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

REGIONAL BENCH- COURT NO. 02

Customs Appeal No. 134 of 2012

[Arising Out Of OIO-02-COMMR-ICD-SABERMATI-2012 Dated-11/04/2012 passed by the Commissioner of CUSTOMS-AHMEDABAD)

DYNAMIC INDUSTRIES LTD **.....Appellant**
Plot No. 5501/2, Phase-iii, Nr. Trikampura Cross Road,
GIDC Vatva, Ahmedabad, Gujarat-382445

VERSUS

COMMISSIONER OF CUSTOMS-AHMEDABAD **...Respondent**
Custom House, Near All India Radio, Navrangpura,
Ahmedabad,Gujarat-380009

WITH
Customs Appeal No. 135 of 2012

[Arising Out Of OIO-02-COMMR-ICD-SABERMATI-2012 Dated-11/04/2012 passed by the Commissioner of CUSTOMS-AHMEDABAD)

Deepak N Chokshi **.....Appellant**
Director of M/s Dynamic Indusris Ltd. Plot No. 5501/2,
Phase-iii, Nr. Trikampura Cross Road, GIDC Vatva, Ahmedabad,

VERSUS

COMMISSIONER OF CUSTOMS-AHMEDABAD.....Respondent
Custom House, Near All India Radio, Navrangpura,
Ahmedabad,Gujarat-380009

APPEARANCE:
Shri Manish Jain, Advocatefor the Appellant
Shri Girish Nair, Assistant Commissioner (AR) for the Respondent

CORAM: HON'BLEDR. AJAYA KRISHNA VISHVESHA, MEMBER (JUDICIAL)
HON'BLE MR. SATENDRA VIKRAM SINGH, MEMBER (TECHNICAL)

Final Order No. 10385-10386/2026

DATE OF HEARING:19.12.2025
DATE OF DECISION:19.06.2026

SATENDRA VIKRAM SINGH

M/s Dynamic Industries Ltd, Vatva, Ahmedabad (Appellant-1) are engaged in the manufacture of Dyes and Dyes intermediates falling under Chapter 32 of the Central Excise Tariff Act, 1985. The appellant imported duty free Beta Napthol under various export promotion schemes like advance authorisation scheme Notification No. 93/2004-Cus. dated 10.09.2004), DFIA Scheme (Notification No.40/2006-Cis. dated 01.05.2006) and Target Plus scheme (Notification No 32/2005-Cus. dated 08.04.2005).

1.1 On the basis of an intelligence that the said unit was diverting duty free inputs and thus, violating the conditions of exemption Notification, the officers searched their premises on 28.03.2008, and resumed various records relevant to investigation. They recorded statement of Shri Deepak Navinchandra Choksi, Director which revealed that the appellant was removing Beta Napthol under job work challans to M/s Bodal Chemicals Ltd (Unit I & II) Ahmedabad, M/s Shivam Chemicals, Vapi and M/s Cambay Chem Ltd., Cambay for getting 6 Nitro and Gamma Acid manufactured on job work basis. The appellant could not produce any records to show receipt of resultant products from the job workers after completion of job work process. It was alleged that the appellant has violated condition (vii) of the exemption notification No. 93/2004-Cus dated 10.09.2004 which is reproduced as under:-

> *(vii) that the [1][said licence or authorization] and the materials shall not be transferred or sold:*
> *[2][**Provided** further that where the Bond filed under condition (iii) against the [said licence or authorization] has been redeemed by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, the unutilised material may be transferred to any other manufacturer [3][except to the Unit availing the benefit of Notifications 49/03-C.E. and 50/03-C.E., both dated 10-6-2003] [4][32/99-C.E. dated 8-7-1999, 33/99-CE. dated 8-7-1999, 8/04-CE. dated 21-1-2004,20/07-CE. dated 25-4-2007, 56/02-C.E dated 14-11-200 57/02-C.E. dated 14-11-2002.71/03-C.E. dated 9-9-2003, 56/03-CE. dated 25-6-2003, 39/01-C.E.*

dated 31-7-2001 for processing under actual user condition after complying the central excise procedure relating to job work)
1 inserted w.e.f 05.05.2026
2 inserted w.e.f 17.05.2005
3 inserted w.e.f 3-19.05.2008
4 inserted w.e.f 16.07.2008

1.2 Similar conditions exist at Sr. No. 3 in Notification No.32/2005-Cus., dated 08.04.2005 for exemption to imports against a duty credit certificate issued during 2004-05 under Target Plus Scheme:-

> *"(3) That the said certificate and goods imported against it shall not be transferred or sold:*
>
> *Provided that where the goods are imported by a merchant exporter having supporting manufacturer(s) whose name and address is specified on the said certificate, the said goods may be utilized by the said supporting manufacturer(s)."*

1.3 The officers also recorded the statement of Shri Himmat Singh Sisodiya, Excise Incharge of M/s Cambay Chem Ltd., statement of Shri Chandrakant Paragji Desai, partner of M/s Shivam Chemicals and Statement of Shri Deepal K Pandya, Authorised signatory of M/s Bodal Chemical Ltd who stated to have not undertaken manufacture of 6-Nitro and Gamma Acid on job work basis for the appellant as only one raw material (i.e. Beta Naphthol) was supplied and the other items such as oleum, sulphuric acid, liquid ammonia, and caustic soda flakes, etc. were not supplied. They also accepted to have supplied "Gamma Acid" and "6-Nirto" to the appellant under the cover of their sales invoices on payment of excise duty and VAT.

1.4 After investigation, Revenue issued them a show cause notice dated 14.03.2011 covering the period 2006-07 and 2007-08 proposing confiscation of Beta Naphthol valued Rs. 2,57,87,560/- under Section 111(o) of the Customs Act, 1962 for violation of actual user condition, demanding Customs duty of Rs. 85,56,907/- along with interest and penalty under Section 112/114A of the Customs Act. Penalty was also proposed on Shri Deepak N Choksi, Director (Appellant-2) under Section 112 of the Customs Act, 1962. In adjudication proceedings, Learned Commissioner vide impugned order confiscated 2,33,150 Kgs of Beta Naphthol valued at Rs. 2,57,87,560/- under Section 111(o) of the Customs Act, 1962 but did not impose redemption fine as goods were not physically available for confiscation. He confirmed customs duty demand of Rs. 85,56,907/- under Proviso to Section 28 (1) of the Customs Act, 1962 by enforcing the bond executed by the appellant along with applicable interest and imposed an equal amount of penalty under Section 114A of the Customs Act, 1962. He also imposed penalty of Rs. 20 Lakhs upon Shri Deepak N Choksi, (appellant-2). Aggrieved with the above order, the company as well as its Director filed appeal before this Tribunal.

2. The appellant-1 took the following grounds and prayed for setting aside the impugned order:-

- The impugned order has been passed without observing the principles of natural justice as their various submissions were rejected by the Commissioner without even discussing and giving findings.
- They imported duty free Beta Naphthol under various export promotion schemes and sent to job worker (s) under challan for manufacture of intermediate products Gamma Acid and 6-Nitro who after manufacturing above intermediate goods, sent the same to the appellant under tax invoices containing reference of job work challans for co-relation between raw material and intermediate goods. These intermediate goods were used to manufacture Black Acid & Direct Black which was exported in fulfilment of the conditions of relevant Notifications. They also obtained Export Obligation Discharge Certificate (EODC).
- They followed the Provisions of Rule 4(5) of Cenvat Credit Rules, 2004 which only requires reversal of availed cenvat credit if inputs are not received back within 180 days from the job worker. This rule does not prescribe any specific proforma for sending goods for job work.
- They rely on the decision of CESTAT Ahmedabad in the case in Aries Dyechem Industries reported in 2010 (257) E.L.T. 113 wherein it was held that *"Appellant sent goods under job work challan but the job workers sent the same back under an invoice. Now, the Rules do not*

prescribe any format or procedure. Rules also do not bar the job worker from paying the duty. After all, job workers cannot be compelled to avail a notification. Under these circumstances, if the Department is not able to show that input, sent to job worker have not been returned within 180 days or diverted, there is no case for the Department."

- The exemption Notifications bar transfer or sale of imported goods as such and there is no bar or prohibition to get the goods manufactured through job worker. The department cannot ignore legal form of transactions and contend that there is sale and purchase of Beta Naphthol. They had applied to DGFT to endorse name of the job workers in advance license, DFIA and Target Plus Scheme.
- The invoices issued by the job workers carry no implication of ownership but accompanied the goods consigned to the purchaser. They rely on the decision in the case of Tata Iron & Steel Co. Ltd. v. Collector 1993 (66) E.L.T. 622 (Tribunal) which was also affirmed by the Apex Court vide 1997 (91) ELT A88 (S.C). They also rely on the Apex Court decision in the case of Aphali Pharmaceuticals reported at 1989 (44) ELT 613 (SC) wherein it is held that interpretation should be done in such a way as to harmonize laws with laws. The revenue has not correctly interpreted the conditions of the Notification as it will result in conflict between the policy and the customs Notifications.
- In Notification No. 117/78 issued for advance license which is first such notification, the word "sold or transferred" used in the condition allows them sending material to the job worker for manufacture. Thus, apart from licence holder, supporting manufacturer can also be made responsible for export obligation by getting, their name added in the licence. Benefit of advance license notification should not be denied when

importer has discharged export obligation. They rely on following decisions:-

(i) Vorin Laboratories Ltd. Vs. Cc, Chennai - 2004 (168) E.L.T. 107 (T)
(ii)Jay Engineering Works Ltd. Vs CC. Chennai- 2003 (162) E.L.T. 680
(iii) U-Foam Pvt. Ltd. Vs. CC, Chennai -2003 (154) E.L.T. 633 (T)
(iv) ITC Ltd. Vs. CC, Chennai- 2003 (153) E.L.T. 366 (Tri. Chennai)
(v) Centwin Vs. CC, Chennai-2002 (149) E.L.T. 573 (Tri. Chennai)
(vi) U-Foam Pvt. Ltd. Vs. CC, Hyderabad-2002 (140) E.L.T. 131 (Tri.)
(vii) Standard Industries Ltd. Vs. CC, Trichy-2001 (136) E.L.T. 124
(viii) M. Ravindra Rao, M.D. Vs. CC. Madras-2000 (116) E.L.T. 261
(ix) Dolphin Drugs (P) Ltd. Vs. CC, Mumbai-2000 (115) E.L.T. 552
(x)CC, Hyderabad Vs. Cheminor Drugs Ltd.- 2003 (54) RLT 311(Tri)

- The show cause notice has been issued on 14.03.2011 for demand of duty on goods removed in 2007 and 2008 without having any ingredients for invoking extended period. The entire case of the department rests upon statutory records maintained by the appellant and therefore, allegation of suppression or misrepresentation of facts is not sustainable.
- SAD and CVD cannot be demanded under Proviso to Section 28 of the Customs Act, 1962 since the sought levy cannot be due to wilful suppression or misdeclaration. CVD and SAD if any paid on the inputs is available to them as Cenvat credit which can be used for duty payment or else, can be got refunded under Rule 5 of the Cenvat Credit Rules. The situation being revenue neutral to the appellant and therefore, they cannot be alleged to have violated conditions of Notifications for non-payment of CVD and SAD by resorting to suppression/wilful misstatement. They rely on following case laws:-

(i) Geep Industrial Syndicate - 1999 (114) ELT 850 (Tri)

(ii)Mahindra & Mahindra Ltd. - 2000 (125) ELT 477 (Tri)

(iii) Sushirpada Chemicals vs. CCE - 1996 (88) ELT 109 (Tri)

- The goods are not liable to confiscation as Section 111(o) of the Customs Act provides for confiscation of imported goods where post importation conditions are not complied with, which is not in their case. The goods are also not cleared by them under Bond or LUT and therefore, redemption fine in lieu of confiscation is also not imposable as per settled legal provisions as held in following cases:-

(i) Shiv Kripa IspatPvt. Ltd. -2009 (235) ELT 623 (Tri.-LB)

(ii) Chinku Exports -1999 (112) ELT 400 (T)
{Approved by Apex Court vide 2005 (184) ELT A36}

(iii) Raja Impex Pvt. Ltd. 2008 (229) ELT 185 (P&H)

(iv) Rishi Ship Breakers Final Order of Bombay High Court in Customs Appeal No. 70 of 2009

(v) Finnesse Creation Inc. Final order of Bombay High Court in Customs Appeal No. 66 of 2009

- Export obligation has been fulfilled and therefore, imported goods cannot be confiscated under Section 111(o) of the Customs Act, 1962 as held in following decisions:-

(i) VBC Industries Ltd., Hyderabad Vs. Commissioner of Customs - 2003 (156) ELT 872 (Tri).

(ii) Rajyalakshmi Laboratories Ltd. v. Commissioner 2007 (208) E.L.T. 398 (Tri.)

(iii) Steel Authority of India Ltd. v. Commissioner 2005 (184) E.L.T. 308 (Tri.)

- Levy of interest is not warranted in this case as duty itself is not payable by the appellant. On the same grounds,, penalty is also not imposable on them as held in following cases.

(i) Collector of Central Excise v. H.M.M. Ltd [1995 (76) ELT 497 (SC)]

(ii) Commissioner of Central Excise, Aurangabad v. Balakrishna Industries [2006 (201) ELT 325 (SC)]

(iii) Commissioner of C. Ex. &Cus. V. Nakoda Textile Industries Ltd. [2009 (240) ELT 199 (Bom.)]

- Penalty under Section 114A is also not imposable as they have not suppressed anything or misstated wilfully. Also, penalty is not imposable in cases involving interpretation as held in following decisions:-
  (i) Auro Textile v. Commissioner of Central Excise, Chandigarh [2010 (253) ELT 35 (Tri.-Del.)]
  (ii) Hindustan Lever Ltd. v. Commissioner of Central Excise, Lucknow [2010 (250) ELT 251 (Tri.-Del.)]
  (iii) Prem Fabricators v. Commissioner of Central Excise, Ahmedabad-II [2010 (250) ELT 260 (Tri.-Ahmd.)]
  (iv) Whiteline Chemicals v. Commissioner of Central Excise, Surat [2009 (229) ELT 95 (Tri.-Ahmd.)]
  (v) Delphi Automotive Systems v. Commissioner of Central Excise, Noida [2004 (163) ELT 47 (Tri.-Del.)]

2.1 Shri Deepak N Choksi, Director (Appellant-2), took the following grounds and prayed for setting aside penalty imposed on him by allowing his appeal.

- The impugned order does not contain any allegation against him and therefore, he is not liable to any penalty under Section 112 of the Customs Act, 1962 as penalty under this Section can be imposed if any person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111 or abets in doing or omission of such an act.
- So long as imported duty-free inputs were not sold as such, there is no violation of Notification No. 93/2004, 14/2006 and 32/2005. Accordingly, he is not liable to any penalty.

3. During arguments, Learned Advocate highlighted the grounds taken by them in their appeals and argued that the conditions of job work are fully satisfied in their case and therefore, revenue has no case to demand differential duty, interest and levy penalty on them. Under the relevant notifications, what is barred is selling or transferring the imported goods as such since these notifications do not prohibit manufacture of goods through job workers. Citing Para 4.16 of the Handbook of procedure, he states that there is a provision for supply of imported material to the supporting manufacturer which cannot be treated as "sold or transferred" within the meaning of condition No. (vii) of the Notification No. 93/2004. Learned Counsel also pleaded that use of duty free imported goods in further production of finished goods mentioned in the license, by the License Holder or supporting manufacturer, will not be considered as "sold or transferred". This is concluded from the wordings of Notification No. 117/78, which is the very first exemption notification issued by Customs under advance license, relevant para of the said notification is reproduced below:

> *"(d) the exempt materials shall be used for the purpose specified in this notification and in such factories as are specified in the said Certificate:*
>
> *(e) the exempt materials or any portion thereof shall not be sold or otherwise transferred to any other person, or utilized or permitted to be utilized or disposed of in any other manner, without the previous permission of the Committee:*
>
> *Provided that this condition shall not apply in relation to any exempt materials which have been imported for replenishment of the materials used in the manufacture of goods"*

3.1 Learned Advocate further argues that the raw-materials have ultimately been used for manufacture of final products. The situation is revenue neutral as they are entitled to Cenvat Credit of CVD and SAD, if any, paid on imported raw materials. He relies on the decision of Hon'ble Gujarat High Court in the case of Aries Dyechem Industries Vs. Commissioner of Central Excise, Ahmedabad reported at 2014 (299) ELT A88 (Guj.) wherein it was held that job worker can clear goods from his premises on payment of duty and under an invoice which cannot be said to be sale of goods by the job worker and the benefit of job work is admissible. He thus, pleads that clearance of Gamma acid and 6-Nitro by the job worker(s) on their duty paying invoice(s) would be covered as return of goods by the job worker to the principal manufacturer. Thus, condition No. (vii) of the relevant notification (s) is satisfied. Hence, impugned order of Learned Commissioner for confiscation of duty free Beta Naphthol confirming demand of customs duty along with interest and penalty is liable to be set aside. Learned Advocate prayed for allowing both the appeals.

4. Countering the arguments, Learned AR explained the manufacturing process of Gamma Acid. He submits that Beta Naphthalene is reacted with concentrated sulphuric acid at high temperatures to produce 2-Hydorxy-6,8-disulfonic acid. The goods are then heated with water in a process called hydrolysis followed by cooling, to form 2-hydroxy naphthalene-6,8-disulfonic acid, which is then isolated by filtration. The isolated compound is placed in a high-pressure reactor along with Ammonia liquor and Sodium bisulfite. Sodium bisulfite is added to facilitate the reaction, which converts a hydroxyl group into an Amino group, forming the intermediate amido-G salt. Ammonia is then removed and Caustic Soda is added at high temperature and pressure to form Gamma acid as a salt. The mixture undergoes filtration to separate the solid product from the liquid. The product is washed thoroughly with hot water to remove impurities. The purified wet cake is then dried to obtain final Gamma acid as a stable, crystalline powder.

4.1 Learned AR submitted that the appellant supplied only Beta Naphthol to their job workers, who then used other raw materials such as oleum, sulphuric acid, liquid ammonia, caustic soda flakes and sodium bisulphite etc purchased on their own account for manufacture Gamma Acid and 6-Nitro. Thus, manufacture of intermediate goods is not a job work. He supports his say on the basis of decision of Hon'ble Supreme Court in the case of Prestige Engineering (India) Ltd Vs. Collector of C. Excise, Meerut reported at 1994 (73) ELT 497 (S.C).

4.2. Relying on the decision of Hon'ble Gujarat High Court in the case of Trafigura India Pvt Ltd reported at (2023) 13 Centax 9 (Guj.), Learned AR pleads that interpretation of an exemption notification may be construed liberally to extend the benefit but eligibility criteria contemplated thereunder to be strictly construed. He argues that the appellant has not fulfilled the condition (vii) of the relevant exemption notifications and therefore, they are not eligible to the benefit of these notifications. He also submits that Shri. Deepak. N. Choksi, Director is the person behind above contraventions, and therefore, penalty imposed on him is justified. Reiterating the findings of the learned Adjudicating Authority, he pleads for dismissing both the appeals and upholding the impugned order.

5. We have heard both the sides. The short issue to be decided in this case is whether the appellant have violated the conditions of exemption notification(s) and if so, whether they are liable to pay customs duty along with interest and penalty?

5.1 The facts reveal that appellant was transferring "Beta Napthol" from their factory to various job workers under challan, who also consumed their other raw materials such as oleum, sulphuric acid, liquid ammonia and caustic soda flakes etc for manufacturing of intermediate goods Gamma Acid and 6-Nitro. The job worker(s) supplied these intermediate goods to the appellant under cover of tax invoice. A perusal of sample copy of Tax invoice bearing No. 46 dated 01.07.2007 issued by M/s Combay Chem Limited (as reproduced below) would clearly reveal that the job worker has sold Gamma Acid to the appellant and reduced the value of Beta Napthol transferred by the appellant, from the total price. Under this invoice 2704.875 kgs of Gamma acid (packed in 119 bags) has been sold to the appellant @ 260 per kg and Excise duty @ 16% and VAT @ 4% has been paid on total price of Rs. 7,03,267/-. From the total price, an amount of Rs. 4,45,493/- has been reduced towards value of Beta Napthol supplied by the appellant under challan dated 11.06.2007. Same is the practice by other job workers which indicate, that duty free Beta Napthol has actually been sold by the appellant to their job workers who in turn, have sold intermediate goods "6-Nitro" and "Gamma Acid" to the appellant under their sale invoice.

...cisable goods from a factory ... 11 (1) of the Central Excise Rules 1944

TAX INVOICE

White - Original for Buyer
Pink - Duplicate for Transporter
Green - Triplicate
Yellow - Account Copy

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CAMBAY CHEM LTD.
Survey No. 637, Nr. Kalamsar Village,
Dhuvaran Road, Cambay,
Phone : (02698) 285562, 285560

Self Authentication
CAMBAY CHEM LTD.

Dt. of Issue : 01/07/2007
Time of Issue : 12:10 hrs.
Dt. of Removal of goods : 01/07/2007
Time of Removal of goods : 12:30 hrs
C. Ex Reg. No. : 21/03/15/071/8
P. L. A. No. : AAACC 9901
Reg. No. : AAACC 9901 HXM/001

Name & Address of Consignee
M/s. Dynamic M/s. Ltd
Plot No. 5501/2 Ph. III
Trikampura Cross
GIDC Vatva.
Ahmedabad

Description of Excisable Commodity : DYE INTERMEDIATES
Tarriff Heading / Sub Handing No. : 2922.00/2921.00
No. & Date of notification under which concessional rate of duty if any claimed :

Your Order No. :
Date :
Invoice Sr. No. : 000046
Delivery Challan No. : 42

Description & Specification of goods (Sr. 29222140)	Pkg. & Dt.	Total Quantity Kgs.	Assessable value per Unit Rs.	Total Price of goods Rs. Ps.
Dyes Intermediates Gamma Acid ... Bag ... 20 10/1 - 22 x 25 x 91% = 500.50 ...- 33 x 25 x 91% = 750.75 ...- 15 x 25 x 92% = 345.00 ...- 37 x 25 x 90.5% = 837.125 ...- 12 x 25 x 90% = 271.50 119 Bags net 2704.875	119 Bags	2704.875 Kgs. Dry	260/- p. Kg.	703267=00 -445493=00 257774=00
Beta Naphthol supplied by you on PGR Challan No. 158 Dt. 1.6.2007 Qty. 3651.5815 Kgs @ 122/- p.				
Purity ___ % Bag No. ___ To ___		ENTRY NO...... DATE...... SING...... PASS BY......		

G.S.T. No. 24075601178 · 16/9/0..

S.C.S.T. No. & Dt.: 24575601178 · 16/9/0..	Sub Total Rs.	257774=00
...s E.C.C. No.: AAACC 9872 EXM-...R	Less : Discount Rs. %	-
... through :	Total Assesable Value	257774=00
Despatch from : kalamsar, Cambay To Vatva	Basic Ex. Duty Rs. 16 %	112523=00
... Transport	EDU. CESS 2%	2250=00
Motor vehicle, its Registration No.: GJ 23T. 4727	S.H. Cess 1% ~~Total Rs.~~	1125=00
	Against form No.	-
...T.R./L.R./R.R./A.W. Bill No	VAT 4 %	32767=00
	Freight	-
Amount (in words) Rs. Four Lac, Six Thousand Four hundred thirty nine only	Other	-
	GRAND TOTAL RS.	406439=00

Excise Duty Paid / Payable Rs. 112523+2250+1125 (In words) One Lac, Fifteen Thousand Eight hundred ninety eight only

...bit Entery No In P.L.A. ______ R. G. 23 Part II) ______ Dt. ______

...N No.: 24650700730 Dt. 30-9-2005
...N No.: 24150700730 Dt. 30-9-2005

Certified that the particulars given above are true and correct and the amount indicated represents the price actually charged and that there is no flow additional consideration directly or indirectly from the buyer OR Certified that the particulars given above are true & correct and the amount indicated is provisional ... from the buyer on account of ...

Scanned with

5.2 We further find from the statement of Shri Himmat Singh Sisodiya, Excise Incharge of M/s Cambay Chem Ltd that they had not undertaken manufacturing of Gamma Acid on job work basis for M/s Dynamic Industries Limited as only one input i.e Beta Napthol was supplied by the principal manufacturer; that they had not returned the job challan or any goods under job challans as had been the practice for normal job work; that M/s Dynamic Industries Limited had placed purchase order (PO) on their unit for supply of Gamma Acid; that supply of Beta Napthol for all practical purposes can be called as their purchase but as M/s. Dynamic Industries did not issue invoices, so to square up their accounting, they reduced it's value in the invoice (s) raised on the appellant for sale of Gamma Acid; that this was done as per discussions and purchase order of M/s. Dynamic Industries; that these transactions have been recorded as sales in their books of account; that they undertook job work for others but in those cases, all the required inputs for manufacture of final products were supplied by the principal manufacturer and they raised invoice for the job charges only and no Excise duty or VAT was paid on such charges. The statement of Shri. Deepak K. Pandya, Authorized signatory of M/s Bodal Chemicals Ltd (Unit-I) and of Shri. Chandrakant P Desai, partner in M/s Shivam Chemicals also confirm the above facts. These statements recorded under Section 108 of the Customs Act, 1962 have not been retracted and hence, have evidentiary value.

5.3 Hon'ble Supreme Court in the case of Prestige Engineering (India) Ltd (cited supra) has clearly held that *"Job work means goods produced out of materials supplied by customer and where the job workers contribute mainly their labour and skill though done with the help of their own tools, gadgets or machinery. But when the job worker contributes his own raw material to* *the article supplied by the customers and manufactures different goods, it does not amount to job work. However addition or application of minor items by job worker would not detract it being a job work Like a tailor stitching a shirt or suit out of the cloth supplied by his customer, may use his own buttons, thread and lining cloth and such an activity would amount to job work Return of same article to the customer even after job work not necessary*".

Further, in Para 24 of the said decision, Hon'ble Court held that- *"there is no certainty that the acetic anhydride that is returned is the product of that customer's very own acetic acid....It is a full-fledged manufacture of a new commodity, and must, therefore, pass through all the rigours that such commodities must pass under the Central Excise Law. If Notification 119/75-CE cannot be applied, then so be it. The notification cannot be forced to operate in conditions it is not qualified to operate. In the case before us now, we have the added factor that acetic anhydride by Sirsilk is not known to be the product of the acetic acid brought by the particular customer, because Sirsilk uses this process for its own production programmes as well. The acetic acid first gets mixed with other acetic acid or the finished anhydride gets mixed with anhydrides obtained from other acetic acid. There is no segregation and therefore no one can tell that the acetic anhydride was the result of this or that acetic acid."*

5.4 We find from the above that the job workers were using other inputs purchased on their own account for manufacture of 6-Nirto and Gamma Acid as appellant had supplied only one input i.e. Beta Napthol to them on job work challans. It is evident from the facts that the appellant sold Beta Napthol to the job workers who, while selling intermediate goods (Gamma Acid & 6-Nitro) to the appellant under their sale invoices, paid taxes on full value but for accounting purpose, had reduced the value of raw material so supplied, from the total invoice price. The Condition No. (vii) of the relevant notification No. 93/2004-Cus dated 10.09.2004 clearly stipulates that the material shall not be transferred or sold. Similarly worded condition exists in respect of other exemption notifications, benefit of which was availed by the party. These facts have also been confirmed by Shri. Deepak N. Chokshi, Director of the unit who in his statement dated 20.11.2008 stated that they were getting some other goods manufactured on job work basis from M/s. Varahi Dyes & Intermediates by supplying all the required raw materials on job work challans. In these cases, concerned job workers were issuing bills for job work charges only and no taxes were paid.

5.5 The appellant has heavily relied on the decision of Hon'ble Gujarat High Court in the case of Aries Dyechem Industries Vs. Commissioner of Central Excise, Ahmedabad reported at 2014 (299) ELT A88 (Guj.) to plead that they had sent duty free goods to job worker who manufactured intermediate goods on their behalf and the same were received back for manufacture of final goods which were exported. We however find that the said decision has dealt with the issue of reversal of Cenvat Credit involving different facts. In the relied upon decision, Aries Dyechem were sending inputs to job worker without reversal of Cenvat Credit and getting the goods manufactured from him. The Revenue in this case had issued show cause notice for non following of the provisions of rule 4(5)(a) of the Cenvat Credit Rules. Likewise, facts in other case laws are also much different than the present case where issues involved is whether appellant has satisfied the conditions of Notification No. 93/2004-Cus to avail exemption from customs duties. As discussed above and in the light of decision of Hon'ble Apex Court in Perfect Engineering case, transfer of only one input "Beta Napthol" by the appellant to the job workers who consumed other inputs from their own account, manufactured intermediate goods and sold the same on tax invoices on payment of excise duty and VAT, cannot be said to be covered as job work. These job workers in fact reflected these transactions as sale in their books of account. They, in other cases where principal had sent all the inputs, shown their activity as job work, issued invoices for job charges only and not paid taxes on them. Therefore, we hold that condition (vii) of the Notification No. 93/2004-Cus., dated 10.09.2004 that importer shall not transfer or sale duty free imported raw materials has been violated as discussed above.

5.6 We also find that similar issue of import of Beta Napthol against advance authorization and its utilization through job worker(s) for conversion into intermediate goods came up for decision before Mumbai Tribunal in appellant's another unit where allegation was that by sending raw material to the job workers, conditions of exemption notification No. 93/2004-Cus has been contravened. The assessee's claim that converted goods have been received in the factory and subsequently exported was not accepted and it was held that there is a clear violation of the condition of the notification which required entire processing to be effected in the assessee's factory. The Tribunal upheld the decision of the lower authority of demand of duty along with interest and consequential penalty. Relevant Para 6,7 and 8 of the said decision are reproduced below: -

> *"6. It is very clear from the reading of the notification, especially after the amendment referred to supra, that the goods should not have been sent to any other factory for any kind of process and that such conversion by a job worker was permissible only after the redemption of the bond. Though Learned Counsel asserts that some of the imports were effected after completion of the exports, it is not evident that these imports took place after the redemption of the bond and that the transfer to job worker thereby permissible. Undoubtedly in re: Tetra Pak (India) Ltd., the Tribunal did hold that movement to a job worker does not constitute a transfer. Nevertheless, the decision was rendered in the context of restriction on transfer/sale of imported raw materials. The relevant notification prescribes that the transfer or sale is liberalised to the extent of conversion of raw materials by a job worker after the export*

> *obligation is fulfilled and of the material that remains unutilized. A harmonious reading of the proviso introduced later and the main provision would lead to the inevitable conclusion that, even if utilised by a job worker for conversion, transfer of the imported inputs is not permissible.*
>
> *7. Notwithstanding the claims of the appellant that the converted goods have been received back in the factory of the appellant and that the exports have taken place subsequently, this would appear to be a clear violation of the provisions of condition requiring the entire processing to be effected in the factory of the appellant.*
>
> *8. Accordingly, we find no flaw in the finding of the lower authorities that the duty was liable to be recovered along with consequential penalties.*

5.7 Regarding invocation of extended period, the appellant contended that they have not suppressed anything in the case and therefore, extended period is not invokable and the show cause notice dated 14.03.2011 issued for demanding customs duty on imports during 2006-2007 to 2007-08 is time barred. We find that as per condition (iii) of the Notification No. 93/2004-Cus dated 10.09.2004, the importer at the time of clearance of goods had to execute a bond with such surety or security and in such form and for such sum as may be specified by the Deputy Commissioner of customs or Assistant Commissioner of customs as the case may be, binding himself to pay on demand an amount equal to the duty leviable but for the exemption contained herein, on the imported materials in respect of which the conditions specified in the notification have not been compiled with together with interest at the rate of fifteen per cent per annum from the date of clearance of the said materials. In this case, the appellant has executed an undertaking to pay the applicable customs duty along with interest @ 15% in case of violation of the conditions specified in the exemption notification. Hon'ble Supreme Court also in the case of Commissioner of Customs (import) Mumbai Vs. Jagdish Cancer and Research Centre reported at 2001(132) ELT 257 (S.C) held that obligation executed in terms of bond is continuous and therefore, limitation as provided under Section 28 (1) of the Customs Act, would not come into play. The hospital in this case was under obligation to provide free treatment as required and reservation of 10% beds in the hospital for weaker sections. It was found that the hospital was not fulfilling the condition of the exemption notification and hence, duty demand was raised against the party.

5.8 It has been held by Mumbai Tribunal in the case of HINDUSTAN LEVER LIMITED Vs Commissioner of Customs (EP), Mumbai reported at 2012 (281) ELT 241 (Tri.) that bar of limitation is not applicable when duty demand is raised in terms of bond and letter of undertaking executed by the importer with the Customs authorities. Relevant Para 7.3 of the said decision is reproduced below:-

> ***"7.3*** *The appellant has also raised a contention that duty demand is time-barred as the show cause notice has been issued only on 29-10-2004, whereas the import of Crude Palm Stearine has taken place in March and June 1999, that is, after a period of five years from the date of import. The question of time bar in this case will not arise for the reason that the duty demand is raised in terms of the bond and letter of undertaking executed by the importer appellant with the customs authorities. In terms of the said bond/LUT, there is a obligation on the part of the appellant to fulfil the terms and conditions of import which we have already held that the appellant has not fulfilled. The bond/LUT executed with the customs has not been discharged and therefore, duty demand can be raised at any time before the bond is discharged. Since the duty demand is sustainable, the liability to pay interest thereon is automatic and consequential. Therefore, the appellant is liable to pay interest on the duty demand of Rs. 66,71,998/- in terms of the bond/LUT executed by them at the appropriate rates. Since the appellant has failed to fulfil the terms and conditions of the relevant customs notification in respect of the end use specified therein, the quantity of 805.266 MTs of crude palm stearine valued at Rs. 1,49,99,863/- is liable to confiscation under the provisions of Section 111(o) of the Customs Act, 1962 and we hold accordingly. Consequently the appellant would be liable to penalty under Section 112(a) of the Customs Act, 1962. Since the crude palm stearine was allowed to be cleared in terms of the bond executed with the customs, in lieu of confiscation, redemption fine under Section 125 of the said Customs Act can also be imposed."*

5.9 Again in the case of Boroplast Vs. Commissioner of Customs, Mumbai reported at 2017 (357) ELT 345, Mumbai Tribunal held that till the validity of bond, demand does not get time barred as the obligation is continuous till it is fulfilled or as the case may be, till the bond is live. Normal period of limitation under Section 28 of the Customs Act, 1962 does not apply and demand is not hit by limitation.

5.10 In the case of Travel Planners Limited vs Commissioner of Customs, Nhava Sheva reported at 2012 (285) ELT 369, Mumbai Tribunal held that duty demand could be enforced in terms of bond executed at the time of import for fulfilment of the conditions as stipulated under EPCG and Notification No. 55/2003-CS. Demand could not be said to be time barred under Section 28 of the Customs Act, 1962.

5.11 We further find that Hon'ble Apex Court in the case of Union of India Vs. Cosmos Films Limited though pertaining to GST regime, had vide order dated 28th April, 2023 upheld pre-import conditions imposed by the DGFT and Customs notification. Citing the decision in the case of Rohitash Kumar & Ors. Vs. Om Prakash Sharma & Ors., it held that inconvenience or hardship is not a ground for the Court to interpret the plain language of the statute differently, to give relief. It also cited the decision of the constitutional Bench of Apex Court in Mysore SEB Vs. Bangalore Woolen Cotton & Silk Mills Ltd {AIR 1963 SC 1128} wherein it was held that "inconvenience is not" all decisive factors to be considered while interpreting the statute. In Martine Burn Ltd Vs. Corpn. of Calcutta { AIR 966 SC 529}, Hon'ble Apex Court while dealing with the same issue observed "A result flowing from a statutory provision is never an evil". A Court has no power to ignore that provision to relive what it considers the distress resulting from its operation. A statute must of course be given effect to whether a Court likes the result or not. "Hon'ble Apex Court in Para 26 of the order concluded that" it is evident that the hardship caused to an individual, cannot be a ground for not giving effective and grammatical meaning to every word of the provision, if the language used therein is unequivocal."

5.12 From the above judicial pronouncements, it is clear that appellant's contention on time bar does not hold ground. Learned Commissioner has confirmed Customs duty in the instant case by enforcing the bond(s) executed in terms of Notification No. 93/2004-Cus and other relevant exemption notifications, read with proviso to Section 28 (1) of the Customs Act, 1962. We are therefore of the view that when importer has executed bond to pay duty in case of contravention of the conditions of the said notification, there will not be any requirement to invoke extended period of limitation under proviso to Section 28(1) of the Customs Act, 1962 for duty demand. We further find that the appellant has suppressed the fact of sale of imported duty-free Beta Napthol to their intermediate goods suppliers in the guise of job work challan. They had placed purchase order for supply of Gamma acid and 6-Nitro on them and tried to cover their activity as job work to justify non-fulfilment of conditions of notifications. Therefore, penalty has correctly been imposed on the appellant under Section 114A of the Customs Act, 1962. Accordingly, we uphold the impugned order of learned Commissioner of confiscation of 2,33,150 kgs of imported Beta Napthol under section 111(o) of Customs Act 1962, confirmation of Customs duty of Rs. 85,56,907/- along with interest @15% and imposition of equal penalty under Section 114A of the Customs Act, 1962.

6. The learned Commissioner has imposed a penalty of Rs. 20 Lakhs on the appellant Shri. Deepak N Choksi, Director of M/s Dynamic Industries Ltd under Section 112 of the Customs Act, 1962. The learned Commisioner has observed in the impugned order that Shri. Deepak Chokshi, director of M/s. Dynamic Industries Ltd, Vatva, Ahmedabad is mastermind in the entire episode of obtaining of advance authorization, DFIA and Target + scheme, import of duty free Beta Napthol under the said schemes and the subsequent diversion and sale of the duty free material under the guise of job work. These facts are evident and corroborated by the statements of Shri Deepak Kanaiyalal Pandya, Authorised signatory of M/s. Bodal

Chemicals Ltd. Unit-I and Unit-II, Vatva, Ahmedabad, Shri Himmatsingh Sisodiya, Excise-in-charge of M/s. Cambay Chem Ltd, Cambay and Shri Chandrakant P. Desai, Partner of M/s. Shivam Chemicals Extension No. 2 & 4, 5& 6, Vapi. Shri Deepak Chokshi, has knowingly involved and concerned himself in masterminding the entire operation of planned evasion of duty, suppressing the material facts from the departments, purchasing, removing and selling the duty free Beta Napthol imported against various schemes in violation of the provisions of the Customs Act, 1962, and FTP. Learned Commissioner has also observed that Shri Deepak Chokshi, knew and had reasons to believe that due to diversion of the subject goods imported duty free, the said goods were liable to confiscation under Section 111(o) of Customs Act, 1962 and thus he indulged in smuggling activity in terms of Section 2(39) of the Customs Act, 1962, thereby rendering himself liable for penal action under provisions of Section 112 of the Customs Act, 1962.

7. We agree with the conclusions arrived at by the Learned Commissioner as mentioned above. Shri Deepak Chokshi was the director of the appellant company M/s. Dynamic Industries Ltd. and was controlling and managing day to day affairs of the company at the relevant time. Therefore, he was responsible for all the activities in which the appellant company indulged including evasion of Customs duty, suppression of material facts from the department and purchasing, removing and selling duty free Beta Napthol imported in violation of various provisions of the Customs Act, 1962 and Foreign Trade Policy. Therefore, we agree with the learned Commissioner that, Shri Deepak Chokshi, is liable for penalty under Section 112 of the Customs Act. However, we find that the Commissioner has imposed penalty of Rs. 20 Lakhs upon Shri Deepak Chokshi, director of M/s. Dynamic Industries Ltd under Section 112 of the Customs Act, 1962 but he has not mentioned the specific Sub-Section and clause of Section 112 of the Customs Act under which penalty has been imposed. Section 112 of the Customs Act, 1962 has been divided in two parts i.e. Section 112(a) and Section 112(b) each having five clauses specifying different quantum of penalty. The Learned Commissioner should have clearly mentioned specific Sub Section and clause of Section 112 under which he sought to impose penalty upon the appellant Shri Deepak Chokshi but it was not done. Therefore, we are of the view that penalty must be imposed upon Shri Deepak Chokshi, director of M/s. Dynamic Industries Ltd under Section

112(a)(ii). In view of the circumstances of the case, it will be proper if the penalty of Rs. 5 Lakhs be imposed upon the appellant Shri. Deepak Chokshi, director of M/s. Dynamic Industries Ltd under Section 112(a)(ii) of the Customs Act, 1962. Consequently, a penalty of Rs. 5 Lakhs is imposed under Section 112 (a)(ii) upon Shri Deepak N Chokshi, Director of M/s Dynamic Industries Ltd. The order of the Learned Commissioner regarding the penalty is modified to this extent.

8. The appeal filed by M/s. Dynamic Industries Ltd is rejected and the appeal of Shri. Deepak N Chokshi is disposed of in terms of this order.

(Pronounced in the open court on 19.06.2026)

(DR. AJAYA KRISHNA VISHVESHA)
MEMBER (JUDICIAL)

(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)

Prachi