

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. I

CUSTOMS APPEAL NO. 50911 OF 2025

(Arising out of Order-in-Original No. 24/2024-25/D.R./Pr. Commr/ACC Import dated 23.12.2024 passed by the Principal Commissioner of Customs ACC (Import), New Customs House, New Delhi)

M/s. Yash Oro India Private Limited

.....Appellant

Survey No 1939 and 1940,
Nandigama Village and Mandal,
Kothur – 509 216

VERSUS

**Principal Commissioner of
Customs ACC (Import)**

.....Respondent

New Customs House,
Near IGI Airport,
New Delhi – 110 037

APPEARANCE:

Shri Kishore Kunal, Ms. Runjhun Pare and Shri Govind Gupta, Advocates for the Appellant

Shri Ranjan Prakash and Shri Nikhil Mohan Goyal, Authorized Representatives for the Department

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

DATE OF HEARING: 30.07.2025
DATE OF DECISION: 07.01.2026

FINAL ORDER NO. 50020/2026

JUSTICE DILIP GUPTA:

This appeal seeks to assail the order dated 23.12.2024 passed by the Principal Commissioner of Customs ACC (Import), New Customs House, New Delhi¹ that confirms the customs duty on M/s. Yash Oro India Private Limited² in respect of goods imported with interest under section 28AA of the Customs Act, 1962³ and penalty under section 112(a)(ii) of

-
1. the Principal Commissioner
 2. the appellant
 3. the Customs Act

the Customs Act. Redemption fine has also been imposed in lieu of confiscation under section 125 of the Customs Act.

2. The issue that arises for consideration in this appeal is whether the appellant is justified in availing exemption of customs duty under Notification No. 96/2008-Cus dated 13.08.2008⁴ on import of gold dore bars from Tanzania in terms of the Import License dated 22.12.2020 issued by the Directorate General of Foreign Trade⁵ permitting imports subject to Notification No. 12/2012-Cus dated 17.03.2012⁶.

3. In the Doha Ministerial Order of the World Trade Conference held in 2001, the member countries, including India, committed to consider providing duty free, quota free market access for Least Developed Countries products and to consider additional measures to improve market excess to such countries. In the Hong Kong Ministerial Declaration held in 2005, the World Trade Organisation countries agreed to provide duty free and quota free market access on a lasting basis on all products originating from Least Developed Countries. The Government of India, in 2008, extended duty free tariff preference scheme for the Least Developed Countries.

4. Accordingly, the 2008 Exemption Notification was issued on 13.08.2008 in exercise of the powers conferred by section 25(1) of the Customs Act. It exempted goods falling under the First Schedule to the Customs Tariff Act, 1975, other than those specified in Appendix I and Appendix II, from the whole of duty of customs as specified in the First Schedule to the Customs Tariff Act and from the whole of Agriculture Infrastructure and Development Cess⁷ leviable under section 124 of the

4. the 2008 Exemption Notification
5. DGFT
6. the 2012 Notification
7. AIDC

Finance Act, 2021⁸ when imported to India from a country listed in the Schedule to the Notification.

5. On 17.03.2012, the 2012 Notification was issued extending benefits of concessional rate of basic customs duty as well as additional duty to certain goods, including gold dore bars at Serial No. 318 having gold content not exceeding 95% subject to Condition No's 5 and 34. Condition No's 5 and 34 are reproduced below:

Condition No.	Conditions
*****	*****
5.	If the importer, is registered with the Directorate of Vanaspati, Vegetable Oils and Fats in the Department of Food and Public Distribution in the Government of India.
*****	*****
34.	If,- (a) the goods are directly shipped from the country in which they were produced and each bar has a weight of 5 kg. or above; (b) the goods are imported in accordance with the packing list issued by the mining company by whom they were produced; (c) the importer produces before the Deputy Commissioner of Customs or the Assistant Commissioner of Customs, as the case may be, an assay certificate issued by the mining company or the laboratory attached to it, giving detailed precious metal content in the dore bar; (d) the gold dore bars are imported by the actual user for the purpose of refining and manufacture of standard gold bars of purity 99.5% and above; and (e) the silver dore bars are imported by the actual user for the purpose of refining and manufacture of silver bars of purity 99.9% and above.

6. Customs Notification No. 50/2017⁹ was issued on 30.06.2017 superseding the 2012 Notification. This Notification extended benefit of concessional rate of basic customs duty to gold dore bars under Serial No. 354 subject to two Conditions at Serial No's. 9 and 40 which are identical to Condition No's 5 and 34 of the 2012 Notification.

8. the 2021 Finance Act
9. the 2017 Notification

7. On 22.12.2020, the DGFT issued Import License to the appellant permitting the appellant to import gold dore bars with purity upto 95%. The Conditions contained in the License are as follows:

2. CONDITION SHEET

1	The licence is issued with actual user conditions besides other usual conditions of Import Authorization
2	The import is subject to Custom Notification no. 12/2012 dated 17.03.2012 and RBI notifications issued from time to time

8. The appellant filed a Bill of Entry for import of gold dore bars from Tanzania and claimed exemption of duty under the 2008 Exemption Notification. The appellant also filed the country of origin certificate. Investigation was carried out and it was revealed that the appellant had wrongly claimed exemption under the 2008 Exemption Notification since the Condition of the Import License issued by the DGFT specifically mentioned that the goods shall be cleared under the 2012 Notification later superseded by the 2017 Notification.

9. However, a show cause notice dated 24.04.2024 was issued to the appellant alleging violation of the Import License Condition and raising a demand under section 28(1) of the Customs Act. The show cause notice alleged that gold dore bars are restricted items for import and import is allowed only against a valid License issued by the DGFT. Thus, all the Conditions mentioned in the License have to be fulfilled by the importer. The show cause notice, therefore, alleged that the appellant had filed Bills of Entry wrongly claiming exemption from whole of the customs duties and AIDC under the 2008 Exemption Notification, though the Condition of the Import License issued by DGFT specifically mentioned that goods shall be cleared subject to the 2012 Notification. Non-payment of duty as

prescribed in the said 2012 Notification, which is mentioned as a Condition for import in the License, therefore, makes the goods ineligible to be imported against the said License. Thus, the importer appeared to have wrongly used the 2008 Exemption Notification for the import of gold dore bars as the importer can only claim one Exemption Notification at a time and availing 2012 Notification was a pre-condition in the License issued by the DGFT. The show cause notice also alleged that violation of the License Condition rendered the good liable to confiscation and the import of gold dore bars by claiming the benefit of the 2008 Exemption Notification resulted in evasion of duty.

10. The appellant filed a reply dated 26.11.2024 and denied the allegations made in the show cause notice and submitted that it had fulfilled the Condition of the 2008 Exemption Notification.

11. The Principal Commissioner, however, confirmed the demand of duty and ordered it to be recovered with interest and penalty under provisions of section 28(1) of the Customs Act. The relevant portions of the order passed by the Principal Commissioner are reproduced below:

"22. I find that the conditions of the Import license shall be construed to be complied with by the importer, if and only if, the importer- (i) follows the Notification completely including the specified conditions of the said Customs Notification as mentioned, in addition to other limiting conditions mentioned on the face of the Import License. Failure to meet any of the said conditions will make the importer ineligible to import under the said licenses, as the goods are in 'Restricted' category of imports, and (ii) pays Customs Duties as mentioned in the said Notification as mentioned in the license.

23. I find that the importer has filed bill of entry claiming wrong exemption from whole of the Customs Duties and Agriculture Infrastructure and Development Cess (AIDC)

under Notification No. 96/2008-Cus dt 13.08.2008, though the conditions of their Import license issued by DGFT specifically mentioned that goods shall be cleared under Notification No. 12/2012-Cus dated 17.03.2012 (later superseded by the Notification No 50/2017 - Cus dated 30.06.2017). Non-payment of duty as prescribed in the said notification which is mentioned as a condition for import in the license makes the goods ineligible to be imported against the said license. Thus, the importer has wrongly used the notification no. 96/2008-Cus dt 13.08.2008 for the import of impugned goods as the importer can only claim exemption notification at a time in respect of a component of Customs Duty in consonance with the license and availing notification No. 12/2012-Cus dated 17.03.2012 (later superseded by the notification no 50/2017 - Cus dated 30.06.2017) was a precondition as per license issued by DGFT.

24. ***** As already observed, the import license in the present case explicitly stipulates that it is subject to the provisions of Notification No. 12/2012-Cus, with a specific rider. **Therefore, I am of the view that the Noticee has to fulfill all the conditions of Notification No. 12/2012-Cus including the tax payment at the rate specified in the Notification and hence is not entitled to avail the benefit of tax payment under another Notification, namely No. 96/2008-Cus (LDC exemption notification).** The Noticee's claim to such benefits is not permissible under the terms of the import license, as then it would lead to situation where finally applied tax rate is different from the one specified under Notification No. 12/2012-Cus, as amended.

25. In view of discussions held above, I hold that Noticee has wrongly availed notification No. Notification No. 96/2008-Cus dt 13.08.2008, as the import of Gold Dore Bars were under restricted category and the conditions of their Import license issued by DGFT specifically mentioned that goods

shall be cleared under Notification No. 12/2012-Cus dated 17.03.2012 (later superseded by the notification no 50/2017-Cus dated 30.06.2017). Import of goods by claiming benefit of Notification No. 96/2008-Cus dated 13.08.2008 has resulted in sort levy/evasion of duty amounting to Rs. 50,92,209/- as per Annexure-A to the SCN. Thus, the Noticee is liable to pay impugned short payment of Customs Duties under Section 28(1) of the Customs Act, 1962.

26. ***** In this case since import of Gold Dore Bars were under restricted category, the Notification No. 96/2008-Cus is of no use until there exists an unconditional Import License or an import license allowing the clearance subject to the notification 96/2008, taking care of importability aspect. **However, the Import license issued by DGFT issued in the instant case specifically mentioned that goods shall be imported and cleared following the conditions and procedure under Notification No. 12/2012-Cus dated 17.03.2012. Thus, the Notfn. No. 96/2008-Cus can't be availed independently as it falls short on the importability aspect and the Noticee has to apply only mandatorily prescribed Notfn. No. 50/2017-Cus (superseded) at the time of import of "Gold Dore Bars" even if the goods imported from these least developed countries.**

28. Further, I find that the import has short paid duty on the impugned goods imported by them by taking recourse to wrong availment of Notification No. 96/2008-Cus dated 13.08.2008 and violating conditions laid down under license, resulting into short payment of the legitimate duty payable in respect of the subject goods. **In view of the above, I hold that this violation of the license condition has rendered the goods liable for confiscation under section 111(d) and 111(o) of the Customs Act, 1962.**

32. I find that in the regime of self-assessment it is the assessee himself who has to ensure correct computation of duty of imported goods and as per Section 17 of the Act, an importer is himself required to determine duty liability on the goods imported by him and discharge the same in the authorised manner. The importer is a regular importer and hence the plea that he did not know the provisions also does not come to his rescue. **The importer by the act of misdeclaration of value has rendered themselves liable to penalty under section 114A of the Act. I further, note that Section 114A & Section 112 of Custom Act, 1962 are mutually exclusive, therefore, no penalty is warranted under section 114A of Custom Act, 1962 on the Noticee."**

(emphasis supplied)

12. Shri Kishore Kunal, learned counsel for the appellant assisted by Ms. Runjhun Pare and Shri Govind Gupta made the following submissions:

- (i) The demand has been raised on the ground of violation of Import License Conditions issued by the DGFT. However, the said License is valid and subsisting as on date. In the absence of any allegation of violation by the DGFT, the demand raised in without jurisdiction. In support of this contention, reliance has been placed on the judgment of the Supreme Court in **Titan Medical Systems Pvt. Ltd. vs. Collector of Customs, New Delhi**¹⁰;
- (ii) A bare perusal of the Import License Conditions discloses that there is no Condition requiring the Licensee to mandatorily pay customs duty. Therefore, the finding of the impugned order that the License Conditions are fulfilled "if and only if" customs duty in terms of the 2017 Notification dated is paid is erroneous;

10. 2003 (151) E.L.T. 254 (S.C.)

(iii) There is no Condition that the importer is required to opt for duty payment under the 2012 Notification. The interpretation adopted in the impugned order by reading such a Condition would amount to adding a Condition in the Notification, which is not permissible. In this connection, reliance has been placed upon the following judgments of the Supreme Court:

(a) Union of India vs. Inter Continental (India)¹¹;

(b) Tata Teleservices Ltd. vs. Commissioner of Customs¹²;

(c) Hind Plastics vs. Collector of Customs, Bombay¹³;

(iv) Once the appellant fulfilled the eligibility of Least Developed Countries 2008 Exemption Notification, denying benefit to the appellant by reading the Conditions of the Import License to exclude the availability of the 2008 Exemption Notification to gold dore bars will render the exemption redundant;

(v) License has to be interpreted in a manner consistent with the Foreign Trade Policy. DGFT cannot impose terms in the License that go beyond or are conflict with the scheme of the Foreign Trade Policy. The interpretation adopted in the impugned order is inconsistent with the governing policy framework;

(vi) There is no express bar in the law preventing simultaneous availment of benefits under two Exemption Notifications. Denial of such benefit is contrary to the settled law. In the

11. 2008 (226) E.L.T. 16 (S.C.)

12. 2006 (194) E.L.T. 11 (S.C.)

13. 1994 (71) E.L.T. 325 (S.C.)

absence of any specific Conditions restricting applicability of another exemption, simultaneous benefits available cannot be denied;

(vii) Denying the benefit of the 2008 Exemption Notification violates article 51(c) of the Constitution and International obligations of India, including under GATT 1994 and the DFTP Scheme. Tariff and non-tariff barriers inconsistent with international treaties cannot be imposed;

(viii) Interest under section 28AA of the Customs Act is not liable to be paid; and

(ix) Penalty under section 112 is liable to be set aside.

13. Shri Ranjan Prakash and Shri Nikhil Mohan Goyal learned authorized representatives appearing for the department, however, supported the impugned order and made the following submissions:

(i) The DGFT issued the Import License to the appellant for importing gold dore bars with explicit Condition that imports must comply with the 2012 Notification which was superseded by the 2017 Notification. This Condition is non-negotiable, as gold dore bars are classified as "restricted" under the Foreign Trade Policy 2015-2020 and 2023-2028, requiring strict adherence to License terms;

(ii) The claim of the appellant for NIL duty rate under the 2008 Exemption Notification which provides exemptions for goods from Least Developed Countries like Tanzania, violates the License Condition mandating compliance with the 2012 Notification and its successor. This contravention rendered the import ineligible under the License, as the License explicitly restricted the importer to the specified Notification;

- (iii) The Delhi High Court in **M/s Tasha Gold Pvt. Ltd. vs. Union of India & ors**¹⁴ unequivocally held that an importer is "mandatorily required" to comply with the Conditions of the Notification specified in the Import License. The Delhi High Court rejected the argument that reliance could be placed on the 2008 Exemption Notification for imports from Least Developed Countries, emphasizing that the reference to the 2012 Notification overrides any other exemption;
- (iv) By claiming exemption under 2008 Exemption Notification, the appellant bypassed the applicable duty under the 2017 Notification, resulting in a short levy. This recovery could be made under section 28(1) of the Customs Act;
- (v) Non-compliance with the License Conditions rendered the goods liable to confiscation under section 111(d) and 111(o) of the Customs Act;
- (vi) The act of claiming an incorrect exemption rendered the goods liable to confiscation, justifying penalty under section 112(a) of the Customs Act; and
- (vii) The short levy of duty would result in mandatory interest under section 28AA of the Customs Act.

14. The submissions advanced by the learned counsel for the appellant and the learned authorized representatives appearing for the department have been considered.

15. The issue that arises for consideration is whether the appellant could claim the benefit of the 2008 Exemption Notification for import of gold dore bars when the Import License issued to the appellant mentioned that the import of gold dore bars is subject to the 2012 Notification.

14. **W.P. (C) 1137/2023 decided on 06.07.2023**

16. It needs to be noted that the appellant was required to pay concessional basic customs duty under the 2012 Notification as superseded by the 2017 Notification, but under the 2008 Exemption Notification the appellant was required to pay NIL basic customs duty and AIDC.

17. Gold dore bars are restricted items under the Foreign Trade Policy and can be imported under a License issued by the DGFT. The appellant was issued a License by the DGFT on 22.12.2020 permitting the appellant to import gold dore bars. The License contained a Condition that the import of gold dore bars is subject to the 2012 Notification.

18. The impugned order passed by the Principal Commissioner holds that it was obligatory on the part of the appellant to have paid customs duty contemplated under the 2012 Notification and it was not open to the appellant to pay NIL customs duty by taking resort to the 2008 Exemption Notification. It is for this reason that the customs duty in terms of the 2012 Notification, as superseded by the 2017 Notification, has been demanded from the appellant and penalty has been imposed under section 112(a)(i) of the Customs Act as the gold dore bars were found to be liable to confiscation.

19. The issue, therefore, that arises for consideration is whether the appellant could have taken benefit of the 2008 Exemption Notification when the Condition of the License issued to the appellant provided that the import of gold dore bars is subject to the 2012 Notification.

20. A perusal of the said Condition shows that the import has been made subject to the 2012 Notification. It does not provide that the benefit of any other Notification, which otherwise would be available to the appellant, cannot be availed of by the appellant. The appellant may have

had to discharge customs duty provided under the 2012 Notification, but if there is a Notification which exempts payment of customs duty than there is no bar in the appellant availing the benefit of the said Notification. The finding recorded by the Principal Commissioner that the Conditions of License can be fulfilled "if and only if" customs duty is paid in terms of the 2012 Notification is, therefore, not borne out from the Conditions of License.

21. It is not the case of the department nor is there any finding recorded by the Principal Commissioner that the appellant was not entitled to take the benefit of the 2008 Exemption Notification since the only reason assigned by the Principal Commissioner is that the benefit of 2008 Exemption Notification could not have been taken by the appellant as the import was made subject to the 2012 Notification.

22. The Condition of License does not also bar the appellant from simultaneously availing the benefits of two Exemption Notifications. In

JSW Energy Ltd. vs. Union of India¹⁵, the Bombay High Court held:

"Further, we find that the Customs, Excise and Service Tax Tribunal has consistently taken a stand that in the absence of any bar in the notification itself, it is open to an assessee to take benefit of more than one notification. This is so held in the matters of Hindustan Lever Ltd. v. Collector - 1989 (40) E.L.T. 388 and Commissioner of Central Excise v. Premier Mashurm Farms - 2005 (190) E.L.T. 511. **Similarly as submitted by the petitioner the Apex Court in the matter of Super Cassettes Industries Ltd. - 2006 (202) E.L.T. 739 (S.C.) benefit of more than one exemption notification was extended."**

(emphasis supplied)

15. 2015 (321) E.L.T. 664 (Bom.)

23. Of course, in the absence of any other Notification granting benefit to the appellant on the import of gold dore bars, the appellant would have had to pay duty under the 2012 Notification.

24. Learned authorized representative appearing for the department has placed reliance upon the judgment of the Delhi High Court in **Tasha Gold**. In the said case, it was found as a fact that the gold dore bars that had been imported did not meet the weight specification as required under the 2012 Notification as the gold dore bars had gold content of more than 95%. It is in this context that the Delhi High Court observed that the benefit of the 2008 Exemption Notification could not have been availed of since the description of goods in the 2012 Notification was gold dore bar having gold content not exceeding 95%.

25. It is, therefore, not possible to accept the contention advanced by the learned authorized representative appearing for the department that since gold dore bars were restricted items under the Foreign Trade Policy and could be imported only under a License issued by the DGFT, the appellant had necessarily to pay customs duty under the 2012 Notification.

26. Learned counsel for the appellant also submitted that that as the Import License issued to the appellant by the DGFT is valid and subsisting and the DGFT had not raised any allegation of violation of the Condition of the Import License, the customs authority cannot exercise power under section 28(1) of the Customs Act to determine violation of Conditions of License. According to the learned counsel for the appellant, it is the DGFT which has been conferred the power of the Central Government under section 3 of the Foreign Trade (Development and Regulation) Act, 1992¹⁶ to make provisions for the development and regulation of Foreign Trade by

16. the FTDR Act

facilitating imports and exports. In support of this contention, learned counsel has placed reliance upon certain decisions.

27. In **M/s. Designco and others vs. Union of India**¹⁷, the Delhi High Court examined the provisions of the FTDR Act alongside the Foreign Trade Policy as well as the Foreign Trade (Regulation) Rules, 1993 and made the following observations:

"104. As we read the various provisions enshrined in the FTDR Act alongside the FTP as well as the FTDR Rules, we find ourselves unable to recognize a right that may be said to inhere in the customs authorities to doubt the issuance of an instrument. We, in the preceding parts of this decision, had an occasion to notice the relevant provisions contained in the FTDR Act and which anoint the DGFT as the central authority for the purposes of administering the provisions of that statute and regulating the subject of import and exports. The FTP 2015-20 in unequivocal terms provides in para 2.57 that it would be the decision of the DGFT on all matters pertaining to interpretation of policy, provisions in the Handbook of Procedures, Appendices, and more importantly, classification of any item for import/export in the ITC (HS) which would be final and binding. The FTP undoubtedly stands imbued with statutory authority by virtue of Section 5 of the FTDR Act.

105. Of equal importance are the FTDR Rules and which too incorporate provisions conferring an authority on the Director General or the licensing authority to suspend or cancel a license, certificate, scrip or any instrument bestowing financial or fiscal benefits. Once it is held that the MEIS would clearly qualify as an instrument bestowing financial or fiscal benefits, the power to cancel or suspend would be liable to be recognized as being exercisable by the Director General on the licensing authority alone. It would thus be wholly impermissible for the customs authorities to either ignore the MEIS certificate or

17. W.P. (C) 14477/2022 decided on 22.11.2024

deprive a holder thereof of benefits that could be claimed under that scheme absent any adjudication or declaration of invalidity being rendered by the DGFT in exercise of powers conferred by either Rules 8, 9 or 10 of the FTDR Rules. **The customs authorities cannot be recognised to have the power or the authority to either question or go behind an instrument issued under the FTDR in law.**

106. **Taking any other view would result in us recognizing a parallel or a contemporaneous power inhering in two separate sets of authorities with respect to the same subject.**

That clearly is not the position which emerges from a reading of Section 28AAA. Quite apart from the deleterious effect which may ensue if such a position were countenanced, in our considered opinion, if the validity of an instrument issued under the FTDR Act were to be doubted on the basis of it having been obtained by collusion, wilful misstatement or concealment of facts, any action under Section 28AAA would have to be preceded by the competent authority under the FTDR Act having come to the conclusion that the instrument had come to be incorrectly issued or illegally obtained. The procedure for recovery of duties and interest would have to be preceded by the competent authority under the FTDR Act having so found and the power to recover duty being liable to be exercised only thereafter.

107. Section 28AAA would thus have to be interpreted as contemplating a prior determination on the issue of collusion, wilful misstatement or suppression of facts tainting an instrument issued under the FTDR Act before action relating to recovery of duty could be possibly initiated. **A harmonious interpretation of the two statutes, namely, the Customs and the FTDR Acts leads us to the inescapable conclusion that the law neither envisages nor sanctions a duality of authority inhering in a separate set of officers and agents simultaneously evaluating and adjudging the validity of an instrument which owes its origin**

to the FTDR Act alone. It is these factors, as well as the role assigned to the DGFT which perhaps weighed upon courts to acknowledge its position of primacy when it come to the interpretation of policy measures referable to the FTDR Act as well as issues of classification emanating therefrom."

(emphasis supplied)

28. The Delhi High Court referred to the views earlier expressed by the Delhi High court in **Simplex Infrastructure Ltd. vs. Union of India and others**¹⁸ and noticed that the views expressed by the Gujarat High Court in **Alstom India Ltd. vs. Union of India and another (No. 2)**¹⁹ had been approved. The Delhi High Court also referred to the judgment of the Allahabad High Court in **PTC Industries Ltd. vs. Union of India and others**²⁰ and the judgments of the Bombay High Court in **Pradip Polyfils Pvt. Ltd. vs. Union of India**²¹, **Autolite (India) Ltd. vs. Union of India**²² and **Commissioner of Customs (E.P.) vs. Jupiter Exports & Ors.**²³. Ultimately, the Delhi High Court held:

"108. ***** **We are thus of the firm opinion that it would be impermissible for the customs authorities to either doubt the validity of an instrument issued under the FTDR Act or go behind benefits availed pursuant thereto absent any adjudication having been undertaken by the DGFT. An action for recovery of benefits claimed and availed would have to necessarily be preceded by the competent authority under the FTDR Act having found that the certificate or scrip had been illegally obtained.** We have already held that the reference to a proper officer in Section 28AAA is for the limited purpose of ensuring that a certificate wrongly

-
- 18. 2014 SCC Online Del 7747
 - 19. 2014 SCC Online Guj 15952
 - 20. 2009 SCC Online All 2138
 - 21. (2004) 173 E.L.T. 3 (Bom)
 - 22. 2003 SCC Online Bom 1313
 - 23. 2007 SCC Online Bom 467

obtained under the Customs Act could also be evaluated on parameters specified in that provision. However, the said stipulation cannot be construed as conferring authority on the proper officer to question the validity of a certificate or scrip referable to the FTDR Act.”

(emphasis supplied)

29. It needs to be noted that in **Titan Medical**, which was considered by the Delhi High Court in **Designco**, the Supreme Court observed as follows:

“13. As regards the contention that the appellants were not entitled to the benefit of the exemption notification as they had misrepresented to the licensing authority, it was fairly admitted that there was no requirement for issuance of a licence that an applicant set out the quantity or value of the indigenous components which would be used in the manufacture. Undoubtedly, while applying for a licence, the appellants set out the components they would use and their value. However, the value was only an estimate. It is not the respondents' case that the components were not used. The only case is that the value which had been indicated in the application was very large whereas what was actually spent was a paltry amount. **To be, noted that the licensing authority has taken no steps to cancel the licence. The licensing authority has not claimed that there was any misrepresentation. Once an advance licence was issued and not questioned by the licensing authority, the Customs Authorities cannot refuse exemption on an allegation that there was misrepresentation. If there was any misrepresentation, it was for the licensing authority to take steps in that behalf.**”

(emphasis supplied)

30. Thus, it is only if the Import License issued by the DGFT was cancelled by the DGFT that the customs could have decided to recover the duty under section 28(1) of the Customs Act.

31. In this view of the matter, the demand of customs duty from the appellant cannot be sustained nor can the imposition of penalty under section 112(a)(ii) of the Customs Act or imposition of redemption fine in lieu of confiscation be maintained. The impugned order is, accordingly, set aside and the appeal is allowed.

(Order Pronounced on **07.01.2026**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

Shreya