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

REGIONAL BENCH-COURT NO. 3

Custom Appeal No. 10453 of 2024 - DB

(Arising out of Order in Original AHM-CUSTM-000-PR-COMMR-10-2024-25 dated 18/04/2024 passed by Principal Commissioner of Customs, Ahmedabad)

SAKAR INDUSTRIES PVT. LTD. ....**Appellant**
H/10 New Mashavpura Market,
Shahibaug Road,
Ahmedabad, Gujarat-380004

VERSUS

Commissioner of CUSTOMS –
Customs Ahmedabad ......**Respondent**
1st Floor, Custom House, Opposite Old High Court,
Navrangpura,
Ahmedabad, Gujarat-380009

APPEARANCE:
Shri Manish Jain, Advocate, appeared for the Appellant
Shri P Ganesan, Superintendent (AR), appeared for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. C L MAHAR

Final Order No.12422/2024

DATE OF HEARING: 12.08.2024
DATE OF DECISION: 22.10.2024

RAMESH NAIR

The present appeal is filed by Appellant against the Order-In-Original No. AHM-CUSTM-000-PR.COMMR.-10-2024-25 dtd. 18.04.2024 passed by the Principal Commissioner of Customs, Ahmedabad.

1.1 Brief facts of the case are that the appellant had imported various input materials without payment of duty of customs under cover of a number of Advance Authorization issued by DGFT. While executing such imports, the importer availed benefit of exemption extended by Notification No. 18/2015-Cus dtd. 01.04.2015, as amended by the Customs Notification No. 79/2017-Cus dtd. 13.10.2017, and did not pay any Customs Duty in the form of Integrated Goods & Service Tax (IGST) levied under Sub-Section (7) of Section 3 of the Customs Tariff Act, 1975, on such input materials at the time of import. However, such exemption was extended subject to condition that the person willing to avail such benefit should comply with pre import condition and the finished goods should be subjected to physical exports only. It was found by revenue that appellant failed to comply with the pre-import condition as required under said Notification No. 79/2017-Cus dtd. 13.10.2017. Pre-import condition means that the goods should be imported prior to commencement of export to enable the exporter to manufacture finished goods, which could be subsequently exported under the same Advance Authorization for discharge of Export Obligation. Accordingly, investigation was initiated by the Officers of ICD, Customs Khodiyar against the Appellant and it appears that the importer have violated such pre-import condition, leading to non-payment of IGST in 122 Bills of Entry under cover of which imports were made involving IGST amount of Rs. 9,77,71,269/- against the 5 advance authorization. Out of these 122 Bills of Entry, 114 Bills of Entry pertain to ICD Khodiyar, Ahmedabad involving IGST of Rs. 8,84,29,279/-, while 05 Bills of Entry pertain to Sanand Port involving IGST of Rs. 53,17,805/-, 01 Bill of Entry pertains to Mundra Ports involving IGST of Rs. 8,08,975/- and 02 Bills of Entry pertain to Nhava Sheva Port involving IGST amounting to Rs. 32,15,209/-. In conclusion, it appears that Appellant have contravened the provisions of Section 17 and 46 of the Customs Act and also provisions of Customs Notification No. 18/2015-Cus dtd. 01.04.2015, as amended by the Customs Notification No. 79/2017-Cus. dtd. 13.10.2017 read with provisions of Para 4.03, 4.13 & 4.14 of the Foreign Trade Policy (2015-20), as amended by the DGFT Notification No. 33/2015-20 dtd. 13.10.2017 issued in terms of the provisions of para 4.13 of the Foreign Trade Policy (2015-20).

1.2 Accordingly a show cause notice dtd. 19.10.2022 was issued by the Commissioner of Customs, Ahmedabad to the Appellant proposing recovery of Customs duty in the form of IGST forgone in course of imports of the goods through the above ports along with interest, fine and penalty. The Ld. Commissioner has passed the impugned adjudication order in the above show cause notice, and while confirming the demand of duty of IGST with interest, he has also held that the goods imported by the appellant were liable for confiscation and that the appellant is liable for paying redemption fine in lieu of confiscation under Section 125 of Customs Act 1962, penalty under Section 114A of Customs Act 1962 and interest under Section 28AA of Customs Act 1962. Being aggrieved, appellant filed the present appeal before this tribunal.

2. Shri Manish Jain, Ld. Advocate appearing on behalf of the Appellant, while reiterating submission in the grounds of appeal, submits that Ld. Commissioner of Customs, Ahmedabad does not have the jurisdiction to issue the impugned show cause notice for the goods imported through Mundra Ports and NehavaSheva Ports. Therefore demand is liable to dropped on this ground alone.

2.1 He also submits that prior to GST, Advance Authorization (AA) scheme granted complete exemption from payment of BCD,CVD and SAD. However, if CENVAT facility was availed by exporter for these exports, the post –exports inputs were required to be used in dutiable goods only. The same cannot be used in exempted goods. With the introduction of GST, CVD was payable only on specified goods. On other goods, CVD was replaced by IGST. Initially, the Customs Notification was amended to grant exemption from payment of BCD only for goods governed by GST Scheme. The said Notification did not grant exemption from payment of IGST as well as compensation cess. Vide Notification No. 79/2017-Cus. dtd. 13.10.2017, the exemption Notification was amended to grant exemption from IGST as well as Compensation Cess subject to pre-import condition and physical exports. The taxable goods manufactured by the Appellant are "Aluminium Alloys Ingots" and "Aluminium Cast Granulates". It is most significant to note that there was no provision which insisted use of post –export inputs in dutiable goods only for GST products, since IGST exemption was subject of pre-import condition. This was a departure from condition (v) to (vi) which had continued similar stipulation for non-GST goods. The Central Government vide Notification No. 01/2019-Cus. dtd. 10.01.2019, amended the Advance Authorisation exemption notification to remove the Pre-import condition. However, it simultaneously inserted Condition No. (vi)(a) and (vi)(b) vide Notification No. 01/2019-Cus. dtd. 10.01.2019 in AA exemption notification. Condition (vi)(a) provided non-exempted –export inputs could be used only in supply of taxable goods and not exempted goods, if the exporter had availed ITC of inputs used in export items. Further, the exporter is required to submit a Bond to the Deputy Commissioner/ Assistant Commissioner at the port of clearances that the said inputs would be used by him or his supporting manufacturer only in supply of taxable goods and not nil rated or exempted goods. Further, the exporter is also required to submit a Certificate from CA that the imported inputs have been used in taxable supplies only. Further it is also provided that if the facility of ITC is not availed or if IGST/cess is paid at the time of import, then such condition would not apply. The removal of pre-import condition and the insertion of Bond/Certificate condition to use post-export inputs only in taxable supplies has to be seen as an integrated step, both intended to achieve same objective. The stipulation imposed in January 2019 is in fact a re-introduction of the old scheme of administering the law by Customs.

2.2 He further submits that in the present case, Appellant had complied with the conditions (vi)(a) & (vi)(b) to Notification No. 18/2015-Cus dtd. 01.04.2015 as amended for entire period from 13.10.2017 (i.e when pre-import was not introduced). Thus, it can be said that the objective of legislation is really achieved.

2.3 He also submits that the impugned order alleges that the appellant has failed to fulfil the 'pre-import condition' and therefore not eligible to avail the benefit of IGST exemption under Notification No. 18/2015-Cus dtd. 01.04.2015, as amended by Notification No. 79/2017-Cus dtd. 13.10.2017. With the introduction of GST, the said Notification No. 18/2015-Cus. was amended vide Notification No. 26/2017-Cus dtd. 29.06.2017 to grant exemption from payment of BCD only. It is pertinent to note that said Notification did not grant exemption from payment of IGST or Compensation Cess. It was only vide Notification No. 79/2017-Cus dtd. 13.10.2017 that exemption was extended to IGST and Compensation cess. Vide Notification No. 79/2017-Cus dtd. 13.10.2017, second proviso was inserted to condition (viii) AA Notification. Apart from, condition (xii) was also inserted. Therefore, exemption from payment of IGST was granted subject to fulfilment of twin condition, i.e export obligation must be fulfilled by physical exports only and such exemption is subjected to a 'Pre-import Condition'. Initially, the IGST exemption was available upto 31.03.2018. Thereafter, it was extended till 01.10.2018 vide Notification No. 35/2018-Cus dtd. 28.03.2018. The same has now been extended upto Notification No. 8/2019-Cus. dtd. 25.03.2019.

2.4 He also submits that apart from the Customs Notification, provisions pertaining to AAs are contained in Chapter 4 of the FTP and Handbook of Procedures 2015-20. The objective of duty exemption/remission schemes under Chapter 4, in terms of para 4.0 is to "enable duty free import of inputs for export production, including replenishment of inputs or duty remission." Further para 4.03 of FTP provides that AA is issued to allow duty free import of inputs, which are physically incorporated in the export products. The list of duties exempted is provided under para 4.14 of the FTP. Para 4.14 was amended vide Notification No. 33(RE-2015-2020) dtd. 13.10.2017, to state that exemption from payment of IGST on imports against AAs would be subject to 'pre-import condition'. Further para 4.13 of the FTP provides for pre-import condition in certain cases. Further the government removed the pre-import condition for granting exemption form IGST and Compensation Cess for materials imported against the AAs vide Notification No. 01/2019-Cus dtd. 10.01.2019. However, the Hon'ble Supreme Court in Union of India Vs. Cosmo Films Ltd. -2023(5) TMI 42-SUPREME COURT has reversed the judgment of Hon'ble Gujarat High Court and has held pre-import condition to be valid. The Apex court observed that the concept of 'pre-import condition' was not alien to the FTP. Supreme Court in its order has directed the board to issue a circular on re-credit or refund of IGST paid now. Subsequently, as directed by Apex court, CBIC issued Circular No.16/2023-Cus, dtd. 07.06.2023, further DGFT issued Trade Notice No. 07/2023-24 dtd. 08.06.2023. The circular mentioned that all the imports made under Advance Authorization Scheme on or after 13.10.2017 &upto and including 09.01.2019 which could not meet the pre-import condition may be regularized by making payment as prescribed in the Customs Circular.

2.5 He argued that Notification No. 01/2019 –Cus dtd. 10.01.2019 is clarificatory in nature and must be given retrospective effect. Notification No. 01/2019 was issued only to address and rectify the 'obvious mistakes' and 'ambiguity' created by amending Notification No. 79/2019-Cus, He placed reliance on the following judgments.

(i) Ralson (India) Ltd. Vs. CCE., Chandigarh –I- 2015(319)ELT 0234(Supreme Court).

(ii)GOI Vs. Indian Tobcco Association, 2005 (187)ELT 162(SC)

(iii) RuiaCotex Ltd Vs. DGFT, 2017(347)ELT 263 (Cal.)

(iv) CCE, Trichy Vs. Supreme Industries -2008(225)ELT 509 (Tri.-Chen.)

(v) Polyplex Corp Ltd. Vs. UOI, 2014(306)ELT 377 (Allahabad)

2.6 He also argued that in the present matter appellant has fulfilled the export obligation against all the concerned Advance Authorization and has complied with all the conditions of the advance Authorization.

2.7 He further submits that the requirement of complying with the pre-import condition should be made qua imported materials/inputs and not qua advance authorization. Since the imported inputs are used for exports of finished goods, pre-import condition is satisfied in the present case.

2.8 He further argued that the entire exercise is revenue neutral as the IGST payable is available as credit to the Appellant. Since the whole process is revenue neutral there is no loss to the government exchequer in this scenario. The courts has consistently held that where the demand raised by the Revenue is equal to the credit available to the Assessee, then the demand is not maintainable. He placed reliance on the following judgments.

(i) CCE Vs. Narayan Polyplast 2005(179)ELT 20 (SC)

(ii) CCE Vs. Narmada Chematur 2005(179)ELT 276 (SC)

(iii) CCE Vs. Coca-Cola India -2007(213)ELT 490 (SC)

2.9 He also submits that there is no dispute that appellant have exported goods and fulfilled export obligation. IGST paid on imports is available as ITC and the same is refunded to Appellants while exporting goods in terms of Rule 89(4) of CGST Rules. In the present matter if appellant had paid the IGST at the time of imports by not availing the exemption under Notification No. 79/2017-Cus dtd. 13.10.2017, they would have been entitled to avail the ITC of the same by way of refund of unutilized ITC under Rule 89(4) while exporting the finished goods. Therefore, to that extent the situation is revenue neutral.

2.10 Without prejudice, he also submits that if the appellant would have paid the IGST at the time of exports, they would have been entitled to avail the refund of the same under Rule 96(10) of CGST Rules. Therefore, to that extent, the situation is revenue neutral. He also placed reliance on the following judgments.

(i) Steel Authority of India Vs. Collector of Central Excise -1997 (90)ELT 287

(ii) TVL Kasi and Sethu Vs. The deputy Commissioner Tax officer 2003(131)STC 73

(iii) Income tax officer Vs. BachuLal Kapoor -1966(60)ITR 74

(iv) CCE Vs. Special Steel Ltd. -2015(329)ELT 449 (T)

2.11 He further submits that the Section 28 (1) of Customs Act provides a limitation period of two years from the relevant date for issuance of SCN. In the present case the date on which the goods cleared from the port of import shall be taken as the relevant date. The latest BOE covered by SCN dtd. 14.12.2022 was cleared on 09.01.2018. Therefore, as per the provisions of Section 28(1) of the Customs Act, SCN could have been issued by 08.01.2020 i.e within the period of two years from the relevant date. However, the present SCN was issued on 14.10.2022 which was after the lapse of limitation period provided under Section 28(1) of the Customs Act, 1962. Therefore the entire demand is barred by normal period of limitation.

2.12 He also submits that additionally, Section 28(4) of Customs Act provides extended period of five years from relevant date for issuing a SCN ,which is applicable only in cases where the duty has not been levied or has been short levied, etc. by reasons of collusion or any wilful misstatement or suppression of facts by importer. The impugned order alleged that appellant has suppressed the facts. However the question of suppression of pre-import and physical export condition does not arises as the imports and exports undertaken by appellant under AA scheme are already on record. It cannot be said that the appellant has kept such relevant information about the claim of exemption of IGST at the time of import, from the customs officers. The Appellant is duly filing its BOE and the subjected goods are being cleared from the respective ports of import without any dispute by the department.

2.13 He further argued that availing the benefit of Notification, which the revenue subsequently formed an opinion was not available, cannot lead to the charges of mis-declration or mis-statement, etc. and even if an importer has wrongly claimed the benefit of the exemption, it is for department to find out the correct legal position and to allow or disallow the same. He placed reliance on the following judgments.

(i) Shri Charnajit Singh Vs. Commissioner of Customs (Port), Kolkata, 2022(12) TMI 897 –CESTAT Kolkata

(ii) Sands Hotels Pvt. Ltd. Vs. CST, 2009 (16)STR 329

(iii) CCE, Kanpur Vs. Ganges Soap Works (P)Ltd. 2002 (146)ELT 470 (Tri. Del.)

2.14 He also submits that extended period of limitation cannot be invoked since there is no 'wilful' suppression in the present case. Further extended period of limitation cannot be invoked since the situation is revenue neutral to the extent of levy of IGST. Further the present matter involved the interpretation of complex provision of the Customs Act, FTP and exemption Notification. He also submits that no redemption fine can be imposed in the present matter under Section 125 of the Customs Act, 1962 as the goods were not liable for confiscation and were not available for confiscation.

2.15 He further submits that even if IGST is payable, the demand of interest, penalty and fine is not sustainable as there was no levy of such of amount in terms of Section 3(12) of Customs Tariff Act. He also submits that as regard the confiscation of goods and redemption fine, therefore, the same is not maintainable for the reason that goods were not available for confiscation. Since, the demand itself is not sustainable on ground of revenue neutrality and time bar, the penalty was also not imposable.

3. On other hand Shri P Ganesan, Ld. Superintendent (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. We have carefully considered the submission made by both the sides and perused the records. We find the issue involved in the present matter is whether appellant is liable to pay Duty (IGST), interest, redemption fines and penalty confirmed by the impugned order in connection with alleged violation of "Pre-import Condition" in the imports made against the advance authorization scheme during the period October 2017 to November 2018, read with Notification No. 18/2015- Cus dated 01.04.2015 as amended by the Notification No.79/2017-cus dated 13.10.2017. We find that the demand of IGST was raised on the ground that the appellant have not complied with the pre-import condition as prescribed under Notification No.79/2017-Cus dated 13.10.2017. The appellant have vehemently argued that all the imported goods have been used in the export goods, therefore the pre import condition have been duly fulfilled. However this aspect was not verified by the adjudicating authority and without verifying the fact straightaway the demand show cause notice was issued and the same was confirmed. Therefore, on this ground itself the entire proceeding is vitiated. We find that there is force in this argument of the appellant and when the imported goods have been used in manufacture of goods which were

exported the pre import condition stands complied with. We find that as per the Hon'ble Supreme Court judgment in the case of Cosmo Films Limited, 2023 (5) TMI 42 (SC) which has reversed the judgment of the Hon'ble Gujarat High Court, in absence of fulfilling the pre-import condition as prescribed under Notification No.79/2019-Cus, the importer is required to pay the IGST. However, at the same time the Hon'ble Supreme Court has given liberty that on payment of IGST the assessee shall be eligible for either ITC or refund against export of goods. Therefore, as per the Hon'ble Supreme Court Judgment in any case IGST is payable in case the pre import condition is not fulfilled.

4.1 However, in the present case since it is the appellant claim that they have fulfilled the condition and if it is found correct no duty is required to be paid by the appellant. If at all there is violation of pre import condition, the appellant is required to pay IGST which has held by the Hon'ble Supreme Court and as per law the appellant shall be eligible for ITC and/or the refund of IGST in case of export of goods. Therefore, in principle the appellant is liable to pay IGST in case the pre import condition is not fulfilled.

4.2 We have further observed that that the department has issued SCN only based on date of the Bill of Entry and the date of Shipping Bills in the particular advance authorization. The department has not investigated the fact that appellants have used imported inputs for exports only. Thus, it is not the case of diversion of imported inputs. It is submitted that in the absence of any evidence of diversion of inputs, the demand is not sustainable. In other words, the SCN is issued on assumption and presumption.

4.3 We have further seen that Condition (xii) provides that the exemption from IGST shall be subject to the pre-import condition, making it evident that those materials or inputs which satisfy the pre- import condition will be eligible for exemption from IGST. It is clear from the wording of Notification No. 18/2015- Cus. that the exemption granted is qua the goods and not qua the authorization. Thus, it is clear that the true meaning of the pre-import would be the utilization of inputs for exports. It is submitted that in the present case, inputs were utilized to manufacture the exported goods, in such cases the pre-import condition is satisfied and the exemption from payment of IGST was rightly claimed by the Appellant. Further there is no allegation that imported inputs are sold as such in the domestic market.

4.4 We find that Appellant is eligible for the clubbing of all the Advance Authorization in terms of para 4.38 of the FTP. Once all the Concerned Advance Authorizations are clubbed together then all the imports have to be considered as part of one Advance Authorization. It is submitted that the inputs imported by the Appellant against all the 8 AAs in the dispute period are used in manufacturing the finished products. The resultant finished products have been exported by the Appellant.

4.5 The appellant post hearing submitted a detailed explanation about the facts of all the advance authorisation that in almost all the cases the exports were made subsequent to the import of goods and use thereof in the export goods and also submitted detailed chart showing comparison of advance licence, shipping bill for export, bill of entry for import and copies of advance authorisation and other documents. From the submission it is observed that On comparing the date of the first Bill of Entry (BE) and the First Shipping Bill (SB) of respective Advance Authorizations, it was alleged in the SCN that the appellant made exports first before imports were made. Thus, the goods exported against those Shipping Bills were not manufactured out of the duty-free materials imported under following five Advance Authorizations (in short "AA"), resulted into non-compliance of the pre-import condition:

Sr. No.	AA No.	Date of AA
1	0810143679	10-10-2018
2	0810141977	12-02-2018
3	0810140486	13-06-2017
4	0810142253	27-03-2018
5	0810141768	12-01-2018

4.6 With regard to the AA mentioned at Sr. No. 1 to 3 above, it is observed that in the SCN, it was alleged that the appellant made exports first before imports were made, which appears to be factually incorrect, as clearly revealed from below table:

Sr. No.	AA No.	AA Date	First BE No.	BE Date	First SB No.	SB Date	Remarks
1	0810143679	10-10-2018	8466631	15-10-2018	8399865	22-10-2018	Applied for EODC.
2	0810141977	12-02-2018	5548344	12-03-2018	3577926	19-03-2018	EODC received.
3	0810140486	13-06-2017	3737972	24-10-2017	96555077	02-11-2017	Applied for EODC.

4.7 In case of first Advance Authorization No. 0810143679 dated 10-10-2018, department has wrongly taken 1stBill of Entry No.8551446 dated 22.10.2018, instead of taking first Bill of Entry No.8466631 dated 15-10-2018. In fact, in this case, first import was made vide Bill of Entry No. 8466631 dated 15-10-2018, which was prior to the date of first export made vide Shipping Bill No. 8399865 dated 22-10-2018. Thus, the duty-free raw materials imported under said AA were used in the manufacture of goods exported against under said AA. After completion of export obligation, the appellant had applied for Export Obligation Discharge Certificate (in short "EODC"). Thus, the appellant has complied with the pre-import condition in above A/A.

4.8 In case of 2ndAdvance Authorization No. 0810141977 dated 12-03-2018, department has wrongly taken 1st Bill of Entry No. 5951050 dated 12-04-2018, instead of taking first Bill of Entry No. 5548344 dated 12-03-2018. In fact, in this case, first import was made vide Bill of Entry No. 5548344 dated 12-03-2018, which was well prior to the date of first export of goods manufactured out of duty free materials, made vide Shipping Bill No. 3577926 dated 19-03-2018. In the SCN, the 1st Shipping Bill was also wrongly taken, as SB No. 3093090 dated 24-02-2018, instead of taking 1st Shipping Bill No.3577926 dated 19-03-2017 under which materials imported duty free were used. Under this AA, first two consignments exported vide Shipping Bill Nos. 9459310 dated 24-10-2017 & 9557850 dated 28-10-2017 were in fact manufactured out of IGST paid imported raw materials. Thus, the duty-free raw materials imported under said AA were used in the manufacture of goods exported under said AA. DGFT has already issued

EODC for subject AA. Thus, the appellant has complied with the pre-import condition in above A/A also.

4.9 In case of 3rdAdvance Authorization No. 0810140486 dated 13-06-2017, in the SCN, it was also wrongly alleged that the appellant made exports first before imports were made. In fact, under this AA, first import was made vide Bill of Entry No. 3737972 dated 24-10-2017, which was prior to the date of first export made vide Shipping Bill No. 96555077dated 02-11-2017. Thus, the duty-free raw materials imported under said AA were used in the manufacture of goods exported under said AA. After completion of export obligation, the appellant had also applied for EODC. Thus, the appellant has complied with the pre-import condition in above A/A also.

(3) The factual position of the remaining two AAs is as below:

Sr. No.	AA No.	AA Date	First BE No.	BE Date	First SB No.	SB Date	Remarks
1	0810142253	27-03-2018	6216969	02-05-2018	3721862	24-03-2018	EODC RECEIVED.
2	0810141768	12-01-2018	5487461	07-03-2018	9825907	10-11-2017	APPLIED FOR EODC.

4.10 As regards the 4thAdvance Authorization No.810142253 dated 27-03-2018, we find that the appellant has subsequently got re-assessed all Bills of Entries (viz. BE No. 6216969 & 6216975 both dated 02-05-2018) from the department and voluntarily paid the entire amount of IGST saved along with interest on 03.07.2024.Further, DGFT has already issued EODC for the same. As such, demand for this AA is required to be dropped. It is observed that appellants are not challenging the IGST already paid by them as they are eligible for the ITC under GST.

4.11 As regards the last Advance Authorization No.810141768 dated 12-01-2018, it is found that the appellant has completed the export obligation and post exports, the appellant imported raw materials duty-free and used in the manufacture of finished goods exported. No demand can be raised until and unless it is proved that such imported materials are not used in the manufacture of finished goods exported. In the instant case, there was no allegation of diversion of such materials as such or sale of resultant finished goods in the domestic market in the SCN itself. After completion of the export obligation, the appellant has also applied for EODC. Thus, in this regard also, the appellant has complied with the law. As such, demand for this AA is also not sustainable.

4.12 From the above factual position it is clear that in almost all the cases, the appellant have fulfilled the pre-import condition, in some cases the bill of entry was re-assessed and appellant have paid the IGST for which they are not contesting on the ground that they are eligible for ITC under GST. In view of the above on the factual aspects of the case the demand of IGST along with the interest, fine and penalties are not sustainable. As regard the penalty corresponding to the IGST paid by the appellant since, the same is availed as ITC under GST there is no malafide on the part of the appellant. Hence, penalty corresponding to the duty paid by the appellant which is not in contest will also not sustain on the ground of Revenue neutrality.

4.13 We also find that the appellant has vehemently argued that the entire demand is hit by limitation for the reason that the demand for the period October-2017 to November-2018 was raised by show cause notice issued on 19.10.2022. In the facts of the present case the appellant’s bills of entry were assessed and the same were verified by the custom authority and clearance of goods was allowed. The issue raised in the present show cause notice was very much existing at the time of assessment of bill of entry. The appellant have bonafidely claimed the exemption Notification No.18/2015 as amended. Therefore, nothing prevented the department to raise the objection at the time of assessment of bills of entry and clearance of goods. Moreover, the issue involved interpretation of exemption notification on advance authorization. The issue once decided by the Hon’ble High Court of Gujarat in the case of Cosmo Films Limited vs. Union of India & Ors. 2020 (10) TMI 1099 , in favour of the assessee that leads to the bonafide belief of the appellant. Therefore, suppression of fact cannot be attributed to the appellant. Accordingly, the extended period for demand is prima facie not invokable in the facts of the present case. Therefore, the appellant has made out a strong prima facie case on time bar. However, since we decide this appeal on the factual matrix of this case, the issue of time bar is kept open. Without prejudice to above, as regard the redemption fine imposed on the appellant against confiscation of the imported goods, we find that firstly the goods were not available for confiscation and in absence of seizure of goods and non availability of the goods, confiscation of the goods cannot be ordered and consequential redemption fine cannot be imposed as held by the Larger bench of this Tribunal in the case of Shiv Kripa Ispat Ltd. vs. Commissioner of Central Excise & Custom, Nasik.

4.14 Without prejudice to the above, we find that though entire case has been decided on factual matrix as discussed above, the demand of duty, interest, penalty and fine are not sustainable. However, the issue of levy of interest, fine and penalty has been independently considered by this Tribunal in the case of Chiripal Poly Films Ltd vide Final Order No.11628-11630/2024 dated 23.07.2024. In view of the said judgment also, the appellant are also entitled for waiver of interest, penalty and redemption fine.

5. As per our above discussions and findings, the impugned order is not sustainable. Hence, the same is set aside, appeal is allowed in the above terms with consequential relief.

(Pronounced in the open court on 22.10.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(C L MAHAR)
MEMBER (TECHNICAL)

Bharvi