BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on 09.04.2026
Pronounced on 15.04.2026

CORAM:

THE HONOURABLE Mr.JUSTICE N.ANAND VENKATESH

AND

THE HONOURABLE Mr. JUSTICE K.K.RAMAKRISHNAN

CMA. (MD)No.755 of 2025

M/s.Seaswan Shipping & Logistics
16/3 Chidambara Nagar, 1st street,
Tuticorin 628 008 .. Appellant

Vs.

The Commissioner of Customs
Tuticorin, Custom House
New Harbour Estate,
Tuticorin 628 004 ..Respondent

Appeals filed under Section 130 of the Customs Act, 1944 against the final order No.FO/A/40008/2024-CU(SM) dated 03.01.2024 in Appeal C/40255/2025 on the file of the Customs, Excise and Service Tax Appellate Tribunal, Chennai.

For Appellant : Mr.N.Viswanathan
For Respondent : Mr.R.Gowrishankar
Senior standing counsel

COMMON JUDGMENT

(Judgment of the Court was delivered by N.ANAND VENKATESH, J.)

This Civil Miscellaneous Appeal has been filed under Section 130 of the Customs Act against the final order passed by the Customs Excise and Service Tax Appellate Tribunal (CESTAT), Chennai in Final order No No.FO/A/40008/2024-CU(SM) dated 03.01.2024 in Appeal C/40255/2025.

2. The appellant is a licensed Customs Broker under the Customs Brokers Licensing Regulations 2018. They are authorised to do business at Chennai and Tuticorin. The appellant filed shipping bills for the export of safety matches for about 17 exporters during the period from 2017 to 2019, which included one of the exporter named M/s.Shivam Exports. The exported goods is covered by such shipping bills were machine made safety matches which were classified under CTSH36050090 for a FOB value of Rs.5,73,80,848/-. The shipping bills were filed under claim for benefit under

MEIS scheme. Under this scheme, the exporter is eligible to get MEIS scrips based on the FOB value realized, which is issued by the DGFT authorities. This MEIS groups is freely tradable in the market and an importer, who purchases them can use it for payment of customs duties on the import of any goods by them.

3. In respect of the above exports, it was duly assessed and cleared by the customs department and the exporter also received MEIS scrips to the extent of Rs.11,47,617/- from the DGFT authorities.

4. The officers attached to SIIB of the Tuticorin customs conducted an enquiry with the exporter for whom the appellant had filed 32 shipping bills. Notice was issued and explanation was sought for on the ground that there was excess availment of MEIS benefits, since a wrong classification had been indicated in the application.

5. On conclusion of enquiry, while issuing notices to the exporter and the importer, notice was also issued to the appellant, who are customs

brokers for imposition of penalties under section 114 and 114AA of the Customs Act ('the Act' in short) for contraventions due to incorrect classification of the safety matches as CTSH36050090 instead of CTSH36050010.

6. The appellant submitted a reply dated 29.09.2022 and contested the charges levelled against them.

7. The adjudicating authority passed an order dated 30.09.2022 and confirmed the allegations made in the show cause notice and sustained the penalty of Rs.10 lakhs, which was imposed on exporter as well as the customs broker.

8. The appellant filed a statutory appeal before the CESTAT, Chennai. The tribunal pronounced its final order dated 03.01.2024 and modified the penalty to Rs.1 lakh under Section 114AA of the Act and the penalty under Section 114(III) was set aside. Aggrieved by the same, the present appeal has been filed before this court.

9. When the notice was ordered by this Court, substantial question of law was not framed.

10. After service of notice, when the matter was came up for final hearing today, this Court had considered the submissions made on either side and framed the following substantial questions of law:

> *"1. Whether the learned Tribunal was right in concluding that the power to incentive vest with the Foreign Trade authorities and the power to prevent leakage vest with the customs authorities when the power exercised by the foreign trade authorities in terms of the FTP to grant the MEIS scrips to the exporter is valid and subsisting thereby entitling the exporter to the continues right to the hold the scrips without revocation of the said grant in the manner known to law?*
>
> *2. Whether the learned Tribunal was right in approving the demand made and confirmed by the respondent herein by invoking Sec. 28 of the Customs Ac against the exporter even when there was no import of the goods into India and also no demand for any duty short paid or short levied or not paid or*

not levied was involved and when only the provisions of Sec. 28AAA operate in such factual situation that too involving obtaining of the scrips by fraudulent means which was not the case of the revenue?

3. Whether the learned Tribunal was right in recording the finding of guilt on the appellant to sustain the penalty on them under Sec. 114 AA of the Customs Act without considering that the admitted facts do not permit such findings to be reached especially when they only acted as the agent of the exporter and also when the express provision contained in the said section did not at all attracted the case of the appellant in the admitted facts of the case?

11. This Court heard the learned counsel on either side on the above substantial questions of law framed by this court.

12. The main ground that was urged by the learned counsel for the appellant is that the appellant filed the shipping bills indicating CTSH as 36050090 for the machine made safety matches exported on the basis of the instructions and advice of the exporter. The officers of the customs of

Tuticorin port accepted the same along with the similarly placed exports and granted the permission.

13. It was further submitted that MEIS benefits/rewards are given by the Ministry of Commerce/DGFT under the Foreign Trade policy to the exporter. The foreign trade office has not raised any dispute with regard to the correct classification of the goods or initiated any proceedings in this matter against the exporter, who have been granted the scrips. However, the customs authority on the assumption that the exporter had made a wrong classification to claim additional or extra benefit has overstepped their jurisdiction and that the very premise on which the demand was made is illegal and unsustainable.

14. It is further submitted that mensrea is required while imposing penalty under Section 114AA of the Act and merely because there was an error while mentioning the classification of the goods that by itself does not import mensrea. Therefore the very penalty imposed is bad.

15. Per contra, the learned Senior Standing counsel submitted that the goods declared by mentioning the classification as CTSH36050090 instead of CTSH36050010, on the face of it, was intentional since there was only one specific head for safety matches. The appellant being an exporter is aware about the same and in spite of it declared a wrong CTSH. It was further submitted that MEIS scrips was received by means of wilful misstatement in respect of the classification of goods and a huge revenue loss was caused to the Government. Therefore, there is every justification for imposing penalty.

16. There is no dispute that it is only the DGFT which glants the MEIS rewards/benefits in terms of Chapter III of the foreign trade policy. The allegation against the appellant/customs broker is that the exporter had availed excess rewards/incentives by showing the CTSH number as 36050090 as against MEIS benefit for CTH36050010 which is 3%.

17. The principle ground that has been raised is that MEIS rewards/benefits are conferred only by DGFT authorities and therefore no

action can be taken by the customs authorities. Thus, the very jurisdiction of the customs authorities has been put to challenge in the present case.

18. At this juncture, it will be relevant to take note of the judgment of the Apex Court in ***Titan Medical Systems Pvt. Ltd., v. Collector of Customs, New Delhi*** reported in ***2003 (151) ELT 254***. That was also a case where advance license was granted to the manufacturer and later a show cause notice came to be issued on the ground that the petitioner therein had not complied with the conditions of the exemption notification. The relevant portions in the judgment are extracted hereunder:

> *"13.As regards the contention that the appellants were not entitled to the benefit of the exemption notification as they had misrepresented to the licensing authority, it was fairly admitted that there was no requirement, for issuance of a license, that an applicant set out the quantity or value of the indigenous components which would be used in the manufacture. Undoubtedly, while applying for a license, the appellants set out the components they would use and their value. However, the value was only on estimate. It is not the respondents' case that the components were not used. The*

only case is that the value which had been indicated in the application was very large whereas what was actually spent was a paltry amount. To be noted that the licensing authority having taken no steps to cancel the license. The licensing authority have not claimed that there was any misrepresentation. Once an adverse license was issued and not questioned by the licensing authority, the customs authorities cannot refuse exemption on an allegation that there was misrepresentation. If there was any misrepresentation, it was the licensing authority to take steps in that behalf."

19. The above judgment of the Supreme Court was considered by the Division Bench of the Kerala High Court in ***Nitta Geletin India Ltd., v. Commissioner of Customs*** in Customs Appeal No.2/2025 by order dated 26.06.2025. That was also a case where an incorrect classification was given by the exporter, who had availed of advance authorisation scheme from DGFT which enables duty free import of inputs. Later the authorities found out that there was wrong classification and hence demanded differential duty notwithstanding the fact that the goods imported were

governed under the advance authorisation scheme. The Kerala High Court held as follows:

> *"8. On a consideration of the rival submissions, we find that the question that essentially arises for consideration is whether, on the facts of the instant case, a mis-description of the inputs imported under cover of an advance authorization is really relevant for the purposes of levy and collection of import duty under the Customs Act read with the Customs Tariff Act. It is significant that under the Foreign Trade (Development and Regulation) Act, the issuance of advance authorization and monitoring of the imports effected under cover of such advance authorization is within the regulatory jurisdiction of the DGFT. In the instant case, the authorities entrusted with the administration of the advance authorization scheme do not have a case that there was a breach of any of the conditions of the advance authorization issued to the assessee. That apart, we note from the provisions of the Foreign Trade Policy, 2009 to 2014 issued by the Central Government under Section 4 of the Foreign Trade (Development and Regulation) Act, that the object of the advance authorization scheme is only to ensure that what is*

imported is an input that is used for the manufacture of a final product that is exported. We also find that the import of items under Chapter 5 and Chapter 35, to the extent relevant for the instant cases, are both restricted in terms of the Foreign Trade Policy, and the limited condition under which products under the said Chapters can be imported is that they have to be covered by an advance authorization granted by the Central Government. It is not in dispute in the instant case that the advance authorization was in fact granted to the assessee, and under cover of the same, the assessee had imported the very same item albeit under different names for many years. For the period between 2012 and 2016, the very same product was imported as 'fish protein' whereas it is only in respect of 9 Bills of Entry filed thereafter that the item imported was shown as 'decalcified fish scale'. The Revenue does not have a contention that the items imported earlier and now were, in any manner different, except for the differential description of the same in the import documents. It is presumably by noting that the item imported was the same that the authorities under the advance authorization scheme did not view the imports of the same goods under a different name as a breach by the assessee of any of the conditions of the advance authorization granted to them. We also note that

under the advance authorization scheme, whether the goods are classifiable under Chapter 5 or Chapter 35, they are liable to only a nil rate of duty so long as they are covered by the advance authorization scheme.

9. It is against the backdrop of the above factual position that we need to consider the case of the Revenue that the assessee was not entitled to the benefit of the Notification No.96/2009 dated 11.09.2009 that granted the benefit of nil rate of duty in respect of inputs imported under the advance authorization scheme. In view of the discussion above, we have to hold that in as much as the classification of the imported items had no bearing on the legality of imports for the purposes of the advance authorization scheme, and the authorities entrusted with the administration of the said scheme have not viewed the different descriptions used by the assessee at the time of import of the product under the advance authorization scheme to be in breach of the terms and conditions of the advance authorization, the stand of the Revenue that the assessee would lose the benefit of the notification in question, cannot be accepted. It is relevant in this connection to notice the judgment of the Supreme Court in **Titan Medical Systems Pvt. Ltd. v. Collector of Customs, New Delhi [2003 (151) E.L.T. 254 (SC)]** *where in almost*

identical circumstances, where the customs authorities had demanded a differential duty alleging a mis-representation of facts to the licensing authority, the Supreme Court, while rejecting the said contention, found as follows:

> *"As regards the contention that the appellants were not entitled to the benefit of the exemption notification as they had misrepresented to the licensing authority, it was fairly admitted that there was no requirement. for issuance of a licence, that an applicant set out the quantity or value of the indigenous components which would be used in the manufacture. Undoubtedly, while applying for a licence, the appellants set out the components they would use and their value However, the value was only an estimate. It is not the respondents' case that the components were not used. The only case is that the value which had been indicated in the application was very large whereas what was actually spent was a paltry amount. To be noted that the licensing authority having taken no steps to cancel the licence. The licensing authority have not claimed that there was any misrepresentation. Once an advance*

licence was issued and not questioned by the licensing authority, the Customs authorities cannot refuse exemption on an allegation that there was misrepresentation. If there was any misrepresentation, it was for the licensing authority to take steps in that behalf."

10. We also find that in view of the fact that it is not in dispute that the assessee has been importing the same product during the previous transactions covered by 42 Bills of Entry [in respect of which, the Tribunal had set aside the demand of differential duty] and the subsequent transactions covered by 9 Bills of entry [which are under provisional assessment), there is no justification for demanding a differential duty payment for the latter transactions alone. We are also told at the time of hearing by the learned senior counsel Sri.V.Sridharan that during the period subsequent to the period covered by the show cause notice, the assessee has obtained advance authorization for importing the same product this time under the nomenclature 'decalcified fish scale' and no objection has been taken by the Revenue to such import.

We are of the view that the imports effected by the assessee had to be seen as covered by the notification aforementioned that permitted an import at nil rate of duty so long as the goods were imported in terms of the advance authorization scheme. In the absence of any objection by the licensing authority or cancellation of the advance authorization, the Department could not have denied the benefit of the notification to the assessee. We therefore allow Customs Appeal No.2 of 2025 preferred by the assessee and dismiss Customs Appeal No.5 of 2024 preferred by the Revenue."

20. In the case on hand, there is no dispute that the exporter was granted MEIS scrips by the DGFT under the foreign trade policy. Therefore, if at all any unfair advantage is taken by the exporter regarding the MEIS scrips action can be initiated only by DGFT and not the customs department. In such an event, the very action initiated by the customs department suffers from lack of jurisdiction. There is also no dispute regarding the fact that the MEIS scrips given by the DGFT continue to be valid and subsisting and it was not revoked by the concerned authority. In

such an event, on a purported misuse of MEIS scrips by showing the wrong classification, the customs department cannot enter the field occupied by DGFT and initiate proceedings.

21. The tribunal went wrong in invoking Section 28 of the Customs Act against the exporter even when there was no import of the goods into India and also no demand for any duty, short paid or short levied or not paid or not levied. In such an event, the tribunal ought not to have invoked Section 28AAA of the Customs Act, which only deals with cases of collusion or wilful misstatement or suppression of facts and that too in a case involving MEIS scrips.

22. This Court also finds that a mere mis-description of the classification will not attribute *mens rea* to impose penalty under Section 114AA of the Act. This is more so since the appellant had acted only as an agent of the exporter and the wilful intent which is a *sine qua non* to impose penalty under this provision was absent.

23. In the light of the above discussions, the substantial questions of law framed by this Court are answered accordingly in favour of the appellant and against the department. In view of the same, the impugned proceedings No.FO/A/40008/2024-CU(SM) dated 03.01.2024 in Appeal C/40255/2025 on the file of the Customs, Excise and Service Tax Appellate Tribunal, Chennai is hereby set aside and the Civil Miscellaneous Appeal stands allowed. No costs.

[N.A.V, J.] & [K.K.R.K, J.]

15.04.2026

NCC : Yes
Index : Yes

RR

N.ANAND VENKATESH, J
AND
K.K.RAMAKRISHNAN, J.

RR

Pre Delivery Judgment made in
CMA. (MD)No.755 of 2025

15.04.2026