CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 87025 of 2015

[Arising out of Order-in-Appeal No. 348(Adj.Imp)/2015(JNCH)-Appeal-II dated 18.06.2015 passed by the Commissioner (Appeals-II), Mumbai-II, Nhava Sheva.]

Zuari Agro Chemicals Limited **.... Appellants**
(Formerly Zuari Global Limited)
Jaikissan Bhavan, Zuari Nagar
Goa – 403 726.

Versus

Commissioner of Customs (Import) **.... Respondent**
Jawaharlal Nehru Customs House (JNCH)
Nhava Sheva, Taluka Uran, District Raigad
Maharashtra – 400 707.

APPEARANCE:

Shri Akhilesh Kangasia along with Ms. Madhura Khandekar, Advocates for the Appellants

Shri Dinesh Nanal, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/86965/2025

Date of Hearing: 27.10.2025
Date of Decision: 27.10.2025

Per: M.M. PARTHIBAN

This appeal has been filed by M/s Zuari Agro Chemicals Limited (earlier known as Zuari Global Limited and prior to that also known as Zuari Industries Limited), Goa (herein after, referred to as 'the appellants', for short), assailing the Order-in-Appeal No. 348(Adj. Imp)/2015(JNCH)-Appeal-II dated 18.06.2015 (herein after, referred to as 'the impugned order') passed by the Commissioner (Appeals-II), Mumbai-II, Nhava Sheva.

2.1 Briefly stated, the facts of the case are that the appellants herein, *inter alia*, is engaged in manufacture and trading of fertilizers. In the course of its business activity, the appellants had, *inter alia*, imported various fertilizers viz., Potassium Nitrate, Potassium Sulphate, Calcium Nitrate etc., and re-sold the same in the local market, directly to the farmers or through dealer network. The fertilizers imported by the appellants was classifiable under Chapter 31 of the First Schedule to the Customs Tariff Act, 1975 and were used as fertilizers only by the end-users. Such fertilizers are also specified in the Fertilizer (Control) Order, 1985. The appellants had been claiming the benefit of exemption from payment of additional duty of customs (CVD) in terms of Serial No.63 of the Notification No. 4/2006-C.E. dated 01.03.2006 even prior to the Budget, 2011. Notifications No.1/2011-C.E. and No.2/2011-C.E. both dated 01.03.2011 were introduced in the Budget 2011, providing for effective rate of duty on goods of chapter 31, which are clearly shown as not to used as fertilizers at 5% advalorem in general and at 1% where no CENVAT credit facility was taken on input or input services.

2.2 Directorate of Revenue Intelligence (DRI) had started an investigation on the import of fertilizers into India by various importers, including the appellants. The appellants furnished the data regarding imports of fertilizers since March, 2011 vide their letter dated 13.02.2012. During investigation statement of Shri Raj Kumamr Gupta, Deputy General Manager (Finance & Accounts) of the appellants company was also recorded on 29.02.2012. According to DRI investigation, the fertilizers imported by the appellants during the period 24.03.2011 to 02.12.2011 were not eligible for CVD exemption under Notification No. 4/2006-C.E. dated 01.03.2006. During the investigation itself, the appellants had paid Rs. 24,00,904/- being the entire amount of CVD liable to be paid in respect of twenty-two Bills of Entry filed for imports made through Nhava Sheva port and the interest of Rs.2,17,218/- towards interest on such delayed payment of duty. On completion of the investigation, DRI had issued Show Cause Notice No. DRI/MZU/CI-09/2012/10505 dated 14.06.2012 demanding differential duty of Rs.24,00,899/- along with interest under Section 28 of the Customs Act, 1962; and for confiscation of the imported goods for violation of Section 111(o) *ibid* and imposition of penalty on the appellants under Section 114A *ibid*.

2.3 In adjudication of the above said SCN dated 14.06.2012, the original authority had confirmed the duty demand of Rs.24,00,899/- along with interest under Section 28 of the Customs Act, 1962 and appropriated the amount of Rs.26,18,188/- paid by the appellants; and confiscated the imported goods without imposition of redemption fine, but imposed penalty of Rs. 26,10,146/- on the appellants under Section 114A *ibid* by issue of Order-in-Original No7979/2012 dated 29.09.2012. Being aggrieved with the said original order, the appellants had preferred an appeal before the Commissioner (Appeals) who in disposal of the case by issue of the impugned order dated 18.06.2015, upheld the order of the original authority and dismissed the appeal filed by the appellants. Feeling aggrieved with the impugned order, the appellants have filed this appeal before the Tribunal.

3. Learned Advocate for the appellants submitted that the appellants on account of the language of the notification, particularly the convoluted manner in which it was phrased led to a confusion for them, and which also led to different interpretation amongst the Customs officers assessing the imported goods at the port of import, who had initially allowed NIL rate of CVD at the time of import; and the officers of DRI investigation, who had demanded CVD at 5% *adv*. on such imports. The appellants also were under the impression that that the CVD exemption provided under Notification No. 4/2006-C.E. dated 01.03.2006 continued in the same manner after 01.03.2006, and they failed to notice the amendments made vide Notification No. 04/2006-C.E. dated 01.03.2006. He further stated that upon noticing the differential CVD required to be paid on the imported goods, the appellants had paid the entire CVD on all twenty-two imported consignments during the investigation stage itself, on the date of recording the statement of the Deputy General Manager of the appellants, by reporting voluntary compliance. He further submitted that the levy of interest under Section 28AA and penalty under Section 114A of the Customs Act, 1962 having not been made specifically applicable under the Section 3 of the Customs Tariff Act, 1975, there is no need to pay the same. In this regard, he relied upon the judgement of the Hon'ble Bombay High Court in the case of *Mahindra and Mahindra Vs. Union of India* – 2022 (10) TMI 212 – BOMBAY High Court which held that in the absence of specific provisions in the charging section of CVD i.e., the Customs Tariff Act, 1975, for charging interest, penalty etc. the confirmation of interest of CVD duty demands and penalty cannot be sustainable. This was also affirmed by the Hon'ble Supreme Court in appeal filed by Revenue by dismissing such appeal – 2023 (8) TMI 135 and also by dismissing the subsequent Review Petition filed by Revenue – 2024 (1) TMI 1277 – SC Order dated 09.01.2024.

4. On the other hand, learned Authorized Representative reiterated the conclusion arrived by the learned Commissioner (Appeals) in upholding the order of the original authority.

5. Heard both sides and perused the records of the case. We have also perused the additional written submissions presented in the form of paper books for this case.

6. The issue under dispute is with respect to eligibility to the exemption benefits allowed under Notification No. 4/2006-C.E., dated 01.03.2006 at Sr. No. 63 and consequential demand of duty, penalty adjudged in the case of the appellants. Further, the impugned order upholding the confirmation of the order of the original authority had also referred to Notifications No.1/2011-C.E. and No.2/2011-C.E. both dated 01.03.2011. Therefore, the extract of the relevant entries of these notifications are captured herein below:

Notification No. 4/2006-C.E. dated 01.03.2006

"In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts excisable goods of the description specified in column (3) of the Table below read with the relevant List appended hereto, as the case may be, and falling within the Chapter, heading or sub-heading or tariff item of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) (hereinafter referred to as the Central Excise Tariff Act), as are given in the corresponding entry in column (2) of the said Table, from so much of the duty of excise specified thereon under the First Schedule to the Central Excise Tariff Act, as is in excess of the amount calculated at the rate specified in the corresponding entry in column (4) of the said Table and subject to the relevant conditions specified in the Annexure to this notification, and the Condition number of which is referred to in the corresponding entry in column (5) of the Table aforesaid.

Explanation.- For the purposes of this notification, the rates specified in column (4) of the said Table are ad valorem rates, unless otherwise specified.

S. No.	*Chapter or heading or sub-heading or tariff item of the First Schedule*	*Description of excisable goods*	*Rate*	*Condition No.*
xx	*xxx*	*xxx*	*xx*	*xx*
63	*31*	*All goods, other than those which are clearly not to be used- (a) as fertilisers; or (b) in the manufacture of other fertilisers, whether directly or through the stage of an intermediate product*	*Nil*	*-"*

The aforesaid exemption entry, *inter alia*, was amended by issue of Notification No.4/2011-C.E. dated 01.03.2011 in the Budget 2011, for providing further restriction in the scope of exemption entry as follows:

63	*31*	*All goods, other than those which are clearly not to be used* ***in the manufacture of other fertilizers****, whether directly or through the stage of an intermediate product*	*Nil*	-

7. Plain reading of the exemption entry at Sl. No. 63 of the notification dated 4/2006-C.E., dated 01.03.2006 prior to 01.03.2011 and post amendment vide No.4/2011-C.E. dated 01.03.2011, it transpires that it had initially prescribed the 'Nil' rate of CVD on all goods used as fertilisers and those used in the manufacture of fertilizers falling under chapter 31; whereas post amendment only "all goods of Chapter 31, other than those which are clearly not to be used in the manufacture of other fertilizers, whether directly or through the stage of an intermediate product" were alone eligible for 'Nil' rate of duty. In other words, the narration of the said entry introduced through amendment meant that the exemption from payment of CVD is available only on the eventuality, where the goods are used in the manufacture of other fertilizers and not to the goods, which were sold in the open market as 'fertilizer'.

8.1 It is an admitted fact on record that the impugned goods imported by the appellants were not used for the intended purpose as per the terms of the notification and the same were sold by them in the open market as fertilizers. We find that the appellants have furnished the explanation that the change in the text of Sr. No. 63 of notification dated 01.03.2006 had gone un-noticed by them and that upon detection of such mistake, they had voluntarily deposited the difference in CVD amount along with interest and prayed for closure of the proceedings initiated by the Department. The facts are also not under dispute that the appellants had discharged their liability for payment of CVD and interest amount before issuance of the show cause notice by the Department. Insofar as the liability for payment of CVD along with interest is concerned, the appellants in this appeal are not contesting the same and their grievance is confined only on confiscation of the goods, interest demands and imposition of penalty by invoking the provisions of Section 114A *ibid* on the appellants.

8.2 Section 114A *ibid* deals with the situation for imposition of penalty, in the case of short-levy or non-levy of duty in certain situations. It has been mandated that in the eventuality of collusion or any wilful misstatement or suppression of facts, the penal provisions contained therein can be invoked and not otherwise. We find that the appellants importer has given an end use declaration before the customs authorities at the time of import, stating the following:

> *"This is to certify that import of 24,000 Metric Tonnes of Potassium Nitrate (13-0-45 NK Fertilizer) Fertilizers as per M/v APL Almandine V 391 vide Bill of Lading No. BL-APLU020854614 dated 01.04.2011 at Nhava Sheva port is for manurial purpose only.*
>
> *It is further declared that after clearance, the same will be used solely as manure"*
>
> *For Zuari Industries Limited*
> *Sd.*
> *M.P,Madhav*
> *Sr. Manager-Agri, Inputs*
> *Zuari Nagar, Goa* *Dated 16.04.2011."*

8.3 From the wordings of the exemption entry at Sl. No. 63 of the notification dated 01.03.2006, it would be evident that even though the imported goods cleared for direct use as 'fertilizers' was exempt earlier to 01.03.2011, subsequent to amendment vide Notification No.04/2011-C.E. it is only those goods that are used in the manufacture of fertilizers and not those directly sold as fertilizers in the open market was eligible to 'Nil' rate of duty; however they were provided with 5%/1% concessional duty of CVD depending on the availment of CENVAT credit facility. On reading of the above changes in the notification and the undertaking given at the time of import before the customs authorities, reveal that the non-payment of CVD at 5% appears to be unintentional on the part of the appellants and there is no element of suppression etc., on the part of the appellants in non-payment of the Government Revenue. In fact, during investigation itself, the appellants had paid the entire differential duty along with interest payable thereon. Thus, under such circumstances, we are of the opinion that the provisions of Section 114A *ibid* cannot be invoked for penalizing the appellants.

8.4 We find that the Hon'ble High Court of Bombay had examined the issue regarding the question of levy of interest on the demand of CVD, SAD and surcharge being recovered under Section 28 of the Customs Act, 1962 cannot be sustained and have held that since the charging section for levy of CVD is Section 3(1) of the Customs Tariff Act, 1975; and that unless by specific borrowing of such machinery provisions of the Customs Act, 1962 made applicable to these in terms of Customs Tariff Act, 1975, the same is not applicable to the CVD, SAD etc. The relevant paragraphs of the said order is quoted below:

> ***"35.*** *Further, Section 12 of the Customs Act, 1962 levies duty on goods imported into India at such rates as may be specified in the Customs Tariff Act, 1975. In Customs Tariff Act, 1975, Section 2 provides the rates at which duties of customs are to be levied under the Customs Act, 1962 are as specified in the first and second schedules of the Customs Tariff Act, 1975. In Section 12 of the Customs Act, 1962 there is no reference to any specific provision of Customs Tariff Act, 1975.*
> *On the other hand levy of CVD or SAD under section 3 or Section 3A of the Customs Tariff Act, 1975 or surcharge under section 90 of the Finance Act, 2000 is not relatable to the first or second schedule but the rate is prescribed in those three sections itself. This itself shows the charging section for surcharge or CVD and SAD is not Section 12 of the Customs Act, 1962 but Section 90 of the Finance Act, 2000 and Section 3 and Section 3A of the Customs Tariff Act, 1975, respectively.*
>
> ***38.*** *We have to note that in the present case, it is not disputed that petitioner has paid a sum of Rs. 11.84 Crores much prior to the issuance of show cause notice. There is no determination of duty under section 28(2) of the Customs Act, 1962 and, therefore, Section 28AB of the Customs Act, 1962 is also not applicable. Petitioner has also paid the difference between the admitted duty liability and the amount settled by respondent no. 2. We do not agree with respondent no. 2 that CVD, SAD and surcharge are being recovered under section 28 of the Customs Act, 1962. Consequently Section 28AB of the Customs Act, 1962 also will also not be applicable. In the absence of specific provision relating to levy of interest in the respective legislation, interest cannot be recovered by taking recourse to machinery relating to recovery of duty."*

8.5 In the appeal filed by the Revenue against the above judgement of the Hon'ble High Court of Bombay, before the Hon'ble Supreme Court in Special Leave Petition (Civil) Diary No. 18824/2023, the Hon'ble Supreme Court had dismissed the SLP being devoid of any merits. Further, in the Review Petition Diary No. 41195/2023 preferred by the department, the Hon'ble Supreme Court had also held that there is no error apparent on the face of the record or any merit in the Review Petition warranting reconsideration of the order impugned. Therefore, the Hon'ble Supreme Court dismissed the Review Petition.

8.6. We further find that the legal provisions under Section 3(12) of the Customs Tarif Act, 1975 was suitably amended vide Finance (No. 2) Act, 2024, w.e.f. 16.08.2024, so as to specifically include the provision for levy of interest, penalty etc. The said amended provision under sub-section (12) of Section 3 of the Customs Tariff Act, 1975 is extracted and given below:

Section – 106 of the Finance (No. 2) Act, 2024

Customs Tariff
Amendment of section 3.

"106. In section 3 of the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the Customs Tariff Act, for sub-section (12), the following sub-section shall be substituted, namely:—

"(12) The ***provisions of the Customs Act, 1962 (52 of 1962)*** *and all rules and regulations made thereunder, including but not limited to those* ***relating to*** *the date for determination of rate of duty, assessment, non-levy, short-levy, refunds, exemptions,* ***interest****, recovery, appeals, offences and* ***penalties shall, as far as may be, apply to the duty or tax or cess, as the case may be, chargeable under this section*** *as they apply in relation to duties leviable under that Act or all rules or regulations made thereunder, as the case maybe.".*

(Emphasis supplied)

8.7 From the above, it clearly transpires that the above amendment introduced in Finance (No.2) Act, 2024 and that such amended provisions of sub-section (12) of Section 3 of the Customs Tariff Act, 1975 shall come into force w.e.f. 16.08.2024 and shall not be applicable during the disputed period in the present case i.e., 24.03.2011 to 02.12.2011, which is prior to the above said amendment. Therefore, we are of the considered opinion that levy of interest and penalty on the appellants in the present case of demand of CVD is not legally sustainable. Thus, we are of the view, that the impugned order to such an extent that it had upheld the confirmation of interest on duty demands and imposed penalty on the appellants, is liable to be dismissed, as it does not stand the legal scrutiny.

9. In view of the foregoing discussions, we do not find any merits in the impugned order, insofar as it has upheld the confiscation of the imported goods and had confirmed interest on CVD duty demands and imposed penalty on the appellants under Section 114A ibid. Therefore, the impugned order to this extent is set aside and the appeal to such extent is allowed in favour of the appellants.

(Operative portion of the order pronounced in open Court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

SM