

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

REGIONAL BENCH-COURT NO. 1

**Customs Appeal No. 10517 of 2020 – SMB**

(Arising out of OIA-MUN-CUSTM-000-APP-231-19-20 dated 17.01.2020 passed by Commissioner of CUSTOMS (Appeals) Ahmedabad)

**AANGAN AGROTECH EXPORTS LTD**  
31 MADHUBAN TOWERS BEHIND TOWN HALL  
AHMEDABAD, 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**

**APPEARANCE:**

Shri Manish Jain, Advocate appeared for the appellant  
Smt. Sunita Menon, Superintendent (AR) appeared for the department

**CORAM:**

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

**Final Order No. 11431/2025**

DATE OF HEARING: 11.12.2025

DATE OF DECISION:15.12.2025

**SATENDRA VIKRAM SINGH**

1. M/s. Aangan Agrotech Exports Ltd. (Appellant) have been alleged to have violated the provisions of Customs Notification No.96/2009-Cus dtd. 11.09.2009 as amended read with para 4.1.3, 4.1.5 and 4.1.9 of the Foreign Trade Policy (2009-14) and para 4.22, 4.24 & 4.28 of the Hand Book of Procedures, Volume-I, as they had imported PP Granules under B/E No. 5084560 & 5084772 both dated 28.04.2016 without payment of duty of Customs under cover of Advance Authorisation No. 0810133655 dated 21.10.2014. A show cause notice dated 24.01.2018 was issued to them by DRI, Kolkata Zonal unit proposing confiscation of imported duty-free goods valued at Rs.98,17,591/- under Section 111 (o) of the Customs Act, 1962, demand of Customs duty of Rs.25,94,617/- under Section 28 (4) of the Customs Act,1962 along with interest under Section 28AA and penalty under Section 114A and 112(a) of the Customs Act,1962.

1.1 The said show cause notice was decided by the Additional Commissioner vide order dated 07.05.2019, wherein, he confiscated the impugned goods under Section 111(o) of the Customs Act, 1962, confirmed the duty demand of Rs. 25,94,617/- along with interest and imposed equal penalty upon the appellant under Section 114A of the Customs Act, 1962. No penalty was imposed on the appellant under Section 112(a) of the said Act. The Adjudicating Authority also appropriated the amount of Rs.30,56,317/- deposited by the appellants on 30.06.2017 towards duty and interest so confirmed. Aggrieved with this order, appellant filed appeal before the Commissioner (Appeal) who vide impugned order upheld the order of the lower authority and rejected the appeal filed by the appellant. Hence, the present appeal before this Tribunal.

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

- a) The charges in the show cause notice are regarding violation of Notification conditions and there are no specific and established charges of collusion etc. to evade duty. The appellate authority has not taken into cognizance the fact that duty and interest was paid by the appellant before issue of the show cause notice in this case. Violation of the conditions of Notification has been taken for applying Section 28(4) without any of the prescribed ingredients required for sustaining penalty under Section 114A of the Customs Act, 1962.
- b) They imported raw materials but could not use for manufacture of export goods which lapse got regularised by the office of Deputy Director General Foreign Trade, Ahmedabad who vide letter dated 15.01.2018 intimated them that, *"This is to inform you that you have paid customs duty with interest of import made. The case has been regularised and closed as per para 4.28 (ii) of hand book."* As DGFT has already regularised their matter and they had paid duty and interest before issue

of show cause notice, they are entitled to the benefit of Section 28(2) read with Section 28(10B) of the Customs Act, 1962.

c) They had brought the facts of regularisation of their matter by DGFT before the Commissioner (Appeal) but the same was not discussed by him. In any case, they are not liable to penalty under Section 114A as there is no collusion or wilful mis-statement on their part. They rely on ruling of Hon'ble Apex Court in the case of Uniworth Textiles Ltd. Vs. CCE, Raipur reported at 2013(288) ELT 161 (SC) and CESTAT Delhi ruling in the case of M/s. Ruchi Soya Industries Ltd. Vs. Commissioner of CGST & CE, Udaipur reported at 2019-TIOL-2065-CESTAT-Delhi. In view of the above, they requested to allow their appeal by setting aside the impugned order.

3. During hearing learned Advocate highlighted letter dated 18.01.2018 of DGFT regularising their matter, payment of customs duty as well as interest on 30.06.2017 before issue of the notice and its appropriation by the Adjudication Authority. He argues that the appellant is entitled to benefit of Section 28(2) of the Customs Act, 1962 as the show cause notice should not have been issued in this case because both duty and interest was already paid. He prays for allowing their appeal.

4. Learned AR on the other hand reiterated findings of the lower authorities and tried to justify imposition of the penalty on the appellant. On being asked whether in the facts of the case, appellant is entitled to benefit of Section 28(2) of the Customs Act, 1962, she fairly agrees that no show cause notice should have been issued in the instant matter.

5. Heard both the sides. The appellant had imported certain goods under advance licence but could not utilise them for manufacture and export of goods. They therefore paid duty along with interest on 30.06.2017 and also approached DGFT authorities for regularisation of the matter. It is also on

record that their matter was regularised by DGFT as communicated vide their letter F No. 08/91/40/00413/AM15 dated 15.01.2018.

5.1 The provisions of Section 28(2) and 28(10B) of the Customs Act are reproduced below:-

Section 28(2):-

*"The person who has paid the duty along with interest or amount of interest under clause (b) of sub-section (1) shall inform the proper officer of such payment in writing, who, on receipt of such information shall not serve any notice under clause (a) of that sub-section in respect of the duty or interest so paid or any penalty leviable under the provisions of this Act or the rules made thereunder in respect of such duty or interest:*

*[PROVIDED that where notice under clause (a) of sub-section (1) has been served and the proper officer is of the opinion that the amount of duty along with interest payable thereon under section 28AA or the amount of interest, as the case may be, as specified in the notice, has been paid in full within thirty days from the date of receipt of the notice, no penalty shall be levied and the proceedings against such person or other persons to whom the said notice is served under clause (a) of sub-section (1) shall be deemed to be concluded.]".*

Section 28(10B):-

*"A notice issued under sub-section (4) shall be deemed to have been issued under sub-section (1), if such notice demanding duty is held not sustainable in any proceeding under this Act, including at any stage of appeal, for the reason that the charges of collusion or any wilful mis-statement or suppression of facts to evade duty has not been established against the person to whom such notice was issued and the amount of duty and the interest thereon shall be computed accordingly.]"*

5.2 I find that in the instant case, charges of collusion, wilful mis-statement, suppression etc. are not sustainable nor have these been justified in the show cause notice. The statement of Shri Paresh Rungta, Director of the appellant firm clearly brings out that they could not fulfill export obligation as they did not have any export orders and so they were left with no option but to use raw materials for manufacture of finished goods and sell them in domestic market. They on their own paid the duty and interest much before the issue of show cause notice and requested DGFT to regularise their matter which was

done on 18.01.2018. This makes me clear that charges of collusion, wilful mis-statement, suppression etc. are not invocable in this case and therefore, by virtue of sub section 10B of Section 28, the notice dated 23.01.2018 is deemed to be issued under Section 28(1) of the Customs Act, 1962. Further, by virtue of Section 28(2) of the said Act, when the appellant had paid duty and interest, show cause notice should not have been issued to them. The proviso to sub section (2) of Section 28 further provides that where show cause notice has been issued and duty and interest is paid within 30 days of the receipt of the notice, no penalty shall be imposable. In view of the above, I find that imposition of penalty by the lower authorities under Section 114A of the Customs Act, 1962 of the appellant is not justified. I therefore, allow appeal filed by the appellant and set aside the impugned order to the extent of imposition of equal penalty under Section 114A of the Customs Act, 1962.

6. The appeal is allowed in above terms along with consequential benefits if any.

*(Pronounced in the open court on 15.12.2025)*

**(SATENDRA VIKRAM SINGH)  
MEMBER ( TECHNICAL )**