

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

REGIONAL BENCH - COURT NO.I

Customs Appeal No.70414 of 2025

(Arising out of Order-in-Original No.VIII(30)Cus/ICD-DD/Gr-2A/Best Crop/04/2025 dated 27.02.2025 passed by Principal Commissioner of Customs, Noida)

M/s Best Crop Science Pvt. Ltd.,

.....Appellant

(Formerly Best Crop Science LLP,
Plot No.B-4, Bhagwan Dass Nagar,
East Punjabi Bagh, New Delhi-110026)

VERSUS

Principal Commissioner of Customs (Import),

Noida

....Respondent

(ICD Dadri, Concor Complex,
Gautam Budha Nagar, U.P.-203207)

APPEARANCE:

Shri Rupesh Kumar, Senior Advocate, Shri Jitin Singhal, Advocate &
Shri Himanshu Tyagi, Advocate for the Appellant
Shri Santosh Kumar, Authorized Representative for the Respondent

CORAM: HON'BLE MR. P. K. CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO.- 70301/2025

DATE OF HEARING : 15.05.2025
DATE OF PRONOUNCEMENT : 20.05.2025

The present appeal has been filed by the Appellant assailing the Order No.VIII(30)Cus/ICD-DD/Gr-2A/Best Crop/04/2025 dated 27.02.2025 passed by Principal Commissioner of Customs, Noida, rejecting the request of the importer to re-export the goods.

2. The facts of the case in brief are that the Appellant imported "3-Chloro-4-(1,1,2-Trifluoro-2-(Trifluoromethoxy) Ethoxy Benzenamine" under Bill of Entry No.5017575 dated 12.08.2024. It appeared to revenue that the Appellant mis-declared their goods while filing the bill of entry. The consignment was put on hold by the DRI, Noida Regional Unit and examined by the officers of DRI, Noida at CFS-Transworlds Terminals Pvt. Ltd., and samples were drawn, but no seizure was made. The Appellant raised the concern with the overseas supplier regarding the specification and the nature of the goods

supplied as mentioned in the sales contract, vide email dated 09.09.2024. The supplier responded and assured to look into the matter. Subsequently, the overseas supplier confirmed that owing to the erroneous/inadvertence on their part, instead of loading the contract product "3-Chloro-4-(1,1,2-Trifluoro-2-(Trifluoromethoxy) Ethoxy Benzenamine", some other product was loaded in the export consignment leading to a bona-fide wrong shipment of goods. The supplier therefore, requested the Appellant to apply for re-shipment of the consignment back to them as the same was not meant for import to the Appellant and there has been a bona-fide mistake on the part of the foreign supplier.

3. Under Section 111(d) of the Customs Act, for the reason that the Appellant is not registered for import of 'Novaluron' and does not have the mandatory registration certificate under Section 9 of the Insecticides Act for import of Novaluron and therefore, the import is restricted in nature. The allegation of mis-declaration under Section 111(m) of the Customs Act was levied by the Department. The Appellant requested the learned Additional Director General, DRI and learned Deputy Director, DRI to lift the detention and allow re-export of the imported goods. This was also confirmed from the Revenue that from the chemical analysis report brought on record. Since Appellant was incurring huge demurrage and detention charges on the goods which are lying at the port, a Writ Petition (C) No.16915/2024 was filed by the Appellant before the Hon'ble High Court of Delhi and vide order dated 11.12.2024, it was directed to decide the representation within a period of two weeks. After the order of Hon'ble High Court to decide the representation, the imported goods were seized by the DRI vide the Seizure Memo dated 23.12.2024. It is the case of the Department that the Appellant had smuggled a finished product (insecticide) i.e. Novaluron in the guise of the imported goods. The seizure memo revealed that the samples tested positive for "Novaluron". Learned Deputy Director, DRI issued a letter wherein it had mentioned that any request for re-export may be submitted to the Noida Customs Commissionerate. In the same breath, the DRI stated that the request of the Appellant seeking re-export stands rejected without citing any reason for the same, which is against the

principles of natural justice. After receipt of DRI's letter, Appellant filed fresh request for re-export before Respondent vide emails. Appellant was constrained to file another Writ Petition No.842/2025 before the Hon'ble High Court of Delhi on 18.01.2025 and vide Order dated 22.01.2025, the Hon'ble Court fixed a date for 03.02.2025 for the Appellant to appear before Respondent. Appellant appeared before the learned Respondent, submitted a written submission dated 03.02.2025 and explained that the goods were wrongly sent by the foreign supplier and requested for re-export of the consignment and also informed about the financial and strategic losses due to the continued detention of the goods. Alternatively, requested to allow the provisional release of the goods, since seized, in terms of Section 110A of the Customs Act, 1962, paving the way for its re-export.

4. Subsequently, the Appellant approached the Original Authority requesting for the provisional release of the seized goods for re-export of the goods. Original Authority through the above stated order, rejected the request of the Appellant holding that since the goods were restricted in nature and were liable for absolute confiscation, it cannot be released provisionally, either for home consumption or for re-export. Aggrieved by the said order, Appellant is before this Tribunal.

5. Learned Senior Advocate appearing on behalf of the Appellant submitted that a written submission was made with the original authority on 03.02.2025 wherein it was explained that the goods were wrongly sent by the foreign supplier and requested for re-export of the consignment under the provisions of CBIC Circular No.04/2015-Customs dated 20.01.2015 and also informed about the financial and strategic losses due to the continued detention of the goods. Alternatively, the Appellant requested to allow the provisional release of the goods, since seized, in terms of Section 110A of the Customs Act, 1962, paving the way for its re-export. Learned Counsel stressed that they neither ordered for the offending goods and nor did they paid to the supplier. Thus, the provisional release of the goods should have been allowed for re-export. It was reiterated that an order was duly placed by the Appellant to the foreign supplier as per the Sales Contract and when the goods were duly sent by

the supplier, the Appellant filed the Bill of Entry dated 12.08.2024 for import and claimed the ownership of the said consignment. However, at a later stage, it was revealed that the wrong goods have been sent by the supplier under bona fide mistake. At this stage, the foreign supplier requested to re-export the goods back and accordingly, the Appellant requested the Ld. Respondent to allow re-export of the goods. It was also submitted that as soon as the Appellant filed the bill of entry, the Appellant claimed the ownership of the goods and unless, the Appellant files for abandonment of the goods or relinquishment of their rights over the said goods, the liability and ownership of the goods remain with the Appellant and therefore, the reasoning of Ld. Respondent is merely a frivolous one to deny the request for re-export. The learned counsel for the Appellant further submitted that it was not the case that the Appellant had not placed any order for the goods and supplier has sent the goods without the consent of the Appellant. Rather, it was merely a case where out of genuine mistake, wrong goods have been sent to the Appellant. Moreover, the imported goods were insecticides, which are in the form of white powder and could not be distinguished visually and as a result, it is possible, that wrong goods were packed and sent to the Appellant. He further submitted that though the Customs Act, 1962 does not categorically mention "restricted goods", the Foreign Trade Policy along with Act and Rules made thereunder distinguish between "Restricted" and "Prohibited" goods. The prohibited goods have certain quality associated with them, and have an intrinsic taint, being harmful to the public health, public order, national security, etc., for example, arms and ammunition, narcotic drugs, etc. and therefore, makes them liable to absolute confiscation. The restricted goods are those goods whose import is permitted on fulfilling of certain conditions and are subject to restriction, which can be confiscated for violation of restrictions, but are liable to be released on payment of Redemption Fine. In the present case, the goods were found to be another insecticide "Novaluron" and as the Appellant does not have the mandatory Registration Certificate as per the Insecticides Act, authorizing import of Novaluron, the same falls under the category of restricted import. That, in view of the said restriction, the

Appellant requested for re-export of the goods which means that the goods shall not be released for home consumption and will be re-exported back to the exporting country from the customs station itself. The rationale for confiscation of the goods under Section 111 of the Customs Act authorizing absolute confiscation of certain goods, is to restrict the goods, having hazardous nature, to enter the Indian territory. However, when the goods are re-exported from the custom station itself, no damage is caused to the Indian soil. He relied upon the judgement delivered by Hon'ble Delhi High Court in *Mala Petrochemical & Polymers v. The Addl. Director General, DRI & ANR* 2017 (353) E.L.T. 446 (Del.), whereby it was held that the power under Section 110A of the Act involves exercise of discretion & the scope of judicial review if the discretion has been rightly exercised, that treatment of all types of wrongful imports on an equal footing might result in miscarriage of justice, hence the said Section leaves some margin to the Customs in the exercise of their discretion. Reliance was also placed on the judgement delivered by Hon'ble Supreme Court in the matter of *Commissioner of Customs vs. Atul Automations Pvt. Ltd.* 2019 (365) E.L.T. 465 (S.C.) wherein the Hon'ble Court had distinguished between prohibited and restricted goods and allowed release of restricted goods on payment of redemption fine.

6. Learned Departmental Authorized Representative justified the impugned order and prayed that the appeal filed by the Appellant, being devoid of any merits, may be dismissed.

7. Heard both the sides and perused the appeal records.

8. I have gone through the records of the case and the submissions made. I note that the contention of the learned counsel for the Appellant that earlier, in similar cases, the goods were allowed for re-export. I find that in the case of *Siemens Public Communication Networks Ltd.* {2001 (137) E.L.T. 623 (Tri-Kolkata)}, the Tribunal, vide its Final Order, set aside the redemption fine and the penalty imposed on the appellant, and allowed re-export of the consignment in question without any redemption fine or penalty or duty. For the sake of ready reference, the relevant portion of the Final Order is reproduced below:-

"5. We have heard the submissions made from both the sides. During the course of the arguments the Id. adv. appearing for the appellant made it clear that the appellants have opted for re-export of the goods. Accordingly they have challenged the order of the Commissioner imposing a redemption fine and penalty for the said re-export, which according to the appellants is not permissible to be imposed in view of the various case laws relied upon by them. It is seen that in the case of *Siemens Ltd. v. CC* - [1999 \(113\) E.L.T. 776](#) (S.C.), their Lordships have held that since goods have been allowed to be re-exported, neither redemption fine nor duty was required to be paid. The Tribunal in the case of *HCL Hewlett Packard Ltd.* - [1997 \(92\) E.L.T. 367](#) (T) has held that no redemption fine is imposable when re-export of the goods is allowed. To the same effect is the decision of the Tribunal in the case of *Padia Sales Corpn. v. CC* - [1992 \(61\) E.L.T. 90](#) and in the case of *Skantrons (P) Ltd.* - [1994 \(70\) E.L.T. 635](#). We further find that the Tribunal in the case of *G.V. International and Another* - [2000 \(118\) E.L.T. 517](#) = 2000 (39) RLT 272, following the earlier decisions of the Tribunal, has set aside the orders passed by the lower authorities ordering confiscation of goods and their release on payment of redemption fine and penalty. Further in the case of *Commissioner of Customs, Calcutta v. J.V. (P) Ltd.* - 2000 (39) RLT 1074, the order of the lower authorities allowing re-export of the goods without fine and penalty was upheld.

6. As discussed above the issue is squarely covered in favour of the appellants by the various decisions of the Tribunal and the Hon'ble Supreme Court. Inasmuch as the Commissioner vide his impugned order has given an option to the appellants to re-ship the goods back to the supplier, we hold that the redemption fine and the penalty imposed by him was not justified. We accordingly set aside the same and allow re-export of the consignment in question without any redemption fine or penalty or duty. Appeal is thus allowed in above terms."

9. Referring to the judicial precedents and the findings, I find that since the Appellant themselves caused enquiry with the overseas supplier once the imported goods were detained by Revenue and duly communicated the lapse much before the chemical report was communicated to the Appellant, there was no place for any doubt regarding the intention of the Appellant and since the goods were also found to be restricted in nature, post-chemical analysis, for which the Appellant was not entitled

to import as having no authorization from the competent Ministry, it was appropriately requested for re-export. By not allowing the re-export, the original authority had erred since his findings are based merely on assumptions and presumptions which could not sustain. The refusal to allow re-export is without any justifiable reason, and if found erroneous, which is not sustainable. Based on the afore-referred decision of this Tribunal in the case of Siemens Public Communication Networks Ltd.(supra) when the goods are liable to be re-exported, neither redemption fine/penalty nor duty is required to be paid by the Appellant. I, therefore, hold that the order rejecting the re-export was not justified. The delay in allowing the re-export would result in adverse effect on the flora, fauna and the ecosystem of the country. I, therefore, set aside the impugned order and allow the above appeal with the specific direction to the Customs, Noida to forthwith allow unconditional re-export of the consignment with consequential relief. Registry is directed to remit a copy of this order to the concerned by Speed Post and by E-mail and one copy by "Dasti" to the learned Departmental Representative for necessary action.

(Order pronounced in open court on - **20.05.2025**)

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

LKS