CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH - COURT No. III

Customs Appeal No. 40646 of 2023

(Arising out of Order-in-Original No.102699/2023 dated 12.07.2023 passed by Principal Commissioner of Customs, Chennai-III Commissionerate, Custom House, No.60, Rajaji Salai, Chennai 600 001.)

M/s.Dell International Services India Private Ltd. **.... Appellant**
M-4, SIPCOT Hitech SEZ,
Sunguvarchatram Post,
Sriperumbudur, Kancheepuram
Tamil nadu 602 106.

VERSUS

The Principal Commissioner of Customs ... Respondent
Preventive Commissionerate,
Custom House, 60, Rajaji Salai,
Chennai 600 001.

APPEARANCE :

Shri Raghavan Ramabadran, Advocate
Shri Rohan Muralidharan, Advocate
Shri Ganesh Aravindh, Advocate for the Appellant

Shri Anoop Singh, Authorized Representative
for the Respondent

CORAM :

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER No.40372/2026

DATE OF HEARING : 22.01.2026
DATE OF DECISION :17.03.2026

Per: Shri P. Dinesha

1. M/s. Dell International Services India Private Ltd., the Appellant herein is engaged in the manufacture and sale of Information Technology **('IT')** products, namely Desktops, Laptops, Monitors etc. **("subject goods")** from their SEZ unit located at Kancheepuram, Tamil Nadu. The Appellant undertakes domestic sales from their SEZ unit to individuals in the Domestic Tariff Area (DTA). At the time of clearance of the subject goods from SEZ to DTA, the Appellant classified the subject goods under their respective headings and discharged applicable taxes, as per the table below:

Sl. No	Product	Classification	Basic Customs Duty ("BCD")/ Social Welfare Surcharge ("SWS")	Integrated Goods and Service Tax ("IGST")
1.	Laptops	CTI 8471 30 10	0	18%
2.	Desktops	CTI 8471 50 00	0	18%
3.	Monitors	CTI 8528 52 00	0	18%

2. After the Post clearance audit, the Audit Commissionerate was of the view that the subject goods removed from the SEZ unit to the DTA were misclassified under CTH 8471 30 10, 8471 50 00 and 8528 52 00. According to the Department, the subject goods merited classification under CTH 9804 90 00 since the subject goods were removed to individual customers in DTA for their personal use. Pursuant to this, the Department issued the Show Cause Notice dated 20.01.2023 *inter alia* proposing reclassification and thereby demanding differential duty to the tune of Rs.82,78,72,633/- along with applicable interest; confiscation of goods under Section 111 (m) & (o) and also for imposing penalty under Section 112(a) of the Customs Act, 1962.

3. The Principal Commissioner of Customs, Chennai (Adjudicating Authority) after hearing the submissions of the Appellant passed Order-In-Original No.102699/2023 dated 12.07.2023**.** The Adjudicating Authority *vide* Impugned Order, confirmed the proposed demands in the SCN on the ground that the subject goods were cleared to individuals in DTA for personal use and the goods are otherwise 'dutiable' as IGST @ 18% is being paid on the

subject goods. Therefore, it was held that the subject goods are classifiable under CTH 9804 90 00 as 'dutiable goods imported for personal use'.

4. Aggrieved by the said order of the Adjudicating Authority the present Appeal has been filed before this Tribunal.

5. Heard Shri Raghavan Ramabhadran, learned Advocate, assisted by Shri Rohan Muralidharan & Shri Ganesh Aravind, ld. Advocates for the Appellant; and Shri Anoop Singh, learned Joint Commissioner defended the impugned order.

6. The only issue is with respect to the classification of the subject goods viz. personal computers cleared by the Appellant from SEZ through DTA to customers. The conflicting Headings are CTH 98049000 [Department] and CTH 84713010, 84715000 & 85285200 [Assessee].

7. It is the case of the Appellant that the subject goods have been correctly classified under their respective sub-headings as against which, the Revenue has termed the above as misclassification by the Appellant.

8. Contentions of ld. Advocate are that the subject goods are not classifiable under Heading 9804 which covers *'all dutiable goods imported for personal use'*; it emerges from the CTI that for any goods to merit classification under Heading 9804, such goods must be 'dutiable goods' and must be imported for personal use. The subject goods are not 'dutiable goods' for the purpose of Heading 9804 for the reasons that Section 2 of the Customs Tariff Act, 1975 provides rates at which duties of Customs shall be levied under the Customs Act, 1962 as specified in the First and Second Schedule to the Customs Tariff Act, 1975. Heading 9804 forms part of the First Schedule to the Customs Tariff and hence, the term **'dutiable goods'** employed under Heading 9804 must be understood in the context of the Basic Customs Duty levied under Section 12 of Customs Act, 1962 and also independently levied under Section 30 of the SEZ Act, 2005 on goods removed from SEZ to DTA.

9. Ld. Advocate contended that from a conjoint reading of Section 2 (14) of the Customs Act which defines 'dutiable goods' and Section 2 (15) of the Customs Act which defines 'duty', dutiable goods are goods which are chargeable to

duty and on which duty has not been paid. Therefore, the subject goods i.e., goods falling under CTI 8471 30 10 (Laptops) and CTI 8471 50 00 (Monitors) are not leviable to any Customs Duty as the Customs Tariff itself prescribes that the goods falling under the said Headings are 'free'. Further, Monitors falling under CTI 8528 52 00 are eligible for complete exemption from payment of Customs Duty *vide* Sl. No. 17 of Notification No. 24/2005-Cus dated 01.03.2005, hence subject goods cannot be termed as 'dutiable goods' for the purpose of Heading 9804.

10. In this regard, reliance has been placed on the decision of the Hon'ble Supreme Court in **Associated Cement Companies Ltd. Vs Commissioner of Customs** [2001 (128) E.L.T. 21 (S.C.) reaffirmed in 2002 (144) ELT A100 (SC)], wherein it was held that when the Customs Tariff provides that import of a particular item is 'Free' from duty or is exempt from payment of any duty, then such goods cannot be treated as 'dutiable goods'. This decision has been subsequently followed by the Tribunal in **Jay AR Enterprises Vs Commissioner of Customs (Sea), Chennai** [2007 (210) E.L.T. 459 (Tri - Chennai)] which

stands affirmed by Madras High Court as reported in **2015 (325) ELT 29 (Mad.)**

11. It was further submitted that Heading 9804 pertains specifically to 'dutiable goods' as against 'taxable goods'. This distinction is significant in the context of exemptions available under the SEZ Act. In this regard, reliance is placed on the judgment of the Hon'ble Andhra Pradesh High Court in **Maithan Alloys Limited Vs Union of India and Others** [2024 (1) TMI 305], wherein the Court held that the exemption under Section 26 (1) (a) of the SEZ Act is limited to Customs duties and does not extend to GST Compensation Cess which is not in the nature of 'duty'. This, according to him, reinforces the position that the subject goods being chargeable to 'Nil' BCD cannot be treated as 'dutiable goods' for the purposes of Heading 9804.

12. Further reliance was placed on a decision in **Interglobe Aviation Limited Vs Commissioner Customs, New Delhi** [2020 (11) TMI 151 = 2020 (43) GSTL 410 (Tri.-Del.)], wherein the Tribunal, in the context of exemption under Notification No. 45/2017-Cus., has held that only duty is required to be paid on re-imported goods and not IGST,

since IGST is distinct and the same cannot be treated as 'duty'.

13. The Appellant submitted that the subject goods are not liable to levy of IGST at 28% as prescribed in Schedule-IV of the IGST Rate Notification, since the very Preamble of the IGST Rate Notification clarifies that, to be charged to IGST at a particular rate under the IGST Rate Notification, two conditions be cumulatively satisfied:

- The item must fall under the Tariff item, sub-heading, heading or chapter indicated in Column (2) of the relevant entry in the IGST Rate Notification; and

- The item must satisfy the description in Column (3) of the relevant entry in the Rate Notification.

He thus prayed for setting aside the Impugned Order and allowing the Appeal.

14. *Per contra*, Shri Anoop Singh ld. Joint Commissioner defending the Impugned Order submitted the following -

- Impugned goods were never fully exempted from the import duties chargeable under the Customs Act, 1962 and the submission of Appellant that impugned goods are not

chargeable to any Customs duty under Customs Tariff as no rate of tax has been prescribed for such goods or are exempted from duty under Exemption Notification issued under Section 25 of the Act *ibid* is not tenable. He referred to Section 12 of the Act read with Section 3 (7) of the Customs Tariff Act, 1975, to submit that IGST was leviable on the impugned goods.

- With regard to **Associated Cement Corporation** (*supra*) and **Sterlite Industries India Ltd.** (*supra*), findings in those cases are not applicable in this context as the Hon'ble Courts discussed the applicable duty on the goods brought as 'baggage' and not as 'imported goods', since the duty was not applicable on the imported goods, the same should be applicable on the baggage goods. However, the context and goods discussed are different from the present case, as the goods are having GST leviable on them, the goods are dutiable goods.

- From a plain reading of Section 12 of the Act read with Section 3 (7) it is evident that IGST or any other duties like ADD, CVD are applicable. Hence, the impugned goods are 'dutiable goods'. Section 5 (1) of the IGST Act is the charging section and the proviso to Section 5 (1) states that the integrated tax on goods imported into India shall be levied and collected in accordance with Section 3 of the Customs Tariff Act, 1975 on the value as determined under the Customs Tariff Act and at the point when duties of Customs are levied under Section 12 of the Customs Act.

- Section 53 (1) of the SEZ Act, 2005 provides that a Special Economic Zone shall, on and from the appointed day, be deemed to be a territory outside the Customs territory of India for the purposes of undertaking the authorized operations.

- The definition of DTA as per Section 2 (i) of the SEZ Act, 2005, read as "Domestic Tariff

Area" means the whole of India (including the territorial waters and continental shelf) but does not include the areas of the Special Economic Zones.

- 'Import' under Customs Act, 1962 with its grammatical variations and cognate expressions, means bringing into India from a place outside India and "imported goods" means any goods brought into India from a place outside India but does not include goods which have been cleared for home consumption.

- It is evident from the perusal of the aforesaid provisions, the Special Economic Zones are clearly excluded from the definition of 'whole of India' and hence, any goods removed from SEZ to DTA tantamounts to 'imports into India'.

- Further, in the case of **Adani Power Limited Vs UOI** [2015 (330) ELT. 883 (Guj.), the Hon'ble High Court quashed the Notification issued under Section 25 (1) of the Customs Act, 1962 and held that the removal of goods from

SEZ to DTA amount to 'import of goods'. The Hon'ble High Court held that the goods known as "electrical energy" removed from SEZ to DTA would be exempted as it will be treated to be 'imported from outside India'. Attention was drawn to paragraph 54 which is relied upon by the Adjudicating Authority in the impugned order.

- Insofar as burden of proof on the Department to re-classify the subject goods under a different heading is concerned, reference was made to Order-in-Original wherein it is held that:

  (a) Even though the impugned goods viz. Laptops, Desktops and Monitors are covered by more specific heading in the Import Schedule of the Customs Tariff Act i.e., 847113010, 84715000 and 85285200 respectively, since the goods are being cleared for personal use for individuals/persons, hence the

impugned goods are rightly covered under Chapter 98.

(b) Removal of the impugned goods from SEZ to DTA fits into the definition of "personal import" as the goods are being removed for persons / individuals for their personal use and not related to trade or manufacture or agriculture.

In this regard, Ld. A.R placed reliance on CBIC Circular No. 14/2018-Customs dated 04.06.2018.

- Further, the SEZ Unit has filed Bills of Entry without IEC for clearance of goods, since the goods cleared are for personal use, Bill of Entry should have been filed with IEC Number as clarified by the above circular.

- SEZ-DTA clearances are imports, the Appellant has violated the Customs Act by misclassifying the goods and hence, the goods imported by the SEZ Unit holder are liable for confiscation, penalty and interest under relevant provisions of Customs Act, 1962.

- With regard to the removal of goods from SEZ to DTA to the individuals/persons, Bill of Entry is filed by SEZ unit on behalf of DTA buyer as per provision under Rule 48 of the SEZ Rules and the duty liability is discharged by the SEZ unit. Therefore, the Appellant was responsible for following all the customs procedures and any further proceedings in respect of the impugned goods.

He would thus pray for sustaining the impugned order.

15. We have heard the rival contentions of both the sides and perused the documents placed on record as well as judicial precedents relied upon during the course of hearing before us.

16. The short issue, therefore, is 'whether the imported goods are classifiable under CTH 8471 3010, 84715000 and 8528 5200 on the one hand, or under 9804 9000 on the other hand ?'. Though levy of penalty and charging of interest are also questioned, the same however, arise as consequence of Revenue's classification, if approved.

Heading 9804 reads: *"All dutiable articles, intended for personal use."* Therefore, to fall under this heading three ingredients must be satisfied. First, the goods must be 'dutiable goods'. Second, they must be 'imported'. Third, such import must be for 'personal use'. It is also evident that these three ingredients are conjunctive. Therefore, all three ingredients must be satisfied for goods to be classifiable under Heading 9804.

17. So far as the first ingredient is concerned, the term "dutiable goods" finds definition in Section 2 (14) of the Customs Act, 1962 as follows:

"dutiable goods" means any goods which are chargeable to duty and on which duty has not been paid."

In turn, Section 2 (15) defines the term 'duty' to mean "*a duty of customs leviable under this Act*". Findings were recorded by the Revenue and arguments have been advanced on behalf of the Revenue before us that the fact that the goods were liable to IGST at the rate of 18% would render the goods 'dutiable'. Even a plain reading of these two definitions makes it clear that the duty contemplated in the term 'dutiable goods' is only a duty levied under the Customs Act, 1961. IGST, therefore does not fall within this

scope. The Levy of IGST will not *per se* render the goods 'dutiable goods'. The levy of IGST is under the IGST Act and, at best, under Section 3 of the Customs Tariff Act, 1975. Wherever the source of **that** levy can be traced, it cannot be traced to the Customs Act, 1962. The distinction between Customs duties and other levies under the Tariff Act is that in the case of Customs duty, the levy is under Section 12 of the Customs Act, 1962. That section does not authorize the levy of IGST. The reference in Section 12 to the Customs Tariff Act is only for the purposes of determining the rate of duty.

18. However, the enquiry cannot stop here. It is necessary to determine whether these goods are subjected to Customs duty. The goods under consideration fall in three classifications, or so the importer claims, viz., CTI 84713010, 84715000 and 85285200. So far as Headings 84713010 and 84715000 are concerned, learned advocate for the Appellant is correct in saying that under the Schedule to the Customs Tariff Act, 1975 the rate of duty is stipulated to be 'free'. In respect of Heading 8528 5200, the rate of duty so prescribed is 10%. However, this is subjected to an

exemption by Notification No. 24/2005 dated 01.03.2005 at Sl. No. 17 in the Table.

19. The Hon'ble Supreme Court, in **Associated Cement Companies Ltd. Vs Commissioner of Customs** [2001 (128) ELT 21 (SC) reaffirmed in 2002 (144) ELT A100 (SC)] at paragraphs 79 and 80, has held as follows:

> **"79.** Under the Central Excise Act, 1944 in definition of words "excisable goods" under Section 2(d), the very specification or inclusion of goods in the First and Second Schedule of the Central Excise Tariff Act would make them excisable goods subject to duty. Under the Customs Act, the provisions seem to be somewhat different. While by virtue of Section 2(22) all kinds of movable property would be 'goods' but it is only those goods which would be regarded as 'dutiable goods' under Section 2(14) which are chargeable to duty and on which duty has not been paid. The expression "chargeable to duty on which duty has not been paid" indicates that goods on which duty has been paid or on which no duty is leviable, and therefore no duty is payable, will not be regarded as 'dutiable goods'. It is only if payment of duty is outstanding or leviable that goods will be regarded as dutiable goods."
>
> **80.** Section 12 of Customs Act provides that the duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act. When the Customs Tariff Act itself provides that the import of drawings and designs under Heading No. 49.06 is 'free', it must follow that these drawings and designs, though goods, were not chargeable to duty. In view of the difference in the language of the Excise and Customs Acts, the decisions in the cases of *Vazir Sultan* and *Wallace Flour Mills* (supra) may not be very apposite and if no customs duty is chargeable either by reason of tariff not providing for it or because of the exemption notification, those goods will not be regarded as dutiable goods "on which duty has not been paid". It is sufficient in the present case to observe that the drawings and designs which were imported by the appellant were correctly classifiable under Heading No. 49.06 and the tariff itself providing that the import of the same is free, the said drawings and designs were not dutiable articles

> and, therefore, no customs duty was leviable thereon even as a part of the passenger baggage. On this short ground alone the appeal of Videocon has to be allowed."

20. Therefore, whether the goods are not subjected to duty by virtue of a free rate under the Customs Tariff Act or by virtue of an Exemption, as the Hon'ble Supreme Court has held, they cannot be regarded as 'dutiable goods'. For these reasons, we hold that the first criterion that the goods must be 'dutiable', is not satisfied in the present case. While this alone would be sufficient to reach the conclusion that the goods cannot be classified under Heading 9804, we are also of the opinion for reasons that we will describe below that the goods were not 'imported for personal use'.

21. In our opinion, importation for personal use necessarily connotes the use of the importer himself and not the use of any other person such as a customer of the importer to whom the goods are ultimately sold. In this case, there is no dispute on the fact that the goods were manufactured by the Appellant and sold to its customers in the ordinary course of its business. This, according to us, is clearly not 'personal use' as contemplated by Heading 9804. The proper construction of that Heading is in view also

of the Chapter Heading. The Chapter Heading refers to **passengers' baggage and personal importations** together. Apparently, what is sought to be covered is goods actually brought into India from a place outside India, and used for personal purposes. We think it might be a stretch too far to extend this to 'SEZ to DTA' transactions. What is contemplated in the context of baggage is usually that a person, being outside India, comes to India, carrying with him, some goods in his baggage. These are goods he has presumably procured outside India, perhaps off the shelf. In the present case, the customers of the Appellant are undisputedly within India. They place orders on the Appellant. The Appellant manufactures and sells goods on this basis. Goods procured on orders cannot conceivably be characterized as 'baggage'.

22. Learned representative for the Department sought strenuously to contend before us that since there was an element of customization in the goods to suit the use of particular customers of the Appellant, the importation is actually in the hands of the customers. If this is the case, duties, if at all they arise, may be recoverable from the customers if the law so provides and not from the Appellant.

This is not the approach that the Revenue itself has adopted. Further, as held by the Hon'ble Supreme Court in **Adani Power Ltd. & Anr Vs Union of India & Ors. Vs** [2026 (1) TMI 24 (SC)], Section 30 of the SEZ Act treats SEZ to DTA clearance as if they bore the same as comparable imports but does not regard every SEZ to DTA transaction as an import for the purposes of Section 12 of the Customs Act. The Hon'ble Supreme Court emphasized that deeming fiction cannot be pressed beyond the purpose for which it was enacted. The Hon'ble Supreme Court also held that Section 30 of the SEZ Act cannot be read as to create a levy which did not exist in the first place under the Customs Act. In the present case, had the transaction been carried out, otherwise than through an SEZ, nothing in the Revenue's contentions or findings would suggest that a duty would be leviable thereon.

23. The whole foundation of the case of the Revenue would be shaken had an SEZ not been involved in the present case. We say so because the Revenue has drawn conclusions by relying on the factor of customization and the nature of use in the hands of the customer/s, by treating the

customer/s, the importer/s. Not only is that inconsistent with the Revenue treating the Appellant as the 'importer' for the purposes of adjudication, but also there is nothing in the law which authorizes extending the legal fiction to treat the customer as the 'importer' in place of the Appellant. Therefore, customization is an irrelevant factor.

24. There is another good reason for this. No importer can be expected to monitor or supervise the use by his customers of goods sold by him to determine whether such use is personal or otherwise, for the purposes of classifying an 'import' which he makes. Further, the purpose of use of the customer of the importer is not a fact which is determinable at the time of importation. The classification, however, has to be decided at the time of importation. Therefore, the classification cannot depend on facts that arise after importation and which are beyond the knowledge and control of the importer who, we reiterate, in this case, is the Appellant. No legal fiction authorizes us to hold that the importer is not the Appellant. The requirement of Heading 9804 that the goods be 'imported for personal use' is thus not satisfied. In this view of the matter, we have no

hesitation in holding that the goods cannot be classified under CTH 98049000.

25. Further, we are also conscious of Chapter Note 1 in Chapter 98, which provides that goods must be classified in that Chapter, even if covered by a more specific Heading elsewhere. However, since we have already expressed our opinion that the ingredients of Heading 9804 do not apply, that Chapter Note is also irrelevant.

26. The other aspect which we feel relevant is that the Appellant, admittedly, filed invoices which clearly indicate individual/different items, falling under different Headings. By over-looking the individual identities, the same have been brought under single Heading by the Revenue, which has resulted in identity loss of the items; it is not as though each item is not covered by or under specific Headings under Customs Tariff, 'computers' as is understood in common parlance including 'units' have been specifically covered under CTI 8471. So, to bunch the items by ignoring individual character/identities and bringing them under a different Heading by defeating the very purpose of Tariff headings, may not sound good; Laptops, Desktops, Monitors

though are covered under specific headings, they have been brought under general items covered under Heading 9804- imported for personal use, like the items specified therein viz. *Drugs and medicines* & *Other.*

27. To get into the basic aspects, it is undisputed that the process of classification of goods under Customs Tariff involves interpretation of Section Notes, Sub-heading Notes, Supplementary Notes, Headings, Sub-headings and the General Rules for Interpretation (GRI) of the Customs Tariff Act. Rule (1) of GRI stipulates that goods under consideration should be classified in accordance with the terms of Headings and any relevant Section or Chapter Notes; and if the goods are not classifiable as per the description provided, then subsequent Rules are to be looked into. Further, Schedules of Customs Tariff Act are based on Harmonized Commodity Description and Coding System, which is otherwise referred to commonly as Harmonized System of Nomenclature (HSN), which is applied all over the world and under the HSN various goods are classified under different Headings, Sub-headings and Tariff entries.

28. It is the settled position of law that whenever there is a doubt insofar as an issue of classification is concerned, HSN is a safe guide for ascertaining true meaning of any expression used in the Act unless there is an expressed different connotation indicated in the Tariff itself. This position has been the law since 1995, as ruled by the Hon'ble Apex Court in the case of **Collector of Central Excise, Shillong Vs Wood Craft Products Ltd.** [1995 (77) ELT 23 (SC)]. The basic tenet of classification of goods is, admittedly, in accordance with Rule 1 of GRI and hence, it is the case of the Appellant that Laptops, Desktops and Monitors cleared to end customer/s in the DTA have been correctly classified under their respective Headings viz. CTH 8471 / CTH 8528. We find to this extent that even the Appellant is legally correct in its declaration insofar as the classification of the goods in question is concerned.

29. The burden of proof whenever a dispute arises, is on the person who ignites the dispute; in the case of a classification and when the Revenue does not accept the declared classification, then, the burden heavily rests on the Revenue, to not only establish that the declared classification was wrong, but also to establish how the

reclassification Revenue wanted is justifiable. Thus, the primary burden itself, according to us, stands unsatisfied insofar as the rejection of declared classification is concerned. A perusal of the SCN clearly indicates that the Revenue sought to reject the declared classification solely on the ground that the goods in question were deemed to be imported into India by the individual(s) / customer(s) for their personal use and therefore, were appropriately classifiable under Heading 9804. This clearly indicates that without discharging the primary burden of proof, the Adjudicating Authority has jumped into the second aspect of getting the goods in question classified under CTH 9804, which according to us, would merit consideration once the first hurdle stands cleared. Moreover, the whole tenor of the Revenue's case as found in the SCN as well as the Order-in-Original, is on the concluded assumption that the declared classification was wrong but however, no attempt has been made to say why and how the declared classification was wrong. In this regard, we find that the following judgements relied upon by Appellant are apt :

(i) **Commissioner of Customs, Amritsar Vs D.L. Steels** - 2022 (381) ELT 289 (SC).

(ii) **H.P.L. Chemicals Vs Commissioner of Central Excise Chandigarh** - 2006 (197) ELT 324 (SC)

30. The Adjudicating Authority has relied on the decision of **Adani Power Ltd. Vs UOI** [2015 (33) ELT 883 (Guj.)], specifically referred to para-54 of the said judgment which has also been extracted in the impugned order. But, we find that the extraction is only a portion of para-54 which has been cherry-picked by the Adjudicating Authority. In the same paragraph, after having observed as extracted in the earlier portion, the Hon'ble Court finally has chosen to quash and set aside the Notification No.25/2010-Cus. dated 27.02.2010 and Notification No.21/2002-Cus. dt. 27.02.2010 as amended by Clause 60 of the Finance Bill, 2010 as *ultra vires*. This decision has further been approved by the Hon'ble Apex Court in its later judgment which we have also referred to at para-22 of our order. The relevant findings of Hon'ble Apex Court reads as under :

> "**19.** A conjoint reading of Entry 83 of List I of Schedule VII and Section 12 of the Customs Act shows that the levy under the said Act is on goods which are physically imported from territory outside India into India. On the other hand, duty under Section 30 of the SEZ Act is not on import of goods into India because the word "import" as defined in the SEZ Act does not cover removal of goods from SEZ in DTA. ....."

> **20**. By virtue of Entry 83 of List I of Schedule VII to the Constitution of India, the said Act has been enacted to provide for levy of customs duty on goods imported into India. The word "import" in the context of Entry 83 of List I means bringing into India from a territory outside India. This is also the scope and ambit of the charging section. The customs duty under Section 12 of the Customs Act read with Section 83 of the List I can only be levied on goods imported into India."

31. Further, with regard to the proposal to recover IGST which stood confirmed in the impugned order, we find that duty of Customs, as contended before us, is distinct from IGST and in this regard, reliance placed by the Appellant on the decision of Andhra Pradesh High Court in the case of **Maithan Alloys Ltd. Vs UOI & Others** [2024 (1) TMI 305-Andhra Pradesh High Court]. While examining the question whether the goods imported into SEZ is exempt from payment of GST compensation CESS under Section 26 of the SEZ Act in the absence of specific Notification to this effect under the Goods and Service Tax [Compensation to States] Act, 2017, the Court held that the word 'duty' used in Section 26 is not Cess and accordingly under Section 26 (1) (a) what is exempted is only duty of Customs and not any Cess including GST compensation. We find that the above view was also applied by the Delhi Bench

of the Tribunal in the case of **Interglobal Aviation Ltd. Vs CC New Delhi** [2020 (43) G.S.T.L 410 (Tri.-Del.)] and Appeal filed by the Revenue against the said order has also been dismissed by the Apex Court vide its order dt. 14.07.2025 in Civil Appeal Diary No.6685/2025. This apart, we also find that though Section 30 of the SEZ Act provides for levy of duty of Customs however, it does not provide any mechanism in which the duty is to be collected since the SEZ Act does not borrow the relevant provisions from the Customs Act in this regard. We therefore find that any recovery by applying the provisions of SEZ Act is clearly barred under Article 265 of Constitution of India. We also find from Rule 47 of the SEZ Rules as per which, Refund, Demand, Adjudication, Review and Appeal regarding the matters relating to authorized operations under SEZ Act, 2005, transactions and Goods and Services related thereto shall be made by the jurisdictional Customs and Central Excise authorities in accordance with relevant provisions contained in the Customs Act, 1962. It is very clear from the above i.e. Rule 47 (5) that the powers conferred by the SEZ Act to the jurisdictional Customs and Central Excise authorities are the matters relating to the sales in Domestic Tariff Area (DTA) concerning Refund, Demand, Adjudication,

Review and Appeal and nothing more. That is to say, there is no specific provision for recovery of duties not levied or not paid or short-levied or short-paid in the manner set out in Section 28 of the Customs Act, 1962. A cumulative reading of the above provisions also makes it clear that any recovery made or proposed is also contrary to the authorization prescribed under SEZ Rule 47 (5).

32. In the impugned order, we also find that the Adjudicating Authority has charged interest, ordered confiscation and also imposed penalty in relation to the demand raised under Section 30 of the SEZ Act. We have perused the SEZ Act but, however, the same does not provide for levy of interest, penalty or even confiscation of goods since, as observed in the earlier paragraph, the authorization given under Rule 47 (5) is limited / restricted to Refund, Demand, Adjudication, Review and Appeal. Therefore, the levy of penalty, charging of interest and ordering confiscation by the Adjudicating Authority is clearly beyond the powers of the Adjudicating Authority and is also stark violation of the SEZ Act and Rules. In this regard, we

find that reliance placed on the decisions / orders of various judicial Fora are very much apt and support our above view.

33. In view of the above discussions, we do not find any merit in the impugned order for which reason, the same requires to be set aside, which we hereby do.

34. In the result, the Appeal stands allowed with consequential benefits, if any, as per law.

(Order pronounced in open court on 17.03.2026)

sd/-	sd/-
(VASA SESHAGIRI RAO)	**(P. DINESHA)**
Member (Technical)	Member (Judicial)

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