IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH - COURT NO.2

Customs Appeal No.75203 of 2025

(Arising out of Order-in-AppealNo.KOL/CUS(PORT)/KS/802/2023 dated12.10.2023 passed by Commissioner of Customs (Appeals), Kolkata.)

M/s.Tanvi Impex
(206, A.J.C. Bose Road, Business Tower, Unit-7A, 7th Floor, Kolkata-700017.)

...Appellant

VERSUS

Commissioner of Customs (Port), Kolkata

.....Respondent

(15/1, Strand Road, Custom House, Kolkata-700001.)

<u>APPEARANCE</u>

Shri R.N.Bandyopadhyay, Advocate & Mrs. Sukanya Roy, Consultant for the Appellant (s)
Shri A.K.Choudhary, Authorized Representative for the Revenue

CORAM:HON'BLE SHRI R. MURALIDHAR, MEMBER(JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER(TECHNICAL)

FINAL ORDER NO.75397/2025

DATE OF HEARING :07.02.2025
DATE OF DECISION : 20.02.2025
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Per :R. MURALIDHAR :

The appellant, Tanvi Impex is engaged in the business of import and export on the strength of valid IEC 0215012631 duly issued by the Directorate General of Foreign Trade, Ministry of Commerce & Trade, Government of India. The appellant was the regular Importer of Peas for trading purpose. The item in question which under free list of the EXIM Policy, came to be classified under restricted goods later by way of several amendments brought in by way of Notifications by DGFT. For the 11 consignment of these goods imported between 29.01.2019 to 15.03.2019, a Show Cause Notice was issued vide File No. file No. S202 Gr.1 (P) - 96/2018A dated 29.09.2020 calling upon the Appellant to Show cause as to why:

a) The goods imported vide the 11 Bills of Entry should not be confiscated under section 111(d) of the Customs Act, 1962 for non-compliance of the said notification issued by DGFT.

b) Penalty under section 112(a) of the Customs Act, 1962 should not be levied on the importer for his acts of omission or commission and

c) Redemption fine under section 125 of the Customs Act, 1962 should not be levied on the goods in lieu of confiscation.

2. The Adjudicating authority vide his Order in Original No. KOL/CUS/GRI/ADC/PORT/91/2021 dated 17.12.2021, confiscated the goods u/s 111(d) of CA'62 and imposed redemption fine of Rs. 60,00,000. Besides, penalty of Rs.60,00,000 was imposed. The appeal filed by the appellant before the Commissioner (Appeals) was dismissed by him on the ground that pre-deposit condition was not fulfilled. Being aggrieved the appellant is before the Tribunal.

3. The Ld. Advocate appearing on behalf of the appellant makes the preliminary submission about the issue of pre-deposit. He submits that since the consignments were held up, which are perishable items, the appellants moved a Misc. Application before the Hon'ble High Court Calcutta.filed a MAT No. 1405 of 2018 with CAN No. 8761 of 2018 before the Hon’ble Division Bench of the High Court, Calcutta. The Hon’ble High Court of Calcutta vide their Interim Order dated 26.11.2018 granted stay on the DGFT Notifications. Based on this Stay Order, provisional release of the goods was conditionally allowed vide letter F. No. S-202-Gr- 1(P)-27/2019A dated 27.03.2019 after providing security deposit of 10% of the assessable value towards

probable fine and 10% of duty towards penalty, copies of which are annexed as Annexure – D to the appeal paper book. This would show that against the pre-deposit requirement before the Commissioner was very much available on record to show that much higher amount was deposited by the appellant. In case of Redemption Fine there is no provision under Section 129E that any pre-deposit is required to be made. Since the appellant had provided security deposit to the extent of 10% of the Assessable Value and 10% of the Redemption fine as the directions of the Hon'ble High Court, this more than meets the requirement of pre-deposit, which has been overlooked and ignored by the Commissioner (Appeals).Since at the time of provisional clearance besides duty, a security deposit of Rs.91,30,121was deposited in the Government Exchequer, it is well covered for the pre-deposit requirement (Rs. 60,00,000 x 10% = Rs.6,00,000/-) u/s 129E of CA'62. Therefore, the Commissioner (Appeals) is in error in holding that the pre-deposit condition has not been fulfilled so as to dismiss the Appeal on this ground.

4. He further states, that an identical issue a case of another exporter has come up before this Tribunal and the reliefs claimed by them have been granted by the Bench. Hence, he prays that even in this case, the appeal itself may be taken up for disposal by the Bench, without having the same to be remanded to the Commissioner (Appeals).

5. Thereafter he makes the following submissions :

5.1 The issue involved in the present appeal is importation of Peas, Yellow Peas. As per the import policy under chapter 7 of lit (HS) 2017, schedule-1 (Import policy) the import of Pigeon peas (Cajanus Cajan)/Toor dal till 05.08.2017 and moong dal/Urad dal till 21.08.2017 and Urad/Moong in split and other form till 05.08.2017 was categorised as free amended the import policy of Beans of the species Vigna Mungo (L) Hepper (Moong Dal) from free to restricted with annual (Fiscal Year) quota of 3 Lakhs MTs.Vide Notification No. 04/2015-2020 dated: 25.04.2018, the Yellow Peas under Exim code 07131000 was revised from free to restricted for a period of three months only, vide Notification No. 15/2015-2020 dated: 02.07.2018, the restriction on import of peas was extended for a further period of three months i.e. till 30.09.2018. By virtue of Notification No. 32/2015-2020 dated: 30.08.2018 import of peas restriction was further extended till 30.09.2018. Notification No. 37/2015-2020 dated: 28.09.2018 the restriction of import of peas classified under EXIM code. 07131000 (Including Yellow peas, Green peas, Dun peas and Kaspa peas) was further extended till 31.12.2018. Trade Notices No. 06/2018 and 12/2018 both dated: 18.05.2018 and 19/2018 dated: 05.07.2018 were also issued by DGFT setting out the procedure and implementation of the above Notifications.

5.2 In the meantime, the appellant being a regular importer of peas for trading purpose had a firm contract with the foreign supplier **M/s U.E.L. INTERNATIONAL FZE,** as specified in the contract No. **UELI/YP/17-18/12 dated 13.03.2018** for supply of **10000 MT** of Yellow peas. Accordingly, as per the contract the appellant fulfilled the condition of advance payment on 18.03.2018. The appellant imported 11 consignments of Green Peas/Yellow Peas through Kolkata Port, which were held up.

5.3 The details of the 11 consignments are as below:

Sl No.	B/E No.	B/E Date	Assessable Value (in Rs.)	Duty (in Rs.)
1	2126171	20.02.2019	6555905	3277953
2	2128267	20.02.2019	2159274	1079637
3	2030198	12.02.2019	6709286	3354643
4	2432214	15.03.2019	3514500	1757250
5	2433006	15.03.2019	7029000	3514500
6	2131395	20.02.2019	6472529	3236265
7	2069959	15.02.2019	6157819	3078909
8	9783766	24.01.2019	4498636	2249318
9	2069902	15.02.2019	5971423	2985712
10	2071436	15.02.2019	5959198	2979599
11	9846269	29.01.2019	5839889	2919945
Total			6,08,67,460	3,04,33,731

5.4 Since the amendment in the EXIM policy was brought by way of Notifications, the appellants contested the amendment of import policy by way of a Writ Petition vide WP No. 17962w/2018 before the Hon'ble High Court, Calcutta, against the validity of the Notification, which was heard by the Hon'ble Single Bench and passed an Order to upheld the operation of the impugned Notification. Further, the appellant filed a MAT No. 1405 of 2018 with CAN No. 8761 of 2018 before the Hon'ble Division Bench of the High Court, Calcutta. The Hon'ble High Court of Calcutta vide their Interim Order dated 26.11.2018 granted stay on the DGFT Notifications. Copy of the Hon'ble high Court's Interim Order dated 26.11.2018 is attached in "ANNEXURE- C".

5.5 As the perishable consignments were held up, the appellants moved a Misc. Application before the Hon'ble High Court Calcutta. filed a MAT No. 1405 of 2018 with CAN No. 8761 of 2018 before the

Hon'ble Division Bench of the High Court, Calcutta. The Hon'ble High Court of Calcutta vide their Interim Order dated 26.11.2018 granted stay on the DGFT Notifications. After this, goods were allowed clearance provisionally keeping security deposit of 10% of the assessable value towards probable fine and 10% of duty towards penalty, copies of which are annexed as Annexure - D.

5.6 In the meantime, the importer in Chennai and other ports also filed separate application before the Jurisdictional High Courts and obtained similar Interim Orders and got the goods cleared. Since the issue involved was on all India basis, the Central Government due to multiplicity of proceedings, filed a transfer petition number 496509/2020 before the Honourable Supreme Court of India and all the petitions pending across various High Courts were transferred to the Apex Court.

5.7 The Honourable Supreme Court in the case of Agricas LLP and Others vide Judgement dated: 26.08.2020, upheld the impugned notifications and rejected the challenge made by the importers inter alia stating that:

> *"48. Accordingly, we uphold the impugned Notification and Trade Notices and reject the challenge made by the importers. The imports if any relying on Interim order(s) would be held to be contrary to the Notifications and Trade Notices issued under the FTDR Act and would be so dealt with under provisions of the Customs Act, 1962. The writ petitions subject matter of the Transfer petitions, subject to above (what is not decided) are dismissed. Writ Petitions filed by the interveners before the respective High Courts shall dismissed in terms of this decision. Pending application(s) if any, also stand disposed of in the above terms. No order as to cost."*

5.8 Thereafter, the proceedings under the present SCN were initiated, which culminated in the Penalty and Redemption Fine being imposed, which are much higher and disproportionate to the transactions carried out by the appellant. The appellant is pleading that the quantum of penalty and redemption fine may be reduced, keeping it proportionate to the already decided appeals of this Bench.

5.9 The Ld Counsel submits that on identical issue, this Bench in the case of **CCE Port Kolkata Vs Rahul Agro Industries vide theFinal Order No.76806/2024 dated 3.9.2024**, was pleased to go through the initial penalty of Rs.4 cr and redemption fine of Rs.2.10 crores, and the Bench modified the penalty to Rs.25 lakhs and redemption fine to Rs.25 lakhs, against the penalty of Rs.50 lakhs and Redemption Fine of Rs.50 lakhs imposed by the Commissioner (Appeals).

5.10 TheLd Advocate submits that the facts are identical. Even in the present case, the appellant has challenged the Notifications issued by the DGFT before the Hon'ble Kolkata High Court, as has been done by the appellant in that case by challenging the same before the Hon'ble Rajasthan High Court. In the cited Final Order of the Tribunal, there is also reference of various importers challenging the validity of the DGFT Notifications before various High Courts, which ultimately came to be decided by the Supreme Court, upholding the validity of the DGFT Notifications. The appellant submits that the copies of the contracts would prove that the goods were purchased before the amendments carried out by the DGFT. Since the issue was being litigated before various High Court, it cannot be said that the appellants have imported the restricted goods deliberately under open license policy. He submits that in the cited case of Rahul Agro this Bench had considered the factual details and the issue of litigation taking place before all the

High Courts and the Tribunal has been kind enough to reduce the Redemption Fine to Rs.25 lakhs from the initially imposed Redemption fine of Rs.2.10 crores and the Bench has reduced the penalty to Rs.25 lakhs from the initially imposed penalty of Rs.4 crores.

5.11 With these submissions, the Ld Advocate prays that even in the present case, the Redemption Fine and the Penalty imposed may kindly be reduced proportionately.

6. The LdA R appearing on behalf of the Revenue submits that the appellant has been a beneficiary by taking the course of free imports while fully knowing that the goods are falling under the Restricted category. He submits that since the appeal has been admitted at Tribunal, considering the deposit made in the initial stages to be sufficient for pre-deposit purposes, the objections about pre-deposit condition stands satisfied. He does not deny that the **Rahul Agro** Final Order referred to and cited and relied upon by the appellant is on similar issues.

7. We have gone through the Security Deposits made by the appellant, which is being reproduced for the convenience of reference :

Sl. No.	B/E No.	B/E Date	Fine Date	Receipt No.	Fine (in Rs.)	Penalty Date	Receipt No.	Penalty (in Rs.)
1	2126171	20.02.2019	10.04.2019	047	655591	10.04.2019	048	327795
2	2128267	20.02.2019	08.04.2019	008	215927	08.04.2019	009	107964
3	2030198	12.02.2019	08.04.2019	004	670929	08.04.2019	005	335464
4	2432214	15.03.2019	08.04.2019	010	351450	08.04.2019	011	175725
5	2433006	15.03.2019	08.04.2019	006	702900	08.04.2019	007	351450

6	2131395	20.02.2019	10.04.2019	049	647253	10.04.2019	050	323627
7	2069959	15.02.2019	10.04.2019	053	615782	10.04.2019	054	307891
8	9783766	24.01.2019	05.04.2019	001	449864	05.04.2019	002	224932
9	2069902	15.02.2019	10.04.2019	051	597142	10.04.2019	052	298571
10	2071436	15.02.2019	10.04.2019	055	595920	10.04.2019	056	297960
11	9846269	29.01.2019	07.06.2019	035	583989	07.06.2019	036	291995
				TOTAL	**6086747**		**TOTAL**	**3043374**
				Total Security Deposit :			**9130121**	

8. Since the appellant has provided Security Deposit of Rs.91,30,121, this would meet the requirement of the pre-deposit when the penalty of Rs.60,00,000 crores is litigated. We do not find any provision to call for pre-deposit when the litigation is towards the Redemption Fine. Hence, being satisfied with the fact the pre-deposit condition has been met, we take up the case for disposal at Tribunal level itself, since on identical case the issue stands decided by this Bench.

9. We have also gone through the factual details. We find that the against the DGFT Notifications, the appellants have contested the amendment of import policy by way of a Writ Petition vide WP No. 17962w/2018 before the Hon'ble High Court, Calcutta, wherein Commissioner of Customs, Kolkata was also respondent, on the ground that such an amendment in Foreign Trade policy is the sole prerogative of the Central Government as set out in section 3, 5 and 6 of the FTDR Act and the trade notice did not indicate that it was issued either with the concurrence or the approval of the Central Government.

10. As the goods were perishable in nature, the appellants moved a Misc. Application MAT No. 1405 of 2018 with CAN No. 8761 of 2018 before the Hon'ble Division Bench of the High Court, Calcutta. After

considering the factual position of the case the Honourable High Court vide their Interim Order dated 26.11.2018 granted stay on the DGFT Notifications. Accordingly, goods were allowed clearance provisionally subject to the appellants keeping security deposit of 10% of the assessable value towards probable fine and 10% of duty towards penalty. For the Assessable Value component of Rs.6,08,67,460, they have given security deposit of Rs.60,86,747 and for the Duty component of Rs.3,04,33,731, they have given security of Rs.30,43,374, as has been observed at Para 7 above.

11. The Kolkata Tribunal in the case of **CC Ports Kolkata Vs Rahul Agro Industries vide Final Order No.76806/2024 dated 03.09.2024**, dealing with identical issue, has held as under :

> 13. In that circumstances, it is to be seen that during the pendency of the proceedings, *various authorities had considered the stay of operation of the impugned notification and in one such case the Adjudicating Authority i.e. Commissioner of Customs, Chennai-II, Chennai vide order dated 23.03.2020 has refrained from imposing redemption fine on the importer and a nominal penalty of Rs. 50,000/- was imposed*.
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> 14. In the impugned order also, the Ld. Commissioner (Appeal) has considered the submission made by the Respondent and proceeded to hold that redemption of final penalty are on higher side and reduced the redemption from penalty. But we find that although Ld. Commissioner (Appeal) has reduced the redemption fine and penalty but in the facts and circumstances of the case as appellant being regular importer and as the earlier notification made the restrictions only up to 30.06.2018 which was extended by notification dated 28.09.2018 which means that there is a gap of three months wherein restriction was not in operation for import of green peas. *In that circumstances, the appellant has imported the goods from the foreign suppliers which were landed after extending restrictions. Further, the respondent approached the Hon'ble High Court and challenged the*

<u>extention of restriction which was stayed by the Hon'ble High Court, in that circumstances, although the goods are restricted as held by the Hon'ble Apex Court but for imposing redemption fine and penalty, a sympathetic view is to be taken</u>.

15. Therefore, we further reduce the redemption fine and penalty on the Respondent to Rs. 25,00,000/- each. (RssTwentyFivelacs each).

16. In these terms, the appeal filed by the Revenue and the cross objection filed by the Respondent are disposed of.

12. From the cited case law of **Rahul Agro Industries**, we find that in that case also the issue was identical with that party challenging the DGFT notifications before the Rajasthan High Court, getting interim stay and the issue being finally decided by the Apex Court upholding the validity of the DGFT Notifications. In the present case, the appellant has challenged the Notifications before the Calcutta High Court. On going through that Final Order passed by the Kolkata Tribunal in the case of Rahul Agro Industries, we find that the Assessable value there was to the tune of Rs.96.65 crores and Duty was to the tune of Rs.44.83 crores. For these imports the Adjudicating authority had imposed penalty of Rs.4 crores and redemption fine of 2.10 crores. On appeal by the Revenue, this Bench has considered the factual details and implication of the DGFT Notifications, the Supreme Court's judgement and has taken a sympathetic view and reduced the same to Rs.25 lakhs of penalty and Rs.25 lakhs of redemption fine.

13. In the present case, the Assessable value is Rs.6.08 crores and Duty component is Rs.3.04 crores. The appellant is before the Tribunal, being aggrieved with the penalty of Rs.60,00,000 of penalty and Rs.60,00,000 of redemption fine. Since the facts are identical in the present case, following the same lines taken by the Tribunal in the

case of Rahul Agro, we take a view that the ends of justice would be met if the these amounts are modified to Rs.8 lakhs of penalty and Rs.8 lakhs of Redemption fine.

14. Accordingly, we partly allow the appeal by reducing the Penalty to Rs.8 Lakhs and Redemption Fine to Rs.8 lakhs.

15. The appellants would be eligible for consequential relief, if any, as per law.

16. The appeal stands disposed off thus.

(Order pronounced in the open court on 20/02/2025.)

(R. MURALIDHAR)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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