

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

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 85635 OF 2025

[Arising out of Order-in-Appeal No: 1557(Gr.IIA-B)/2024(JNCH)/Appeals dated 10th December 2024 passed by the Commissioner of Customs (Appeals-II), Mumbai.]

Frunuts Exim LLP

F-59, APMC Market No.1 Phase 2, Sector 19
Vashi, Navi Mumbai - 400703

... Appellant

versus

Commissioner of Customs

Jawaharlal Nehru Custom House,
Nhava Sheva, Raigad

...Respondent

APPEARANCE:

Shri Mihir Mehta along with Shri Kshitij Kari, Advocates for the appellant
Shri Ram Kumar, Assistant Commissioner (AR) for the respondent

CORAM:

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

FINAL ORDER NO: 85184/2026

DATE OF HEARING:	25/09/2025
DATE OF DECISION:	27/01/2026

PER: C J MATHEW

Much like

*'Back to the seasons of my youth
I recall a box of rags that someone gave us
And how my mama put the rags to use
.....
Mama sewed the rags together
Sewin' every piece with love
She made my coat of many colors
That I was so proud of'*

that Dolly Parton penned on the back of a laundry receipt belonging to Porter Wagoner which went on to become the hit 'Coat of Many Colours' in 1971, the fabric of this dispute is not a single composition by an adjudicating authority but collated from findings of the first appellate authority supplemented by submissions of Learned Authorized Representative. This is all about two 'duty free import authorizations (DFIA)' issued by the Directorate General of Foreign Trade (DGFT) that were presented by the appellant, M/s Frunuts Exim LLP, for availing exemption from 'basic customs duty (BCD)' against notification no. 25/2003-CE dated 1st April 2003, on import of 13,234 kg of 'dried cranberry', valued at US\$ 44,346, *vide* bill of entry no. 6882603/26.11.2024; of these under 'other confectionary ingredients' enumerated in the relevant Standard Input Output Norm (SION) group, one¹ permitting 'relevant fruit (juice/pulp/puree)' was adjusted towards discharge of liability for 7464 kg and the other² permitting 'fruits and fruit products' towards discharge of liability on the remaining 5770 kg.

¹ [DFIA no. 5611002533 dated 10th January 2024 (at sl. no. 3)]

² [DFIA no. 0311030812 dated 7th February 2024 (at sl. no. 8)]

2. The assessing authority raised a query on putative ineligibility of the impugned goods for the exemption and, not satisfied with the response, revised the bills of entry for clearance on payment of duty in full. By impugned order³ of Commissioner of Customs (Appeals-III), Mumbai, the denial was affirmed upon examination of the entries as well as the terms in the authorizations and provisions of the Foreign Trade Policy. Aggrieved by the levy of 'basic customs duty(BCD)', the appellant is before us seeking consequence of eligibility for exemption and direction to the Commissioner to enable deployment of the impugned authorizations by excluding the period of litigation in computation of period of validity.

3. The essence of the dispute is that 'dried cranberry' has not been evidenced as actually utilized in manufacturing the exported goods in pursuance of which the impugned authorizations had been issued to the original holder and that the specific ingredients were entailed with 'actual use' condition as well as 'value cap' owing to which duty exemptions could not be extended.

4. Learned Counsel for the appellant contends that the authorizations, being 'post-export' and transferable, cannot be fastened with condition of actual use. It was further contended that correlation of imported ingredients with deployment in exported product, restricted

³ [order-in-appeal no. 1557(Gr.IIA-B)/2024(JNCH)/Appeals dated 10th December 2024]

to few select goods, was not applicable to ‘dried cranberry’ and that ‘actual user’ condition attached only to ‘sensitive items’ specified in the Schedule. Two policy circulars^{4,5} of Director General of Foreign Trade (DGFT), circular⁶ of Central Board of Indirect Taxes & Customs (CBIC) and public notice⁷ issued by Director General of Foreign Trade (DGFT) were relied upon in support. Reliance was placed on the decision of the Hon’ble High Court of Bombay in *Shah Nanji Nagsi Pvt Ltd v. Union of India* [2019 (367) ELT 335 (Bom)], that was affirmed by the Hon’ble Supreme Court with dismissal of appeal of Revenue, and upon the decisions of the Tribunal in *Unibourne Food Ingredients LLP v. Commissioner of Customs, Mundhra* [2022 (381) ELT 810 (Tri-Ahmd)], in *Frunuts Exim LLP v. Commissioner of Customs* [(2023) 13 Centax 322 (Tri-Ahmd)] and in *Pushpanjali Floriculture Private Limited v. Commissioner of Customs (Export), Nhava Sheva* [2015 (327) ELT 77 (Tri-Mumbai)] besides the decision of the Hon’ble High Court of Punjab & Chandigarh in *Pushpanajali Floriculture Private Limited* [2016 (340) ELT 32 (P&H)].

5. Learned Counsel argued that ‘post-export’ and ‘transferred’ authorizations under the said scheme stands on footing far removed from ‘pre-export’ instruments in the Foreign Trade Policy (FTP) and

⁴ [circular no. 50 (RE-08)/2004-08 dated 6.01.2009]

⁵ [circular no. 72 (RE-08)/2004-09 dated 24.03.2009]

⁶ [circular no. 20/2025-Cus dated 24.07.2025]

⁷ [public notice no. 41/2015-2020 dated 2.11.2016]

minutiae of other schemes in the same chapter of the Foreign Trade Policy (FTP) inasmuch as export obligations had been fulfilled by the original holder and entitlements flow from details contained in the corresponding shipping bills that were subjected to scrutiny before the authorizations were issued by the licencing authority. He also deprecated the attempt to sit in judgment over the decisions made under authority of another law by officials with domain expertise thereto.

6. Learned Authorized Representative intimated that debit⁸ of ₹ 23,31,285 and debit⁹ of ₹ 18,02,185 against the two authorizations had been inappropriately claimed even as these were not placed on record as transferred to the appellant as mandated by trade notice¹⁰ of Director General of Foreign Trade (DGFT). He drew our attention to a condition

*‘19. For compliance of the provisions of Para 4.12 and 4.30 of the FTP, the Customs **must have examined and cleared the consignment** for exports after confirming the name of the specific input/s together with the quantity, technical characteristics, quality and the specifications etc. (which have been used in the manufacturing the export product/s) and then allowed the endorsement in the Shipping Bill/s. Accordingly, at the time of imports under the DFIA, similar items for imports be allowed with the same quantity, technical characteristics, quality and the specification etc. that have been used in the manufacture of the exported item/s’ (emphasis supplied)*

⁸ [DFIA no. 5611002533 dated 10th January 2024]

⁹ [DFIA no. 0311030812 dated 7th February 2024]

¹⁰ [trade notice no. 06/2021-22 dated 25.052021]

in one¹¹ of the authorizations as well as to

'18. For import item, other confectionary ingredients – fruit and fruit products, the CIF value shall not exceed 2% of the total CIF value of the Authorization'

in the same authorization, owing to which debit of ₹18,02,185 was far in excess of ceiling of ₹3,21,660 against gross value of ₹1,60,882,983, to contend that the assessing authority, bound to conditions imposed by the licencing authority, could not but require payment of duties of customs in full on the imports. Referring to the governing notification¹² and to *proviso* in paragraph 1(iii) and para 4.2 of the Foreign Trade Policy (FTP), he submitted that 'fruit' in the said authorizations being generic, imports were to be permitted only if 'dried cranberries' were used in the production of exported goods by drawing upon the parallel of 'cereals' and 'maize' in *re Shah Nanji Nagsi Exports Pvt Ltd* besides relying upon the said decision to press for 'actual use' condition to be insisted upon for specified enumerations as input items¹³, among which is 'relevant fruit (juice/pulp/puree)' in applicable product group. He further distinguished the applicability of the decisions in *re Uniborne Food Ingredients LLP* and in *re Frunuts Exim LLP* besides citing that the last is not binding precedent owing to appeal not having been filed because of low tax effect.

¹¹ [DFIA no. 0311030812 dated 7th February 2024]

¹² [notification no. 25/2023-Cus dated 1st April 2023]

¹³ [serial no. 2,3,4 (input item) of SION E-1]

7. From the record of proceedings, it turns out that the denial of benefit of exemption was not preceded by a show cause notice; indeed, the assessing authority has failed to comply with the statutory requirement of issuing ‘speaking order’ prescribed in section 17(5) of Customs Act, 1962. It is seen from the records that the sum and substance of the rejection led from

‘It has been observed that the imported “Dried Cranberry” is not mentioned against the description of the goods mentioned in the DFIA. Pl give justification/explanation since your import of the imported goods claiming DFIA exemption under Notfn., 25/2023-Cus dated 01.04.2015 (sic) is subjected to AU condition and value restrictions. Also you may clear the goods after paying customs duty as applicable to the imported goods’

and, with the assertion of ‘post-export’ authorizations not entailed with ‘actual use’ condition and of impugned goods conforming to enumeration of input/s therein, followed with

‘Your letter dated 27.11.2024 is not satisfactory to justify utilization of DFIA with respect to actual user condition. Therefore, duty exemption under Notfn. 25/2023 is denied. You may clear the goods under payment of duty.’

which leaves no room for doubt that it was alleged breach of ‘actual use’ condition which prompted denial of benefit. This cryptic declaration by the original authority circumscribes the present proceedings even as the first appellate authority stepped into the shoes of assessing authority to assign reasons and Learned Authorized

Representative undertook scrutiny for other infirmities.

8. The first appellate authority may, and most certainly without either order from the lower authority or any explanation for denial of exemption than observation *supra*, have examined the impugned notification and found the appellant wanting in production of evidence of actual use of ‘dried cranberry’ in the exported goods to hold that

‘5.4... Thus, it is mandatory that the materials permitted in the said authorization shall be of the same quality, technical characteristics and specifications as the materials used in the resultant product. Moreover, the description of the imported goods “Dried Cranberry” is not appearing against the description of Fruit or Nut and Nut Products in the DFIA. I therefore, find that non-fulfillment of condition of notification disentitles the appellant to claim benefit of DFIA scheme.

5.5 Further, the exporter is required to comply with the requirements of Appendix 4H to show the accounting and stocks of duty-free imported material or domestically procured raw material, components etc. against each authorization by declaring the technical specification, quality and characteristics of inputs used in export goods in the shipping bill and not limited to sensitive items listed under Para 4.29 of FTP as contended by the appellant.

.....The DGFT is empowered to enforce AU condition and the Value cap restrictions as per the policy...’

for which support was sought by Learned Authorized Representative from the first of the conditions cited by him *supra*. Needless to restate, the reference to some of the provisions for affirming denial by the

assessing authority are not to be found in the note recorded by the original authority – the query and the denial.

9. Furthermore, that the said paragraph in the authorization was perceived as a condition may have been prompted by rose-tinted spectacles of optimism of fitment within a pre-ordained mindset or from frailty of articulation in concatenating ‘must have examined and cleared’ with conditions prescribed in the notification for the benefit of which the authorizations had been procured by the appellant. As authorization issued ‘post-export’, any reference to obligation usually attending upon prospective export obligation is redundant and no such obligation attaches to the original holder and subsequent transferees. To read such into that string of words is not rational. *Per contra*, properly comprehended, it is tantamount to disclaimer by the licencing authority that presumption of conformity with the prescriptions in the said scheme – specific export product, technical descriptions and specifications of input/s - as well as in the impugned notification, inheres with endorsement of the corresponding shipping bills by customs officials at the time of export. This *caveat* may have been of assistance to customs authorities had some initiative been taken to verify the contents of the said shipping bills; the observations of the assessing officer offers no space for such conclusion. In the absence of factual scrutiny of the declarations, it was not proper to conclude that ‘dried cranberry’ was, with ample certainty, not used in the

manufacture for denial of benefit of notification. Fastening responsibility that accrues, in the normal course, to the exporter, for full and correct declaration in the shipping bills, on subsequent transferee who has aught to do with bills of entry is no substitute either. Things need not have come to this pass had the first appellate authority been conscious of its obligation to rule of law and, rather than speculate upon possible cause of denial considered by a lower authority, directed the assessing authority to comply with section 17(5) of Customs Act, 1962 to infuse that much-needed responsibility in deciding to revise self-assessed duty liability.

10. Even as the ‘duty free import authorization (DFIA)’ scheme in the Foreign Trade Policy (FTP) does have certain in-built conditions for countering misuse, just as subsisting in the notification under Customs Act, 1962 for exempting the input/s from ‘basic customs duty (BCD)’, to the same end, both may be considered to be intended for ‘pre-export’ instruments, requiring adherence to ‘actual use’, wherever indicated’ as well as demonstration of such use, through appropriately verifiable details in the relevant shipping bills, to facilitate closure to potential liability from diversion and inefficient usage. With ‘post-export’ permissibility as an outlier, neither the scheme format nor the exemption notification have been enlarged; the notification did not need not be as customs authorities at the port of import are to be guided entirely by the authorization and its conditions. The Foreign Trade

Policy (FTP), like all promotional legislation and subordinate legislation, is replete with sweeping generalizations that, to a tax collector, proffers alternatives for conditioned responses; indeed, from its purpose, the exactness and precision that marked the original, and erstwhile, Export Import Policy guiding Chief Controllers and Controllers was not of significance. It is inapt for customs authorities to venture upon drawing contents of Foreign Trade Policy (FTP) to reinforce or interpret doubtful aspects of notifications issued under Customs Act, 1962; appropriately, either reference should have been preferred to the licencing authority in such cross-road confounding or denial backed solely by reference to the customs notification. The impugned order is found wanting for that very failing.

11. It is common ground that the appellant is a transferee of entitlement to import having nothing to do with production of export goods or its shipment out of the country. No spadework was undertaken on the shipping bills furnished for obtaining the impugned authorizations to ascertain improper issue by the licencing authority. The denial was proposed by the assessing authority solely from skepticism about 'actual use'; a superfluous appendage sought to be tagged on 'transferee' of 'post-export' authorization without any legal authority to do so. Indeed, the implied proposition is that the customs officials at the port of export had not carried out due ascertainment of the shipments. To base denial of entitlement on such peripheral

summations is neither responsible discharge of authority under Customs Act, 1962 nor in conformity with spirit of the ‘export promotion schemes’ designed by the Central Government. Consequently, all findings that transcend the original ground in the bill of entry are in excess of jurisdiction and liable to be discarded.

12. It would also appear that the several decisions cited on behalf of the appellants do resolve the conundrum agitating the first appellate authority on ‘actual use’ of ‘post-export’ imported input/s. However, on behalf of respondents, these have been distinguished by Learned Authorized Representative and we turn to perusal of these. The decision of the Tribunal in *re Frunuts Exim LLP* and in *re Pushpanjali Floriculture Private Ltd* have followed the earlier decision¹⁴ of the Tribunal in *Pace Ventures Pvt Ltd v. Commissioner of Customs, Ahmedabad* and which, in turn, relied upon that in *re Uniborne Food Ingredients LLP*. The contention of Learned Authorized Representative that the decision in *re Frunuts Exim LLP* remains untested owing to low tax effect is not tenable; while the said decision may not have been acceptable to customs authorities, which does not suffice to invalidate that which only failure in surviving the test of appeal does. Having been precluded from entering the lists for such test, standing as precedent is not jeopardized merely from such failure; if it did, the ‘litigation policy’, with threshold for recourse to appeal, may as well spell the end

¹⁴ [final order no. A/11615/2019 dated 30th August 2019 disposing off customs appeal no. 11926/2019]

of judicial discipline. We are bound by the precedent that holds the field till set aside by a constitutional court. The insistence on the specific as intended import by substituting the generic that is emplaced in the ‘standard input output norms (SION)’ does not flow from legislatively sanctioned mandate. It is attributable to selective refuge in case law and occasional reference to the Foreign Trade Policy (FTP) lacking in validity of application across the board.

13. In *Shubhankar Bhowmik v. Union of India*¹⁵, the Hon’ble High Court of Tripura held that

‘12. There is also no merit in the contention of the petitioner that although the substantive condition (iii) of Notification No.19 of 2015 concerns mentioning in Transferrable DFIA the details “of materials imported”, in the first proviso the words “as the material used” for the purpose of ascertaining the “material permitted to be imported” would include not only the “material imported” but also even such material used which is “domestically procured”.

13. Further, the Appendix 4H is “Register for accounting the consumption and stocks of duty free imported or domestically procured raw materials, components, etc., allowed under Advance Authorisation/DFIA”. The said Appendix 4H is prescribed in terms of Paragraph 4.57 of Handbook of Procedure to ascertain from the exporter/original licence holder accounting of consumption and stock of duty free goods allowed under DFIA, whether imported or domestically procured. The said Appendix 4H is

¹⁵ [order dated 7th November 2022 in WP(C) (PIL) no. 18/2022]

in consonance with Paragraph 4.27(i) of FTP and not in derogation thereof. It nowhere stipulates requirement of declaration of quality, technical characteristics and specifications either of the inputs used for the exported product or of the duty-free goods imported or domestically procured.

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15. *Vide a Judgment dated 18.10.2019, the Hon'ble Allahabad High Court was pleased to dismiss a similar PIL Civil No.28695 of 2019 in Sachin Pandey vs. UOI thru Secy. Ministry of Commerce & Industries & Ors., while inter alia relying upon judgment of Hon'ble Bombay High Court in Shah Nanji Nagsi Exports Pvt. Ltd. Vs. Union of India reported in 2019 (367) E.L.T. 335 (Bom), with the following observations:-*

"4. A new Foreign Trade Policy 2015-20 was announced on 01.04.2015 incorporating various changes under DFIA Scheme. The FTP for the year 2015-20 provides a frame work and mechanism for increasing export of Indian goods. In order to increase the foreign trade, certain concessions have been accorded to Indian traders.

5. FTP 2015-20 floated a Duty Free Import Authorization Scheme (DFIA) to regulate export viz-a-viz import of the goods. It is a post export scheme which gave exemption from basic custom duty while importing specified inputs. The design of the scheme is like, the merchant/export trader, has to file on-line application to the concerned regional authority before exporting the goods under DFIA scheme. It is stipulated that export shall be completed within the span of twelve months from the date of generation of particular file number. On completion of export and realization of proceeds, one has to apply for issuance of DFIA with the concerned authority. On each transaction, separate DFIA is issued as per the Standard Input Output Norms (SION). On issuance of authorization the trader will get exemption from paying basic custom duty on the goods allowed to be imported under scheme.

6. In order to give effect to the DFIA Scheme contained in Foreign Trade Policy 2015-20, the Government of India, Ministry of Finance, issued Notification dated 1st April, 2015 in exercise of powers conferred upon it under Sub-section (1) of Section 25 of Customs Act, 1962. The said notification exempts material imported into India against a valid DFIA

Scheme in terms of paragraph 4.25 and 4.27 of the Foreign Trade Policy, 2015-20, subject to the conditions contained therein.....”

“11. Sri S.B. Pandey, learned ASG for the respondent no.1 (Union of India) and respondent no.2 (DGFT) and Sri Dipak Seth, learned counsel appearing for the respondent no.3 (Commissioner of Customs, Lucknow), opposed the admission of the PIL and submitted that the PIL is misconceived and the claims made therein are erroneous.”

“13. We are unable to agree with the petitioner. Directions are being sought by the petitioner against the respondents without any justifiable grounds. The DFIA Scheme as also the earlier Transferable DEEC Schemes are based on the Standard Input Output Norms. In any event, there is no need to go into the issue of applicability or otherwise of the various judgments referred by the petitioner.

15. In Shah Nanji Nagsi Exports Pvt. Ltd. Vs. Union of India reported in 2019 (367) E.L.T. 335 (Bom), a Division Bench of the Bombay High Court has also considered the DFIA Scheme and has observed as under:

25. It is not denied that popcorn maize has also similar starch contents as other varieties of maize, indicating that popcorn maize can be used to manufacture maize starch powder. The scheme never conveys that there is actual user condition attached to the import against the export obligation. It amounts to adding some conditions in the FTP when they never exist. Moreover, when the authorisation is made transferable under the scheme there is no question of actual user condition.

27. As per SION export item at serial No.E-75 is maize starch powder against which exporter is permitted to import “maize” without putting any condition or restriction as regards to variety, quality or characteristic in the said entry. Moreover, there is no such corresponding condition in licence. In its absence, any addition of words cannot be imported to change the equation. Precisely, import of popcorn maize is not excluded from the scope of term “maize”.

16. We see no reason to take a different view to take away the benefits otherwise available under the DFIA Scheme under the Foreign Trade Policy, whether of 2009-14 or 2015-20, merely to satisfy the petitioner. According to us the aforesaid judgments of the Punjab and Haryana High Court and Bombay High Court still hold the field, so far as permitting duty-free imports under DFIA are concerned. The contention of the petitioner that duty free import of any goods under DFIA cannot be permitted unless each of the abovementioned

“three essential conditions” are satisfied, clearly runs counter to the above judgments which are binding on the authorities. Neither the officers of the respondents can be proceeded against for following such binding precedents nor can the exporters or importers be subjected to any onerous conditions, declaration, bond or undertaking contrary to these binding precedents, which if taken would be non-est.’

14. The ‘cereal-maize’ exemplification, in *re Shah Nanji Nagsi Exports Pvt Ltd*, was intended to demonstrate that ‘generic’ and ‘specific’ are relative terms and that a hierarchy exists for produce from which it would be possible to garner amenability to categorization as ‘specific’ instead of ‘generic’ with consequence for flexibility in import. As held therein,

‘22. Neither FTP 4.12 nor SION describes generic or specific terms; therefore, the general meaning of the word is to be construed. The term generic is an adjective relates to a class of group or things or which is not a specific one. In other word use of generic term is for describing something that refers to the whole class of similar things. Respondents’ stand that maize is a generic term is based on the submission that there are different varieties of maize namely flint corn, dent corn, hybrid, popcorn etc. This argument does not stand to reason because maize itself is a quality of Cereal. When the term cereal is used, naturally unless it is specified, one cannot understand what it means. Naturally Cereal is generic term which covers all its types like corn, oat, wheat, rice etc. However, when the term maize is used, it is a specific class of cereal apart from its inter se varieties, therefore the term maize can be well construed as a specific term and, therefore, the provisions of para 4.12 (i) would not apply.’

15. Thus, though the issue of ‘generic’ vis-à-vis ‘specific’ was not

within the ken for denial of exemption at the stage of assessment, we may follow the ratio set out *supra* to which we shall attend presently. Objection was also raised to the ‘intra description’ cap which was incorporated through public notice *supra* and, as pointed out by Learned Counsel, the Hon’ble High Court of Rajasthan, seized of the matter in *Nrapen Shankar Acharya v. Union of India*¹⁶, held therein that

‘6. Under Chapter 4 of the Duty exemption/remission scheme which enables duty free import of the inputs for export production including replenishment of inputs or duty remission, a detailed procedure has been laid down. The schemes thereunder consist of Advance Authorisations and Duty Free Import Authorisation; Duty Remission Scheme; Scheme for Rebate of State and Central Taxes and Levies etc. Clause 4.03 deals with Advance Authorisation clause 4.05 talks of eligible applicant/export/supply. There are also provisions for the Self-Ratification Scheme (4.06), Value Addition (4.08) and Minimum Value Addition (4.09). The learned senior counsel appearing for the petitioner referred to clause 4.13 which provides for “pre-import condition in certain cases” to support the prayer made under clause (i) of the present writ petition. However, we are of the opinion that the pre-import condition for the inputs under Chapter 4 can be issued only by Ministry of Commerce and Industry subjecting the imports under appendix 4-J to pre-import condition. The expression “may” occurring under clause 4.13 has to be read in consonance with the powers of the Union of India to issue a Notification and the powers of DGFT shall remain confined to issue a Notification under clause 4.13 only in tune with the Notification, if any, issued by the respondent no. 1 imposing

¹⁶ [order dated 23rd October 2024 in DB CWP no. 17806/2024]

pre-import condition for the inputs. As to imposition of Actual User Condition by way of public notice, this is well remembered that such an exercise shall also be touching upon the policy decision and, therefore, can be notified only through a Notification in the official Gazette.'

owing to which the said public notice of 2nd November 2016 is invalid for enforcement of stipulations therein.

16. Recently, in *Viraj Impex Pvt. Ltd. vs. Union of India & Anr.* [2026 INSC 80], the Hon'ble Supreme Court, taking note of the imperative in section 3 of Foreign Trade (Development & Regulation) Act, 1992 to hold that not only should such matters be notified but that effect can be had only upon publication of notification in the manner prescribed. The law was set out thus

'16. We have given our thoughtful consideration to the rival submissions and have taken note of the relevant statutory provisions. Law, to bind, must first exist. And to exist, it must be made known in the manner ordained by the legislature. Delegated legislation, unlike plenary legislation enacted by the Parliament, is framed in the executive chambers without open legislative debate.

The requirement of publication in the Gazette, therefore, serves a dual constitutional purpose i.e. (a) it ensures accessibility and notice to those governed by the law, and (b) it ensures accountability and solemnity in the exercise of delegated legislative power. The requirement of publication in the Gazette, is therefore not an empty formality. It is an act by which an executive decision is transformed into law. It is precisely for this reason that courts have consistently insisted

that strict compliance with the publication requirements is a condition precedent for the enforceability of delegated legislation.

17. *The legal position in this regard stands crystalised by a long line of decisions of this Court. The true test of the effective commencement of a statutory order or subordinate legislation is whether it has been published in a manner reasonably calculated to bring it to the notice of all persons who may be affected by it, namely, through a mode which is ordinarily and generally accepted for that purpose.*

The aforesaid principle was referred to with approval by this Court⁴ and it was held that natural justice requires that before a law can become operative, it must be promulgated or published. It must be broadcast in some recognisable way so that all men may know what it is, or, at the very least, there must be some special rule or regulation or customary channel by or through which such knowledge can be acquired with exercise of due and reasonable diligence.

18. *Another two-Judge Bench of this Court undertook a comprehensive survey of law relating to publication of subordinate legislation. The court recognised the modern reality that delegated legislation pervades almost every sphere of governance, often framed unobtrusively and without the visibility that attends Parliamentary enactments. It was, therefore, held that publication or promulgation is indispensable to enforceability of subordinate legislation. It was further held that when the parent statute prescribes a particular mode of publication, that mode must be strictly followed. The aforesaid position was reiterated, in subsequent decisions.*

19. *In the backdrop of aforesaid well-settled legal position, we may advert to the facts of the case in hand. The parent statute, namely the Act expressly mandates that any order regulating imports or exports shall be made by an order published in the Official Gazette. The legislature in its wisdom, has not left the mode of promulgation to executive discretion. Delegated legislation is an instrument to give effect to the policy and purpose of the parent statute. It, therefore, has to be construed in the manner that advances the object of the Act, namely to regulate foreign trade through transparent, predictable and legally certain measures.*

Tested on the aforesaid legal principles, coupled with requirement of publication in the Official Gazette, contained in parent statute, it is manifest that the Notification could not have acquired the force of law prior to its publication in the Official Gazette on 11.02.2016. Indeed, the Notification itself acknowledges its incompleteness by declaring that it is 'to be published in the Gazette of India'. The acknowledgement is a confession that, until such publication, the Notification had not crossed the threshold from intention to obligation.

Once the legislature has prescribed the specified mode of promulgation, the executive cannot introduce an alternative mode and attribute legal consequences to it. A Notification cannot operate in a fragmented manner. In law, it is born only upon publication in the Official Gazette, and it is from that date alone that rights may be curtailed or obligations imposed. To hold otherwise, would permit unpublished delegated legislation to burden citizens, a proposition expressly rejected by this Court in long line of decisions referred to supra.'

17. There are no two ways about it. The cap, incorporated by public notice, has no validity in law. We do not intend to go so far as urged by

Learned Counsel for holding the impugned public notice to be *ultra vires*, we do hold that to be inapplicable for restricting entitlement to import without payment of duty. The objection of value of imported ‘dried cranberry’ being in excess of the cap has no basis in law.

18. Likewise, the issue of ‘actual use’, which was the sole bone of contention for denying access to the exemption notification, was considered in *re Shah Nanji Nagsi Export Pvt Ltd* thus

‘24. The statute should be read as a whole, in its context and scheme, to discover what each clause or word is meant and designed under the scheme. Interpretation of words and clauses must depend on the text and context. There was no difficulty for the framers of the scheme to specifically lay down that the imported items must be used for manufacturing export items. However, in its absence the terms ‘can be used’ must be interpreted as it stands. It simply conveys that the imported item should be potential to use but necessary to be used. The scheme itself is of transferable authorisation and therefore in that context different interpretation cannot be made. Moreover, Clause 4.27 (iv) conveys that wherever SION prescribes ‘Actual User’ condition, it will prevail. Herein no such actual user condition is specifically prescribed by SION for relevant entry. Chapter 9 of FTP, 2015-20 specifically defines the term ‘actual user’ as a person who utilizes imported goods for manufacture in his own unit. It means that actual user condition relates to a person and not to a product. Therefore, the argument advanced by the petitioner regarding actual user condition would not sustain.

26. *...DFIA scheme is distinct from Advance Authorization Scheme where raw material is to be imported on authorization and to be used for manufacturing purpose. Basically, DFIA is post export scheme in which exporter has to first export goods and after realization of proceeds, exporter has to make an application to the authority, who after verification, grant DFIA certificate which is transferable. Therefore, there is no actual user condition inbuilt under the scheme.'*

19. Underlying this purposive interpretation by the Hon'ble High Court, in relation to proceedings initiated against by licencing authority to withhold authorizations despite completion of exports, is the significance of 'standard input output norms (SION)' and the outlier that the 'duty free import authorization (DFIA)' scheme is in the Foreign Trade Policy (FTP). Transposing from the time of active control over goods that were bonded after import against exemption available to registrants for trade promotion schemes, the gradual manumitting therefrom necessitated 'accounting control' and thus was born the 'standard input output norms (SION)' which, by its very nature, could not be designed as exhaustive or precise except at the cost of conformity with the objective of the scheme. Initially made applicable to the few schemes in existence then, its pervading influence was enlarged to cover other chapters such as 'export oriented unit (EOU)' scheme too. Its application for strict regulation of 'pre-export' imports - the characteristic of larger proportion of the schemes' - warranted intramural conditions such as 'actual use', correlation and

quantity/value caps within restrictions. Application of ‘actual use’ to ‘post-export’ scheme distinguished by ‘transferability’ in the same manner as intended for ‘pre-export’ schemes is nothing but rigidity in administration that betrays ‘text and context’ as the foundation for interpretation. The rigours envisaged for the original schemes needs to be read down contextually as was undertaken by the Hon’ble High Court.

20. ‘Actual use’ is redundant in the impugned scheme. The objection raised for denial of exemption by the assessing authority, and affirmed by the first appellate authority, skeptically, as it were, about ‘actual use’ by appellant does not have sanction of law; denial of exemption on that ground lacks authority of law. Among the general provisions made applicable to the scheme of import accessed by the appellant, there is no finding in the impugned order except in relation to paragraph 4.12 of the Foreign Trade Policy (FTP) and, even so, is restricted to the specification of detail of input/s in the shipping bill for restricting import of like input/s alone. We have examined the disaggregation of spheres in which transferee of authorization and original holder-cum-exporter operate. The decision in *re Shah Nanji Nagsi Export Pvt Ltd* has set out the relevance of context. The circular of Central Board of Indirect Taxes & Customs (CBIC) has also clarified that

‘(a) Only in case of import of inputs mentioned in paragraphs 4.29 of the FTP, 2023, correlation of technical

characteristics, quality and specifications of the inputs with the export product is required to be established when imported under the DFIA scheme.

(b) In case of inputs mentioned in paragraphs 4.12 and 4.28(iii) of FTP, 2023, only name of the specific input along with quantity is required to be declared in the shipping bill/bill of export. Declaration of technical characteristics, quality and specification of the inputs used in the manufacture of the export product is not required.'

in paragraph 6 therein. It is not evident from the impugned order if the said Entry in 'standard input output norm (SION)' carries 'generic input' or 'alternative input' in the enumeration sought for by the appellant herein. Learned Authorized Representative has submitted that 'relevant fruit (juice/pulp/puree)' relates to one authorisation and 'fruit and fruit products' is relevant for the other. The appellant had sought the benefit of the authorizations for 'dried cranberry' and the argument on behalf of respondent is that 'fruit' therein, being generic, is no ground for requiring 'specific' description in the corresponding shipping bills. There is no finding on the actual details entered in those shipping bills. Denial of exemption without such ascertainment is irresponsible adjudication; placing the onus on an importer, who is not the exporter, by unfounded presumption is not approved by any legally established procedure.

21. Owing to all of the above and, more particularly, as 'dried cranberry' is, doubtlessly, 'fruit', the entitlement to exemption is

undeniable. Before we part with the matter, there is one submission that, necessarily, must be dealt with. The authorizations have since lapsed and the appellant put to severe financial detriment in consequence. The fault is not that of the appellant but overreach, without an iota of factual foundation to dispute entitlement to exemption, or any measure of legal authority to cast doubts on the eligibility, on the part of the assessing authority who was also derelict in adhering to his obligation under law. The first appellate authority, too, did not consider it necessary to insist on placing a reasoned order of the original authority to the test of being legal and proper; he, too, chose to decide against eligibility for exemption without any basis as we have set out above. Certainly, restitution is called for and we may forbear from doing so only on peril of encouraging extra-legal impediments to foreign trade and instigating defiance of settled law. We do not intend that; the jurisdictional Commissioner is, hereby, directed to request the licencing authorities for restoration of validity of the licence for the unexpired period commencing with presentation of bill of entry. In doing so, we are guided by the decision of the Hon'ble High Court of Punjab & Haryana in *Pushpanjali Floriculture Pvt Ltd v. Union of India* [2016 (340) ELT 32 (P&H)] thus

'44. *It is seen that the DFIA is issued with a limited validity of 24 months. Due to the actions of the respondents the DFIA's could not be utilised by the petitioner. The Hon'ble Supreme Court in the matter of Sandeep Exports Ltd., 2004 (9) SCC 128,*

had directed the respondents to issue certificate for the purpose of revalidation of expired licences due to disputes raised by the department. We are satisfied that due to the impugned invalid notifications/Public Notice/Circular, licences could not be utilised by the petitioner. The petitioner cannot be expected to present licences for debit in such circumstances. Therefore, a case for directing revalidation of the licence is made out.'

22. We set aside the impugned order to allow the appeals along with the direction *supra*.

(Order pronounced in the open court on 27/01/2026)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

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