

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, CHENNAI**

Customs Appeal No. 41299/2014

(All appeals arising out of Order in Original No. 24475/2014 dated 28.2.2014 passed by the Commissioner of Customs (Seaport – Export), Chennai)

Shri Amit Kumar Jain

Proprietor M/s. Amit Impex
New No. 17, Old No. 9, Narayana
Mudali Lane, Chennai – 600 079.

Appellant

Vs.

Commissioner of Customs

Seaport – Export Commissionerate
Customs House, 60, Rajaji Salai, Chennai – 600 001.

Respondent

APPEARANCE:

Shri N. Viswanathan, Advocate for the Appellant
Shri Anoop Singh, Authorised Representative for the Respondent

With

Customs Appeal No. 41348/2014

Shri Rajesh Gupta

Proprietor of J.P. Enterprises
J.P. House, Nehru Road
Siliguri, West Bengal – 734 405.

Appellant

Vs.

Commissioner of Customs

Seaport – Export Commissionerate
Customs House, 60, Rajaji Salai, Chennai – 600 001.

Respondent

And

Customs Appeal No. 41349/2014

Shri Sushanta Kumar Chaudhuri

28, Chandra Master Road
P.O. Nona Chandan Pukur
Titagarh, Kolkata – 700 122.

Appellant

Vs.

Commissioner of Customs

Seaport – Export Commissionerate
Customs House
60, Rajaji Salai, Chennai – 600 001.

Respondent

APPEARANCE:

Shri Tapan Kumar Mitra, Advocate for the Appellant
 Shri Anoop Singh, Authorised Representative for the Respondent

CORAM

Hon'ble Shri M. Ajit Kumar, Member (Technical)
Hon'ble Shri Ajayan T.V., Member (Judicial)

FINAL ORDER NOS.40378-40380/2026

Date of Hearing: 15.10.2025

Date of Decision: 18.03.2026

Per M. Ajit Kumar,

All these appeals arise out of a common Order in Original No. 24475/2014 dated 28.2.2014 passed by the Commissioner of Customs (Seaport – Export), Chennai, hence they were heard together and are disposed by this common order.

2. Intelligence received by DRI, Kolkata revealed that M/s J.P. Enterprises imported large quantities of coated paper and paperboard through Haldia and Chennai ports between October 2006 and January 2009 (6 through Haldia and 13 through Chennai), by allegedly wrongly availing duty exemption using five non-transferable Target Plus Licences issued to a Merchant Exporter with actual user condition and without any supporting manufacturer. M/s J.P. Enterprises allegedly lacked facilities to use the goods and diverted them to the local market thereby evading customs duty. It further appeared that imports through Chennai were actually made by M/s Amit Impex on a high-seas sale basis and, after duty-free clearance in J.P. Enterprises' name, were taken back by Amit Impex. After following due process, the Commissioner confirmed the duty demands with interest, imposed

equal penalty under section 114A of the Customs Act, 1962, and further imposed penalties on Shri Sushanta Kumar Chaudhuri and Shri Amit Kumar Jain under section 112(b). Hence, the present appeals.

3. The learned Advocates Shri Tapan Kumar Mitra and Shri N. Viswanathan appeared for the appellants and the Ld. Authorized Representative Shri Anoop Singh appeared for the respondent.

3.1 Shri Tapan Kumar Ld. Counsel for Shri Rajesh Gupta, proprietor, M/s J.P. Enterprises sand Mr Sushant Kumar Chaudhuri, submitted as under:

A. The appellant, proprietor of M/s J.P. Enterprise and a recognized Star Export House, was granted eight Target Plus Licences by DGFT. The Target Plus Scheme, implemented through Notification No. 32/2005-Cus. dated 08.04.2005, grants duty exemption without any export obligation or re-export condition, restricting only transfer or sale of imported goods *as such*.

B. The appellant lawfully imported paper products under the scheme, undertook permitted processing through job workers at Haldia and Chennai, and sold the processed goods on payment of VAT. Job work, payments, invoices, and sales to buyers including Oxford Paper & Boards and Amit Impex stand admitted and undisputed. Out of total imports of 862.818 MT, dispute is confined only to about 37.60 MT; the balance remains unquestioned.

C. The Department's case rests solely on the uncorroborated statement of one job worker, whose cross-examination was denied and whose allegation is contradicted by documentary evidence and

confirmations from buyers and processors. There is no allegation or proof of transfer or sale of imported goods or licences as such.

D. The revenue's reliance on the statement of Mr. Paresh Mehta dated 04.07.2011 is wholly misconceived. The statement was relied upon without compliance with the mandatory statutory procedure and without permitting cross-examination.

E. The show cause notice discloses no cause of action for denial of exemption and is founded on conjecture. Proceedings under Sections 28 and 114A are misconceived, as any alleged violation would fall, if at all, under Section 111(o) and cannot give rise to demand under Section 28, as settled by the Supreme Court in **Jagdish Cancer & Research Centre** [2001 (6) SCC 483] and **Fortis Hospital Ltd.** [2015 (318) E.L.T. 551 (SC)].

F. The Target Plus Scheme is intended to neutralise duties and taxes suffered by exporters. Denial of exemption merely because job workers were engaged defeats the very purpose of the scheme and runs contrary to its beneficial character. Any ambiguity must be resolved in favour of the assessee.

G. In view of the above:

- There is no breach of Notification No. 32/2005;
- Entrustment of goods to job workers does not amount to transfer;
- The actual user condition stands fulfilled;
- The requirement of naming supporting manufacturers is inapplicable;
- Reliance on the statement of Paresh Mehta is legally impermissible; and
- A purposive interpretation of the notification clearly favours the appellant.

H. He relied on a large number of judgments in his written submissions.

- i. Commissioner of Customs, Mumbai Vs. Jagdish Cancer & Research Centre – 2001 (132) ELT 257 (SC)
- ii. Hissar Medical Diagnostic & Hospitals Ltd. Vs. Commissioner of Customs, New Delhi – 2006 (202) ELT 268 (Tri. Del.)
- iii. Fortis Hospital Ltd. Vs. Commissioner of Customs – 2015 (318) ELT 551 (SC)
- iv. Basudev Garg Vs. Commissioner of Customs – 2013 (294) ELT 353 (Del.)
- v. Ambika International Vs. Union of India – 2018 (361) ELT 90 (P&H)
- vi. Ummer Abdulla Vs. CCE & ST, Calicut – 2019 (367) ELT 181 (Ker.)
- vii. Commissioner of Customs, New Delhi Vs. Sameer Gehlot – 2011 (263) ELT 129 (Tri. Del.)
- viii. Vedanta Ltd. Vs. Commissioner of Customs, Tuticorin – 2018 (364) ELT 573 (Tri. Chennai)
- ix. Hi Tech Abrasives Ltd. Vs. CCE, Raipur – 2018 (362) ELT 961 (Chatt.)
- x. Laxmi Export Vs. CCE, Indore – 2018 (364) ELT 509 (Tri. Del.)
- xi. Commissioner of Customs Vs. Adani Enterprise Ltd. – 2016 (342) ELT A50 (SC)
- xii. Silver Line Plastpack Pvt. Ltd. Vs. CCE, Bhavnagar – 2016 (343) ELT 281 (Tri. Ahmd.)

- xiii. Judgment of the Hon'ble High Court of Delhi in the case of Shri Radha Kishan Garwal & Ors. Vs. M/s. Network Ltd. & Ors. Dated 15.9.2011
- xiv. Commissioner of Customs, Kolkata Vs. Rupa and Co. Ltd. – 2004 (170) ELT 129 (SC)
- xv. Coastal Paper Ltd. Vs. CCE, Vizhag – 2015 (322) ELT 153 (SC)
- xvi. Chaque Jour HR Services Pvt. Ltd. Vs. UOI – 2020 (42)GSTL 24 (Del.)
- xvii. Ajay Saraogi Vs. UOI – 2023 (386) ELT 333 (Cal.)
- xviii. B. Lakshnichand Vs. Government of India – 1983 (12)ELT 322 (Mad.)
- xix. Panjrath Road Carriers Vs. Commissioner of Customs, Ludhiana – 2018 (359) ELT 408 (Tri. Chan.)
- xx. Commissioner of Customs, Ludhiana Vs. Rakesh Nayyar – 2010 (255) ELT 234 (P&H)
- xxi. Decision of the Tribunal in the case of Regin Exports and Ors. Vs. Commissioner of Customs, Tuticorin vide Final Order Nos. 42432 to 42435 of 2018 dated 17.9.2018

The appellant therefore respectfully prays that the appeal be allowed and the impugned order be set aside.

3.2 Shri N. Viswanathan Ld. Advocate appearing for Shri Amit Kumar, Proprietor M/s Amit Impex, submitted as follows:

A. The appellant is a commercial agent engaged in import and supply of paper and paperboard and, in the present case, sold coated paper rolls to JP Enterprises on a high-sea-sale basis for clearance under the Target Plus Scheme. The appellant merely facilitated job

work and subsequently purchased the processed cut sheets at a commercial discount, which neither renders him the importer nor affects JP Enterprises' eligibility for exemption.

B. JP Enterprises admittedly imported the goods and cleared them against valid licences under Notification No. 32/2005-Cus. While the DRI alleged sale of goods "as such," documentary evidence recovered during search showed dispatch to job workers. The show cause notice itself (para 18) admits that the goods were job-worked and sold as processed cut sheets to identified buyers, with no evidence of sale of unprocessed rolls.

C. Coated paper rolls are not marketable without conversion into sheets, and the investigation failed to establish any sale of imported goods as such. The case rests solely on suspicion and assumptions, which cannot substitute proof.

D. Though the adjudicating authority admitted that job work was carried out and that there was no legal bar on sale of processed goods to the appellant, exemption was denied on an alleged theory of orchestration—an untenable finding unsupported by any breach of the notification. These findings, not challenged by the Revenue, attain finality. Procedural issues relating to job work and endorsement are also settled in favour of importers by binding precedents.

E. As per the judgment of the Hon'ble Madras High Court in **B. Lakshmichand Vs GOI** – 1983 (12) ELT 322 (Mad.), unless the show cause notice specifically alleges the exact sub-clause of Section 112 violated and sets out the manner in which the noticees attracted the

said provision, the notice stands vitiated and hence the impugned order may be set aside with consequential relief.

Accordingly, the impugned order deserves to be set aside and the appeal allowed with consequential reliefs.

3.3 Shri Anoop Singh the Ld. Authorized Representative appeared for the respondent and submitted as under:

A. M/s. J.P. Enterprises imported six consignments through Haldia Port and thirteen consignments through Chennai Port by availing non-transferable Target Plus Licences with an actual user condition. He drew attention to para 2 of the OIO listing out the details of the imports made. The same is reproduced here under:-

Imports through Haldia Port

Bill of Entry / Date	Item Description	Quantity in MT	Assessable value	Target Plus License No.
312418 / 10.11.06	Paper	20.308	4,67,139.85	0210087730
315994 / 0612.06	Paper	80,089	28,53,287.16	- do -
316950 / 15.12.06	Paper	38.98	14,15,738.01	- do -
319350 / 29.12.06	Paper	17.928	6,51,137.79	- do -
323715 / 31.01.07	Printing paper / board	79,117	28,57,509.48	0210087732
326172 / 14.02.07	Paper	22.71	5,09,777.05	- do -
	Total	259.132	87,54,589.34	

Imports through Chennai Port

Bill of Entry / Date	Item Description	Quantity in MT	Assessable value	Target Plus License No.
311247/06.10.06	Coated paper Board	39.25	1463451.93	0210087728
321604 / 23.10.06	Coated paper Board	35.82	13,35,549.99	- do -
323265 / 26.10.06	Coated paper Board	35.41	13,20,820.75	- do -
332719 / 09.11.06	Coated paper Board	37.14	12,64,362.72	- do -
335494 / 13.11.06	Coated paper Board	19.11	7,03,184.87	- do -
343459 / 24.11.06	Paper Board coated	31.333	9,41,004.89	0210087731
343460 / 24.11.06	Printing paper coated	60.425	20,98,255.19	- do -

343461 / 24.11.06	Printing Paper	58.905	20,45,473.27	- do -
345520 / 28.11.06	Paper Board coated	18.6	6,41,776.73	- do -
350740 / 05.12.06	Coated Paper Board	83.136	24,76,319.89	0210087728 & 31
583726 / 23.10.07	Printing Paper coated	59.454	18,76,577.82	0210087728 & 32
862591 / 10.10.08	Printing paper coated & paper board coated	97.823	46,17,109.93	0210087729
923135 / 01.01.09	Gloss coated	27.26	10,26,781.31	- do -
	Total	603.868	2,18,10,669.29	

B. At the outset he stated that the importer was seeking the benefit of an exemption notification and that in **Commissioner of Customs (Import) Vs M/s Dilip Kumar and Company & Ors.** [AIR 2018 SUPREME COURT 3606 / AIRONLINE 2018 SC 73] the Constitutional Bench of the Hon'ble Supreme court held that the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.

C. As per the Foreign Trade Policy 2004-09, "Actual User" means a person who utilises the imported goods for his own use and "Supporting Manufacturer" is one who manufactures goods/ products or any part/ accessories/ components of a good/ product for a merchant exporter or a manufacturer exporter under a specific Authorisation. Further there is nothing shown by the importer that mere slitting of paper rolls amounts to manufacture.

D. In respect of the Haldia imports, the goods were cleared to a non-existent address at 15/1, Kaliprossonno Singhi Road, Kolkata, as confirmed by the occupier of the premises and the local Post Office. Shri Rajesh Gupta, Proprietor of M/s. J.P. Enterprises, admitted that

the firm had no godown at the said address and failed to offer any satisfactory explanation for furnishing a false address.

E. The claim that the goods were sent for job work to M/s. Arihant Mudra stands disproved by the categorical statement of the job worker that no goods were ever received and that the transactions were merely on paper. Despite importing 259.132 MT through Haldia Port, M/s. J.P. Enterprises failed to produce any records relating to storage, transportation, or job work, except payment details, and could account for only a small quantity sold. These facts clearly establish sale of the goods as such in violation of the actual user condition under Notification No. 32/2005-Cus., rendering the goods liable to confiscation under Section 111(o) of the Customs Act, 1962, and Shri Rajesh Gupta liable to penalty under Section 114A.

F. With regard to the Chennai imports, the investigation revealed a concerted arrangement between Shri Rajesh Gupta and Shri Amit Kumar Jain to create a façade of genuine transactions through fabricated job-work and movement records. M/s. J.P. Enterprises had neither an office nor a godown at the declared address, and job workers confirmed that they dealt only with Shri Amit Kumar Jain and returned the processed goods to him. Most of the imported goods were diverted to M/s. Amit Impex without proper documentation.

G. The above acts amount to mis-statement and violation of the conditions of Notification No. 32/2005-Cus., rendering the goods imported through Chennai Port also liable to confiscation under Section 111(o) and the importer liable to duty, interest, and penalty under Section 114A of the Customs Act, 1962.

H. He relied upon the following judgments in support of his submissions:

(i) **The Commissioner of Customs, Tuticorin Vs M/s Olam Enterprises India Pvt Ltd.** [2025 (9) 1421 – MADRAS HIGH COURT] – Once the certificate is defective on the face of the record, the claim of exemption necessarily fails – Burden lies on the importer to establish eligibility for exemption.

(ii) **M/s National Rifle Association of India Vs Commissioner of Customs, (Import & General), New Delhi** [2025 (1) TMI 232 – CESTAT NEW DELHI] – imported goods must be used for specific use as provided in the notification

(iii) **Paragon Steel Vs Commissioner of Central Excise** [2017 (12) TMI 766 – CESTAT BANGALORE]; **Stalin Joseph Vs Commissioner of Customs (Airport)** [2021 (3) TMI 439 – MADRAS HIGH COURT]; **Al Jalaludeen Vs Dy. Dir. Of Enforcement, Chennai** [2009 (4) TMI 821 – MADRAS HIGH COURT], - **M/s Thir'ven Steels Pvt. Ltd. Vs CC (port – Import), Chennai** [2016 (8) TMI 1283 – CESTAT CHENNAI] - No prejudice caused by denial of cross examination.

He hence prayed that the appeals may be rejected.

3.4 After the public hearing, the Ld. Counsel Shri Tapan Kumar Mitra, in his **rejoinder dated 15.10.25**, to the submissions made by the Ld. A.R. stated as under:

A. The revenue's case is founded on a misreading of Notification No. 32/2005 dated 08.04.2005 and the object of the Target Plus Scheme; the conditions of the notification stand fully complied with, rendering the impugned order unsustainable.

B. The allegation that entrustment of imported goods to job workers amounts to prohibited "transfer" is misconceived, as the notification prohibits only sale or transfer of title, which necessarily implies conferral of proprietary rights.

C. Mere entrustment of goods to job workers for processing, without divestment of ownership, does not constitute transfer; job workers merely hold the goods as bailees for a limited purpose and return the processed goods, and temporary possession for processing is not transfer in law.

D. The contention that the actual user condition was violated is untenable, since the condition is satisfied when goods are used for the declared purpose by or on behalf of the importer.

E. It is well settled that processing through job workers constitutes utilisation by the importer itself, as held in **Luxmi Exports Vs CCE**, 2018 (364) EL.T. 509 and **Silverline Plastic Pvt. Ltd. Vs CCE, Bhavnagar**, 2016 (343) ELT. 281.

F. The allegation regarding non-naming of job workers as supporting manufacturers is unsustainable, as this requirement was introduced only from February 2008, whereas the imports pertain to 2006–2007.

G. In any event, a job worker merely processes goods and does not “utilise” them for manufacture on its own account; long-standing industry practice consistently recognises engagement of job workers by merchant exporters as permissible.

H. The decisions relied upon by the revenue [**Olam Enterprises** (supra) and **National Rifle Association of India** (supra)] are factually distinguishable, as they concern illegal certificates or outright transfer of goods, neither of which arises in the present case.

I Exemption notifications must be interpreted purposively in light of the object of the scheme [**Commissioner of Customs, Kolkata Vs Rupa & Co.** - 2004 (170) E.L.T. 129 (S.C.)], and denial of exemption merely because job workers were engaged defeats the beneficial purpose of the Target Plus Scheme.

J. The revenue's reliance on the statement of Mr. Paresh Mehta dated 04.07.2011 is legally impermissible, as it was relied upon without compliance with mandatory procedure and without allowing cross-examination.

K. It is settled law that statements not tested by cross-examination cannot be relied upon [**Andaman Timber Industries v. CCE; Ajay Sarangi v. Union of India** – 2023 (386) ELT 333 (Cal.)], particularly when the statement is uncorroborated and contradicted by other accepted evidence.

L. Accordingly, there is no breach of Notification No. 32/2005; entrustment to job workers does not amount to transfer; the actual user condition stands fulfilled; the requirement of naming supporting manufacturers is inapplicable; and a purposive interpretation of the notification squarely favours the appellant.

M. The appeal therefore deserves to be allowed and the impugned order set aside.

4. We have heard the parties to the dispute. We have also perused the appeals, written and oral submissions and connected judgments. We find that the dispute pertains to allegations relating to the misuse of the Target Plus scheme.

5. We find that the appellant have cited a large number of judgments in their submissions without mentioning the ratio of the said judgments and how they apply to the facts in issue. While dealing with a similar challenge this Bench recently, in our Final Order NO. 40339-40341/2026, Dated: 10.03.2026 [2026 (3) TMI 440 - CESTAT CHENNAI], in the case of **Panasonic Home Appliances India Co.**

Ltd. Vs Commissioner of GST & Central Excise, held as under:

"5. Before going forward we must state that the Appeal Memorandum cites an unusually large number of judgments, copies of which have not been annexed. Only nine judgments were produced during oral hearing, and merely four or five were cited at the bar. Parties are expected to rely on a few leading judgments on an issue and supply copies to the Bench. In **Rashmi Metaliks Ltd. Vs Kolkata Metropolitan Development Authority**, [(2013) 10 SCC 95], the Hon'ble Supreme Court, expressing similar concern, held that:

"6. . . The sheer plethora of precedents makes it essential that this Court should abjure from discussing each and every decision which has dealt with a similar question of law. **Failure to follow this discipline and regimen inexorably leads to prolixity in judgments which invariably is a consequence of lengthy arguments.**

7. It is a capital exhaustion of Court time, lack of which has become critical. . ."

(emphasis added)

The Hon'ble Court had earlier in **Kanwar Natwar Singh Vs Directorate Of Enforcement & Anr** [2010 (13) SCC 255 / AIR 2010 SC (SUPP) 9 / (2010) 10 SCALE 401], held:

"38. Before parting with the judgment, we are constrained to observe with some reluctance about **the recent practice and procedure of including list of authorities in the compilation without the leave of the Court.** In many a case, even the senior counsel may not be aware of inclusion of such authorities in the compilation. **In our considered opinion, this Court is not required to consider such decisions which are included in the compilation which were not cited at the Bar.** In the present case, number of judgments are included

in the compilation which were not cited at the Bar by any of the counsel. **We have not dealt with them as we are not required to do so.**"

(emphasis added)

Further certain guidelines with respect to the submission of written arguments/ synopsis were formulated by the Hon'ble Delhi High Court in **Mst. Kiran Chhabra And Anr. Vs Mr. Pawan Kumar Jain And Ors.** [CS(OS)No.1671/2009, Dated:14.02.2011], and is reproduced for guidance:

"2. **When the Court calls for written arguments to be submitted, it is expected to be something as would assist the Court in its endeavour to do justice and decide the case.** Simply filing a list of judgments and attaching photocopies does not assist the Court nor does filing long-winded arguments which are not structured and properly arranged.

3. Written arguments, which Order XVIII Rule 2(3A) of the Code of Civil Procedure also recognizes, ought to be such that would assist the Court. **The pattern would vary from case to case but generally Written Arguments should comprise a very brief list of dates, the admitted facts and the disputed facts.** The points to be decided should be duly formulated as questions or propositions. In case issues have been framed, separate arguments on each issue are necessary unless two or more issues are such which can be more conveniently addressed together. The factual premises on which a particular argument is given has to be stated on each issue so that the proposition can be appreciated in that light.

4. For each proposition, after stating the factual premises on which a particular argument is given, there should be first the applicable statute which can even be excerpted. Only then, case- law may be cited not just as the legal database on a computer shows up on a query; **but each judgment has to be examined and only the more relevant ones for each topic be cited. The Court expects the lawyers to place all case laws, both for and against his case, so long as it is relevant to the proposition in question.** Those from the Supreme Court be placed first; those from our High Court be placed next; and those from other High Courts be placed thereafter. In each grouping, the judgments are to be arranged in a reverse chronological order. This is in line with the law relating to precedents. Thereafter, for each decided case which appears to be

important, a brief resume of the factual scenario in which the judgment was rendered, is necessary whereafter the relevant portion can be excerpted or described.

5. If there are older judgments which have been noticed in a later judgment, then the older judgment need not be cited. But if the later judgment merely follows and says nothing new, then the older judgment, which contains the reasoning and also lays down the law, should be cited and against the first (later judgment) it ought to be noted that it simply follows or approves a particular earlier judgment. In that event, the earlier judgment may be excerpted or discussed together with a brief resume of the factual scenario in that case.

6. **After the judgments have been cited or portions excerpted, the ratio-decidenti of the judgment needs to be stated, for, it is the ratio-decidenti and not the conclusion, that is binding as a precedent.**

7. **If there is a contention of the opposite side, it must be answered and not ignored or left for the court to look for an answer.** When all the points or proposition on which the arguments are addressed have been stated, there has to be a summing up so that the Court can get a fair idea of what the arguments are leading to.

8. **Throughout these written arguments, page numbers and placitums of the documents or other material on the court record, and the reported judgment, must be given so that the Court can readily reach it in order to verify.**

9. Lastly, keeping them brief is more helpful than giving a long mass of something which could even be incoherent. Structuring is most important. **If an approach as this followed, the Court gets full assistance, much lesser time of the Court is consumed, and there is less likelihood of the Court falling into error.**

10. The parties are directed to file the written submissions **not exceeding five pages** on the above terms along with the copies of the judgments with relevant portions highlighted for the convenience of the court at least one week before the next date of hearing. The photocopies of the relevant pages of the documents already on record with relevant portions

highlighted be also attached to the written submissions for ready reference and convenience of the Court.”

(emphasis added)

This would also help to cross verify the actual judgments at a time when the Hon’ble Supreme Court has frowned upon pleadings using Artificial Intelligence (A.I.), that cite non-existing judgments.”

6. We find that the charge against the appellants relate to the import of goods under Target Plus scheme covered by notification no. 32/2005 – Cus. dated: 08.04.2005, during the period between October 2006 and January 2009. The department has alleged that there was no mention of any supporting manufacturer on the impugned five Target Plus scheme licences. The importer M/s JP. Enterprises were allowed to import the goods under these licences **subject to actual user condition**. Relevant portion of the notification is extracted below:

“Notification No. 32/2005-Cus Dated 08-04-2005

Exemption on goods imported into India against a Duty Credit Certificate issued under the Target Plus Scheme.-
5[In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts , -

. goods when imported into India against a duty credit certificate issued under the Target Plus Scheme in accordance with paragraph 3.7 of the Foreign Trade Policy (hereinafter referred to as the said certificate) from, -

(a) the whole of the duty of customs leviable thereon under the First Schedule to the Customs Tariff Act 1975 (51 of 1975); and

(b) the whole of the additional duty leviable thereon under

section 3 of the said Customs Tariff Act,-
subject to the following conditions, namely :-

.....

(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 utilised by the said supporting manufacturer(s); . . ."**

(emphasis added)

Further Chapter 9 of the Foreign Trade Policy 2004-2009 provides the definition of terms used in the policy. The term **actual user** has been defined in Para 9.4 and 9.5 of the FTP 2004-09, which reads as follows:

9.4 "**Actual User**" means an actual user who may be either industrial or non-industrial.

9.5 "**Actual User (Industrial)**" means a person who utilises imported goods for manufacturing in his own industrial unit or manufacturing for his own use in another unit including a jobbing unit.

9.6 "**Actual User (Non-Industrial)**" means a person who **utilises the imported goods for his own use** in

(i) any commercial establishment carrying on any business, trade or profession; or

(ii) any laboratory, Scientific or Research and Development (R&D) institution, university or other educational institution or hospital; or

(iii) any service industry.

The term "**Supporting Manufacturer**" means;

9.61 "Supporting Manufacturer" means any person **who manufactures** any product or part / accessories / components of that product. Name of supporting manufacturer as well as the exporter must be endorsed on export documents.

(emphasis added)

7. We have carefully considered the records of the case, the impugned order, the detailed submissions advanced by the learned

Counsels for the appellants, the rejoinder filed thereafter, and the arguments of the learned Authorized Representative for the Revenue.

8. The core issue that arises for determination is whether the appellants have complied with the conditions of Notification No. 32/2005-Cus. dated 08.04.2005, issued under the Target Plus Scheme, and whether the duty-free paper and paperboard imported thereunder were utilised in accordance with the actual-user and non-transferability conditions, or were diverted / disposed of in violation of the said notification. The Department contends that under the Target Plus Scheme, a merchant-exporter cannot transfer or sell the licence or the imported goods and may utilise the goods through supporting manufacturers only if their names and addresses are endorsed on the licence. Since the appellant, being a merchant-exporter and had no endorsed supporting manufacturers, the Department asserts that the goods could not have been lawfully utilised through any supporting manufacturer. He could also neither transfer nor sell the licence or goods.

9. It is trite law that taxation under the Act is the rule, and exemption, either by way of policy or by a notification, is the exception. It is also well settled, as held by the Constitution Bench of the Hon'ble Supreme Court in **Dilip Kumar and Company** (supra), that the burden of proving eligibility to an exemption squarely lies on the assessee.

10. The matter can be looked at from another angle. Facts as alleged in the SCN, which are in the special knowledge of the appellants, must be demonstrated by them to be untrue (section 106 of the **Evidence**

Act, 1872 / section 109 of the **Bharatiya Sakshya Adhiniyam, 2023**). Especially when the issue involves actual-user and non-transferability conditions which includes complex transitions concerning certain individuals, who have more than one role, for which they have not maintained proper records and the available evidence prima facie is shown to be against the noticees of the SCN. Further the '**Rule of best evidence**' has been defined to mean that "so long as the higher or superior evidence is within your possession or may be reached by you, you shall give no inferior proof in relation to it." All the documents and records in this case are available with the appellants and are in their special knowledge. The belief, knowledge and intention of the parties involved are a part of evidence and would be clear from the documents. In such circumstances adverse inference can be drawn when the best evidence is not produced before the authorities. The Hon'ble Supreme Court in **Commissioner Of Income Tax, Madras Vs Messrs. Best & Co** [1966 SCR (2) 430 / AIR 1966 SUPREME COURT 1325], held that when sufficient evidence, either direct or circumstantial, in respect of its contention was disclosed by the Revenue, adverse inference could be drawn against the assessee if he failed to put before the Department material which was in his exclusive possession.

11. On examining the issue, we find that in respect of the consignments imported through **Haldia Port** during the period November 2006 to February 2007, the appellants defence is that the goods were sent for job work and thereafter sold as processed goods. However, this explanation does appear to be correct. Firstly the names

and addresses of the said job workers were not endorsed on the licence. Secondly we find that the so called job worker at Kolkata, namely **M/s Arihant Mudra**, in a categorical statement, has denied having received any goods for processing and has stated that the job-work documents were merely paper transactions and hence there was no question of using transport as there was no physical movement of goods. This statement has not been effectively rebutted by any contemporaneous documentary evidence establishing physical receipt, processing, or return of goods. In fact delivery challans from **M/s Arihant Mudra** to **M/s J. P. Enterprises** did not mention any vehicle number and was shown to be done during the period February 2008 to November 2008 whereas the import at Haldia was more than a year earlier. **M/s J. P. Enterprises** has hence not discharged the burden of proof in this case.

11.1 We further find that the CHA delivery challans indicate delivery of the goods to 15/1, Kaliprossonno Singhi Road, Cossipore, Kolkata, an address at which **M/s J.P. Enterprises** was found not to exist, as confirmed during investigation by the occupier of the premises and the local Post Office. The proprietor of **M/s J.P. Enterprises**, Shri Rajesh Gupta, admitted that the firm had no godown at the said address and failed to offer any satisfactory explanation for furnishing a false address in the import documents.

11.2 As regards the purported despatch of goods to **M/s Oxford Paper & Boards**, Shri Ramesh Kumar Kataruka, Partner of the firm, they did not have any factory. They purchased paper Boards from **J.P. Enterprises**, Siliguri on six occasions. They were not aware of any firm

by the name of M/s Arihant Mudra. M/s J. P. Enterprises were unable to show any records for despatch, job-work and return of the goods from M/s Oxford Paper & Boards.

11.3 It is also on record that three consignments were delivered to Siliguri, where admittedly no job worker of M/s J.P. Enterprises was located. These circumstances, taken cumulatively, clearly point towards diversion of the duty-free goods, rather than bona fide movement for job work.

11.4 Hence M/s J.P. Enterprises have been unable to show that the impugned goods were sent to any job worker for being utilised in terms of the Target Plus scheme, let alone demonstrate that the goods were sent to supporting manufacturers endorsed on their Target Plus licence.

11.5 We also note that the role attributed in the OIO to the Customs House Agent M/s G. S. Tewari at Haldia Port, a key link in the whole transaction, is not that of a bonafide trade facilitator. However since the said noticee is not before us, we do not examine his role in the matter.

11.6 Hence the importer M/s J.P. Enterprises and its proprietor Shri Rajesh Gupta has not been able to discharge the burden of proof that the goods imported at Haldia were used in terms of Notification No. 32/2005-Cus.

12. With regard to the imports through **Chennai Port** during October 2006 and January 2009, we find that out of thirteen consignments, seven were on high-seas sale basis, with **M/s Amit Impex** as the high-seas seller. M/s J.P. Enterprises claimed to have

seven job workers who had processed the impugned goods. The investigation has brought on record that Shri Amit Kumar Jain handled the importation, engagement of job workers, and sale of the goods.

12.1 Further the names and addresses of the job workers stated to have carried out certain activities were not endorsed on the licence. Secondly statements of the Chennai job workers, namely Vel Paper Converter, N.S. Paper Converter, and Vidyasagar Traders, clearly indicate that the job work was carried out as per the instructions of Shri Amit Kumar Jain and that the processed goods were delivered to the premises of M/s Amit Impex at 41, Theyagappa Chetty Street, Korrukkupet, Chennai. M/s Guru & Co., M/s Velmurugan and M/s Apsara Paper Convertors were found closed and the present whereabouts not known. Another job worker, Janvi Converter, was found to be non-existent.

12.2 We further find that M/s J.P. Enterprises had no established office or godown at Chennai, and the alleged rented office at the declared address could not be proved during verification. The factual matrix thus demonstrates that the operational control and custody of the goods were not with the licence holder and the transaction was a ruse to hoodwink the department.

12.3 The pattern of transactions, including high-seas sales, routing of goods through job workers under the control of a third party, and delivery of processed goods to M/s Amit Impex, clearly establishes a pre-arranged mechanism for handling and disposal of the duty-free imports through loose documentation, rather than genuine utilisation by the licence holder.

12.4 In the case of **M/s Bhavish Associates**, it was stated by Mr R. Manoj Kumar Agarwal that they were a paper merchant and they had purchased coated paper in sheets from M/s Amit Impex, Chennai. During 2009 they had purchased coated paper sheets from M/s J.P. Enterprises and the goods were delivered from 41, Theyagappa Chetty Street, Korrukkupet, Chennai. It is seen above that the said address belonged to M/s Amit Impex.

12.5 It was expected that the importer M/s J.P. Enterprises, rebut these allegations with proper evidence as is expected from a businessman having genuine business transactions and where he is in a position to provide records of the transactions made and which are in his special knowledge. But no such explanation was forthcoming. Hence the importer has not been able to discharge the burden of proof that the goods imported at Chennai were used in terms of Notification No. 32/2005-Cus.

13. The importer M/s J.P. Enterprises has stated that the allegation regarding non-naming of job workers as supporting manufacturers is unsustainable, as this requirement was introduced only from February 2008, whereas the imports pertain to 2006–2007. Firstly the impugned check period is from 2006 to 2009. Secondly a mere bland statement is not what is expected in such a situation. Being an important legal point, impacting taxability, it should have been taken up at the first available opportunity before the Original Authority. Further the appellant should state the specific amending notification and provide a copy of the same and segregate the imports made pre and post that

date. Failing which it is not possible for us to take cognisance of the averment made.

14. The appellants have strongly contended that reliance on statements, particularly that of job workers, without allowing cross-examination vitiates the proceedings. Considerable emphasis has been placed on **Andaman Timber Industries** (supra), copy of the said judgments is not seen provided in the Appeal Memorandum or even subsequently, and **Ajay Saraogi** (supra) to contend that denial of cross-examination vitiates the proceedings. We find that in the present case, the findings are not based on a solitary uncorroborated statement, but on a chain of corroborative evidence, including delivery challans, verification of addresses, statements of job workers, admissions of key noticees, and failure of the appellants to produce basic records of storage, transportation, and job work, which would be the best evidence to discharge his burden and prove his case. Moreso in the case of **Mohanlal Shamji Soni Vs Union of India & Anr.**, [1991 AIR 1346 / 1991 SCR (1) 712] it has been held by the Hon'ble Supreme Court that:

“...it is a cardinal rule in the law of evidence that the best available evidence should be brought before the court to prove a fact or the points in issue.”

The best evidence in this case consists of records and documents relating to the transaction in the possession of the appellants.

14.1 Further, the Hon'ble Delhi High Court in **M/s Vallabh Textiles Vs Additional Commissioner, Central Tax, GST, Delhi East & Ors.** [W.P.(C) 4576/2025, dated 09.04.2025] held that cross-examination is not a matter of right in every case and is required

only where, based on the facts and circumstances, denial thereof would cause prejudice to the concerned party. It held:

"19. The Court is of the considered view that parties cannot, by praying for cross-examination, cannot convert Show-cause Notice proceedings into mini-trials. Persons seeking cross-examination ought to give specific reasons why cross-examination is needed in a particular situation and that too of specific witnesses. A blanket request to cross-examine all persons whose statements have been recorded by the Department, many of whom are typically employees, sellers, purchasers, or other persons connected to the entity under investigation, cannot be sustained. If a prayer for cross-examination is made, the Authority has to consider the same fairly and if the need is so felt in respect of a particular person, the same ought to be permitted. If not, the Authority can record the reasons and proceed in the case. **Moreover, cross examination need not also be of all persons whose statements are recorded. It could be permitted by the Authority in case of some persons and not all."**

14.2 Recently the Hon'ble Allahabad High Court in **Commissioner Of Customs (Preventive) Lucknow Vs Shri Sarad Chand Agrahari @ Sharad Chand Agrahari** [2026:AHC-LKO:3332-DB / CUSTOM APPEAL No. - 19 of 2025, Dated: 16.01.2026], held:

"11. Upon a perusal of Section 138-B of the Act, 1962, it is clear that there is no specific requirement for allowing cross-examination. Furthermore, the law established by the Hon'ble Supreme Court and various High Courts as discussed above is that in the event, any material is relied upon by the authorities, any witnesses are examined by the authorities, upon a request made by the show cause noticee, the said relied upon documents are to be provided to the noticee and the witnesses that have been examined and whose statements are being relied upon by the authorities shall be subject to cross-examination by the noticee. **The law does not mandate that in each and every case, cross-examination is required to be provided. We are of the view that it is incumbent upon the noticee to seek cross-examination of the witnesses, and if such a request is made, it is mandatory for the authorities to provide such cross-examination.** In the event, such cross-examination is not possible, the adjudicating authority in his order has to specifically note down the reasons as to why the witnesses

could not be subjected to cross-examination. Such reasons could be as specified in Section 138-B such as death of the witness, the witness being incapable of giving evidence, the witness not being traceable, amongst others.”

14.3 The Hon’ble High Court of Madras in **M/s AMRITHA MARKETING, MADURAI Vs THE JOINT COMMISSIONER OF CGST AND CENTRAL EXCISE CENTRAL, MADURAI** [2026-TIOL-148-HC-MAD-GST, Dated: 26.11.2025], held:

“8. It is not in dispute that the assessment order relies on the report of the staff of M/s. FDI Labs, Chennai who retrieved the data from the electronic devices seized during the search operation. The technical rules of evidence may not be applicable as such to assessment proceedings. But when the report which forms the basis of the order itself is questioned, the proper officer is obliged to make available the author of the report for cross-examination. Failure to do so may render the assessment order vulnerable for having breached the principles of natural justice provided that the assessee is able to show prejudice on account of such denial. **It is well settled that though the right to cross examine a given witness may not be provided by or under the statute, it being a part of the principles of natural justice should be held to be an indefeasible right. But the assessee must still make out a case for cross examination. It will not be "Ask, and it shall be given".** The assessee seeking cross-examination ought to give specific reasons why cross-examination is needed in a particular situation and that too of specific witnesses. A blanket request to cross-examine all persons whose statements have been recorded by the department, cannot be sustained (vide 2025 (4) TMI 1154, **Vallabh Textiles v. Addl. Commissioner, Central Tax (GST)** = 2025-TIOL-680-HC-DEL-GST.”

14.4 The judgments cited by the Revenue above, including **Paragon Steel, Stalin Joseph, Al Jalaludeen**, and **Thir’ven Steels Pvt. Ltd.**, including those of the High Courts relevant portions of which have been extracted above, support the proposition that denial of

cross-examination does not vitiate proceedings where independent documentary and circumstantial evidence establish the contravention, and no demonstrable prejudice is caused to the noticees. These principles squarely apply to the facts of the present case, where the best evidence is available with the appellants themselves to prove their case. In such circumstances, and in view of the judicial precedents above, we are of the considered view that no prejudice has been caused to the appellants by denial of cross-examination, particularly when the documentary and circumstantial evidence independently establishes violation of the notification conditions.

14.5 As regards the reliance placed on decisions such as **Laxmi Exports** (supra) and **Silverline Plastic** (supra) for the proposition that utilisation through job workers constitutes utilisation by the importer, is not in dispute as a general legal principle. However, these decisions proceed on the foundational premise that the imported goods remained under the ownership, control, and supervision of the licence holder, and that the job workers acted merely as processing agents for utilising the imported goods on behalf of the importer. All of which are well documented. In the present case, the name and address of the so called job workers have not been endorsed on the licence. The contention that mere entrustment of goods to job workers does not amount to transfer is of no assistance to the appellants, as the facts on record establish that the goods were not under the control of the licence holder, and were in fact diverted and disposed of in violation of the actual user condition. Further the factual findings clearly establish that in many cases the so called "job workers" did not exist, further in

case where some job workers exist, the goods were not under the effective control of M/s J.P. Enterprises, but were handled, routed, and disposed of through third parties, including M/s Amit Impex, under a pre-arranged mechanism. There is no documentary proof of the goods being 'utilised' by the "job workers", even though it could have been easily produced. Hence the goods cannot be said to be utilised on the account of the importer. Although the importer operating under the Target Plus scheme could neither transfer nor sell the licence or goods. Accordingly, the said judgments are factually distinguishable. Further, be that as it may be, Tribunal being the final fact finding authority we are unable to find anything in the process to show that the activities of the "job worker" by slitting paper rolls to a smaller size, involves manufacturing any product or part / accessories / components of that product as required by the Foreign Trade Policy to show 'utilisation' of the goods by the job workers.

14.6 The appellants have also relied upon **Rupa & Co.** (supra), to submit that exemption notifications must be interpreted purposively. While there can be no quarrel with the principle that beneficial notifications should be interpreted to advance their object, it is equally well settled that conditions attached to an exemption must be strictly complied with. In the case of **Competent Authority Vs. Barangore Jute Factory** reported in (2005) 13 SCC 477, it has been held by the Hon'ble Apex Court that where statute requires an act to be done in a particular manner, the act has to be done in that manner alone. [Also see: **A.K. Roy Vs. State of Punjab** - (1986) 4 SCC 326 and **CIT Vs. Anjum M.H. Ghaswala** - (2002) 1 SCC 633]. The same would apply

to a policy notification as well. A purposive interpretation, as intended by the appellant, cannot be stretched to condone non-compliance with express conditions, particularly the actual user condition, which forms the very foundation of Notification No. 32/2005-Cus. The decision of the Hon'ble Madras High Court in **Olam Enterprises India** (supra) relied upon by the Revenue supports the principle that where the foundational requirements for claiming exemption are defective or not complied with, the claim of exemption necessarily fails. Similarly, the decision of the Tribunal in **National Rifle Association of India** (supra) reiterates that goods imported under an exemption notification must be used strictly in the manner prescribed therein.

14.7 The appellants' reliance on upon **Jagdish Cancer & Research Centre** (supra) and **Fortis Hospital Ltd.**, (supra), to contend that proceedings under Sections 28 and 114A are misconceived is misplaced. Those decisions concern cases where the alleged violation did not involve a demand under Section 28. In the present case, the facts clearly establish misstatement and suppression in fulfilling the exemption conditions, resulting in wrongful availment of duty-free benefits, resulting in short levy. Accordingly, invocation of Section 28 for demand of duty and Section 114A for imposition of penalty is legally sustainable. Once misstatement and other violations are established, the demand of duty, interest, confiscation under Section 111(o), and penalty under Section 114A are fully justified. Section 114A does not require proof of intention to evade duty, as mens rea is not an essential element for penalties arising from breach of civil obligations unless expressly provided by statute.

14.8 Shri Amit Kumar Proprietor of M/s Amit Impex has stated that as per the judgment of the Hon'ble Madras High Court in **Lakshmichand** (supra), unless the show cause notice specifically alleges the exact sub-clause of Section 112 violated and sets out the manner in which the noticees attracted the said provision, the notice stands vitiated and hence the impugned order may be set aside with consequential relief. We find that the Hon'ble Supreme Court has consistently held that mere citation of an incorrect provision does not vitiate proceedings if the substantive power exists in law [See: **Collector of Central Excise Vs Pradyumna Steel Ltd.** - (2003) 9 SCC 234; **JK Steel Vs Union of India** - 1978 (2) E.L.T. (J355); **Sanjana Vs Elphinstone Spinning & Weaving Mills** - 1978 (2) E.L.T. (J399)]. In **Dharampal Satyapal Ltd. Vs Dy. Commissioner of Central Excise**, [2015 (320) ELT 3 (SC)], the Court further clarified that procedural lapses invalidate proceedings only where prejudice is shown. However, the jurisdictional Madras High Court in **Lakshmichand** (supra), held that a bare reference to Section 112, without specifying the applicable clause or setting out its essential ingredients, reflects non-application of mind and renders the proceedings unsustainable, as this is not a case of mere mis-citation but of fundamental ambiguity. In keeping with judicial discipline, we follow the binding decision of the jurisdictional High Court and accordingly set aside the penalty on the appellants which was proposed under section 112 and confirmed in the OIO.

15. In view of the foregoing findings, the impugned order is upheld, except for the imposition of penalty under section 112 of the Customs

Act 1962, on Shri Rajesh Gupta, Proprietor of M/s J.P. Enterprises; Shri Amit Jain, Proprietor of M/s Amit Impex and Shri Sushanta Kumar Chaudhuri. The appellants are eligible for consequential relief, if any, as per law. The appeals are disposed of accordingly.

(Order pronounced in open court on 18.03.2026)

(AJAYAN T.V.)
Member (Judicial)

(M. AJIT KUMAR)
Member (Technical)

Rex