CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.II
(E-Hearing)
Customs Appeal No.70458 of 2022

(Arising out of Order-in-Appeal No.NOI-CUSTM-000-APP-94-22-23 dated 01/07/2022 passed by Commissioner (Appeals) Customs, Central Goods & Services Tax, Noida)

M/s PG Electroplast Ltd., ...Appellant
(Plot P-4/2, 4/3, 4/4, 4/5, 4/6, Site-B UPSIDC,
Indl. Area, Surajpur, Noida-201306)

VERSUS

Commissioner of Customs & CGST, Noida ....Respondent
(4th Floor, C-56/42, Reni Tower, Sector-62, Noida-201301)

APPEARANCE:

Shri Mohit Kalra, Proxy Counsel for the Appellant
Shri Santosh Kumar, Authorised Representative for the Respondent

CORAM: HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.70812/2025

DATE OF HEARING : 14 August, 2025
DATE OF DECISION : 14 August, 2025

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Appeal No.NOI-CUSTM-000-APP-94-22-23 dated 01/07/2022 passed by Commissioner (Appeals) Customs, Central Goods & Services Tax, Noida. By the impugned order, Commissioner (Appeals) has upheld the Order-in-Original No.14/ADC/Noida-Customs/2021-22 dated 24.08.2021 wherein following has been held:-

"ORDER

a) I hereby confiscate goods imported vide Bill of Entry No 6285589 dated 17.11.2021 having assessable value of Rs. 23000046.73 which includes goods having assessable value of Rs.28,11,575.48 imported without CHIMS registration under section 111(d) of Customs Act, 1962.

However, I give an option to importer to redeem the goods on payment of redemption fine of Rs.1,30,000/- (Rupees One Lakh and Thirty Thousand only) under section 125 of Customs Act, 1962.

b) I hereby impose a penalty of Rs.3,90,000/- (Rupees Three Lakh Ninety Thou-sand only on M/s PG Electoplast under section 112(1) of Customs Act, 1962.

c) I hereby order to release Bill of Entry No 6285589 dated 17.11.2021 on payment of Redemption Fine & Penalty."

2.1 Appellant have filed Bill of Entry No.8285589 dated 17.11.2021 for the clearance of the goods imported as detailed in table below:-

BE No.	Date	Supplier Name	Self Declared value (In Rs.)	Self assessed value (In Rs.)	Local IGM date	HSS date
8285589	17.11.2021	HONEST (MACAO COMMERCIAL OFF SHORE Ltd.) EM MACAJAVENIDA PRAAGRANDE no.619 EDF COMMERCIALS CHINA	23000046.73	7406671	14.11.2021	06.11.2021

2.2 The above said Bill of Entry was routed to Faceless Assessment Group (FAG) for verification of self Assessment of the Bill of Entry. While verifying the same, it was observed that the Bill of Entry was filed without CHIMS certificate for import of goods declared as Integrated Circuit under CTH 8542. Importer uploaded CHIMS registration certificate subsequently.

2.3 Another query was raised asking from importer to justify delay in CHIMS Registration. In reply, importer submitted that as per the Notification No.15/2015-20 dated 09.08. 2021 issued by DGFT, CHIMS Certificate are required to be submitted for clearance. The same has been received from DGFT who is the competent Authority for issuance of CHIMS certificate. Hence, it is requested to kindly clear the goods as it is incurring demurrage and detention."

2.4 Thereafter, the instant Bill of Entry was pushed back to Port Assessment Group (PAG) on the basis that "CHIMS Registration was not done on time, adjudication resulting confiscation and Penalty".

2.5 As per DGFT notification the CHIMS registration should be done in advance whereas in the present case the registration was done on 25.11.2021 i.e. ten days later than the local IGM date. Thus, it appeared that the goods have been imported in violation of import policy restrictions and the goods are liable for confiscation under Section 111 (d) of the Customs Act, 1962 and the importer appeared liable for penal action under Section 112 of the Act ibid.

2.6 Importer/appellant was informed about the violation and the importer vide letter dated 27.11.2021 requested for waiver of SCN/PH and requested for decision on merits.

2.7 Thereafter, the matter was adjudicated as per the Order-in-Original referred in para 1 above.

2.8 Aggrieved appellant have filed appeal before Commissioner (Appeals) which has been disposed of as per the impugned order.

2.9 Aggrieved appellant have filed this appeal.

3.1 Shri Mohit Kalra holding brief for the Counsel on record appears and prays for an adjournment in the matter.

3.2 I find that the matter has been already adjourned on the request of the appellant for more than the number of times statutory provided by proviso to Section 35C(1A) of the Act. Accordingly, matter is taken up for consideration after hearing Shri Santosh Kumar the learned Authorised Representative appearing for the revenue.

3.3 Learned Authorised Representative reiterates the findings recorded in the orders of the lower authorities.

4.1 I have considered the impugned orders along with the submissions made in appeal and during the course of argument.

4.2 Impugned order records the findings as follows:-

"In the instant the issue to be decided before me is whether the required/mandatory CHIMS registration obtained 10 days after actual import date is valid and legally sustainable for the import of the impugned goods or not?

5.1 Since the matter is related to the DGFT, which regulates the foreign trade of the country as per the Government of India directions, therefore it is imperative to examine the stands and policy of the DGFT. In this context, I find that DGFT vide Notification No. 05/2015-20 dated 10.05.2021 amended the import policy from 'Free' to 'Free subject to compulsory registration' under Chip Import Monitoring System (CHIMS) for the goods falling under CTH 85423100, 85423200, 85423300, 85423900 and 85429000. As per the new Policy Condition No. 6 added in Chapter-85 of ITC (HS). 2017, Schedule-I (Import Policy) reads as:

The Chip Imports Monitoring System (CHIMS) shall require importers to submit advance information in an online system for import of items and obtain an automatic Registration Number by paying registration fee of Rs. 1 per thousand subjects to minimum of Rs. 100/ and maximum of Rs. 500 on CIF value. The Importer can apply for registration not earlier than 60th day before the expected date of arrival of import consignment and can apply till the date of arrival of the import consignment. The Automatic Registration Number shall remain valid for a period of 75 days Importer shall have to enter the Registration Number and expiry date of Registration in the Bill of Entry to enable Customs for clearance of consignment.

It further states that importers who fail to register their Information/data on notified HS code Items in advance or are found to furnish incorrect data in the online CHIMS module will attract punitive action including action under FTDR Act. 1992.

5.2 1 also find that Notification for registration under CHIMS had come in the month of May, 2021 only but the same was made effective for the Bills of Entry filed on or after 01.08.2021. Later on, DGFT vide Notification No 15/2015-20 dated 09.08.2021 extended the Implementation by 2 more months l.e. registration under CHIMS made effective for the Bills of Entry filed on or after 01.10.2021. Hence, it is clear that ample time was given to trade before CHIMS became effective.

5.3 I find that in the present case, the impugned goods are Integrated Circuit falling under CTH 85423100. Thus, advance registration under CHIMS is mandatory for these goods. However, as per the facts of the instant case on record it is amply clear that the importer has registered the details under CHIMS for current, shipment on 25.11.2021, whereas the consignment had arrived on 14.11.2021. Hence, it is evident that Importer has submitted information under CHIMS after the arrival of the goods and after the query which was raised by the Customs officers regarding CHIMS registration.

5.4 Therefore, on the basis of above discussion and findings I hold that the impugned goods under Bill of Entry No 8285589 dated 17.11.2021 have been brought by the appellant in violation of Foreign Trade (Development Regulation) Act, 1992, and were thus liable for confiscation and penal action for violation of the existing provisions of the law of the land. Further, the appellant's plea that the customs has to only follow the licensing conditions which had been duly compiled with, by the Appellant, is not convincing in as much as for implementation of the rules and regulations of the DGFT, Customs Officers are the executive body. Similarly, the plea of late submission of CHIMS registration certificate before the DGFT is within the purview of DGFT only and Customs department has no role to play once the valid registration certificate is issued by *the DGFT has also got no force as it violates the condition of mandatory CHIMS registration up to the date of arrival of the consignment. Finally, the case laws quoted and relied upon by the appellant are not applicable in the instant case as the facts and circumstances of the instant case are different from those. Finally In the instant case value of imported goods is Rs. 2,30,00,046/- and the Customs duty paid is Rs. 74,06,671/-, whereas the Redemption fine imposed under Section 125 of the Act is merely Rs. 1,30,000/- and the penalty imposed under Section 112 of the Act is also Rs. 3,90,000/-which too is a meager amount in comparison of value and duty paid by the appellant. Since the appellant failed to comply the requirement of the mandatory CHIMS registration up to the date of arrival of the consignment, therefor I hold that the fine and penalty Imposed by the adjudicating authority is justified and I do not see any reason to Interfere in this context. Moreover, the appellant is a big business house therefore their ignorance of the existing provision of the law of the land cannot be an excuse, it was imperative on their part to get themselves registered in CHIMS, up to the date of the arrival of the consignment. But it is fact on record that they initiated the necessary CHIMS registration after the query raised by the Customs Officer and they got themselves registered with DGFT approximately after 10 days of the arrival of the consignment with the definitely not as per the guidelines of the DGFT."*

4.3 The only issue that needs to be decided in the present case is whether for the reason of obtaining CHIMS registration certificate 10 days after the local IGM can be a ground for holding the imported goods to be imported in contravention of the provisions of Foreign Trade Policy and notifications issued there under and held the goods liable for confiscation.

4.4 Undisputedly, appellant have got the CHIMS registration after ten days letter than the local IGM but the same has been obtained prior to actual clearance of the goods from the port. As the certificate has been obtained prior to actual clearance of the goods from the port though after filing of local IGM, I do not find any merits for holding the goods liable for confiscation. Tribunal in the case of M/s Laser Sight (India) Pvt. Ltd. 1999 (110) ELT 935 (Tribunal) have held as follows:-

> *"**4.** I have considered the submissions of both sides. I observe that even Commissioner of Customs, who adjudicated the matter, has mentioned in the impugned order that the appellants had imported the goods first time. However, he held that the ignorance of formalities cannot be ignored. No doubt it is the requirement of the provisions of the Foreign Trade (Development and Regulation) Act, 1992 that import or export can be made only under the Importer Exporter Code Number granted by the Director General. But not obtaining the requisite code would not make the import illegal as it is a procedural requirement. It has been held by the Supreme Court in Mangalore Chemicals & Fertilisers v. Dy. Commissioner - 1991 (55) E.L.T. 437 (S.C.) that denial of benefit should flow from the non compliance. The consequence would indeed be the result if the condition was a substantive one and one fundamental to the policy. "The stringency and mandatory nature must be justified by the purpose intended to be served. The mere fact that it is a statutory does not matter one way or the other. There are conditions and conditions some may be substantive, mandatory and based on consideration of policy and some others may merely belong to the area of procedure. It will be erroneous to attach equal importance to the non observance of all conditions irrespective of the purpose they were intended to serve. A distinction between the provisions of statute which are of substantive character and were built in with certain specific objectives of policy on the one hand and those; which are merely procedural and technical in their nature on the other must be kept*

clearly distinguished." In the light of this judgment of the Apex Court, it is felt that the requirement of obtaining the Code Number was a procedural requirement and mere non observing of the same should not lead to confiscation of the impugned goods under Section 111(d) of the Customs Act as the sub-section provides for confiscation of goods in case of import contrary to any prohibition. Accordingly I set aside the confiscation of the impugned goods. No doubt the penalty is imposable on the appellants but it has to be commensurate with the offence and taking into consideration the gravity of offence as held in the case of C.C. v. Skefko (India) Bearing Co. Ltd. (supra), it is viewed that ends of justice would be met if the appellants are asked to pay the penalty of Rs. 1,000/- only. I accordingly reduce the penalty from Rs. 50,000/- to Rs. 1,000/- only. The appeal is thus disposed of in the above terms.

4.5 There are numbers of judgments on this subject which clearly hold that for such miner procedural distractions the goods cannot held liable for confiscation. Reliance is placed on the following decisions:-

- Shipping And Trading Associates (P) Ltd. [2001 (128) E.L.T. 250 (T- Chen)]
- Colby International Limited [2002 (147) E.L.T. 928 (T– Del)]

4.6 As I do not find any merits in the impugned order upholding the confiscation of the goods and redemption fine imposed and imposition of penalties under Section 112 of the Act also cannot be justified.

5.1 Appeal is allowed.

(Operative part of the order pronounced in open court)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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