

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 87343 OF 2025

[Arising out of Order-in-Original No: 103/2025-26/Commr/NS-II/CAC/JNCH dated 30th June 2025 passed by the Commissioner of Customs (NS-II), JNCH, Nhava Sheva.]

KBN General Trading Co

1804, The Ambience Court, Plot no. 2, Sector 19D
Opp APMC Market-II, Vashi, Mumbai – 400 703

... Appellant

versus

Commissioner of Customs (NS-II)

Jawaharlal Nehru Custom House, Nhava Sheva
Mumbai – 400 707

...Respondent

WITH

CUSTOMS APPEAL NO: 87405 OF 2025

[Arising out of Order-in-Original No: 103/2025-26/Commr/NS-II/CAC/JNCH dated 30th June 2025 passed by the Commissioner of Customs (NS-II), JNCH, Nhava Sheva.]

MP IMPEX

C-602, Ashapura CHS, Plot no.3, Sector 16
Sanpada, Navi Mumbai – 400 705

... Appellant

versus

Commissioner of Customs (NS-II)

Jawaharlal Nehru Custom House, Nhava Sheva
Mumbai – 400 707

...Respondent

WITH

CUSTOMS APPEAL NO: 87406 OF 2025

[Arising out of Order-in-Original No: 103/2025-26/Commr/NS-II/CAC/JNCH dated 30th June 2025 passed by the Commissioner of Customs (NS-II), JNCH, Nhava Sheva.]

KBN GENERAL TRADING

1804, The Ambience Court, Plot no. 2, Sector 19D
Opp APMC Market-II, Vashi, Mumbai – 400 703

... *Appellant*

versus

Commissioner of Customs (NS-II)

Jawaharlal Nehru Custom House, Nhava Sheva
Mumbai – 400 707

...*Respondent*

WITH

CUSTOMS APPEAL NO: 87434 OF 2025

[Arising out of Order-in-Original No: 103/2025-26/Commr/NS-II/CAC/JNCH dated 30th June 2025 passed by the Commissioner of Customs (NS-II), JNCH, Nhava Sheva.]

Arbina Maqbool Dhoki

1303, Orchid Residency, Sector 14
Koparkhairane, Navi Mumbai – 400 709

... *Appellant*

versus

Commissioner of Customs (NS-II)

Jawaharlal Nehru Custom House, Nhava Sheva
Mumbai – 400 707

...*Respondent*

WITH

CUSTOMS APPEAL NO: 87435 OF 2025

[Arising out of Order-in-Original No: 103/2025-26/Commr/NS-II/CAC/JNCH dated 30th June 2025 passed by the Commissioner of Customs (NS-II), JNCH, Nhava Sheva.]

Manish Purushottam Bhanushali

Prop MP Impex
C-602, Ashapura CHS, Plot no.3, Sector 16
Sanpada, Navi Mumbai – 400 705

... *Appellant*

versus

Commissioner of Customs (NS-II)

Jawaharlal Nehru Custom House, Nhava Sheva
Mumbai – 400 707

...*Respondent*

WITH

CUSTOMS APPEAL NO: 87436 OF 2025

[Arising out of Order-in-Original No: 103/2025-26/Commr/NS-II/CAC/JNCH dated 30th June 2025 passed by the Commissioner of Customs (NS-II), JNCH, Nhava Sheva.]

Kapil Mahesh Kothari

1101, Tower 2, Vikas Paradise
LBS Marg, Mulund (West), Mumbai – 400 080

... *Appellant*

versus

Commissioner of Customs (NS-II)

Jawaharlal Nehru Custom House, Nhava Sheva
Mumbai – 400 707

... *Respondent*

AND

CUSTOMS APPEAL NO: 87441 OF 2025

[Arising out of Order-in-Original No: 103/2025-26/Commr/NS-II/CAC/JNCH dated 30th June 2025 passed by the Commissioner of Customs (NS-II), JNCH, Nhava Sheva.]

Maqbool Siddiq Dhoki

1303, Orchid Residency, Sector 14
Koparkhairane, Navi Mumbai – 400 709

... *Appellant*

versus

Commissioner of Customs (NS-II)

Jawaharlal Nehru Custom House, Nhava Sheva
Mumbai – 400 707

... *Respondent*

APPEARANCE:

Shri Prasanan S Namboodiri, Advocate for the appellants

Shri Deepak Sharma, Joint Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: 87002-87008 /2025

DATE OF HEARING: 22/09/2025
DATE OF DECISION: 03/12/2025

PER: C J MATHEW

In that typically incomparable style of his, PG Wodehouse has the narrator, Monty, in *The Luck of the Bodkins* contemplate thus

‘.... He was in a new world, with no plans. He might do anything. He might seek solace in one of the round-the-globe cruises. He might visit the Rocky Mountains and shoot bears. He might bury himself in some distant South Sea island and grow or catch copra – according to whether (a fact which he had never been quite able to grasp) it was a vegetable or some kind of fish.....’

and not exactly out of character in a member of the ‘Drones Club’ between the wars with time and money as no burden at all. To find like confusion, though not as extreme as that of Monty’s but over distinguishing between ‘dry coconut’ and ‘copra’, in a land that, arguably, is among the largest producers of the nut, and not only third only to Indonesia and Philippines but also, together with them, source of close to three-fourths of world output, is not cause for amusement but a sad commentary on the chasm between field and file; if that be the core of the dispute as the appellants suggest.

2. Three exporters, M/s KBN General Trading Co, M/s KBN General Trading and M/s MP Impex – the latter two being

proprietorship concerns and the former, comprising Maqbool Siddiq Dhoki, Arbina Maqbool Dhoki and Kapil Mahesh Kothari, a partnership firm – had been supplying ‘dried coconut’ to purchasers in Pakistan and earning incentives such as drawback at 1% of FOB value and scrips for 5% of FOB value under the erstwhile ‘Vishesh Krishi & Gram Udyog Yojana Scheme (VKGUYS)¹’ as well as the extant ‘Merchandise Export Incentive Scheme (MEIS)²’ in the relevant Foreign Trade Policy (FTP) regimes. It is alleged that ‘copra’ was being exported against declaration of HS Code 0801 1920, intended for ‘dry coconut’ whereas the more apt fitment against HS Code 1203 0000 had no benefits accruing on export. It is also alleged that the exports were effected against two sets of invoices and, with payment only against one remitted by the buyer in Pakistan, the deficiency was made good by M/s Dhveep General Trading LLC, Dubai – a partnership comprising Maqbool Siddiq Dhoki and Kapil Kothari. The investigation had its genesis in four shipments of 315.5 metric tons, in 13 containers covered by shipping bills no. 8808242/12.07.2016, no. 8824085/13.07.2016, no. 8827288/13.07.2016 and no. 8854999/14.07.2016 declared to be valued at ₹ 3,14,94,788³, of M/s KBN General Trading Company intended for Nimroz and Kabul in Afghanistan and for Quetta, Pakistan which were seized under section 110 of Customs Act, 1962 in the reasonable belief of being liable to

¹ [EXIM Policy 2009-14]

² [EXIM Policy 2015-20]

³ [US\$ 473250 (CNF)]

confiscation under section 113 of Customs Act, 1962 and provisionally released on revised value of ₹ 2,04,73,108. A total of 926 consignments shipped by the three exporters were taken up for initiating remedial measures. From the records, it would appear that conclusions were drawn from statements of the *dramatis personae* and from extractions from electronic devices. From these emerged the outcome of rejecting the declared RITC in the 354 shipping bills of M/s KBN General Trading, in the 432 shipping bills of M/s KBN General Trading Co, and in the 140 shipping bills of M/s MP Impex, with identical substitution of RITC 0801 1920 with 1203 0000 as in the shipping bills pertaining to the four live consignments, for consequential re-assessment. The declared values (FOB) in the shipping bills, totaling ₹ 103,04,03,590 of M/s KBN General Trading, totaling ₹ 103,04,03,590 of M/s KBN General Trading Company and totaling ₹ 164,98,89,297 of M/s MP Impex, as also ₹ 3,13,26,815 in the live consignment were rejected under rule 8 of Customs Valuation Rules, 2007 by drawing upon the authority of rule 11 and rule 14 of Foreign Trade (Development and Regulation) Rules, 1992 and substituted with ₹ 66,52,24,731, ₹ 1,30,38,19,544 ₹ 28,80,71087 and ₹ 1,94,00790 respectively besides confiscation of impugned goods in the 930 shipping bills under section 114 of Customs Act, 1962 that were permitted to be redeemed under section 125 of Customs Act, 1962 for restoration, as in the case of the exports under shipment, or

in lieu of confiscation, for past consignments. Penalties imposed on the individual-appellants for various acts of omission and commission are cause of their cavil in their respective appeals.

3. The recourse to fine in lieu of confiscation of goods exported in the past, grounded on misdeclared value and erroneous RITC, was sought to be justified by reliance on decision of the Hon'ble Supreme Court in *Navayuga Engineering Co Ltd v. Union of India and Anr* [(2024) 20 Centax 566 (SC)] as well as that of the Hon'ble High Court of Madras in *Visteon Automotive Systems India Ltd v. CESTAT, Chennai* [2018 (9) GSTL 142 (Mad)] which, according to the adjudicating authority, has the added felicity of having been referred to by the Hon'ble High Court of Gujarat in *Synergy Fertichem Pvt Ltd v.* [2020 (33) GSTL 513 (Guj)] but, in doing so, the judgement of the Hon'ble High Court of Bombay in *Commissioner of Customs (Import), Mumbai v. Finesse Creation Inc* [(2009) 248 ELT 122] appears to have been overlooked. We entertain no doubt about that which should prevail in the face of persuasive value of other. The proposition underlying that course of action in the adjudication order is that fine may be perceived as mandate consequent upon liability for confiscation and *quid pro quo*, for redemption of goods or for forbearing from confiscation and redemption, being obligations devolving on persons. It overlooks the reality that 'confiscation' is not the same as 'liable to confiscation', that 'confiscation' dispossess the

owner or custodian with finality by operation of section 126 of Customs Act, 1962 to vest the goods in the Central Government and that the 'fine' in section 125 of Customs Act, 1962 is fiscal alternative to the absoluteness of confiscation. Needless to state, the decision of the Hon'ble Supreme Court in *re Navayuga Engineering Co Ltd*, which is about the purport of 'redemption' on payment of fine, rather than deciding on 'substituting fine' as supplementing 'redemptory confiscation' under section 125 of Customs Act, 1962, sets out the scope of the dispute therein thus

'6. Section 125 of the Act: Alternatively, there is also the option of redemption of the confiscated goods under Section 125, the statute specifically empowers the owner of the goods to exercise an option of legitimising the importation by paying fine, duty and other charges. The procedure prescribed is simple; i) confiscation must be authorised, ii) those goods should not be prohibited goods, iii) the officer shall give an option to redeem the goods in lieu of fine, iv) the owner or the possessor must exercise the option and v) pay the fine vi) within 120 days. The purpose and object of Section 125 is to enable a transition from 'illegality' to 'compliance' of laws. It grants an opportunity to the owner or possessor of the confiscated goods to regularise the transaction by payment of fine. This provision is based on a public policy consideration that balances crime and punishment and achieves the twin objectives of enabling a citizen to remain on the right side of law by adopting a prescribed measure and amicable settlement of disputes through resolution.'

and 'untaints' such goods for free importability and exportability thereafter which, while apparently influencing the adjudicating authority to concede that

'21.3 It may be seen that in order to enable a transition from illegality to compliance of laws, it is essential to impose redemption fine on the goods already exported without which the illegality cannot be undone. Merely because the goods are not available does not mean that their illegality is regularized.'

failed in prompting such reasonableness and rationale to temper his order for recovery under section 28AAA of Customs Act, 1962 which, subject to payment of fine and according to logic of his proposition, could not have subsisted together. For the context of circumstances in which 'fine' may not be imposed, the decision in *re Finesse Creation Inc* offers precedent decision from jurisdictional High Court. We are, thus, required only to ascertain the propriety of recovery of the amount sanctioned as scrip in the event that exporters are held as having exported ineligible goods.

4. Owing to the re-determination of ineligibility for scrips under the schemes in the Foreign Trade Policy (FTP), access to ₹ 5,13,62,533, of ₹ 6,01,11,233 and of ₹ 6,01,11,233, sanctioned on claims of M/s KBN General Trading, M/s KBN General Trading Co and M/s MP Impex respectively, was disallowed and ordered for recovery under section 28AAA of Customs Act, 1962. From the value having been re-determined, drawback was, thereby, restricted and

ordered for recovery to the extent of ₹ 36,51,816 from M/s KBN General Trading, of ₹ 34,60,742 from M/s KBN General Trading Co and ₹ 10,02,985 from M/s MP Impex. The unavailed benefit of scrip against exports in the remaining shipping bills as well as the anticipated benefit of scrips and drawback from the live consignments was also voided.

5. In the elucidatory text of the impugned order⁴, Commissioner of Customs (NS-II), Jawaharlal Nehru Custom House, Nhava Sheva, has ventured to draw the distinction between ‘copra’ and ‘dry coconut’ thus

‘2.30.17 EXPORTED ITEM: COPRA OR DRY COCONUT: Copra is dried meat or kernel of the coconut which is used for Coconut Oil extraction. The process of Coconut Oil extraction is performed by crushing Copra to extract Coconut Oil (70%). The by-product is known as Copra Cake or Copra Meal (30%) which cannot be consumed by Human and is used for feeding ruminants. Copra is covered under Chapter 12 of Indian Trade Classification (Harmonized System), specifically under Tariff Entry 1203 0000 for which there is no VKGUY/MEIS benefit under the DGFT and attracts a Drawback rate of 1%.

2.30.18 On the other hand, Dry Coconut is used for human consumption and is covered under Chapter 08 of Indian Tariff Classification (Harmonized System), specifically under Tariff Entry 0801 1100. The Explanatory Notes of Chapter 0801 clearly state that Dry Coconut would “include

⁴ [order-in-original no. 103/2025-26/Commr/NS-II/CAC/JNCH dated 30th June 2025]

desiccated coconut, that is dried and shredded flesh of coconut, but excludes Copra, the dried flesh of coconut used for the extraction of coconut used for the extraction of coconut oil and unsuitable for human consumption.” Dry Coconut, usually used in making sweets and confectionary is eligible for 5% export benefit under VKGUY/MEIS and 1% Drawback.’

For this authoritative dissertation on this agricultural product, there is no attributed provenance. That officers of customs are, neither by familiarity with the preserved traditions of this industry nor by constant experience of this trade, not acknowledged to be in possession of domain expertise thereto would not be an overstatement. We are, therefore, not inclined to look beyond the authority cited therein insofar as the resolution of this dispute is concerned. And, that too, to the extent permitted insofar as the impugned codes are concerned.

6. Furthermore, it is interesting to notice that the expansion of ‘ITC’ in the finding *supra* is not identical. Strangely, in the operational portion of the order, it is ‘RITC’ that has been deployed. It is highly inconceivable that these are interchangeably deployable and is manifest of lack of application of mind. ‘Tariff’ is of significance only to levies with its genetic trace travelling back, with legal authority too, to the Schedules to Customs Tariff Act, 1975 adopting the Harmonized System of Commodity Description and Coding of the

erstwhile Customs Cooperation Council (CCN)⁵ as found owing to which the legality of ‘grandfathering’ the *Explanatory Notes* in resolving classification disputes was affirmed by the Hon’ble Supreme Court in *Collector of Central Excise v. Wood Craft Products Ltd [1995 SCC (3) 454]*. As to utility in deciphering the descriptions in a convenience tabulation of licencing restrictions and conditions that, while imitative of the tariff - structured for identifying goods intended to be covered in tax policy or for assessment to duty - is, yet, open territory, contingent upon facts available only with the Director General of Foreign Trade (DGFT) which the adjudicating authority is not, and, not being before us, we may venture to hold that isolated excerpting from the Harmonized System of Nomenclature indulged in by the adjudicating authority does not advance the distinguishment between ‘dried coconut’ and ‘copra’ for any resolution unless it be about classification for assessment to duty under section 17 of Customs Act, 1962.

7. In addition to recourse to the descriptions in the First Schedule to Customs Tariff Act, 1975, with assistance of *Explanatory Notes* to Harmonized System of Nomenclature (HSN), for determining mis-description of export goods, resort has also been had to rule 11 and rule 14 of Foreign Trade (Development & Regulation) Rules, 1992 for sustaining re-determination of value of exported goods on the premise

⁵ [now World Customs Organization (WCO)]

of mis-declaration in the shipping bills. Without one or both of these, invoking of section 28AAA of Customs Act, 1962 would be void at the threshold. It is moot if a statute that borrows a definition from another may be drawn upon by an officer empowered under the latter, as secondary empowerment, to arrogate competence to invoke any other law for the time being in force; such competence should exist in the statute that creates an officer in relation to provisions of another statute applicable to goods under import. Thus it is that exercise of jurisdiction by ‘proper officer’, under section 47 of Customs Act, 1962, or official empowered, under section 124 to propose and section 125 of Customs Act, 1962 to propose or to adjudge confiscation of imported or export goods, are not limited to prohibitions under Customs Act, 1962; such circumscribed empowerment is not intended to be ‘reverse engineered’ to accord ownership of the processes set out in other laws, and entrusted to officers appointed thereunder, merely from having provisions that embed expressions similar to that in Customs Act, 1962 or borrow definitions therein. Simply put, ‘value’ and ‘shipping bill’ in Foreign Trade (Development & Regulation) Act, 1992 or rules framed thereunder does not confer jurisdiction of ‘foreign trade’ officers to officers under Customs Act, 1962.

8. For the purposes of Customs Act, 1962, declarations in ‘entry’, referred to in section 111(m) and in section 113(h), 113(i) and 113(ia)

of Customs Act, 1962, must bear relevancy to the context in the principal statute and not to coordinate statutes, even if concerned with the import and export, that are intended to involve other jurisdictions in concomitant or consequential processing. The test of both 'value' and 'code', declared in the impugned shipping bills, must rest entirely within the framework of section 17 and section 51 of Customs Act, 1962, and to recovery of duty by recourse to section 28 of Customs Act, 1962 and/or confiscation of goods under section 113 of Customs Act, 1962 to be extended, for the purpose of section 125 of Customs Act, 1962, or section 28AAA of Customs Act, 1962, as consequence of determination of violation of 'any other law' by the jurisdictional authority under that law. Any other interpretation would confer 'prevail over' status to Customs Act, 1962 that only specific provisioning in parliamentary enactment may.

9. From the above, we may deduce that adjudgement of the 'octopi-like tentacled' reach of customs authorities in this dispute, over recast of 'code', appended to Foreign Trade Policy (FTP), and the value of goods exported, will have to pass the test of statutory competence endowed by Customs Act, 1962, and not merely from deemed jurisdiction resting upon 'declarations' in 'entry', for the consequent disallowance and recoveries, as well as confiscation, to take effect. We are not presumptuous in so doing as

'(18) ...means taking out of India to a place outside India;'

assigned to 'export' of

'(19) ... any goods which are to be taken out of India to a place outside India;'

assigned to 'export goods' lie within the jurisdictional competence of customs officers commencing only from

'50. Entry of goods for exportation

The exporter of any goods shall make entry thereof by presenting electronically to the proper officer ... a shipping bill in the prescribed form

The exporter of any goods, while presenting a shipping bill ..., shall make and subscribe to a declaration as to the truth of its contents.'

in Customs Act, 1962, as at the relevant time, enabling exercise of authority under section 17 of Customs Act, 1962 merely to

'(2) ...verify the self-assessment of such goods and for this purpose, examine or test any imported or export goods or such part thereof as may be necessary:'

and which, in the absence of any determination by the exporter obliged by

'(1) or an exporter entering any export goods under section 50, shall..... self-assess the duty, if any, leviable on such goods.'

therein, at the relevant time, limited the empowerment of customs officers to scrutiny, and substitution, of rate of duty, value and

exemption precluding any other intervention as far as shipping bills were concerned with the restricted scope in

'51. Clearance of goods for exportation

Where the proper officer is satisfied that any goods entered for export are not prohibited goods and the exporter has paid the duty, if any, assessed thereon, the proper officer may make an order permitting the clearance and loading of the goods for exportation.'

precluding jurisdiction on export goods thereafter, under section 124 of Customs Act, 1962, only on the finding that the 'proper officer' had been derelict in ascertaining the consignment to be prohibited goods. This is not to imply that subsequent amendments did confer enlarged authority as those are unconnected with the facts of this dispute.

10. We may also note that neither 'rate of duty', enumerated in the Second Schedule to Customs Tariff Act, 1975, nor does, from the facts on record, prohibition under section 11 of Customs Act, 1962 attach to either of the impugned descriptions of the goods. We are now at liberty to turn to the submissions of the respective sides.

11. Learned Counsel for the appellants submitted that the scope for invoking section 28AAA of Customs Act, 1962 had been considered by the Hon'ble High Court of Delhi in *Designco v. Union of India* [2024 SCC OnLine Del 8163] placing emphasis on the pre-requisite of determination of deficiency by the licensing authorities for tainted

procurement or ineligibility for possession of the instrument. It was further submitted that the bar of limitation would operate against recovery under that provision in much the same manner as section 28 of Customs Act, 1962 is. Placing reliance on the decision of the Hon'ble High Court of Madras, in *Kwalitee Fabs v. Commissioner of Customs*, and of the Tribunal, in *Aquapharm Chemicals Limited v. Commissioner of Customs (Port)* [2025 SCC OnLine CESTAT 2667], in *KG Exports v. Commissioner of Customs (Export)* [2025 SCC OnLine CESTAT 1781] and in *Pelican Quartz Stone v. Commissioner of Customs (Preventive)* [2025 SCC OnLine CESTAT 1688], it was contended that any such recovery would have to be contingent upon determination of the instrument being void by the licensing authority. Particular reference was made to the decision of the Tribunal in *Bharat Rasayan Ltd v. Commissioner of Customs* [2024 SCC OnLine CESTAT 428] which had examined every aspect of the scheme for obtaining of scrips as incentive for incremental exports.

12. It was contended by Learned Counsel that the drawback permitted prior to September 2017 could not have been recovered by invoking Customs and Central Excise Duties Drawback Rules, 2017 owing to prospective application thereof and the bar of section 159A of Customs Act, 1962 in the absence of explicit saving of the erstwhile provisions. Submitting that the rules, framed for handling the outliers, under the authority of section 14 of Customs Act, 1962 is

limited to assessment to duty and that application of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007 is relevant only for 'export goods' which, according to Learned Counsel, did not, in terms of section 2(19) of Customs Act, 1962, encompass goods already exported, reliance was placed on the decision of the Hon'ble High Court of Punjab & Haryana in *Jairath International and another v. Union of India [2019 SCC OnLine P & H 3866]* in support thereof.

13. Learned Authorised Representative submitted that the decision of the Tribunal in *re Bharat Rasayan Ltd* had not attained finality as dismissal of appeal of Revenue thereto was solely on the ground of the classification having been decided by the licensing authority and specifically leaving the empowerment and jurisdiction of Customs officials open for decision in appropriate dispute on a future occasion. The jeopardy in which the decision of the Tribunal was placed, according to Learned Authorised Representative, was clear from the decision of the Hon'ble High Court of Bombay, in *Gauri Plasticulture P Ltd and others v. Commissioner of Central Excise [2019 (6) TMI 820-BOMBAY HIGH COURT]*, holding that

'35. The Special Leave Petition was dismissed, but the question of law was expressly kept open. It is in these circumstances that we are not in agreement with Mr. Patil that the issue or the controversy before us stands concluded against the Revenue. The question of law was still open to be

raised and equally examined by us. There is no question of judicial discipline in such matters. The counsel relied upon this principle of judicial discipline by inviting our attention to the judgment of the Hon'ble Rajasthan High Court in the case of Welcure Drugs and Pharmaceuticals Ltd. v. Commissioner of Central Excise, Jaipur reported in 2018 (15) G.S.T.L. 257. There, the Hon'ble Rajasthan High Court concluded that the Revenue cannot seek to urge before that High Court that the view taken by four different High Courts approving the order of CESTAT has lost its persuasive value, particularly when the Special Leave Petitions against the view taken by four different High Courts were either not filed or filed but not entertained. Thus, the Tribunals have taken a consistent view and the Revenue could not succeed in having that set aside. It is in these circumstances, the Rajasthan High Court negated the contention of the Revenue that the Tribunal under the jurisdiction of that High Court could have distinguished the orders and judgments of its Benches. That was found to be contrary to the judicial discipline. It is in these circumstances so also when there was a Larger Bench view of the Tribunal having a binding effect, that the principle of judicial discipline was pressed into service.'

and, thereby, not binding precedent for the purposes of the present dispute. It was also contended that the said decision was distinguishable on facts in view of the observation of the Hon'ble Supreme Court on the controversy over classification having been examined and decided by the Directorate General of Foreign Trade (DGFT). Relying upon the Foreign Trade (Regulation) Rules, 1993 which, in rule 2 (h) assigned meaning to 'value' by drawing upon the definition in section 2 (41) of Customs Act, 1962, it was contended

that officers of customs were empowered to determine value even if duty liability did not arise. He submitted that the decision of the Tribunal in *Somani Cotsynth Ltd & Others v. CC (Export), Nhava Sheva [2017 (4) TMI 482-CESTAT MUMBAI]* reinforces the statutory competence to do so. He contended that the provisions of section 28AAA of Customs Act, 1962 leaves no room for doubt that the duty liability on scrips that were not entitled to the benefit of concession in import was to be recovered by the ‘proper officer’ of customs alone.

14. The principal outcome of the findings in the impugned order are disallowing of entitlement to duty exemption to the extent permissible against the scrips issued under the two schemes in the Foreign Trade Policy (FTP) and recovery thereof under section 28AAA of Customs Act, 1962 from the exporters. The jurisdiction of customs authorities to invoke section 28AAA of Customs Act, 1962 is an afterthought enactment⁶ to plug the gaps, arising from ‘instruments’ issued under authorized schemes by competent authorities, in holding the original holder of ‘instruments’ accountable for alleged loss to the exchequer and, though

‘ Provided that the action relating to recovery of duty under this section against the person to whom the instrument was shall be without prejudice to an action against the importer under section 28.’

⁶ [Finance Act, 2012 effective from 28th May 2012]

is embedded therein to fasten liability on user of the ‘instrument’, the lack of authority to levy duty more than once on any goods is also to be borne in mind owing to

‘(4) Where an order determining the duty has been passed under section 28, no order to recover duty shall be passed under this section.’

enunciated therein. It does not escape notice that ‘instruments’ are substitutes for payment of duty on imported goods, and in pursuance of notification issued under section 25 of Customs Act, 1962 for operationalizing schemes that incentivize exports; the exporter and the importer may not be the same with import duties recoverable in the normal course from the ‘person chargeable with duty’ and it is only in circumstances allowing the importer to ‘pass under the bar of being chargeable to duty’ that the lack of jurisdiction thereby prompts proceeding further back in time and only in circumstances of such duty not being recoverable under section 28(1) of Customs Act, 1962 or under section 28(4) of Customs Act, 1962. This is logical conclusion from the exclusion of ‘importer-exporter’ from the *schema* of section 28AAA of Customs Act, 1962. Any other course of action manifests a finding on ‘instrument’ having been issued by competent authority to ineligible applicant which affords latitude to the ‘proper officer’ under section 28 of Customs Act, 1962 to choose between one or the other by manumission of ‘person chargeable to duty’ arbitrarily

which is fraught with scope for misapplication of law except where proceedings under the law authorizing issue of 'instrument' has determined voidability thereof and communicated to customs authorities. From our perusal of the records which is lacking in any report on the deployment of the impugned instruments, we conclude that fastening of duty liability under section 28AAA of Customs Act, 1962 is without sufficient foundation for invoking the said jurisdiction against person to whom instrument was issued.

15. Furthermore, in *re KG Exports*, the Tribunal has held thus

'16. This issue was examined by the Delhi High Court in M/s Amit Exports. The Delhi High Court held that it was not possible to recognize a right that may be said to inhere in the customs authority to doubt the issuance of the instrument. After referring to the FTP 2015-20, the Delhi High Court held that it provides in paragraph 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 and so it would be impermissible for the customs authority to deprive a holder of the instrument the benefits that can be claimed, absent any adjudication of declaration of invalidity by the DGFT. The relevant portion of the judgment of the Delhi High Court is reproduced below:

"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 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.

108. This clearly flows from what our High Court held in Simplex Infrastructure when it approved the view expressed by the Gujarat High Court in Alstom India and which had held that export benefits claimed and enjoyed pursuant to approvals granted as per the provisions of the FTDR Act could not be reviewed or redetermined except in accordance with the procedure prescribed therein. A similar view came to be expressed by the Allahabad High Court in PTC Industries and where it was held that any doubt with respect to the description or classification of exported goods would have to be referred for the consideration of the DGFT. The Allahabad High Court had thus concurred with the view expressed by the Bombay High Court and which too had observed that benefits which could be claimed under a Duty Entitlement Pass Book license could not be denied by the customs authorities on the basis of their own perception on the subject of appropriate classification. The Bombay High Court had held that as long as the licensing authority had desisted from either reviewing the grant or cancelling the license, it would be wholly impermissible for the customs authorities to deprive the importer or the exporter of benefits. The view expressed by the Gujarat, Allahabad and the Bombay High Courts stands reiterated in the two subsequent decisions of Autolite and Jupiter Exports. The principles culled out in the aforementioned decisions are in line with what the Supreme Court had succinctly observed in Titan Medical Systems (P) Ltd. Vs. Collector of Customs. 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 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)

17. In this connection, it may also be important to refer to the TRU letter dated 01.06.2012 highlighting the budget changes on the eve of the enactment of the Finance Act, 2012. The relevant portion of the letter is reproduced below:

“11.2 Recovery of duty in case of instrument issued under Foreign Trade (Development and Regulation) Act: Section 28AAA has been inserted in the Customs Act through Section 122 of the Finance Act, 2012 to provide for recovery of duties from the person to whom an instrument such as credit duty scrips was issued where such instrument of law, action for recovery of duty can be initiated under the said provision. Field formations are advised to issue demands as soon as DGFT/concerned regional Authority initiates action for cancellation of an instrument but the matter may be decided only after the instrument has been cancelled by DGFT.”
(emphasis supplied)

18. The impugned order, therefore, is without jurisdiction as the DGFT has neither cancelled the instrument nor even initiated proceedings for cancellation of the instrument.’

In the light of these several decisions of coordinate benches of the Tribunal, it cannot be said that there is no binding precedent or that the decision in *re Bharat Rasayan Ltd* merits discard. The dismissal of the appeal of Revenue by the Hon’ble Supreme Court in *re Bharat Rasayan Ltd* does not, of itself, sanctify the arrogation of authority under section 28 AAA of section 28 of Customs Act, 1962 in the present instance, as Learned Authorized Representative appears to suggest in asserting that the facts therein were different, for the reference thereto of classification having been determined by the Directorate General of Foreign Trade (DGFT) pertains to issue of the scrips which is no different in the factual matrix of the present dispute. The observation therein that the claim to jurisdiction by

customs officials was not being decided may be perceived only in the context of the pleas, and grounds, preferred by Revenue. We are not privy to that either. As far as we are concerned, the Tribunal has adopted a consistent view on the lack of scope for invoking section 28AAA of Customs Act, 1962 by officers of customs without the prerequisite of determination of ineligibility of scrips by the licensing authority.

16. It is contended that the value of the exported goods was below the declared value in the shipping bills and, consequently, in exercise of powers both under Customs Act, 1962 and for the purposes of administration of the Foreign Trade (Development & Regulation) Rules, 1992, re-determination was well within the ambit of the adjudicating authority. There can be no quarrel with the authority vested in 'proper officer' of customs to re-assess duty on 'export goods'; re-assessment, however, is not an exercise in isolation-it is the re-determination of either, or both of, 'rate of duty' and 'value' of impugned goods. Rate of duty is not relevant to the present dispute inasmuch as the impugned goods do not find fitment within Second Schedule to Customs Tariff Act, 1975 for which alone access thereto is empowered by section 12 of Customs Act, 1962 to self-assess or to re-assess shipping bills under section 17 of Customs Act, 1962. It is but natural corollary that valuation would be relevant in assessment only to the extent that *ad valorem* duties are prescribed against the

appropriate tariff item in the appropriate schedule of Customs Tariff Act, 1975. Moreover, adoption of substituted value would necessarily have to follow from rejection empowered under

'8. Rejection of declared value.-

(1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any export goods, he may ask the exporter of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such exporter, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, the transaction value shall be deemed to have not been determined in accordance with sub-rule (1) of rule 3.

2) At the request of an exporter, the proper officer shall intimate the exporter in writing the ground for doubting the truth or accuracy of the value declared in relation to the export goods by such exporter and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1).

Explanation. - (1) For the removal of doubts, it is hereby declared that-

(i) This rule by itself does not provide a method for determination of value, it provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value; where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 6.

- (ii) *The declared value shall be accepted where the proper officer is satisfied about the truth or accuracy of the declared value after the said enquiry in consultation with the exporter.*
- (iii) *The proper officer shall have the powers to raise doubts on the declared value based on certain reasons which may include –*
 - (a) *the significant variation in value at which goods of like kind and quality exported at or about the same time in comparable quantities in a comparable commercial transaction were assessed.*
 - (b) *the significantly higher value compared to the market value of goods of like kind and quality at the time of export.*
 - (c) *the misdeclaration of goods in parameters such as description, quality, quantity, year of manufacture or production.'*

of Customs Valuation (Determination of Value of Export Goods) Rules, 2007. It is evident from the impugned order that the value has been determined from ascertainment of local prices and admissions purportedly made by deponents in statements. From the Explanation *supra*, there can be no doubt that the rejection must be followed by sequential progression from rule 4 to rule 7 of Customs Valuation (Determination of Value of Export Goods) Rules, 2007. Such exercise was not carried out and the findings do not establish that computed value was in accord with rule 5 of the said Rules. In the circumstances, the determination of value of goods exported and,

consequential, curtailment of drawback is not tenable. It is also evident from the submission of Learned Counsel that the recovery of drawback for the period prior to October 2017 is clearly beyond the scope of empowerment under the extant rules framed under section 75 of Customs Act, 1962. These consequential acts, not conforming to law, merely supplement the lack of empowerment to scrutinize or alter any detail in the 'entry' unconcerned with re-assessment of self-assessed shipping bills that, admittedly, pass muster as free of duty before and after intervention of adjudicating authority.

17. The thrust of the contentions for denial of the benefit flowing from scrips, issued on the basis of previous exports was the deployment of codes not conforming to 'copra' but of 'dry coconut'; it is nobody's case that either of the two find place in the Second Schedule to Customs Tariff Act, 1975 and the disputed codes pertain to the ITC (HS) enumeration appended to the Foreign Trade Policy (FTP) for the purposes of regulating international trade through non-tariff barriers as well as for the administration of export promotion schemes. That the said enumeration is not far different from the First Schedule to Customs Tariff Act, 1975, and, thereby, to the Harmonized System of Nomenclature (HSN), does not render them to be the same and as affording empowerment, as well as domain expertise, to re-determine solely for the reason that they have been declared in the shipping bills. The framework governing placement in the First

Schedule to Customs Tariff Act, 1975 is set out in the General Interpretative Rules appended thereto and, while the tariff, for the purposes of import licensing, may well coincide, it cannot be said that the powers exercisable under section 12 of Customs Act, 1962, read with section 2 of Customs Tariff Act, 1975, would apply to drawing upon those for a unified schedule in the Foreign Trade Policy (FTP) in like manner. It is not without reason that we draw this distinction as the Government of India in Ministry of Commerce & Industry had, through the office of Director General of Foreign Trade (DGFT) and only by trade notice of 14th November 2024, placed the proposal for 'Harmonization of Schedule-II (Export Policy), ITC (HS) 2022' for consultation as prelude to final incorporation. In the absence of such harmonisation, the competence of customs officials to venture upon scrutiny of the codes in the ITC (HS) appended the Foreign Trade Policy (FTP) is markedly questionable.

18. Evident as it is that declaration of export goods are beyond the scope of re-determination - the description by way of absence in the Second Schedule to Customs Tariff Act, 1975 and the value by way of lack of cause to discard – in, and after, assessment and recovery of duties foregone, by way of scrip utilization, barred thereupon by lack of voiding by the issuing authority for having been obtained by one or more of the ingredients that justifies invoking of section 28AAA of Customs Act, 1962, it is also nothing if not logical for us to examine

the Harmonized System of Nomenclature (HSN)⁷ for the clarity on the distinguishment between ‘copra’ – which the adjudicating authority insisted the export goods to be – ‘dry coconut’ which appellants declared in the shipping bills. In addition to the exposition, such as it is and referred *supra* as lacking in validation, the impugned proceedings rested upon the class of suppliers of the impugned goods – all styled as ‘copra’ dealers – whose use of the goods for ‘oil extraction’ was sure pointer to ‘copra’ having been shipped out instead of ‘dried coconut’ as the Harmonized System of Nomenclature (HSN) offers distinction from the former being ‘unsuitable for human consumption’ and the latter, impliedly, being fit. We do not think the structuring of the Harmonized System of Nomenclature (HSN) is that reductionist as to provide alterative between chapter 8 and chapter 12 therein from a phrase relating to the latter. As far as international trade is concerned, ‘coconut’ and its derivatives, in primary form, is of significance only to those few countries that traditionally have ‘milled’ the coconut kernel for oil extraction. It is a produce of the tropics, particularly on the ocean fringe, and rarely seen beyond the tropical lines in either hemisphere; the international trade is limited to a few countries in Asia and Oceania. It does not surprise that descriptions are rather meagre and cause for confusion in nations that have traditionally cultivated it and its uses; especially, when enthusiasm over withholding of tax breaks is embraced with alacrity.

⁷ [Harmonized Commodity Description and Coding System (HS) of the WCO]

19. The role of Harmonized System of Nomenclature (HSN) in transnational intercourse is substantial. The Central Product Classification (CPC), the overarching tabulation of United Nations published by the Department of Economic Social Affairs as

*'a complete product classification covering all goods and services. It serves as an international standard for assembling and tabulating all kinds of data requiring product detail, including statistics on industrial production, domestic and foreign commodity trade, international trade in services, balance of payments, consumption and price statistics and other data used within the national accounts ...'*⁸

acknowledges thus

*'10. In addition, efforts have been made to define each subclass in sections 0 to 4 of the CPC as the equivalent of one heading or subheading or the aggregation of several headings of the Harmonized Commodity Description and Coding System (HS), owing to the fact that **the HS is a detailed classification of transportable goods that is widely accepted in international trade statistics by virtually all countries.**' (emphasis supplied)*

The products of the palm, except oil and fibre which have more widespread utility, are to be found in chapter 8, chapter 12 and chapter 23 among cluster of 'edible nuts', 'oil seeds and oleaginous fruits' and 'residues and waste from the food industries' respectively.

Interestingly, below

⁸ [Preface to Central Product Classification (CPC), Series M No. 77, Ver 2.1, United Nations, 2015]

‘oil-cake and other solid residues...resulting from extraction of vegetable or microbial fats or oils....’

corresponding to heading 2306 in the Harmonized System of Nomenclature (HSN), varieties of ‘oil cakes’ are clubbed together thus

‘of coconut or copra’

corresponding to subheading 2306 50 therein emphasizing that, no matter the disaggregation of ‘coconut’ and ‘copra’, the final form, other than of coconut kernel consumed directly, is ‘oilcake’ which is not exactly inedible but, despite high protein content, unsuitable for human consumption owing to high concentration of dietary fibres making it eminently useful as cattle-feed. Thus, neither consumption by humans nor deployment in oil extraction is a suitable distinction between the two. Neither do the notes in section II nor those in chapter 8, which, at subheading levels, encompasses desiccated coconut, fresh and dried coconut in ‘inner shell’ and ‘other’ fresh and dried coconut, and chapter 12, specifying ‘copra’, provide exclusionary advice. It is on the strength of these descriptions, unclear in distinction to the ‘coconut world’ which holds no commercial acknowledgment of ‘dried coconut’, that the adjudicating authority has ventured to suggest that ‘whole round coconuts’ removed from the shell after drying of the ‘whole coconut’ is ‘dried coconut’ and not the coconut dried in ‘half shell’ which is ‘copra’; that, again, is unacceptable speculation because publications of authoritative

agencies such as Coconut Development Board and Central Plantation Crops Research Institute (CPCRI) indicate that negligible quantities of such produce, small in size as they are, are also known as 'ball copra' which should, therefore, find fitment, for that very reason, in the description corresponding to heading 1203 of the Harmonized System of Nomenclature (HSN).

20. The distinguishment by the adjudicating authority fails as heading 0801 of Harmonized System of Nomenclature (HSN), within the sub-classification 'coconuts', includes fresh and dried coconuts in the inner shell and others which only can be without shell; and it is practically impossible to prise the kernel from the shell without drying. It hardly befits an interpretation of the tariff structure to posit that there exists a degree of difference which is invalid without *Explanatory Notes* suggesting so along with measure for calibration. The *Explanatory Notes*, too, are too general to conclude, from a reading therefrom, that is possible to distinguish between 'dried coconut' and 'copra'; in any case, other than enabling importers/exporters to ascertain 'rate of duty', the Harmonized System of Nomenclature enables national governments to place policy and tax rates against appropriate descriptions and trade policy administrators have not considered it necessary to query the appellant herein about the export goods. There is, thus, no call to supply such distinction in administration of Customs Act, 1962.

21. Thus, there appears to be no distinction between ‘dry coconut’ and ‘copra’ – semantically and in trade parlance – and the re-determined value is without basis in law. The eligibility for scrips on the export goods is not questionable under the measures in Customs Act, 1962 and, the licencing authority not having voided the scrips by due process of law, recovery under section 28AAA of Customs Act, 1962 is without jurisdiction. The value not having been established as validly rejected for re-determination, drawback sanctioned cannot be curtailed for recovery. In the absence of misdeclaration, liability to confiscation under section 113 of Customs Act, 1962 is not invocable and imposition of penalties fail. Accordingly, the impugned order is set aside to allow the appeals.

(Order pronounced in the open court on 03/12/2025)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)