

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

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 20491 of 2019

(Arising out of Order-in-Appeal No. 05-06/2019 dated 23.01.2019
passed by the Commissioner of Customs (Appeals), Bangalore.)

**M/s. Hind High Vacuum Company
Pvt. Ltd.**

Appellant(s)

Site No.17, Phase-I, Peenya Industrial Area
Bangalore – 56 058.

VERSUS

The Commissioner of Customs

Inland Container Depot,
Whitefield,
Bangalore – 560 066.

Respondent(s)

WITH

Customs Appeal No. 20490 of 2019

(Arising out of Order-in-Appeal No. 05-06/2019 dated 23.01.2019
passed by the Commissioner of Customs (Appeals), Bangalore.)

**Sri Vidyadhar Kamath
Vice President**

Appellant(s)

M/s. Hind High Vacuum Company Pvt. Ltd.
Site No.17, Phase-I, Peenya Industrial Area
Bangalore – 56 058.

VERSUS

The Commissioner of Customs

Inland Container Depot,
Whitefield,
Bangalore – 560 066.

Respondent(s)

APPEARANCE:

Ms. Purvi Aasti and Shri Ashutosh Sharma, Advocates for the
Appellants

Shri M. Sreekanth, Superintendent (AR) for the Respondent

**CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER
(TECHNICAL)**

FINAL ORDER NO. 21456 - 21457 /2025

DATE OF HEARING: 11.09.2025
DATE OF DECISION: 11.09.2025

PER: D.M. MISRA

These two appeals are filed against Order-in-Appeal No.05-06/2019 dated 23.01.2019 passed by the Commissioner of Customs (Appeals), Bangalore.

2. Briefly stated the facts of the case are that the appellants are engaged in import of various goods such as Controller with Sensor, True Graphite Insulation, Thermocouple Probe, Acutance Monometer, Pressure Regulator, Flow Regulator, Variable Reactance, etc., falling under Chapter 84, 85, 90 of Customs Tariff Act, 1975. Alleging that appellant had wrongly availed the benefit of Notification No.36/1996-Cus. dated 23.07.1996 as amended in respect of goods imported by claiming exemption from payment of additional customs duty under Section 3 of Customs Tariff Act, 1975, show-cause notice was issued to them on 15.05.2017 for recovery of differential duty amounting to Rs.22,19,474/- and proposal for appropriation of the amount already paid along with interest of Rs.2,77,013/-, penalty under Section 114AA and/or Section 112(a) of the Customs Act, 1962 and penalty on Shri Vidhyadhar Kamath, Vice President under Section 112(b) of the Customs Act, 1962. On adjudication, the differential duty was confirmed and the amount paid was appropriated with interest, penalty of Rs.24,97,586/- under Section 114A and Rs.2,00,000/- on Shri Vidhyadhar Kamath, Vice President under Section 112(b) of the Customs Act, 1962. Aggrieved by this order, appellants filed appeals before the Commissioner (A), who upheld the order of the lower authority. Hence, the present appeals.

3. At the outset, the learned counsel for the appellants submits that in the present appeals, the appellants are not contesting the payment of differential duty and also the interest which has been paid before issuance of show-cause notice and appropriated in the order. Also, she submits that appellant would make good the differential interest amount of Rs.1,099/- which could not be paid due to calculation mistake while discharging the interest amount which was appropriated. She submits that imposition of penalty under Section 114A in the present case is disputed by the appellant and also the personal penalty imposed under Section 112(b) on Shri Vidhyadhar Kamath, Vice President. She submits that the appellants have been importing the goods and supplying the same to various organisations connected with Ministry of Defence. They were availing the benefit of exemption under Sl. No.10 of Notification No.39/1996-Cus. dated 23.07.1996 as it existed before 30.04.2015 which allowed exemption from Basic Customs Duty (BCD) and additional duty of customs to the importers who were contractors to the Government of India and State Government of Karnataka, Public Sector Undertakings of the Central Government or the State Governments subject to furnishing certificate i.e., Customs Duty Exemption Certificate [CDEC] at the time of import signed by the Chief Controller of Research and Development of the Laboratories or Establishments. The appellant has been complying with the said condition in all their imports. She submits that Notification No.39/1996-Cus. dated 23.07.1996-cus was amended by virtue of which exemption from payment of additional duty of customs was done away in respect of certain goods mentioned therein; thereafter Sl. No.10 of the Notification No.39/1996-Cus. dated 23.07.1996 was amended vide Notification No.29/2015-Cus. dated 30.04.2015 which restricted the benefit of exemption both BCD and Additional

Customs Duty only to imports by the Government of India or State Governments and Sl. No.10A was inserted in the said Notification No.39/1996-Cus. dated 23.07.1996 which provided only BCD exemption to the goods identical to one mentioned at Sl. No.10 provided the same were imported by contractors of the Government of India, Public Sector Undertakings of the Central Government or the State Government. She submits that there was a *bona fide* mistake on the part of the appellant to continue to avail exemption under Sl. No.10 of the said Notification even though their case falls under Sl. No.10A of the said Notification, thereby exemption from additional customs duty was erroneously availed. However, as soon as the said mistake was brought to the notice of the appellant, they voluntarily paid the differential duty of Rs.22,19,474/- along with interest of Rs.2,77,013/- and intimated to the department through their letter dated 22.09.2016 i.e., prior to issuance of show-cause notice. She submits that claiming classification or exemption under any customs Notification cannot be considered as an act of wilful mis-statement or suppression of fact and it was an interpretation which has been considered by the appellant *bona fide* while making such claims. In support, they referred to the following judgments.

- **Northern Plastic Ltd. vs. CC & CE: 1998 (101) ELT 549 (SC)**
- **Sirthai Superware India Ltd. vs. CC: 2020 (371) ELT 324 (Tri.-Mum.)**
- **M/s. Rittal India Pvt. Ltd. vs. CCE, Bangalore: 2024-VIL-1027-CESTAT-BLR-CU**
- **M/s. Suntec Agri Equipment (India) Pvt. Ltd. vs. CC, Bangalore: 2025-VIL-282-CESTAT-BLR-CU**
- **M/s. Narayana Hrudayalaya Pvt. Ltd. vs. CC, Bangalore: 2024 (10) TMI 63 – CESTAT Bangalore**
- **M/s. Ratnagiri Impex Pvt. Ltd. vs. CC: 2024 (3) TMI 194-CESTA, Bangalore.**

3.1 Further, she submits that the impugned goods are not liable to confiscation and also imposition of penalty under Section 114A is unwarranted since the extended period of limitation under Section 28(4) is not invocable. Reliance is placed on the following decisions:

- **M/s. Bharat Biotech Internal Ltd. vs. CC: 2024 (8) TMI 1000 – CESTAT Bangalore**
- **Hikoki Power Tools India Pvt. Ltd. vs. CC: 2024 (3) TMI 137 – CESTAT Bangalore**
- **CC vs. Videomax Electronics: 2011 (264) ELT 0466 (Tri.-Bom.)** maintained in **2011 (270) ELT A90 (SC)**

Further, she submits that penalty under Section 112(b) imposed on the appellant Shri Vidhyadhar Kamath, Vice President is also not sustainable.

4. Learned Authorised Representative (AR) for the Revenue reiterating the findings of the Commissioner (A) submits that the appellant paid the differential duty only after an enquiry initiated by the department about their payment of duty by claiming exemption under Sl. No.10 of the Notification, which was not applicable to them, therefore, imposition of penalty on both the appellants are justified.

5. Heard both sides and perused the records. We find that the appellant has not disputed the levy of differential duty with interest and also agreed to discharge the short-payment of interest of Rs.1,099/-. The only issue remains to be addressed is imposition of penalty under Section 114A of the Customs Act, 1962. Undisputedly the appellant had wrongly claimed benefit under Sl. No.10 of the Notification No. 36/1996-Cus. dated 23.7.1996 which has been amended by Notification No. 29/2015-Cus. Dated 30.04.2015 even though they are not eligible to the benefit of the said Notification being a contractor who supply material to the Government departments. The bill of

Entry relates to period soon after the amendment has been brought into force, therefore, there is merit in the contention of the learned advocate for the appellant that the availment of benefit of Notification No. 36/1996-Cus. dated 23.7.1996 under Sl. No.10, even though their case falls under Sl. No.10A inserted in the said Notification with effect from April 2015, was *bona fide* mistake on their part. On realisation, the differential duty was paid with interest, the balance amount of interest of Rs.1,099/- was a calculation mistake which they agreed to discharge. In these circumstances, we do not find that the appellant had misstated or mis-declared in the Bill of Entry to the department or suppressed any fact in claiming the benefit of the said Notification. Hence, imposition of penalty under Section 114A is not warranted. Since no other penal provision has been invoked proposing imposition of penalty, the penalty under Section 114A cannot be sustained, accordingly, penalty is set aside. On the same reasons, imposition of penalty under Section 112(b) of the Customs Act, 1962 on Shri Vidyadhar Kamath, Vice President is also unwarranted. Consequently, the impugned order is modified and the appeal filed by the appellant-company is partly allowed to the extent of setting aside penalty under Section 114A and appeal filed by Shri Vidhyadhar Kamath, Vice President is allowed. Appeals are disposed of accordingly.

(Dictated and pronounced in Open Court.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)