THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

<u>THE HON'BLE SRI JUSTICE P. SAM KOSHY</u>

<u>AND</u>

<u>THE HON'BLE SRI JUSTICE NARSING RAO NANDIKONDA</u>

<u>CENTRAL EXCISE APPEAL Nos.2, 26 & 27 of 2013</u>

Date: 11.08.2026

Between:

The Principal Commissioner of Customs.

…Appellant

AND

M/s. Gimpex Limited.

…Respondent

<u>COMMON JUDGMENT</u>: *(per the Hon'ble Sri Justice P. Sam Koshy)*

Since the issue arising out of the three appeals is one and the same and the parties thereto are also same, they were heard together and are decided by this Common Judgment.

2. The instant appeals are preferred by the Customs Department under Section 130 of the Customs Act, 1962 assailing the Common

Order dated 13.06.2012 in Appeal No.C/249/09 passed by the Customs, Excise and Services Tax Appellate Tribunal, South Zonal Bench, Bangalore (for short, 'CESTAT') in the course of deciding a batch of appeals, the lead case being C-249/2009. Though there were other appeals as well which were filed by the Customs-Department and decided by the CESTAT, however consequent to the revised litigation policy adopted by the Central Board of Excise and Customs, except for the present batch of appeals, all other appeals have been withdrawn.

3. Heard Ms. B. Sapna Reddy, learned Senior Standing Counsel for Central Board of Indirect Taxes and Customs (C.B.I.C.), for the appellant; and Mr. B. Satish Sundar, learned counsel appearing on behalf of Mr. Parikshith Kutur, for the respondent.

4. For convenience, the facts in Central Excise Appeal No.2 of 2013 are discussed hereunder.

5. The respondent M/s. Gimpex Ltd. (for short 'GL') was engaged in the export of industrial minerals such as iron ore, bentonite, feldspar, and granite slabs, for which purpose the raw material and machinery required for export packing materials such as PP bags, and machinery such as dozers, dumpers, generators, excavators, tippers, and crushing and screening systems were utilised. During the period from 01.04.2004 to 31.03.2005, GL exported iron ore fines valued at Rs.142.3 crores and other minerals valued at Rs.31 crores, aggregating to Rs.173.3 crores which enabled GL to record sufficient incremental growth over its exports in the preceding year (2003-04), thereby rendering it eligible for duty credit certificates under the Target Plus Scheme (for short 'TPS'). GL accordingly applied in the prescribed format to the Director-General of Foreign Trade (for short 'DGFT') for grant of such certificates, and obtained 7 duty credit certificates for a total amount of Rs.7,08,12,793/- in the month of May, 2006 issued by the Joint DGFT, Chennai. These certificates / licences under the TPS enabled GL to import canalized items in terms of paragraph 3.2.5 of the Handbook of Procedures (Volume-I) 2004-09 subject to the actual user condition, the Conditions Sheet attached to each certificate specifying two export product groups, namely 'Chemical and Allied Products' and 'Engineering Products' and carrying an endorsement that 'import will have broad nexus'. Since the said licences stood registered at Chennai Port Customs and GL intended to effect imports through ICD Hyderabad, it obtained Transfer Release Advices (for short 'TRAs') from Chennai Customs for that purpose.

6. Using the said TRAs, GL imported 'continuous cast copper rods' (a canalized item, hereinafter referred to as 'c.c. copper rods') in 14 consignments, aggregating 427.383 MTs in weight and valued at Rs.13,53,94,741/- through ICD Hyderabad during the period from September, 2006 to April, 2007, the said imports having been effected under High Sea Sale Agreements concluded between GL and M/s. MMTC Limited.Notification No.32/2005-Cus, dated 08.04.2005, issued by the Central Government under the TPS in terms of paragraph 3.7 of the Foreign Trade Policy (FTP), 2004-09, granted full exemption from payment of basic customs duty and additional customs duty (CVD) on goods imported against duty credit certificates/licences issued under the TPS, extending to any inputs, capital goods (including spares and office equipment) and agricultural products freely importable under the FTP, subject to the actual user condition. GL claimed the benefit of this exemption in respect of the c.c. copper rods so imported, pursuant to which the relevant Bills of Entry were assessed and the goods were cleared without payment of duty.

7. Subsequently, the Directorate of Revenue Intelligence (for short 'DRI') initiated investigations into the manner in which GL had availed itself of the benefit under the TPS, in the course of which the relevant documents relating to the purchase of 'c.c. copper rods' by GL from MMTC under the High Sea Sale Agreements, the import documents relating to duty-free clearance of the goods under the TPS, documents relating to export of iron ore fines and other goods, and correspondence exchanged between GL, MMTC and others, came to be recovered and scrutinised.

8. Statements were recorded under Section 108 of the Customs Act, from functionaries of M/s. Gimpex Ltd., M/s. Mangalchand Alloys and Refineries Pvt. Ltd. ('MARPL'), M/s. Shah International Travels (the Customs House Agent) and others, and the relevant provisions of the FTP 2004-09, the Handbook of Procedures (Volume-I), and Customs

Notification No.32/2005 dated 08.04.2005, were examined in the course of the said investigation.

9. On the basis of the results of the investigation, the Department issued a show-cause notice to GL and others, whereunder it was proposed:

(a) To deny the exemption claimed under the said Notification in respect of the imported copper rods and to demand duty thereon under the proviso to Section 28(1) of the Customs Act;

(b) To hold the said goods liable to confiscation under Section 111(o) of the Customs Act and GL liable to penalty under Section 114A of the Customs Act;

(c) To demand interest on the duty so determined under Section 28AB of the Customs Act; and

(d) To impose penalties on the other noticees, namely Sri Samir Goenka, Sri Anil Goyal and Sri Ranjit S. Chaudhari, under Section

112 of the Act, all of which demands and proposals came to be contested by the noticees.

10. Similarly, M/s. Sree Enterprises engaged in the manufacture and export of articles of mild steel and alloy steel such as ferro-silicon, obtained 11 duty credit certificates / licences in February, 2006 from the Joint DGFT, New Delhi, upon showing sufficient incremental growth in exports for the year 2004-05 as against 2003-04, and making use of TRAs issued on the strength of the said licences, imported c.c. copper rods in a quantity of 136.654 MTs valued at Rs.4,92,58,835/- through ICD Hyderabad, which goods were cleared duty-free in terms of Notification No.32/2005-Cus, dated 08.04.2005. Subsequent investigation by the DRI culminated in issuance of a show-cause notice to M/s. Sree Enterprises, similar in nature to the one issued to GL, proposing penalties as well on Sri Sanjay Bansal (proprietor of M/s. Sree Enterprises), Sri Anil Goyal (authorised signatory of M/s. Sree Enterprises), and Sri Ranjit Chaudhari, under Section 112 of the Customs Act, the demand of duty and the other proposals being contested by the noticees.

11. Learned Senior Standing Counsel for C.B.I.C. contended that a conjoint reading of paragraphs 3.7.1 and 3.7.6 of the Foreign Trade Policy (FTP) 2004-09, made it evident that the incentive granted by way of duty credit certificates under the TPS, predicated upon an exporter's incremental export performance during the year 2004-05, was intended to be utilised only for import of such goods as bore a relation, as inputs, capital goods or the like, to the very goods exported during that year the underlying objective of the scheme being to accelerate growth in exports of a similar nature by enabling the exporter to augment its infrastructural and manufacturing capabilities in respect of the goods so exported. It was also contended that, on a true construction of Customs Notification No.32/2005-Cus dated 08.04.2005, <u>read together with paragraphs 3.7.1 and 3.7.6 of the FTP and paragraph 3.2.5 of the Handbook of Procedures notified on 31.08.2004</u>, the goods sought to be imported by availing the benefit of the TPS were required to bear a nexus or relation, as inputs, capital goods or other equipment useful for the processing, manufacture or packing of the exported goods, with the goods actually exported by the claimant during the year 2004-05. The relevant provisions of the

Paragraphs 3.7.1 and 3.7.6 of the Foreign Trade Policy (FTP) (2004-09), is reproduced below for ready reference:

> *"**3.7 TARGET PLUS SCHEME***
>
> ***Objective 3.7.1***
>
> *The objective of the scheme is to accelerate growth in exports by rewarding Star Export Houses who have achieved a quantum growth in exports. High performing Star Export Houses shall be entitled for a duty credit based on incremental exports, substantially higher than the general annual export target fixed (Since the target fixed for 2005-06 is 17%, the lower limit of performancefor qualifying for rewards is pegged at 20% for the current year).*
>
> ***Imports allowed 3.7.6***
>
> *The Duty Credit may be used for import of any inputs, capital goods including spares, office equipment, professional equipment and office furniture provided the same is freely importable under ITC (HS) Classification of Export and Import items, for their own use or that of supporting manufacturers as declared in 'Aayaat Niryaat Form'."*

12. Applying the above test to the facts of the case, it was submitted by the learned Senior Standing Counsel for C.B.I.C. that GL had imported continuous cast copper rods without payment of customs duty against the duty credit certificates issued under the TPS, notwithstanding that the said imports bore no broad nexus, as contemplated under paragraphs 3.7.1 and 3.7.6 of the FTP and paragraph 3.2.5 of the Handbook of Procedures, with the goods actually exported by GL, namely iron ore fines, bentonite and the like, and that GL had thereby irregularly availed itself of the <u>benefit of Notification No.32/2005-Cus dated 08.04.2005.</u> It was further contended that continuous cast copper rods being goods with a specific end-use, namely wire drawing, could not be regarded as a specified input for any of the goods actually exported by GL for the purpose of obtaining duty credit certificates under the TPS, and in these circumstances, no nexus whatsoever existed between the goods imported and the goods exported by GL. The relevant provisions of the Notification No.32/2005-Cus, dated 08.04.2005, are reproduced below for ready reference, viz.,

<u>Notification NO. 32/2005-CUS</u>

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, ***hereby exempts goods when imported into India against a duty credit certificate issued under the <u>Target Plus Scheme</u>*** *in accordance with paragraph 3.7 of the Foreign Trade Policy.*

(1) that the benefit under this notification shall be available only in

> *respect of duty credit certificate issued under the said Scheme to a Star Export House on the basis of incremental growth in FOB value of exports made during the financial year 2004-05 over the exports made during the financial year 2003-04;*
>
> *(2) that the said certificate has been issued to a Star Export House by the licensing authority and it is produced before the proper officer of customs at the time of clearance for debit of the duties leviable on the goods, but for this exemption:*
>
> ***Provided** that exemption from duty shall not be admissible if there is insufficient credit in the said certificate for debiting the duties leviable on the goods, but for this exemption;"*

13. It was also argued by the learned Senior Standing Counsel for C.B.I.C. that although the expression 'broad nexus' did not find place in the FTP itself but appeared only in the Handbook of Procedures and the said expression could not be dissociated from the words 'input and use' occurring in the FTP, the intended import necessarily having to bear a relationship with the export product. That the condition of broad nexus under paragraph 3.2.5(II) of the Handbook of Procedures was merely clarificatory of the expressions 'Inputs and use' employed in the FTP, and that any interpretation dissociating 'inputs from use' in the exported goods would run contrary to the provisions of the FTP itself, there being required, in substance, a one-to-one nexus between the export product and the imported inputs and that GL had failed to declare the requisite information regarding the goods exported by it at the time of importation, so as to enable verification of compliance with the conditions of the Customs Notification, thereby keeping the Customs Officers unaware of the products actually exported by it during the year 2004-05 through other ports. That GL, despite being aware that it was ineligible to import copper rods under the TPS, the said goods bearing no connection, whether as input, capital good, consumable or office equipment, with the processing, packaging or manufacture of the goods actually exported by it had nonetheless imported continuous cast copper rods through ICD Hyderabad, a port through which it had at no material point exported any of its export goods with the intention of evading payment of applicable customs duty and that it was this conduct which formed the basis of the enquiry, investigation, and issuance of the show-cause notice, culminating in the demand of duty through the adjudication order.

14. *Per contra*, the learned counsel for the respondent submitted that the categorical finding of the CESTAT being the last fact-finding authority, that there was no wilful suppression or misstatement on the part of the respondent. It was a finding of fact based on evidence, and did not warrant interference in appeal. It was submitted that the shipping bills filed by the respondent in respect of its exports, which had grown incrementally between 2003-04 and 2004-05, together with the relevant accompanying documents, had been duly factored into by the DGFT while granting duty credit certificates under the TPS and that these shipping bills were themselves available with the Customs Department and could not be disputed. This being so, the grant of TPS certificates by the DGFT certificates that were never revoked / cancelled / amended could not be faulted, a finding also recorded by the Adjudicating Authority itself. It was contended that the proviso to Section 28(1) of the Act, could be invoked only where wilful suppression was made before the Customs authorities in the course of assessment under Section 46 of the Customs Act. That any alleged suppression before any other authority, including the DGFT, could not be elevated to 'wilful suppression or mis-statement' for the purpose of a demand under Section 28 of the Act and its penal provisions.

15. It was further submitted by the learned counsel for the respondent that at the relevant time, the respondent entertained a *bona fide* belief that the benefit of the Notification was available to it having regard to paragraphs 3.2.5 and 3.7.5 of the EXIM Policy which required only a 'broad nexus' between the goods imported and the goods exported. That it was only by a subsequent Circular No.21/2007, dated 08.05.2007, and Public Notice No.9/2007 dated 21.06.2007, that the scope of 'broad nexus' came to be narrowed by the DGFT. That the said Circular had itself been later struck down by the Hon'ble High Court of Bombay in the case of **Essel Mining Industries vs. UOI**[1] following the decision of the Hon'ble High Court of Delhi in the case of **Indian Exporters' Grievance Forum vs. UOI**[2].

16. Since the GL's imports predated the said Public Notice and Circular, it was submitted that the GL reasonably believed that the goods imported under the (unrevoked, uncancelled, unmodified) TPS certificates were validly importable under the Notification, a belief reinforced by the fact that the duty credit certificates had been accepted

[1] 2011 (270) ELT 308 (Bom.),
[2] 2010 SCC OnLine Del 2605

at the time of assessment and the copper rods cleared extending the benefit of the Notification. On this basis, it was contended that the extended period of limitation under the proviso to Section 28(1) of the Customs Act could not be invoked, and that the demand of differential duty, interest, and penalty under Section 114A could not survive, and had rightly been vacated by the CESTAT. Paragraph No.27 of the **Indian Exporters Grievance Forum,** (supra) is reproduced hereunder for ready reference, viz.,

> ***"27.*** *Given the objective of providing an incentive to exporters, para 3.7.6 of the FTP can reasonably be interpreted to require an exporter to show that the goods imported should have a "broad nexus" with reference to any product group of the exported goods within the overall value of the entitlement certificate. The word "nexus" obviously refers to a larger group of similar goods and not the very exported goods itself. Consequently the impugned circulars and notice that purported to "clarify" the term "broad nexus i.e. the impugned circular dated 8-5-2007, the Public Notice dated 21-6-2007 and the further circular dated 19-12-2007, travelled beyond what was envisaged by para 3.7.6 of the FTP and severely restricted the benefit thereunder. It was a significant change that could be brought about only through a notification under Section 5 FTDR Act. The said circulars and public notice were, therefore, ultra vires para 3.7.6 of the FTP. Further they sought to retrospectively take away a benefit that had accrued to the exporters which cannot but be viewed as unreasonable in the context. The*

impugned circular dated 8-5-2007, the Public Notice dated 21-6-2007, the further circular dated 19-12-2007 and the amended para 3.2.5 of the HBP are accordingly quashed."

17. It was further submitted by the learned counsel for the respondent that the duty credit certificates issued by the DGFT had never been called into question, there being no material to show that the licensing authority had taken any step under the Foreign Trade (Development and Regulation) Act, 1992 to cancel, revoke or modify the same; that any importation made on the strength of such certificates had to be treated as valid. That the Customs authorities upon noticing some infraction at their end, were obliged to refer the matter to the DGFT and await its response, rather than act unilaterally and proceed against the assessee for recovery of duty in the absence of any adverse action by the licensing authority. It was further submitted that the ambiguity surrounding the <u>expression 'broad nexus' under Notification No.32/2005-Cus</u> and the EXIM Policy, unrebutted even by the statements recorded under Section 108 of the Customs Act, reinforced the *bona fides* of the GL's imports, and that, in any event, even applying the normal period under Section 28(1) as it then stood, the demand ought to have been confined to six months from the dates of the Bills of Entry; the Show Cause Notice, having been issued only on 13.11.2007, was thus barred by limitation even on this alternative computation, and the demand raised under the order dated 19.02.2009 was rightly set aside by the CESTAT on this ground as well.

18. Having heard the contentions put forth on either side and on perusal of records, including the impugned order of the CESTAT, the questions of law that fall for consideration in this Appeal are:

(i) Whether for claiming the benefit of exemption under Notification No.32/2005-Cus dated 08.04.2005 issued under the TPS, it was necessary for the GL to establish a strict, product-to-product nexus between the goods imported and the very goods exported by them, or whether establishment of a 'broad nexus' as contemplated under paragraph 3.2.5 of the Handbook of Procedures (Volume-I), 2004-09, with reference to the product group of the exported goods, was sufficient?

(ii) Whether the CESTAT was justified in setting aside the demand of duty, and the consequential penalties under Sections 114A and 112 of the Customs Act on the ground that the extended period of limitation under the proviso to Section 28(1) of the Customs Act was not invocable against the GL?

19. Taking up the first question, we find that the very premise on which learned Senior Standing Counsel for C.B.I.C. sought to build the case for a rigid, one-to-one nexus between the goods imported and the specific goods exported, is one that has already been examined and rejected by the CESTAT after due consideration of the interpretation placed upon the policy provisions by the Hon'ble High Courts of Delhi and Bombay. The CESTAT has correctly noted that the Policy, as judicially interpreted, did not require an assessee to establish that the goods imported were usable in the manufacture of the very goods exported by it for obtaining the TPS certificate. It was sufficient for the assessee to demonstrate that the imported goods could be used as input in the manufacture of any goods falling within the same, defined product group such as 'Engineering Products or Chemical & Allied Products' as specified by the licensing authority in the Conditions Sheet attached to the certificate. We find no infirmity in this construction, which harmonises the <u>expression 'broad nexus' occurring in paragraph 3.2.5 of the Handbook of Procedures with the words 'input and use'</u> employed in the FTP itself, while at the same time not permitting the expression to be stretched so as to render the concept of nexus wholly illusory.

20. It is significant that even while adopting this liberal construction in favour of the assessees, the CESTAT did not extend a blanket benefit to GL in respect of the entirety of its claim. The CESTAT specifically examined whether the broad nexus, so understood, stood established between the c.c. copper rods imported by GL and each of the product groups under which GL had exported goods, and on facts held that while a broad nexus existed between the imported copper rods and GL's exports of iron ore fines (falling under the Engineering Products group), no such nexus was shown to exist with GL's other exports, namely bentonite and similar goods (falling under the Chemicals and Allied Products group). The CESTAT accordingly held, in terms adverse to GL, that the argument advanced on GL's behalf that establishment of nexus with any one product group sufficed to justify duty-free import to the extent of the entire value of the TPS certificate, regardless of the certificate having been issued with reference to exports spanning multiple product groups was a specious argument liable to be rejected, and consequently held that GL could not resist the demand of duty on merits. However, as regards M/s. Sree Enterprises, the CESTAT found, and it is not disputed before us that both the goods exported (articles of mild steel and alloy steel) and the goods imported (c.c. copper rods) fell within the very same product group namely ‘Engineering Products’ and that the requisite broad nexus therefore stood duly established.

21. We are, therefore, unable to accept the appellant’s contention that the CESTAT erred in holding that a strict nexus between the imported goods and each individual item exported was unnecessary. That finding, being a benefit extended to the GL in interpretation of an admittedly ambiguous Policy, and being consistent with the view taken by the Hon’ble High Courts of Delhi and Bombay, calls for no interference; and in any event, the same finding operated adversely to GL on the facts found by the CESTAT, thereby demonstrating that the CESTATapplied the test even-handedly rather than in a manner designed to confer an unmerited windfall upon the GL.

22. This brings us to the more substantial question, namely whether the CESTAT was right in setting aside the demand of duty and the penalties in their entirety on the ground that the extended period of limitation under the proviso to Section 28(1) of the Customs Act was not available to the Department.

23. We find considerable force in the reasoning of the CESTAT on this score. The CESTAT has correctly observed that the TPS was, in comparison to other export promotion schemes, short-lived, and that the clarificatory Circulars and Public Notices issued by the DGFT during its brief currency failed to dispel the inherent ambiguity in the expression ‘broad nexus’ as employed in paragraph 3.2.5 of the Handbook of Procedures, an ambiguity compounded by paragraph 3.7.6 of the FTP, which permitted duty credit to be used for import of “any inputs, capital goods, provided the same is freely importable, for their own use” without further clarifying the extent of nexus required. It was precisely this ambiguity that led the Hon’ble High Courts of Delhi and Bombay to strike down the restrictive interpretation of “broad nexus” sought to be placed by the Customs authorities.

24. Where the Policy provisions themselves were demonstrably capable of more than one interpretation, and where the interpretation ultimately upheld by two Hon’ble High Courts was, in substance, the interpretation on which the GL had proceeded and claimed the benefit of the Notification, it cannot be said that the GL acted with the intent to evade payment of duty. such intent being an essential ingredient for invoking the extended period of limitation under the proviso to Section 28(1) of the Customs Act, as also for imposition of penalty under Section 114A. The appellant’s contention that GL had established a unit for the purpose of utilising the TPS certificates and had supplied imported copper to other regular importers at a discounted price, even if true, does not by itself establish fraud, collusion, wilful mis-statement or suppression of facts within the meaning of the proviso to Section 28(1). It is equally and perhaps more plausibly explicable as conduct consistent with a *bona fide*, if ultimately erroneous or only partially sustainable, understanding of an admittedly ambiguous Policy. We find merit in the CESTAT's further observation that the duty credit certificates used by the assessees were not shown to have been obtained by fraud or other clandestine means, were never revoked, cancelled or amended by the licensing authority i.e. DGFT at the instance of the Customs authorities or otherwise, and must be presumed to have been issued after due verification of the relevant Shipping Bills and export documents that, being part of the Customs record themselves, could not be said to have been 'suppressed' by the GL merely because copies were not separately furnished at the time of import.

25. For the aforesaid reasons, we find no infirmity, legal or otherwise, in the common order passed by the CESTAT warranting interference by this Court in exercise of its appellate jurisdiction under Section 130 of the Customs Act. The questions of law framed are accordingly answered against the appellant-Department and in favour of the GL.

26. The Central Excise Appeals accordingly stand dismissed and the impugned order passed by the CESTAT allowing the appeals of GL and M/s. Sree Enterprises are hereby upheld.

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

P.SAM KOSHY, J

NARSING RAO NANDIKONDA, J

Date: 11.08.2026
Ndr / GSD