the purpose for which they were imported.

14. The only case of the department is that the appellant had imported goods in excess of the declarations made before the jurisdictional Assistant Commissioner or Deputy Commissioner. This is not possible. The Assistant Commissioner or Deputy Commissioner of customs at the port of import will not release the goods unless the appropriate amount of duty is paid. In case a notification is availed and the condition of the Notification is

that the IGCR Rules have to be followed, the Assistant Commissioner or Deputy Commissioner at the port of import will only allow clearance of the goods on the strength of a copy of the declaration received from the jurisdictional Assistant Commissioner or Deputy Commissioner. It is impossible that the jurisdictional Assistant Commissioner has received a declaration for some quantity but he communicated to the Assistant Commissioner of customs a much larger quantity.

15. In such a case, the responsibility lies clearly at the doorstep of the jurisdictional Assistant Commissioner.

16. Alternatively, if the jurisdictional Assistant Commissioner transmitted the applications for some quantity but the Assistant Commissioner of customs at the port allowed clearance for much larger quantity, the responsibility for that lies squarely with the Assistant Commissioner of customs who allowed such clearance.

17. We do not find anything in SCN to show that the Assistant Commissioners had allowed such wrong clearances. There is no allegation that the jurisdictional Assistant Commissioner conveyed declarations for much larger quantities than what was actually declared. There is also nothing on record to show that the Assistant Commissioner of customs at the port of importation allowed clearance of goods in excess of all quantities declared by the jurisdictional Assistant Commissioner.

18. In the absence of any recording as to which of the two Assistant Commissioners committed the irregularity, the demand

of duty on the appellant cannot be confirmed. We can only presume that the jurisdictional Assistant Commissioner and the Assistant Commissioner of customs at the port of import were satisfied about the quantities declared cleared the goods accordingly. The impugned order is set aside and the appeal is allowed.

[Order pronounced on **10/04/2026**]

**(JUSTICE DILIP GUPTA)**  
**PRESIDENT**

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

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