

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO.1

Customs Appeal No. 10762 of 2020-SM

(Arising out of OIA-MUN-CUSTOM-000-APP-68-20-21 dated 31/07/2020 passed by
Commissioner of Customs (Appeals) -AHMEDABAD)

Deep Traders

18, Vijay Society, Khambhat
Anand, Gujarat

.....Appellant

VERSUS

Commissioner of Customs-Mundra

Office of the Principal Commissionerate of Customs,
Port User Buld. Custom House Mundra, Mundra
Kutch, Gujarat-370421

.....Respondent

WITH

Customs Appeal No. 10995 of 2021-SM

(Arising out of OIA-KDL-CUSTOM-000-APP-015-21-22 dated 09/09/2021 passed by
Commissioner of CUSTOMS (Appeals)-AHMEDABAD)

Deep Traders

18, Vijay Society, Khambhat
Anand, Gujarat

.....Appellant

VERSUS

Commissioner of Customs -Kandla

Custom House,
Near Balaji Temple,
Kandla, Gujarat

.....Respondent

APPEARANCE:

Shri Vinay Kansara, Advocate for the Appellant
Shri P Ganesan, Superintendent(AR) for the Respondent

CORAM:

HON'BLE MR. SATENDRA VIKRAM SINGH, MEMBER (TECHNICAL)

Final Order No. 10246-10247/2026

DATE OF HEARING: 11.12.2025
DATE OF DECISION: 07.04.2026

SATENDRA VIKRAM SINGH

1. M/s. Deep Traders, Anand, Gujarat (Appellant) have imported Technical Grade Urea (TGU) falling under CTH 31021000 of the first schedule to the Customs Tariff Act, 1975 on high sea sales basis from State Trading Enterprises viz. MMTC during the period from April-2012 to 27.04.2015 without having a license of import of Urea from DGFT.

1.1 It came to the notice of the department through a reference from DRI that some importers including the appellant, have violated the provisions of Foreign Trade Policy for import of Technical Grade Urea. In term of Notification

04/2015-2020 dated 28.04.2015, of Ministry of Commerce & Industry, import policy of urea under ITC(HS) 3102100 was amended. As per the revised policy, besides State Trading Enterprises, import of industrial urea/Technical grade urea shall be free subject to Actual user condition. Revenue therefore initiated investigation against the appellant which resulted in issuance of two show cause notices dated 05.07.2018 and 15.10.2019 proposing confiscation of imported Technical Grade Urea valued at Rs.27,13,158/- & Rs. 26,38,239/- respectively, by the appellant in contravention of Foreign Trade Policy, under Section 111(d) of the Customs Act,1962. Penalty under Section 112(a)(i) of the said Act was also proposed on the appellant.

1.2 These show cause notices were adjudicated by the Additional Commissioner of Customs vide order dated 29.07.2019 and dated 29.05.2000 respectively wherein, he after considering various submissions made by the appellant, ordered for confiscation of above said goods under Section 111(d) of the Customs Act,1962 but did not impose any redemption fine under Section 125 as the said goods were not available for confiscation. He also imposed penalty of Rs.2,25,000/- & Rs. 1,31,912/- respectively upon the appellant. Aggrieved with the above orders, the appellant filed appeals before the Commissioner (Appeals) who vide impugned orders dated 31.07.2020 & 09.09.2021 did not find merit in their appeals. He rejected both the appeals and upheld the orders of the Adjudicating Authority.

1.3 Against above impugned orders, the appellant filed appeals before this Tribunal.

2. In their appeals, the appellant took the following grounds:-

- Ministry of Chemical and Fertilizers had granted them permission for import of 1500 MT TGU for industrial use vide letter No.6-4/2013-FM (Volume-II) dated 16.05.2013. While giving the said permission, they had imposed various conditions but none of the condition lays down that

goods cannot be purchased on high seas sales basis from State Trading Enterprises.

- They entered into an agreement dated 05.06.2013 with MMTC Limited and in terms of Article 15 of the said agreement, they were required to follow some conditions and to provide some documents. Here also, there was no restriction that they cannot purchase goods from State Trading Enterprises on high seas sales basis.
- As per the conditions, actual users were to give information regarding input output ratio in relation to consumption of TGU, the total quantity produced and the quantity of goods manufactured out of TGU. Being a trader (and not the manufacturer), question of giving such details was not possible. Therefore, there is no ground for confiscating the goods and imposing penalty on them.
- There is no revenue loss to the Government as the Customs Authorities have cleared their goods on payment of appropriate Customs duties. The goods, therefore cannot be confiscated, under Section 111(d) of the Customs Act, 1962 which gets attracted when goods are imported or attempted to be imported or 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. There is no such contravention in their case and therefore, impugned orders upholding confiscation of goods is not tenable.
- Penalty under Section 112(a)(i) is imposable when any person who in relation to any goods, does or omits to do any acts which act or omission would render such goods liable for confiscation under Section 111 or abets the doing or omission of such an Act shall be liable for penalty. In the present cases, penalty under this Section cannot be imposed at goods were not imported contrary to any prohibition.

- The show cause notices have not set out specific allegation against the appellant elaborating as to how contravention of Section 112 (a) has been made by them. They rely on the following cases:-
 - a) C. Gandhi Texturising Indu. Stries Ltd. Vs. CCE-2014 (311) ELT 209 (T-Ahmd.)
 - b) Sharpscans Prints Ltd. Vs. CC - 2007 (209) ELT 107 (T)
 - c) A.V. Swamy Vs. CC - 2009 (240) ELT 419 (T)
 - d) P. Kumar Vs. CC - 2009 (240) ELT 108 (T)
 - e) Avlon Syntex Pvt. Ltd. Vs. CCE-2007 (213) ELT 706 (T)
 - f) S. S. Gupta Vs. CC - 2001 (132) ELT 441 (T)
 - g) Maersk India Ltd. Vs. CC - 2001 (129) ELT 444 (T)
- Penalty is not imposable on them in terms of decision of the CESTAT in Marico Industries Limited case reported at 2007 (709) ELT 403 (T). In view of the above, they prayed that the impugned orders may be set aside and relief be granted to them.

3. Learned Advocate submitted that the appellant imported Technical Grade Urea in September, 2012(100 MT) and in August, 2013, (100 MT) through MMTC on high sea sales basis. The charges alleged by the Department are completely false as they have not violated DGFT policy on import of Technical Grade Urea. The appellant obtained permission from the Department of Fertilizers, Ministry of Chemicals and Fertilizers vide letter dated 16.05.2013 for import of 1500MT of Technical Grade Urea for industrial use through State Trading Enterprises during the year 2013-14 on fulfilment of certain conditions by the importer. The imported goods are not against any policy prohibition and hence, not liable to confiscation under Section 111(d) of the Customs Act,1962. The appellant is also not liable to penalty under Section 112(a)(i) of the Customs Act,1962 as they have not violated any conditions so imposed by the Ministry. Learned Advocate relied on the decision of Hon'ble Bombay High Court in the case

of Finesse Creation reported at 2009 (248) ELT 122 (Bom.) and the decision in the case of Marico Industries Limited Vs. CCE reported at 2007 (209) ELT 403 (T).

3.1 Regarding confiscation of imported goods, he relied on the decision of Larger Bench of the Tribunal in the case of Shiv Krupa Ispat Pvt. Ltd. Vs. CCE, Nasik reported at 2009 (235) ELT 623 (T-LB) and decision in the case of Asoj Soft Caps Pvt. Ltd. reported at 2012 (280) ELT 88 (Tri-Ahmedabad). Learned Advocate also placed reliance on Final Order No. A/10059-10062/2023 dated 16.01.2023 passed in the case of Sunita Commercials Pvt. Ltd. and Final Order No. A/10724-10725/2023 dated 28.03.2023 in the case of M/s. Brightglow Ventures Vs. Commissioner of Customs, Mundra. He prayed for allowing their appeals by setting aside impugned orders.

4. Countering the arguments, learned AR reiterated the findings of the lower authority. He submits that the appellant had imported Technical Grade Urea on high sea purchase basis from State Trading Enterprises without having a license for import of Urea from the Director General of Foreign Trade. As per the conditions specified in ITC (HS) code 3102 1000, prior to 28.04.2015, import of Urea was allowed through State Trading Corporation only. He argues that the appellant has violated the provisions of Foreign Trade Policy as they had imported Urea without having any valid license and therefore, confiscation of goods and imposition of penalty on them has rightly been upheld by the Commissioner (Appeal). Relying on Final Order No.10691/2025 dated 02.09.2025 in the case of M/s. Crozsell Vs. CC, Mundra, he prays for rejecting the appeals and upholding the impugned orders.

5. Heard the rival submissions. The short issue to be decided in this case is whether or not the appellant by importing Technical Grade Urea has violated the provisions of Foreign Trade Policy?

5.1 I find that similar issue of import of Urea purchased by M/s. Sunita Commercial Pvt. Ltd. through state trading enterprises on high sea sales basis came up for decision before this Tribunal. After analyzing the provisions of ITC (HS) policy, 2009-2015 against Heading No.3102 1000, the Tribunal found that the words used in the said heading is "Through" and not "By" STC, MMTC and Indian Potash which means that an importer can import Urea through the State Trading Corporation or State Trading Enterprises and there is no mandatory requirement that such Technical Grade Urea is imported by State Trading Enterprises only. This decision was followed in M/s. Brightglow Ventures Vs. Commissioner of Customs, Mundra vide Final Order No.A/10724-10725/2023 dated 28.03.2023. The relevant paras of the decision are reproduced below:-

"4. I have carefully considered the submissions made by both the sides and perused the record. I find that there is no dispute that the appellants have not directly imported Urea from abroad but in fact M/s. MMTC / M/s. IFFCO and M/s. KEIBHCO have imported Urea and the same was sold on high sea sale basis to the appellants. In these facts, this Tribunal has considered identical issue and passed the following order in the case of Marico Industries Limited (supra):-

"11. We find that in the present case, as per the policy at the prevailing time the goods could have been procured from M/s State Trading Corporation at Mumbai only and the initial import should have been that of State Trading Corporation. However, there have been some procedural lacunae and the appellants have brought to our notice a letter written by Jt. DGFT dated 28-12-2005 addressed to DGFT stating that since the procedure for import for canalized items was not very clear prior to 30-6-2005, the appellant's case was a fit case for relaxation of policy. We further find that in any case, the Commissioner has allowed duty free clearance against AROs and has not demanded duty. We further note that in any case if M/s State Trading Corporation was required to pay duty, the same would have been reimbursable to them for supply against advance licences which are to be treated as deemed export. It is also admitted that DGFT has even prior to the date of import though after the date of shipment allowed the clearance on the basis of high sea sale. The Commissioner has confiscated the goods as she concluded that in this case the sale was on high sea sale basis. Therefore, in such a situation, the violation can be said to be technical in nature having no duty implication and once before date of import the goods could freely be procured on high sea sale basis, the margin of profit as compared to other importers is totally wiped out. We however hold that the goods were liable to confiscation under Section 111(d) as the procedure prescribed in the policy was not followed. Looking into the facts and circumstances of the case, having no duty implication, and no margin of profit, we reduce the redemption fine to Rs. 10,000/- (Rupees Ten thousand only) and penalty to Rs. 10,000/- (Rupees Ten thousand only).

12. The appeal is allowed in above terms."

Further, this Tribunal in another case in the case Pooja Chemicals & Others in Customs Appeal No. 10736 of 2020, vide order No. A/10059-10062/2023 dated 16.01.2023 decided the issue in favour of the assessee, which is reproduced below:-

"4. Shri G. Kirupanandan, learned Superintendent (AR) appearing for the department reiterated the findings given in the impugned Orders. He pointed out that by virtue of purchase of Urea on High Seas from STEs and by filing Bill of Entry, the appellant became the importer and that under the Import Policy the STEs who have purchased the Urea from the foreign buyer can sell the same to the Indian buyer after clearance from Customs and that condition no. (xiv) of permission letter of Government of India, Ministry of Chemical and Fertilizers, permission was granted to the Appellant only for domestic purchase of Urea from STE.

5. On carefully considered the submissions made by both the sides and upon perusal of the case records, it emerges that the purchase from the foreign suppliers was made by STE viz. MMTC and Indian Potash Ltd and the goods were shipped by the foreign suppliers to MMTC/ Indian Potash Ltd and the Appellants have purchased the said goods on High Seas from the MMTC/Indian Potash Ltd. It can be seen that Heading No.3102 1000 of the ITC (HS) Policy 2009-2015, does not stipulate that Urea was allowed to be imported only by State Trading Enterprises; the said Heading allows import of Urea through STC, MMTC and Indian Potash Limited. Clearly, the word used in the said Heading 3102 1000 is "through" and not "by" STC, MMTC and Indian Potash. In view of above, when the import is allowed "through" STC, MMTC and Indian Potash, it means that so long as the purchase of the Urea from the foreign supplier is effected by STC, MMTC or Indian Potash and payment to foreign supplier is made by STC, MMTC or Indian Potash, who in turn sell the same to a party in India whether on High Seas or otherwise, the import is clearly through STC, MMTC or Indian Potash.

5.1 Learned Commissioner (Appeals) clearly erred in holding that under the Import Policy although the STEs who have purchased the Urea from the foreign supplier can sell the same to the Indian buyer after clearance from customs, such sale cannot be permitted on High Seas before clearance of the Urea from customs and that by virtue of purchase of the Urea on High Seas from STE and by filing the Bill of Entry, the Appellants became the importer is irrelevant because there is no bar against the Appellants being the importer so long as the import is through STE. There is no restriction in the Policy against State Trading Enterprise making High Seas Sale of Urea which during the relevant period was permitted to be imported through State Trading Enterprise.

5.2 Since the import was made through MMTC/Indian Potash Ltd and was in accordance with Heading No.3102 1000 of the ITC (HS) Policy and the letters of the Government of India, Ministry of Chemical and Fertilizers, the import was in accordance with law and therefore the goods cannot be held to be liable to confiscation under Section 111(d) of the Customs Act 1962. Consequently, no penalty is imposable on the Appellants under Section 112 of the said Act

5.3 The Commissioner (Appeals) has erred in not appreciating the permission granted by the Ministry of Chemical & Fertilizers to the Appellant. The very opening sentence of the said letters/ Permission of the Ministry of chemical and Fertilizers has permitted the Appellant to import the Urea through any STE. The permission to import is addressed and granted to the Appellant and such import has to be made by the Appellant through any STE, which only means that the STE would purchase the Urea from a foreign supplier and then sell the same to the Appellant on High Seas. This is the only way in which the permission to the Appellant to import through STE can be implemented and operated. Learned Commissioner (Appeals) finding that per condition no. (xiv) of Permissions of the Government of India, Ministry of Chemical and Fertilizers, permission was granted to the Appellant only for domestic purchase of Urea from STE is also erroneous. There is absolutely no such restriction in the said condition no. (xiv).

Neither does condition no.(xiv) contain any restriction that purchase shall be made only domestically from STE nor does it prohibit purchase on High Seas. All that condition (xiv) stipulates is that the Department of fertilizers has to be kept informed through the STE from whom the Urea is purchased, about the product being produced from such urea, the quantity required, etc. There is absolutely no stipulation in condition (xiv) that urea has to be purchased from STE only domestically and not on High Seas. On the contrary, the very first para of the said letter grants permission to the Appellant to import the Urea through STE. If as upheld by the Commissioner (Appeals), Appellant was only permitted to purchase domestically from the STE, the letter would not have said that the Appellant is permitted to import through STE. The authorities below have mis-read the Conditions Nos. (v) and (xiv) of the Permission letter dated 15th May 2013 of the Government of India, Ministry of Chemical and Fertilizers and in inferring therefrom that High Seas purchase by Appellant from STE was not permitted as per the said conditions. The said conditions are not related to the Appellant's purchase from STE but are related to the purchases by the end users/ distributors from the Appellant. The meaning of the word "through" used in Heading No.3102 1000 of the ITC (HS) Policy, itself show that when the ITC Policy talks of import through STE, it means import using the help of STE and not import by STE.

5.4 Further, as per the regular practice accepted by customs for over several decades in case of imports which are canalized through STEs, the STEs place the order on the foreign supplier and thereafter effect High Seas sale of the same to the Indian Buyers. This is evident from the judgments and Board Circular supra. As laid down in the following judgments, where the import is in accordance with a consistent past practice, the question of confiscation under Section 111(d) and imposition of penalty under Section 112 of the Customs Act 1962 does not arise:

*Gujarat State Export Corporation Ltd v UOI – 1984 (17) ELT 50
Memon Associates v CC – 1988 (34) ELT 367
Trident Agencies v CC – 1989 (45) ELT 116
Varson Chemicals P. Ltd v CC – 1987 (27) ELT 55*

The judgment in the case of Marico Industries Ltd v CC – 2007 (209) ELT 403 relied upon by the Commissioner (Appeals) has no application to the facts of the present case. In that case the importer had directly established the Letter of Credit on the foreign supplier as a result of which the import could not even be said to be through STE. Further, the import in that case was against Advance Release Order which is issued for sourcing inputs indigenously instead of importing against Advance License. The provisions relating to procurement of inputs against Advance Release Order which applied in that case did not provide for import through STE.

06. In view of above, impugned Orders vide which penalty under section 112(a)(i) of the Act on the appellants was upheld cannot be sustained Accordingly, the impugned orders are set aside. The appeals are allowed with consequential relief."

5. In view of the above judgments, the issue is no more res-integra. Accordingly the purchase of Urea through State Trading Enterprises cannot be liable for penalty under Section 112(a)(i) of Customs Act, 1962. Accordingly the penalties imposed by the lower authorities in both the appeals are set-aside and the appeals are allowed."

5.2 The facts in the present case are similar where the appellant has entered in to an agreement with M/s. MMTC (a State Trading Enterprise) which imported Technical Grade Urea and sold to the appellant on high sea sales basis. The appellant, later on cleared the goods by filing Bill of Entry

and on payment of proper Customs duties. The issue is no more res-integra and therefore, following the ratio laid down by the Tribunal in above cases, appeals of the party are allowed and the impugned orders are set aside.

6. The appeals are allowed.

(Pronounced in the open court on 07.04.2026)

(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)

Bharvi