

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
AHMEDABAD**

REGIONAL BENCH, COURT NO. 2

CUSTOMS APPEAL NO. 11590 OF 2025

[Arising out of CUS/APR/BE/MISC/1812/2025-Gr-1 dated 10/12/2025 passed by Assistant Commissioner of Customs, Import Assessment, Mundra]

SHREEJI AGRI COMMODITY PVT LTD

Office No. 1205, The Spire, Near Ayodhya Circle,
150 Feet Ring Road, Rajkot-360007
Gujarat

Appellant

Vs.

**ASSISTANT COMMISSIONER OF CUSTOMS,
IMPORT ASSESSMENT, MUNDRA**

Customs House, Mundra, Kutch,
Gujarat-370201

Respondent

Appearance:

Shri Manish Jain, Advocate for the Appellant

Smt. Sunita Menon, Superintendent (AR) for the Respondent

CORAM:

HON'BLE Dr. AJAYA KRISHNA VISHVESHA, MEMBER (JUDICIAL)

FINAL ORDER NO. 10031/2026

Date of Hearing : 12/01/2026

Date of Decision : 21/01/2026

Dr. AJAYA KRISHNA VISHVESHA

This appeal is directed against the communication / order / letter dated 10th December, 2025 issued under the orders of Commissioner of Customs, Mundra through which the learned Assistant Commissioner of Customs, MCH has granted permission for provisional release of goods on submission of bond equal to value of the goods i.e. Rs. 9,11,24,983/--00 (Rupees Nine Crores Eleven Lacs Twenty Four Thousand Nine Hundred and Eighty Three only) and bank guarantee (with Auto Renewal Clause) of Rs. 6,31,96,584-00 (Rupees Six Crores Thirty One Lacs Ninety Six Thousand Five Hundred and Eighty Four only) as per para 2.2 of circular no. 35/2017-Customs dated 16.08.2017.

1.1 Brief facts of the case are that appellant is *inter alia* engaged in the trading, processing and retail of various agri-commodities, including spices, pulses and oilseeds. In the regular course of business, the Appellant imported “coriander seeds” under duty exemption Notification No. 21/2023-Cus dated 01.04.2023 against various Advance Authorizations issued during the period between February 2024 to February 2025.

1.2 According to the department, the appellant has diverted the said imported coriander seeds as such into the domestic market without doing any processing of the same which is in violation of actual user condition as provided in Customs Notification No. 21/2023- Customs dated 01.04.2023. It is also alleged that the said imported coriander was stored in various warehouses in the name of other parties. Further, it was also alleged by the department that to fulfil the export obligation, the Appellant is procuring the coriander seeds from the domestic market rather than processing the imported coriander seeds under Customs Notification No. 21/2023-Cus.

1.3 Based on the above allegation, department vide Seizure Memo dated 18.06.2025 seized the coriander seeds stored in various warehouses. On request of appellant, department vide impugned order dated 10.12.2025 granted permission for provisional release of the subject goods on submission of bond equal to the value of the goods i.e. Rs. 9,11,24,983/- and Bank Guarantee of Rs, 6,31,96,584/-as per Para 2.2 of Circular No. 35/2017 dated 16.08.2017. The present appeal is against the above mentioned order for provisional release of goods. Appellant has challenged the conditions imposed under of the provisional release order passed under section 110A of the Customs Act in the present appeal.

2.1 Learned Counsel for the appellant, submitted that appellant has never sold imported coriander seeds in domestic market, thus there is no violation of

actual user condition under Notification No. 21/2023-Cus. He also submitted that imported coriander seeds were always brought to the factory of the Appellants and it undergo a detailed process of cleaning and sorting etc. After the said detailed process, the appellant either export coriander seeds or transfers the processed coriander seeds to the third-party exporters for further export. Sometimes, the processed coriander are stored at various warehouses. Since the space in the warehouse is already booked by known parties/friends, appellant used their names for storing the processed coriander seeds. Thus, appellant have never sold imported coriander seeds as such into domestic market without undertaking any process including that of cleaning and sorting on imported coriander seeds. Since there is no sale of imported coriander in imported condition, there is no violation of actual user condition of Customs Notification No. 21/2023-Cus dated 1.04.2023.

2.2 Learned Counsel further submits that, without prejudice, Customs Notification No. 21/2023-Cus does not require that the export obligation should be completed out of imported duty-free input alone. Thus, assuming without admitting, even sale of processed coriander into domestic market does not violate any of the conditions of Customs Notification No 21/2023-Cus. He submits that the Authorisation Holder is free to fulfill the export obligation out of indigenous raw materials. The Hon'ble Supreme Court in the following cases has held that the term 'for use' means 'intended to be used':

- (a) **BPL Display Devices Ltd. vs. CCE**, 2004 (174) ELT 5 (SC)
- (b) **State of Haryana vs. Dalmia Dadri Cement Ltd.**, 2004 (178) ELT 13 (SC)
- (c) **Steel Authority of India Ltd. vs. CCE**, 1996 (88) ELT 314 (SC)
- (d) **Indian Petrochemicals vs. CCE**, 1997 (92) ELT 294 (SC)

2.3 Learned Counsel further relies on the decision in case of **M/s KDL Biotech Ltd. vs. Commissioner of Customs (Export Promotion), Mumbai**, 2015 (327) E.L.T 305 (Tri.-Mumbai) wherein the Tribunal observed that the term “physically incorporated” in the policy does not mean that the imported inputs should be actually used in the resultant product exported out of India. He also relies on following decisions on this aspect:

- (a) **Dolphin Drugs (P) Ltd. V/s. C.C.** Final Order No. 73/98 dated 15.01.1998
- (b) **Dolphin Drugs (P) Ltd. V/s. C.C.** reported in 2000 (115) ELT 552 (T)
- (c) **U-Form Pvt. Ltd. V/s. C.C.** reported in 2003 (154) ELT 633 (T).
- (d) **Vorin Laboratories Ltd. V/s. C.C.** reported in 2004 (168) ELT 107 (T).

2.4 The above settled position was reiterated by the CESTAT in **Galaxy Surfactants Ltd. Vs. CC** - reported in 2006 (202) ELT 495, the relevant portion is reproduced hereunder:

"14.....As regards the use of duty free imported raw material first in the manufacture of final products required to be exported for meeting the export obligation before being used for use for domestic clearances of the same product we find that the Tribunal in the case of Dolphin Drugs, Standard Industries and Jay Engineering Works have consistently taken a view that as long as the export obligation has been met it is immaterial whether the goods first used for domestic clearances and exports were made later on or vice versa. Even though in the above decisions there was difficulty in selling the product in International market, the duty exemption were nevertheless held admissible and only the export obligation period was extended due to extenuating circumstances. We, therefore hold that there has been no violation of condition No. (vii) of the Notification no. 30/97 in these cases also."

2.5 Learned Counsel further submits that the definition of the term “materials” as defined under customs notification No. 21/2023-Cus is identical

to the definition of the said term in other notifications issued under Advance Authorization Scheme. The CBEC issued a clarification vide Circular No. 4/93 dated 4.3.93 (F.No. 605/50/93-DBK) in the context of Notification No. 203/92. This Circular issued in the context of the insistence of Customs field formations "seeking to establish a detailed nexus of inputs with reference to export product" and insisting "that the material imported must be actually utilized in the manufacture of the goods to be exported", clarified as under:-

"The materials permitted import are those which are required for a particular class of export product. That does not mean that the goods imported must be physically incorporated in the exported product. It only implies that the goods imported must be of a category that could have been used for the export product."

2.6 The learned Counsel further submits that statements of various persons cannot be relied upon in absence of any corroborative evidence. He also submits that merely storing the processed coriander seeds in warehouse in name of other parties does not violate actual user condition.

2.7 Learned Counsel further submits that without prejudice to above, Hon'ble Supreme Court and Hon'ble High Court of Gujarat have permitted provisional release of goods on furnishing bank guarantee amounting to 30% of differential duty and 100% value of bond. He places reliance on the case of **Commissioner of Customs, ICD vs. Navshakti Industries Pvt. Ltd.**, 2011 (5) TMI 149- (Supreme Court) wherein the Hon'ble Supreme Court modified the Hon'ble High Court's Order and directed the respondents to furnish bank guarantee of 30% of the differential duty to the satisfaction of the Commissioner of Customs for the release of goods in question. Further in the case of **M/s. Printwell Offset vs. Union of India and 2**, 2016 (3) TMI 988- (Gujarat High Court) wherein the Hon'ble High Court referred to the decision of **Navshakti Industries** (supra) by Hon'ble Supreme Court and held that the condition of furnishing

guarantee for the full duty amount is required to be modified by directing the Appellant to furnish a bank guarantee only to the extent of 30% of duty amount. He, therefore, submitted that in the present case the impugned order has demanded an excessive and disproportionate amount of bank guarantee for the provisional release of goods. The amount demanded is approx. 70% of the value of the goods which stands in contradiction with the decisions of Hon'ble Supreme Court and High Court.

2.8 He further submitted that impugned order has demanded bond and bank guarantee from the Appellant as per Para 2.2 of Circular No. 35/2017-Customs dated 16.08.2017. He submitted that condition requiring furnishing of a bank guarantee for provisional release of goods solely based on the departmental circulars is legally not sustainable as circulars are administrative instructions.

2.9 He submitted that, the impugned order is liable to be set aside on this ground alone as it stands contrary to the binding decisions of Hon'ble Supreme Court and Delhi High Court. Thus, bank guarantee can be demanded only to the extent of 30% of differential duty i.e. 30% of Rs. 3,61,31,056/- = Rs. 1,08,39,317/-.

3. Learned Authorised Representative for the department at the very outset, submitted that the goods involved in this case are having value of more than Rs. 50 lacs, therefore, the matter may be heard by the Division Bench. On the other hand, the learned Counsel for the appellant cited the order passed by CESTAT Allahabad in M/s. **BP Wire Industry vs. Commissioner of Customs (Preventive), Lucknow** – 2025 (7) TMI 89 – CESTAT Allahabad in which this Tribunal has held that provisions of Section 110 A and 111 of the Customs Act, 1962 operates in two different fields in as much as Section 110 mandates seizure of the goods for the reason that the goods are liable for confiscation and Section 110A mandates provisional release of the seized goods pending

adjudication. A separate provision in Section 111 deals with confiscation of inappropriately imported goods for the conditions mentioned in the said Section. The Tribunal observed that present case is not a case under Section 111 instead it is a case pertaining to Section 110A of the Customs Act, 1962. The Tribunal further held that in the present case, adjudication proceedings had not been concluded and the order of confiscation has not been passed yet. The Tribunal held that it is a case of provisional release of goods under Section 110A by imposing certain conditions, hence the matter can be heard by Single Member Bench. The learned Counsel for the appellant prays that in view of the order passed in **M/s. BP Wire Industry vs. Commissioner of Customs (Preventive), Lucknow** (supra), the matter may be heard by Single Member Bench. I agree with the learned Counsel for the appellant and I am of the view that this matter may be heard by Single Member Bench.

3.1 The learned AR has reiterated the impugned order passed by the Commissioner. She further submitted that though the Commissioner has ordered provisional release of goods but imposed certain conditions as mentioned in the impugned order. She further submitted that the Tribunal should uphold the conditions mentioned in the impugned order.

4. I have heard both sides and perused the records. I find that appellant has submitted that imported coriander are always processed in his factory and never sold in market and violation of actual user condition is attracted only when imported inputs are sold in domestic market. Hon'ble High court has permitted use of imported inputs imported under notifications issued under Advance Authorisation Scheme for manufacturing of finished goods which are sold in domestic market in some decided cases.

4.1 At this stage, issue pertains to challenge to conditions of provisional release of goods under section 110A of the Customs Act, for which I find that

issue is directly dealt with in decision in case of **Commissioner of Customs, ICD vs. Navshakti Industries Pvt. Ltd.**, 2011 (5) TMI 149- Supreme Court wherein Hon'ble Supreme Court modified the Hon'ble High Court's Order and directed the respondents to furnish bank guarantee of 30% of the differential duty to the satisfaction of the Commissioner of Customs for the release of goods in question. Relevant extract has been reproduced hereunder for ease of reference:

"Having considered the facts and circumstances of the case and also taking notice of the fact that the goods in question are newsprint which is perishable in nature, we issue a direction that the goods of the respondents shall be cleared by the appellants herein on the respondents' furnishing a bank guarantee of 30% of the differential duty to the satisfaction of the Commissioner of Customs. The goods shall be released in terms of this order immediately on furnishing of the aforesaid bank guarantee and satisfaction of the concerned Commissioner of Customs. We also direct the Commissioner of Customs to hear the adjudication proceeding pending before him as early as possible, preferably within a period of three months, from the date of receipt of a copy of this order."

(Emphasis Supplied)

4.2 The above decision is followed by Hon'ble High Court of Gujarat in case of **M/s. Printwell Offset vs. Union of India**, 2016 (3) TMI 988- (Gujarat High Court) wherein the Hon'ble High Court referred to the decision of **Navshakti Industries** (supra) by the Hon'ble Supreme Court and held that the condition of furnishing guarantee for the full duty amount is required to be modified by directing the Appellant to furnish a bank guarantee only to the extent of 30% of duty amount. Relevant extract is reproduced hereunder for ease of reference:

"6. Under the circumstances, without entering into the merits of the contentions of the rival parties, the court is of the view that the interests of justice would be served if the order of provisional release of the seized goods

as contained in the communication dated 9.2. 2016 is modified to the following extent:

(i) The first condition which requires the petitioner to furnish a bond for the full value of the goods is required to be sustained

(ii) The second condition which requires the petitioner to furnish bank guarantee for full duty amount is required to be modified by directing the petitioner to furnish a bank guarantee to the extent of 30% of the duty amount in line with the decision of the Supreme Court in Commissioner of Customs, ICD, TKD, New Delhi v. Navshakti Industries Pvt. Ltd. (supra)."

(Emphasis Supplied)

4.3 In view of the above legal position, I agree with the submissions of appellant that impugned order has demanded an excessive and disproportionate amount of bank guarantee for the provisional release of goods which stands in contradiction with the decisions of Hon'ble Supreme Court and High Court.

4.4 Therefore, the impugned order for provisional release under section 110A is modified to the following extent:

(i) The First condition which requires the appellant to furnish a bond for the full value of the goods is required to be sustained.

(ii) The second condition which requires the appellant to furnish Bank Guarantee (with auto-renewal clause) of Rs. 6,31,96,584/- as per para 2.2 of Circular No. 35/2017 Customs dated 16.08.2017 is required to be modified by directing the appellant to furnish a Bank Guarantee to the extent of 30% of the duty amount in line with the decision of Hon'ble Supreme Court of India in Commissioner of Customs, ICD, TKD New Delhi vs. Navshakti Industries Pvt LTd (supra).

4.5 The appeal is partly allowed in above terms and impugned order is modified to the above extent.

(Order pronounced in the open Court on 21/01/2026)

(Dr. AJAYA KRISHNA VISHVESHA)
MEMBER (JUDICIAL)

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