

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, MUMBAI
REGIONAL BENCH
Court No.5**

Customs Appeal No. 1107 of 2012

(Arising out of Order-in-Original No. 19/2012-13 dated 31.07.2012 passed by the Commissioner of Customs (Export) Raigad)

M/s. Tejus

Plot No. 660, Paikki,
Block No.660,
Palsana,
Surat 395 003

Appellant

Vs.

**Commissioner of Customs (Export), Nhava Respondent
Sheva**

Jawaharlal Nehru Custom House,
Post Uran, Dist. Raigad 400 707.

Appearance:

Shri Mihir Mehta with Shri Suyog Bhawe, Advocates, for the Appellant
Shri S.K. Mathur, Special Counsel for the Respondent

CORAM:

**HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)**

Date of Hearing: 22.07.2025

Date of Decision: 14.08.2025

FINAL ORDER No. 86264/2025

PER: DR. SUVENDU KUMAR PATI

Confirmation of duty demand of Rs.2,61,26,141/- and Rs.2,46,17,607/- totalling Rs.5,21,80,300/- under Section 28(8) of the Customs Act, 1962 alongwith total redemption fine of Rs.2,75,00,000/- as well as penalties of Rs.5,21,80,330/- both under Section 112(a) and 114A for alleged violation of actual user conditions in respect of eight numbers of imports made through DFIA (Duty Free Import Authorization) and 10 numbers of imports through AA (Advance Authorization) respectively for the period from June 2007 to June 2008 and April 2007 to June 2008 by the Commissioner vide his above noted order, while adjudicating show cause notice dated 08.12.2008, is assailed before this forum by the importer appellant.

2. Fact of the case, in a nutshell, is that M/s. Tejus having IEC No.349001499 had obtained DFIA from the Directorate General of Foreign Trade (DGFT) and AA for importation of polyester filament yarn (PFY) (upto 250 denier) and textured filament yarn (TFY) (upto 25 denier). Intelligence was gathered by the Directorate General of Intelligence (DRI), Regional Unit, Surat that appellant was indulged in misusing DFIA and AA. On receipt of tipoff that on 25.06.2008 it's imported consignment under DFIA was diverted from factory premises to local market, action was initiated by the DRI and two trucks loaded with containers carrying the goods with one autorikshaw were intercepted and taken to factory premises where panchnama (seizure list) was drawn, the matter was investigated and office bearers of the appellant company including proprietor were all examined and upon completion of investigation, show cause notice dated 08.12.2008 was issued to the appellant with proposal for recovery of duty, penalty, redemption fine etc. as noted above, that was adjudicated and decided in complete confirmation of the said proposal in the show cause notice. Legality of the said order passed by the Commissioner is questioned by the appellant.

3. During the course of hearing of the appeal, learned counsel for the appellant, Mr. Mihir Mehta assisted by Mr. Suyog Bhqave, argued that Customs authorities have no jurisdiction to demand duty on inputs imported under licence once Export Obligation Discharge Certificate (EODC) has been issued by the DGFT and in support of his stand, he has placed reliance on the judgment passed by Hon'ble Supreme Court in the case of Titan Medical Systems Pvt. Ltd. vs. Collector of Customs, New Delhi, reported in 2003 (151) ELT 254 (SC) that was also reiterated in the order passed by Hon'ble jurisdictional Bombay High Court in the case of Commissioner of Customs vs. Jupiter Exports, reported in 2007 (213) ELT 641 (Bom.), wherein it was categorically held that once an advance licence was issued and not questioned by the licensing authority, the Customs authorities cannot refuse exemption on allegation that there was misrepresentation and if at all there was misrepresentation, it was for the licensing authority to take steps on that behalf and not the Customs authorities. Mr. Mihir Mehta

further argued that the appellant is in a better footing in this case for the reason that twice vide their letters dated 16.09.2008 and 17.11.2008, Assistant Director of DRI at Surat had requested the Joint Director General of Foreign Trade to suspend/cancel DFIA and AA issued to the appellant to prevent further misuse and also requested them not to issue EODC to the appellant pending investigation, that might be in conformity to the judicial precedent set in the case of Commissioner of Customs vs. Jupiter Exports, 2007 (213) ELT 641 (Bom.), but after carrying out investigation, order-in-original was issued by the DGFT on 19.10.2010 absolving the appellant company from the allegations of misuse of licence with an opinion that the firm had fulfilled the export obligation against advance licence and no proof of misutilisation of advance licence has been established by the DRI but it had imposed nominal penalty on the appellant on three imports, not on the ground of establishment of charge but on the ground that the appellant could not provide proper defence to disprove the allegations. He further argued with reference to relevant para 4.1.5 of AA scheme and para 4.4.6 of DFIA scheme, which have authorised the importer to dispose of products manufactured out of duty free inputs once export obligation is completed in respect of AA scheme and can authorize transfer of imported inputs as such with approval of concerned RA, once export obligation has been fulfilled and as there is no allegation against the appellant that it had not fulfilled the export obligation in completing required export of goods, Customs department has got no jurisdiction to invoke the provisions of Section 28(1) of the Customs Act, which cannot be attracted to the post importation conditions, as has been held by Hon'ble Supreme Court in the case of Commissioner of Customs, New Delhi vs. CT Scan Research Centre (P) Ltd., reported in 2003 (155) ELT 3 (SC), for which the order passed by the Commissioner is required to be set aside.

4. Per contra, learned Special Counsel Mr. S.K. Mathur argued in support of the reasoning and rationality available in the order passed by the Commissioner and took us to para 3 and 21 of the show cause notice to justify that the truck drivers who were intercepted with the goods had confirmed that they were carrying

imported goods from the port through the factory to the local market and the DRI had seized the imported goods as such without any manufacturing activity undertaken thereon. He has argued with reference to the statements of several witnesses recorded under Section 108 of the Customs Act including the unretracted statement of the appellant proprietor himself that would justify that the inputs as such were removed from the factory to the local market and polyester textured yarn (output) cannot be manufactured from polyester filament yarn, for which the order passed by the Commissioner need not be interfered with.

5. Contradicting such submission, learned counsel for the appellant submitted that the statements of witnesses including that of the proprietor of the appellant firm, Mr. Tejus Kapadia, would go to reveal that the goods imported under advance licence were sold to local buyers after cutting it and packing the goods in small cartons, which admittedly as per amended definition, amounts to manufacture and since both the schemes allowed sale of goods including inputs in the local market after fulfilling actual user conditions and one of the user conditions was to export goods at the first instance and thereafter to import the raw materials/inputs, selling the products outside would not amount to violation of any user conditions, which under no circumstances Customs officials are empowered to deal with, apart from the fact that statements of various persons were relied upon without complying with the requirement of Section 138(B) of the Customs Act in examining and cross examining them. He also questioned the legality of imposition of simultaneous penalty under Section 112(a) and 114(A) of the Customs Act as well as confirming the redemption fine without goods being available for seizure.

6. We have gone through the appeal paper book, written notes and additional written notes of submissions filed by the advisories, relevant provisions of law and case laws relied upon by the parties. At the outset, it can be said that going by the order-in-original it cannot be ascertained as to violation of which part of licence, viz., DFIA or AA, duty liability was fastened on the appellant as the provisions of both the schemes were not distinguished in the said

order. However, going by the investigation report that contains also detention and seizure of trucks and tempo (auto-rikshaw), it can be said that those were carrying goods, allegedly inputs brought from JNPT through the factory and seizure of Bills of Entry as well as lorry receipts and other documents had established that those goods were imported under DFIA scheme licence No. 5210023698 dated 12.06.2008. These being the facts on record, we do not find any irregularity in such selling of inputs, if at all, in the local market since para 4.4.6 of the DFIA scheme permits transferability of authorization of inputs imported with request made to the concerned RA. It is apparently for this reason when the DGFT examined the allegation of the DRI regarding misuse of its licences, it had clearly noted in its final orders passed for both DFIA and DA scheme that DRI (Preventive) Action failed to establish any proof of misutilisation of those licences (Exhibit 2 annexed to part I of the additional written submission, page 21 to 30). In those three cases in which pecuniary penalty was imposed by the DGFT, the ground for imposition of such penalty is also unsustainable for the reason that though burden of establishing the case is on the department (DRI herein), DGFT had found the appellant guilty only for the reason that the appellant firm had not proved to absolve itself completely of the allegations of the DRI. This order will not stand scrutiny by any court of law for the reason that it is incumbent upon the prosecution to prove the guilt of the delinquent beyond all reasonable doubt and not upon the delinquent to establish that it/he is completely innocent. Be that as it may, the issue has been settled at the Hon'ble Apex Court level in the case of Titan Medical Systems Pvt. Ltd., cited supra, that once advance licence was issued and not questioned by the licensing authority, which in the instant case was questioned at the instance of DRI but the allegations could not be substantiated, Customs authorities cannot refuse exemption on allegation of misrepresentation. It would be beneficial to reproduce the relevant para of Titan judgment for better clarity. Relevant part of para 13 of it reads:-

"13. 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."

Therefore, placing reliance on the judgment of Hon'ble Supreme Court in the case of Sheshank Sea Foods Pvt. Ltd. vs. Union of India, reported in 1996 (88) ELT 626 (SC), by the respondent will not aid its case for the reason that in a Writ of Prohibition seeking restraint on the part of Customs authority to investigate into a case involving licence issued by the DGFT, the said order was passed when in the instant case, Customs authorities findings were nullified by the licensing authority for which it's *ratio* will not apply to the appellant's case, apart from the fact that judicial precedent has put Titan Medical Systems Pvt. Ltd. decision as the later one. Further reliance on the Larger Bench decision passed in the case of Bombay Hospital Trust vs. Commissioner of Customs, Mumbai, reported in 2005 (188) ELT 374 (Tri.-LB) would not help the respondent as it had not considered Titan Medical Systems Pvt. Ltd., cited supra, and CT Scan Research Centre, cited supra, case laws while deciding the issue.

6. In his additional written submission filed belatedly, learned Special Counsel has placed it on record that the appellant had imported PFY of total quantity of 8,71,307 kg. during the period and sold and a quantity of 7,85,057 kg. to the local market leaving balance of 86250 kg., out of which 38880 kg. were seized by the DRI on 25.06.2008 and the remaining quantity of 47370 kg. were found lying the factory and as per the statement of the proprietor of the appellant firm, who himself is an engineer, TFY could not be made out from PFY, both of 80D/48F categorirs and that would establish that PFY imported by availing exemption was sold by the appellant to the local market without using the same in manufacture of finished goods of TFY.

7. However, going by the additional written submission filed by learned counsel for the appellant on 30.07.2025 that is also received much later by this office from the Registry, in para 4 and 5 of his written submission he also has mentioned the same

quantity of import of PFY without payment of duty for the period from June 2007 to June 2008 but he has mentioned that more than that quantity, viz. 8,74,789 kg. of PFY were exported in that period that was imported through eight DFIA licences. He has also reproduced the quantity of PFY purchased through AA of 10 numbers to the total tune of 6,72,630 kg., against which export happened to the tune of 6,91,704 kg., but he categorically pointed out that both DFIA and AA prescribed export of PPY also had permitted the appellant to import PFY of 250 denier.

8. We are not going to analyse the Data provided by the advisories but what we intend to place on record is that there were clear adjudication orders passed by the DGFT in respect of alleged irregularity in violation of terms of the export obligation but they categorically had held that there was no such violation of the export conditions, who might have analysed these aspects of input-output ratio, apart from the fact that there could be some minor violations but in view of the clear finding of Hon'ble Supreme Court in the case of Titan Medical Systems Pvt. Ltd., cited supra, Customs authorities are not competent to deal with these aspects and in view of the decision of Jupiter Exports (respondent), cited supra, the issue regarding validity of licence is to be determined by the DGFT and not by the Customs authorities. Hence the order.

The Order

9. The appeal is allowed and the order passed by the Commissioner of Customs vide Order-in-Original No. 19/2012-13 dated 31.07.2012 is hereby set aside with consequential relief, if any.

(Pronounced in court on 14.08.2025))

(Dr. Suvendu Kumar Pati)
Member (Judicial)

(Anil G. Shakkarwar)
Member (Technical)