CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT No. III

Customs Appeal No. 40319 of 2015

(Arising out of Order-in-Original No. 33006/2014 dated 28.11.2014 passed by Commissioner of Customs, No. 60, Custom House, Rajaji Salai, Chennai – 600 001)

M/s. M.K.P. Fashions **...Appellant**
Proprietor Promod Kumar Kishorepuria,
No. 8, Old No. 5, 1st Main,
Chakravarthy Iyengar Layout,
Seshadripuram,
Bangalore – 560 020.

Versus

Commissioner of Customs **...Respondent**
Chennai II Commissionerate,
No. 60, Custom House,
Rajaji Salai,
Chennai – 600 001.

APPEARANCE:

For the Appellant : Mr. Sudhir Mehta, Senior Advocate
For the Respondent : Mr. Sanjay Kakkar, Authorised Representative

CORAM:
HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER No. 40052 / 2026

DATE OF HEARING : 04.12.2025
DATE OF DECISION : 09.01.2026

Per Mr. VASA SESHAGIRI RAO

The present appeal has been filed by the Appellant, arises out of Order-in-Original No.33006/2014 dated 28.11.2014 passed by the Commissioner of Customs (Import), Chennai (hereinafter referred to as the 'impugned order'), pursuant to Show Cause Notice dated 30.07.2013

issued by the Directorate of Revenue Intelligence under Section 28(4) read with Section 124 of the Customs Act, 1962.

2.1 M/s. MKP Fashions, Bengaluru, Importer-Exporter Code (IEC) 0799002011, (hereinafter referred to as "the Appellant"), is engaged in the manufacture and export of silk made-ups. The Appellant imported silk fabric during the period 2012–2013, availing duty exemption under Notification No. 96/2009-Cus dated 11.09.2009, against Advance Authorisations issued by the Director General of Foreign Trade. The said notification permitted duty-free import subject to fulfilment of post-import export obligation, failing which the importer was required to pay the applicable customs duty along with interest in terms of the bond executed at the time of import.

2.2 Due to adverse overseas market conditions, the Appellant could not fulfil the export obligation within the stipulated period. The Appellant voluntarily informed the Department vide letter dated 04.01.2013 of its inability to discharge the export obligation and requested acceptance of duty and interest payable under the bonds and re-credit of the Advance Authorizations.

2.3 Thereafter, the Appellant voluntarily discharged customs duty and interest aggregating to approximately ₹1.75 crores, prior to issuance of the Show Cause Notice. The payments were duly acknowledged by the Department and are also reflected in the Show Cause Notice itself.

2.4 Notwithstanding the above voluntary compliance, the DRI issued the impugned Show Cause Notice alleging misuse of the Advance Authorization scheme and diversion of duty-free imported goods into the domestic market.

2.5 The impugned Order-in-Original confirmed a demand of ₹4,14,99,046/- with interest by denying exemption under Notification No. 96/2009-Cus, ordered confiscation of imported silk fabrics with redemption fine of ₹8,00,000/-, imposed penalty of ₹4,14,99,046/- on the Appellant under Section 114A and ₹1,50,00,000/- on the Proprietor under Section 114AA, and appropriated ₹1,75,00,000/- paid during investigation. Being aggrieved by the said Order-in-Original, the Appellant filed the present appeal before this Tribunal.

2.6 During the pendency of the appeal, the matter was dismissed on 26.11.2024 for non-prosecution by this

Tribunal due to non-appearance of the Appellant on any of the dates of hearing granted.

2.7 Subsequently, the Appellant filed an application for restoration of the appeal, explaining the reasons for non-appearance. This Tribunal, being satisfied with the explanation offered and in the interest of justice, restored the appeal vide Miscellaneous Order, dated 06.08.2025 subject to payment of costs of ₹10,000/-.

2.8 The Appellant duly complied with the said condition and the appeal was restored to its original number and taken up for hearing on merits.

2.9 The appeal is now being disposed of after hearing both sides on merits.

3. The Ld. Senior Advocate Mr. Sudhir Mehta, appeared on behalf of the Appellant and advanced detailed submissions in support of the Appeal and the Ld. Authorized Representative Mr. Sanjay Kakkar, appeared for the Revenue and defended the Impugned Order.

4. The Ld. Senior Advocate Mr. Sudhir Mehta for the Appellant made the following submissions which are summarized as below: -

4.1 Silk fabric was freely importable under the Foreign Trade Policy during 2012–2013.

4.2 Notification No. 96/2009-Cus contained only post-import conditions, and in the event of non-fulfilment of export obligation, the importer was required only to pay duty and interest under the bond.

4.3 There were no pre-import conditions and no misdeclaration or suppression at the time of clearance.

4.4 It was submitted that bonds were duly executed by the Appellant and accepted by Customs, pursuant to which duty exemption was granted by the proper officer; upon inability to export, duty and interest were voluntarily paid prior to the issuance of the Show Cause Notice.

4.5 It was argued that once duty and interest were paid prior to SCN, Section 28(2) stood attracted and proceedings were required to be concluded and invocation of Section 28(4) is legally impermissible.

4.6 On CVD, it was submitted that Additional Duty was exempt under Notification No. 30/2004-CE dated 09.07.2004, as excise duty on silk fabric was nil. Reliance was placed on: -

i. *SRF Ltd. v. CC – 2015 (318) ELT 607 (SC)*
ii. *CC Chennai Vs Enterprise International Ltd Vs Sunstar International and others 2015(8) TMI 191-CESTAT Chennai and the 2017(4) TMI 80 -SC Order* wherein the Civil Appeal filed by the Department was dismissed.

5.1 *Per Contra*, the Ld. Authorized Representative supported the findings in the impugned order and further submitted that: -

i. Advance Authorizations were procured by misdeclaration of job workers;
ii. Imported goods were diverted to the local market;
iii. Statements under Section 108 establish wilful contravention.

5.2 It was argued that voluntary payment after detection does not bar proceedings under Section 28(4). The payment was made after detection by the DRI and was therefore not voluntary. It was contended that suppression existed, as the Appellant never intended to fulfil the export obligation.

5.3 The respondent relied upon several case Laws, which are discussed separately in later part of the order.

5.4 Finally, it was contended that the appeal is devoid of merit and, accordingly, prayed that the same be dismissed and the impugned Order-in-Original be upheld in toto.

6. We have heard the rival submissions of both sides. We have also perused the appeal records, SCN, statements recorded under Section 108 of CA 1962, written submissions placed on record, as well as the judicial precedents cited.

7. Upon such consideration, the following issues arise for our determination, namely, as to: -

i. Whether CVD is leviable on imported silk fabric during 2012–2013?
ii. Whether Section 28(4) was rightly invoked, or Section 28(2) applies?
iii. Whether confiscation and penalties are sustainable?

We take up the issues in seriatim: -

ISSUE No. (i) Whether Countervailing Duty (CVD) was leviable on imported silk fabric during 2012–2013: -

8.1 The Appellant submitted that Excise duty on silk fabric was exempt under Notification No. 30/2004-CE and Additional Duty under Section 3 of the Customs Tariff Act is only to counterbalance excise duty and that where excise duty is nil or exempt, CVD is also nil and placed reliance was placed on the case of SRF Ltd. v. CC 2015 (318) ELT 607 (SC) and CC Chennai Vs Enterprise International Ltd CESTAT Chennai.

8.2 The Revenue contended that Notification No. 30/2004-CE contains conditions not applicable to imports. Later notifications (34/2015 & 37/2015) restricted the benefit.

8.3 We have considered the submissions and find that the Hon'ble Supreme Court in *SRF Ltd. v. Commissioner of Customs, 2015 (318) ELT 607 (SC)* authoritatively held that conditions relating to non-availment of CENVAT credit are inapplicable to imports, as imported goods cannot avail CENVAT credit in the first place. During the period 2012–2013, excise duty on silk yarn and silk fabrics was fully exempt under Notification No. 30/2004-CE dated 09.07.2004. By operation of Section 3 of the Customs Tariff Act read with the said notification, countervailing duty on imported silk fabric was therefore not leviable. Notification

No. 96/2009-Cus itself does not independently provide for levy or exemption of CVD.

8.4 Subsequent amendments to excise notifications in 2015 cannot be applied retrospectively to imports made during 2012–2013. The adjudicating authority has failed to follow the binding precedent of the Hon'ble Supreme Court in SRF Ltd. Accordingly, the demand of countervailing duty confirmed in the impugned order is set aside in toto, and the surviving demand, if any, is confined only to Basic Customs Duty along with applicable interest in terms of Notification No. 96/2009-Cus and the bonds executed by the Appellant.

8.5 We further note that the legal position laid down by the Hon'ble Supreme Court in *SRF Ltd. v. Commissioner of Customs, 2015 (318) E.L.T. 607 (S.C.)* has attained finality. The Review Petitions filed by the Department against the said judgment were dismissed by the Hon'ble Supreme Court vide order reported at *Commissioner of Customs v. SRF Ltd. – 2016 (340) E.L.T. A202 (S.C.),* wherein the Court categorically observed as under:

> *"We find no error, much less apparent error, in the order impugned. The review petitions are, accordingly, dismissed."*

The dismissal of the review petitions removes any residual doubt as to the correctness or binding nature of the ratio laid

down in SRF Ltd. The Hon'ble Supreme Court had unequivocally held that for the purpose of levy of additional duty of customs under Section 3 of the Customs Tariff Act, the imported goods are to be imagined as if manufactured in India, and the question to be examined is whether excise duty would be leviable on such goods if so manufactured.

8.6 The Court further held that where excise duty on a like article manufactured in India is exempt subject to a condition of non-availment of CENVAT credit, such condition is inherently inapplicable to imports, as imported goods cannot, by their very nature, avail CENVAT credit. Consequently, where excise duty is exempt, the corresponding countervailing duty on imports must also be Nil.

8.7 Applying the above binding principle, the Hon'ble Supreme Court in SRF Ltd. held that nylon filament yarn, which was exempt from excise duty under Notification No. 6/2002-CE subject to non-availment of credit, would likewise not attract countervailing duty when imported. The same principle squarely applies to silk yarn and silk fabrics, which were fully exempt from excise duty during the relevant period under Notification No. 30/2004-CE.

In view of the dismissal of the review petitions, the ratio in SRF Ltd. stands conclusively affirmed and continues to bind all authorities under Article 141 of the Constitution. Accordingly, the contention of the Revenue that the condition of non-availment of CENVAT credit disentitles imported silk fabrics from exemption from countervailing duty is wholly untenable and stands rejected.

8.8 We also find that the issue of levy of countervailing duty on silk yarn and silk fabrics during the relevant period is no longer res integra in view of the decision of the Chennai Bench of the Tribunal in *CCE/CC, Chennai v. Enterprise International Ltd., Sunstar International & Others – 2015 (8) TMI 191 (CESTAT, Chennai).* In the said decision, the Tribunal examined the very same Notification No. 30/2004-CE and categorically held that where excise duty on silk yarn and silk fabrics is exempt, additional duty of customs under Section 3 of the Customs Tariff Act is not leviable, as the condition of non-availment of CENVAT credit is inherently inapplicable to imported goods.

8.9 The Tribunal in Enterprise International Ltd. expressly relied upon the ratio subsequently affirmed by the Hon’ble Supreme Court in SRF Ltd. v. Commissioner of

Customs, holding that the levy of countervailing duty is only to counterbalance excise duty actually leviable on like goods manufactured in India, and where such excise duty is nil, the corresponding additional duty must also be nil.

8.10 We further note that the Civil Appeals filed by the Department against the said decision of the Chennai Bench were dismissed by the Hon'ble Supreme Court vide order reported at 2017 (4) TMI 80 (SC). Though the dismissal was by a non-speaking order, it nonetheless affirms the correctness of the legal position adopted by the Tribunal and lends finality to the ratio that countervailing duty is not leviable on silk yarn and silk fabrics during the period when excise duty was exempt under Notification No. 30/2004-CE.

8.11 Significantly, the period involved in Enterprise International Ltd. and connected cases overlaps with the period under consideration in the present appeal, namely 2012–2013. The statutory framework, the excise notification governing silk fabrics, and the levy provision under Section 3 of the Customs Tariff Act are identical. The said decision therefore squarely applies to the facts of the present case.

8.12 We find that none of the later decisions relied upon by the Revenue either notice or rule the above decisions. In particular, none of them consider the binding effect of the Supreme Court's dismissal of the Department's appeals arising from the Enterprise International line of cases. In the absence of any contrary judgment of the Hon'ble Supreme Court, the ratio laid down in Enterprise International Ltd., as affirmed by the Hon'ble Supreme Court, continues to hold the field and is binding on this Tribunal.

8.13 Accordingly, following the binding precedents of the Hon'ble Supreme Court in SRF Ltd., as reinforced by the Chennai Bench decision in Enterprise International Ltd. / Sunstar International and the subsequent dismissal of the Department's appeals by the Hon'ble Supreme Court, we hold that countervailing duty was not leviable on the imported silk fabrics during the period 2012–2013.

We therefore hold that CVD was not leviable on the subject imports.

ISSUE No. (ii) Whether invocation of Section 28(4) (extended period) or Section 28(2) of Customs Act is applicable in this case.

9.1 The Appellant submitted that Notification No. 96/2009-Cus dated 11.09.2009 prescribed only post-import conditions relating to fulfilment of export obligation and specifically contemplated recovery of duty with interest in case of default. There were no pre-import conditions, mis-declaration or suppression at the time of clearance. Due to adverse market conditions, the Appellant was unable to fulfil the export obligation and voluntarily informed the Department *vide* letter dated 04.01.2013. Thereafter, the Appellant discharged customs duty and applicable interest aggregating to about ₹1.75 crores prior to issuance of the show cause notice dated 30.07.2013. It was contended that once duty and interest are paid before issuance of notice, Section 28(2) of the Customs Act, 1962 is squarely attracted. In such circumstances, proceedings stand statutorily concluded. Invocation of the extended period under Section 28(4) was therefore legally impermissible.

9.2 The Revenue contended that the payments were made only after detection by DRI and hence cannot be treated as voluntary. It was argued that the Appellant never intended to fulfil the export obligation and had diverted the goods into the domestic market, thereby justifying invocation of the extended period under Section 28(4).It was further submitted that mere payment of duty does not bar

proceedings when suppression and intent to evade duty are established.

9.3 We have carefully considered the rival submissions on this issue. It is undisputed that the imports were made against valid Advance Authorisations, exemption was granted by the proper officer at the time of import, and Notification No. 96/2009-Cus itself envisages payment of duty and interest upon failure to fulfil export obligation. The failure to fulfil export obligation is admittedly a post-import event and, by itself, does not constitute suppression or wilful misstatement at the time of import. Section 28(2) of the Customs Act, 1962, being a beneficial provision intended to encourage voluntary compliance, mandates statutory conclusion of proceedings once duty and interest are paid prior to issuance of show cause notice. In the present case, there is no evidence of suppression or mis-declaration at the time of import, and invocation of the extended period under Section 28(4) is therefore legally impermissible.

9.4 We further note that the Appellant, by its letter dated 04.01.2013, had voluntarily intimated the Customs authorities of its inability to fulfil the export obligation and unequivocally expressed its intention to discharge the

applicable duty along with interest. This letter, forming part of the Appellant's reply to the show cause notice, preceded the DRI search conducted on 05.02.2013 and remained wholly uncontroverted, as neither the show cause notice nor the impugned order has adverted to or rebutted the same. The subsequent search cannot retrospectively convert such voluntary disclosure into a case of "post-detection" payment, and the non-consideration of this material document renders the impugned order legally infirm.

9.5 We also find that the Appellant discharged an aggregate amount of ₹1,75,00,000/- towards Basic Customs Duty and applicable interest by way of multiple challans between 07.02.2013 and 15.07.2013, all prior to issuance of the show cause notice dated 30.07.2013, a fact acknowledged in the impugned order itself. Having held that countervailing duty was not leviable on silk fabric during the relevant period, the amounts paid necessarily relate to Basic Customs Duty with interest. Once the duty liability stood fully discharged prior to issuance of notice, the very foundation of invocation of Section 28(4) and the consequential penal proceedings ceases to exist. Accordingly, we hold that Section 28(4) was wrongly invoked and the proceedings stood concluded by operation of Section 28(2) of the Customs Act, 1962.

10.1 The Revenue has placed reliance on the following decisions in support of the impugned order:

i. *Commissioner of Customs v. Prashray Overseas Pvt. Ltd., 2016 (5) TMI 1106 (Madras High Court);*
ii. *M/s Goyal Impex v. Commissioner of Customs, 2024 (12) TMI 1035 (CESTAT, Chennai);*
iii. *Prashray Overseas Pvt. Ltd. v. Commissioner of Customs, Chennai, 2017 (1) TMI 478 (Supreme Court);*
iv. *Huawei Telecommunications India Pvt. Ltd. v. Principal Commissioner of Customs, Air Cargo, Chennai, 2024 (11) TMI 142 (Madras High Court); and*
v. *HLG Trading; Aditya International Ltd.; Microweb Enterprises Pvt. Ltd. v. Commissioner of Customs, 2023 (10) TMI 1469 (CESTAT, Chennai).*

10.2 We have carefully examined the above decisions and find that none of the said judgments apply to the facts and statutory context of the present case, for the reasons recorded hereinafter.

10.3 None of the above decisions relied upon by the Revenue involve imports during the period 2012–2013; a case of voluntary payment of duty and interest prior to issuance of show cause notice; application and effect of Section 28(2) of the Customs Act, 1962.

10.4 Further, none of the cited judgments overrule, dilute or depart from the law laid down by the Hon’ble Supreme Court in SRF Ltd. nor do they detract from the statutory mandate of Section 28(2). The said decisions are therefore clearly distinguishable on facts, period and

statutory context, and do not advance the case of the Revenue.

10.5 On the contrary, the binding decision in the case of Enterprise International Ltd. (CESTAT, Chennai) and affirmed by the Hon'ble Supreme Court has not been displaced by any subsequent judgment relied upon by the Revenue.

10.6 Further None of the decisions relied upon by the Revenue dilute the finality attained by the judgment of the Hon'ble Supreme Court in SRF Ltd., as reaffirmed upon dismissal of the review petitions.

ISSUE No. (iv): Whether confiscation and penalties under Sections 111, 112, 114A and 114AA of the Customs Act, 1962 are sustainable

11.1 In the present case, we have already held that the proceedings stood statutorily concluded under Section 28(2) of the Customs Act, 1962 upon voluntary payment of duty and interest prior to issuance of the show cause notice, and that invocation of Section 28(4) is legally unsustainable. Once the substantive demand fails by operation of law, there survives no enforceable determination of duty by reason of fraud or suppression. Penalty under Section 114A, being

inextricably linked to valid determination under Section 28(4), is therefore barred. Further, the Appellant's prior disclosure vide letter dated 04.01.2013, coupled with discharge of duty and interest before issuance of notice, clearly negatives the existence of *mens rea* required for imposition of penalties.

11.2 Penalty under Section 114AA, which requires strict proof of intentional use of false or fabricated documents, is equally unsustainable, as no such document or deliberate falsification has been identified in the impugned order. Confiscation under Sections 111(d), 111(m) and 111(o), and penalty under Section 112, presuppose a subsisting contravention at the time of import, which is absent in a case of post-import failure expressly contemplated under Notification No. 96/2009-Cus. Accordingly, confiscation, redemption fine and all penalties imposed under Sections 112, 114A and 114AA are set aside in entirety, and the surviving issue, if any, is confined only to verification of the arithmetical correctness of Basic Customs Duty along with applicable interest already paid.

12.1 On a comprehensive consideration of the facts on record, the statutory framework governing Advance Authorizations, and the provisions of Sections 28(2) and

28(4) of the Customs Act, 1962, we hold that the impugned proceedings are unsustainable both in law and on facts.

12.2 The present case pertains to a post-import failure to fulfil export obligation under Notification No. 96/2009-Cus, a contingency expressly contemplated by the notification itself. The Appellant voluntarily discharged the applicable customs duty along with interest prior to issuance of the Show Cause Notice. In such circumstances, proceedings stood statutorily concluded by operation of Section 28(2) of the Act, rendering invocation of the extended period under Section 28(4) legally impermissible particularly in view of the Appellant's prior written intimation dated 04.01.2013, which preceded the DRI search and remained unrebutted.

12.3 We further hold that countervailing duty was not leviable on imported silk fabric during the period 2012–2013 in view of the binding law laid down by the Hon'ble Supreme Court in SRF Ltd., which continues to hold the field.

12.4 Once the foundational demand itself fails, the consequential confiscation, redemption fine and penalties imposed under the Customs Act cannot be sustained. The case laws relied upon by the Revenue, being distinguishable

on facts, period and statutory context, do not advance its case.

13. Insofar as the demand of Basic Customs Duty along with applicable interest is concerned, we note that the Appellant has already paid an amount aggregating to ₹1,75,00,000/- prior to issuance of the show cause notice, which was ordered to be appropriated in the impugned order. Having held that countervailing duty is not leviable and that confiscation and penalties are unsustainable, the surviving issue is confined only to verification of the arithmetical correctness of the Basic Customs Duty and interest actually payable.

14. Accordingly, the impugned order is set aside in part, and the matter is remanded to the adjudicating authority strictly for the limited purpose of re-computing and verifying whether the Basic Customs Duty along with applicable interest has been correctly discharged by the Appellant in terms of Notification No. 96/2009-Cus and the bonds executed, without invoking Section 28(4).

15. Upon such verification: -

i. if any shortfall is found, the same shall be recovered from the Appellant in accordance with the law; and

ii. if any excess amount is found to have been paid, the same shall be refunded to the Appellant, along with consequential relief, in accordance with law.

16. It is clarified that no fresh adjudication on merits shall be undertaken, and the scope of remand shall remain strictly confined to the aforesaid arithmetical verification alone.

17. The appeal is disposed of on the above terms.

(Order pronounced in open court on 09.01.2026)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

MK