

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH – COURT NO. 4

E-HEARING

Customs Appeal No. 50925 of 2020

(Arising out of Order-in-Appeal No. 24(SM)/CUS/JPR/2020 dated 17.03.2020 passed by the Commissioner (Appeals), Customs & Service Tax, Jaipur-1)

M/s Paramount Surgimed Limited

Appellant

A-106, RIICO Industrial Area, Bhiwadi,
Rajasthan

Versus

Commissioner of Customs, Jaipur-1

Respondent

NCR Building, Statue Circle,
C-Scheme, Jaipur

Appearance:

Present for the Appellant: Shri Jatin Mahajan, Advocate

Present for the Respondent: Shri V.J. Saharan, Authorized Representative

CORAM:

Hon'ble Dr. Rachna Gupta, Member (Judicial)

Date of Hearing : 18/09/2025

Date of Decision : 06/10/2025

Final Order No. 51513/2025

Dr. Rachna Gupta:

M/s Paramount Surgimed Ltd.¹ is registered with the department, being an importer. The appellant was availing benefit of exemption Notification No. 50/2017-Cus. dated 30.6.2017 as amended (Entry No. 290). The appellant was required to file quarterly return for July 2017 to September 2017, by 10th day of October 2017. However, it was observed that the quarterly returns

1 the appellant herein

for the said period was not submitted in time to the competent authority i.e. Deputy Commissioner or Assistant Commissioner of Customs. The department alleged that the appellant is liable for penal action under Section 158 of Customs Act, 1962. Accordingly, vide Show Cause Notice No. 59/2018 dated 10.6.2019, penalty for contravention of sub-rule 3 of Rule 6 of Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 was proposed as per Section 158 of the Customs Act, 1962. The said proposal has initially been confirmed vide Order-in-Original 01/2019-20 dated 7.10.2019 vide which following penalties have been imposed under Section 158 of the Customs Act:

- (i) Penalty of Rs. 25,000/- (Twenty Five Thousand only) under Section 158 of the Customs Act, 1962 for late filing of quarterly return for the quarter July 2017 to September 2017;
- (ii) Penalty of Rs. 25,000/- (Twenty Five Thousand only) under Section 158 of the Customs Act, 1962 for late filing of quarterly return for the quarter October 2017 to December 2017;
- (iii) Penalty of Rs. 25,000/- (Twenty Five Thousand only) under Section 158 of the Customs Act, 1962 for late filing of quarterly return for the quarter January 2018 to March 2018;
- (iv) Penalty of Rs. 25,000/- (Twenty Five Thousand only) under Section 158 of the Customs Act, 1962 for late filing of quarterly return for the quarter April 2018 to June 2018;
- (v) Penalty of Rs. 25,000/- (Twenty Five Thousand only) under Section 158 of the Customs Act, 1962 for late filing of quarterly return for the quarter July 2018 to September 2018;
- (vi) Penalty of Rs. 25,000/- (Twenty Five Thousand only) under Section 158 of the Customs Act, 1962 for late

filing of quarterly return for the quarter October 2018 to December 2018;

- (vii) Penalty of Rs. 25,000/- (Twenty Five Thousand only) under Section 158 of the Customs Act, 1962 for late filing of quarterly return for the quarter January 2019 to March 2019.

The said order has been upheld by Commissioner (Appeals) in Order-in-Appeal No. 24/2020 dated 17.3.2020. Being aggrieved, the appellant is before this Tribunal.

2. I have heard Shri Jatin Mahajan, learned counsel for the appellant and Shri V.J. Saharan, learned Authorized Representative for Revenue.

3. Learned counsel for the appellant has submitted that Section 158 of Customs Act alleging contravention of sub-rule 3 of Rule 6 of Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 has wrongly been invoked. It is submitted that while complying with the said provision of aforesaid rules of 2017 for availing the exemption benefit of Notification No. 50/2017 dated 30.6.2017 / 68/2017 both dated 30.6.2017, the appellant had filed the quarterly returns for the period July 2017 to September 2017 in CGST-Division-C, Bhiwadi on 3.11.2017. However, the appellant had provided the information regarding import at concessional rate of duty as per the provisions of Notification No. 68/2017. Certificate dated 10.1.2018 and another dated 20.2.2018 has also been issued by the Assistant Commissioner, in this regard. The said certificate is the sufficient evidence showing fulfillment of the condition of Rule 6(3) of Customs (Import of Goods at Concessional Rate of Duty) Rules 2017. It is further submitted that vide letter

dated 05.03.2019, the appellant had applied for acceptance of continuity bond of Rs. 5 lakhs and bank guarantee of Rs. 25,000/- and again filed the quarterly return for the period July 2017 to March 2018, April 2018 to June 2018, July 2018 to September 2018 and October 2018 to December 2018 in the department in the month of December. The order under challenge is passed absolutely ignoring all these facts. Hence the same is liable to be set aside. Appeal is accordingly, prayed to be allowed.

4. While rebutting these submissions, learned Departmental Representative has reiterated the findings arrived at by the adjudicating authorities below. It is brought to notice that Commissioner (Appeals) has observed an admission of the appellant in their reply to Show Cause Notice dated 8.7.2019 about not filing the stipulated returns in time and that all the returns were not filed on 27.6.2017 i.e. after the issuance of show cause notice on 10.6.2019. The said admission is the sufficient proof for non-compliance of Rule 6(3) of Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017. Hence there is no infirmity in the order under challenge. Otherwise also, the appellant had availed the concessional customs duty on Fluff Pulp which was conditional upon following the procedure outlined in Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 notified by Notification No. 68/2017 dated 30.06.2017. The departmental letter dated 26.3.2019 from the Deputy Commissioner (Preventive), Customs Commissionerate, Jaipur reveals that returns for July 2017 to December 2018 were filed along with the letter dated 5.3.2019. Thus, it is clear that the

returns were not submitted by the specified due date. Also the returns did not contain the unit's name, seal and the name and signature of the concern authority. These failures amounts to contravention of the aforesaid Notification No. 68/2017 in which situation Section 158 of Customs Act provides the imposition of penalty. Learned Departmental Representative has also relied upon the decision of Hon'ble Supreme Court in the case of **Commissioner of Customs (Import), Mumbai Vs. M/s Dilip Kumar And Company And Ors.**² and has prayed for the dismissal of the present appeal.

5. Having heard both the parties and perusing the record, it is observed that the allegations against the appellant are:

- (i) The quarterly returns for July 2017 to March 2018 have not been filed by the stipulated date;
- (ii) The returns did not contain all requisite particulars vis-à-vis unit's name, seal and the name and clear signature of the concern authority.

The bare perusal makes it clear that the alleged contravention seems to be procedural in nature. No doubt the alleged contravention is the contravention of Rule 6(3) Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 notified vide Notification No. 68/2017 dated 30.06.2017. The said rule reads as follows:

"3. The importer who has availed the benefit of an exemption notification shall submit a quarterly return, in the Form appended to these rules, to the Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs having jurisdiction over the premises where the imported

goods shall be put to use for manufacture of goods or for rendering output service, by the tenth day of the following quarter.”

6. The appellant has relied upon various certificates issued by Assistant Commissioner, CGST Division – C, Bhiwadi Alwar showing that the returns for the period in question were filed by the appellant but not before the Assistant Commissioner of Customs having jurisdiction over the appellant’s premises. Those were filed before Assistant Commissioner, CGST Division-C, Bhiwadi. This perusal is sufficient for me to hold that the alleged non-compliance is purely a procedural lapse on part of appellant.

7. No doubt, in case of exemption notifications, it is for the assessee/importer to prove its entitlement and he has to follow the procedure as prescribed in the notification. However, it is also the settled position of law that, in case of contravention of any provision of such exemption notification the burden on assessee is to prove the absence of three things i.e. :

- (i) fraud;
- (ii) gross and willful neglect and;
- (iii) intent to evade the government revenue.

I draw my support from the decision of hon’ble Allahabad High Court in the case **Commissioner of Income Tax Vs. Chiranji Lal Shanti Swarup**³. Apparently and admittedly three of those elements which gave rise to the situation of imposition of penalty are absent in the present situation.

3 1981 (130) ITR 651 (All.)

8. I further observe that the object of penalties are to ensure that the tax payees should fulfill their legal duties by discouraging tax evasion and non-compliance. The Hon'ble Supreme Court in the case of **Hindustan Steel Ltd. Vs. State of Orissa**⁴ has held that penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law and was guilty of conduct concamacious or dishonest or acted in conscious disregard of its obligation. The hon'ble Court further held that even if a minimum penalty is prescribed the authority competent to impose penalty will be justified in refusing to invoke penalty when there is a technical or venial breach of the provisions of the Act or where the breach flows from the bona fide belief that the offender is not liable to act in the manner prescribed by the statute. Thus, on the same analogy, it is held that the appellant is not liable for any penal action and so the penal proceedings initiated in the show cause notice merits to be dropped.

9. With reference to Tax Statues, the Hon'ble High Court in full Bench in **CIT Vs. Patram Dass Raja Ram Beri**⁵ has held as follows:

"In view of the aforesaid authoritative enunciations, it is unnecessary to elaborate the matter further and it would be evident that generally penalty proceedings in a taxing statute are civil proceedings of remedial or coercive nature imposing an additional tax as a sanction for the speedy collection of revenue. Therefore, the imposition of penalty for a tax delinquency cannot possibly be equated with the conviction and sentence for a criminal offence."

10. In the light of the entire above discussion, I hold that the bona fide procedural lapse has wrongly been dealt with as the act

4 1978 (2) ELT J159 (SC)

5 (1976) 132 ITR 671

of such contravention which invites the penalty. With these observations, I hereby set aside the order under challenge imposing several penalties upon the appellant. Consequent thereto, the appeal stands allowed.

(Pronounced in open Court on 06.10.2025)

(Dr. Rachna Gupta)
Member (Judicial)

RM