IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.1

Mode of Hearing : Virtual

Customs Appeal No.75348 of 2026

[Arising out of Order-in-Appeal No.KOL/CUS/PORT/DC/95/2026 dated 30.01.2026 passed by Commissioner of Customs (Appeals), Kolkata]

M/s Global Exim
(301, Neelkanth Corporate Park, Vidyavihar West, Mumbai-400086)

Appellant

VERSUS

Commissioner of Customs (Port), Kolkata
(15/1, Strand Road, Kolkata-700001)

Respondent

APPERANCE :

Shri Mihir Mehta, Advocate for the Appellant
Shri Subrata Debnath, Authorised Representative for the Respondent

CORAM:
HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.75721/2026

DATE OF E-HEARING : 21 MAY 2026

DATE OF PRONOUNCEMENT : 18 JUNE 2026

Per Ashok Jindal :

The appellant is in appeal against the impugned order wherein the Assessment Order dated 12.08.2025 has been upheld.

2. The facts of the case are that the appellant is a Partnership firm and imported 27 Metric Tons of Citric Acid CIF Value ($) 18,495/- and filed Bill of Entry (BE) No.318343 dated 10.07.2025. In the said BE, the Appellant claimed exemption from payment of Basic Customs Duty ("BCD") under Customs Notification No.25/2023-Cus dated 01.04.2023 ("Notification") on the strength of Transferable Duty-Free Import Authorization Nos.0311043071 dated 16.04.2025 ("DFIA").

2.1 The Appellant is a Transferee of the said DFIA dated 16.04.2025 issued on a post-export basis against the Export of Assorted Confectionary Products covered by Standard Input Output Norm (SION E-1).

2.2 Vide Public Notice No. 41 dated 02.11.2016, the DGFT, *inter-alia*, imposed the Actual User Condition on inputs at serial no. 2,3 and 4 and further imposed value cap restrictions on Sr. Nos. 5,6 and 7 of SION E-1 and accordingly, the Regional Authorities have endorsed the said conditions in the DFIA.

2.3 The said BE was selected for assessment by the faceless assessment group and during the said assessment, various queries were raised on 24.07.2025 and 25.07.2025. The said queries were duly responded to by the Appellant vide its letters dated 24.07.2025 and 25.07.2025.

2.4 Thereafter, the Ld. Assessing Officer disregarded the submissions of the Appellant and proceeded to reassess the BE by denying the benefit of exemption claimed by the Appellant and assessed the imported Citric Acid at merit rates. Copy of the query dated 28.07.2025 reassessed Bill of Entry is attached with the appeal memorandum.

2.5 The Appellant made a detailed submission to the Respondent, vide its letter dated 28.07.2025, and requested him to allow clearance of goods by extending DFIA benefits, in view of the settled law that no actual user condition exists under DFIA Scheme.

2.6 In response to the above letter dated 28.07.2025, vide its letter/ order dated 31.07.2025, the Respondent was pleased to reject the

request for re-assessment of the captioned Bill of Entry with duty-exemption under transferrable DFIA.. The said letter dated 28.07.2025 was issued by the Learned Assistant Commissioner of Customs, Appraising Group 2, under the approval of the Respondent.

2.7 Being aggrieved by the Order dated 31.07.2025 passed by the Respondent, the Appellant had preferred an Appeal No.C/76046/2025 before this Tribunal. During the course of the hearing, this Tribunal sought a reply from the Learned A.R. for the Revenue whether any speaking order was passed under Section 17(5) of the Customs Act, 1962 ("Act").

2.8 The Learned A.R. for the Revenue subsequently submitted a copy of E-mail dated 12.08.2025 sent to the Appellant containing the Speaking Order No.185/AC/JAP/ADJ/2025-26 dated 12.08.2025.

2.9 In view of the aforesaid submission by the Learned A.R., vide Final Order No.77362/2025 dated 01.09.2025, this Tribunal was pleased to dismiss the above appeal filed by the Appellant on the ground that the same is not maintainable in view of the fact that the adjudicating authority has passed a speaking order under Section 17(5) of the Act, which is appealable before the Learned Commissioner of Customs (Appeals).

2.10 Pursuant to the said final Order dated 01.09.2025 and anticipating further delay in clearance of the imported goods, the Appellant was compelled to pay the customs duty and clear the consignment subsequently.

2.11 Thereafter,being aggrieved with the speaking Order dated 12.08.2025 passed by the Adjudicating Authority under Section 17(5) of the Act,

the Appellant preferred an appeal before the Learned Commissioner of Customs (Appeals).

2.12 Vide Order-in-Appeal dated 30.01.2026, the Commissioner of Customs (Appeals) was pleased to reject the appeal filed by the Appellant and uphold the Assessment Order No.185/AC/JAP/ADJ/2025-26 dated 12.08.2025

2.13 Being aggrieved with the said order, the appellant is before us.

3. The ld.Counsel for the appellant submits that the DFIA scrips under dispute are on a post export basis wherein the exporter has first exported the goods and after realization of proceeds, a transferable DFIA scrip was issued. In an event, unlike the Advance Authorization scheme, there is no actual user condition inbuilt under the DFIA. It is submitted that the custom authorities, at various customs house across India, are extending duty free benefit against transferred DFIAs without insisting on the "actual use" condition. It is further submitted that the Appellant is a Transferee of the said DFIA dated 16.04.2025 issued on a post-export basis against the Export of Assorted Confectionary Products covered by Standard Input Output Norm (SION E-1). He further submits that in the present case, the product description mentioned in the DFIA under Serial No. 4 of the DFIA matches with the imported goods viz. Citric Acid (Food Grade – Monohydrate – 99.5%).

3.1 He further submits that as submitted above, the Public Notice No. 41 dated 02.11.2016 was issued by DGFT, *inter alia*, amending various SIONs under Food Products. One such amendment was imposing the actual user condition on items under Sl.no. 2, 3 and 4 and value cap restrictions on items under Sr. No. 5, 6 and 7 of the said SION E-1. The

said imposition of actual user condition and value cap restrictions was issued by DGFT through a Public Notice and not by a Notification, as specified under the Foreign Trade Policy 2023. In this regard, he submitted that the Hon'ble Rajasthan High Court vide its Order and judgement dated 23.10.2024 in the case of Nrapen Shanker Acharya Vs. UOI - D.B. Civil Writ Petition No.17806/2024, has held that imposing pre-import conditions for inputs and actual user conditions by way of Public Notice shall be an exercise of touching upon the policy decision, and therefore such amendments can be notified only through a Notification in the Official Gazette.

3.2 He further submits that the Hon'ble Supreme Court in the case Viraj Impex Pvt. Ltd. Vs Union of India & Anr. 2026 (1) TMI 1102 - Supreme Court after taking note of the imperative in Section 3 of the Foreign Trade (Development & Regulation) Act, 1992, was pleased to hold that not only such matters be notified but that effect can be had only upon publication of the Notification in the manner prescribed. It is clear that in the absence of any Notification published in the Official Gazette prescribing the actual user conditions imposed by Public Notice is bad in law.

3.3 In view thereof, it is submitted that the insertion of the actual user and value cap conditions itself are void and illegal. Accordingly, the customs authorities cannot insist on the actual user condition in DFIA in view of the aforesaid judgments and the Appellant is eligible to the benefit of DFIA without insisting on actual user conditions.

3.4 Further, he relies on the judgment of the Hon'ble Supreme Court in the case of L. Chandrakumar Vs UOI, 1997 (2) SCR 1186, wherein the Hon'ble Supreme Court held that this Tribunal has the power to test the vires of subordinate legislations and Rules.

3.5 It is further submitted that the Hon'ble Delhi High Court in the case of Select Impex Ltd. Vs Union of India, 2006 (194) ELT 146 (Del) affirmed by Hon'ble Supreme Court , 2022(380) ELT after passing strictures against the Learned Additional Director of Foreign Trade for observing that CEGAT is not competent to decide upon Import and Export Policy held that CEGAT is a quasi-judicial authority deserving and commanding the respect of the Executive. Without prejudice to the above and in any event, it is submitted that the DFIA scheme being a post export benefit Scheme, as opposed to the Advance Authorization Scheme, the Appellant is not required to fulfil the actual user conditions. He also relies on the decision of this Tribunal in the case of Frunuts Exim LLP Vs Commissioner of Customs, Nhava Sheva, Raigad, 2026 (2) TMI 298.

3.6 Further, he relies on the judgment of the Hon'ble Bombay High Court in the case of Shah Nanji Nagsi Exports Pvt. Ltd. Vs Union of India, 2019 (367) ELT 335 (Bom), wherein it is held that there is no actual user condition inbuilt in the DFIA scheme. He also relies on the judgment of the Hon'ble Allahabad High Court in the case of Sachin Pandey vs UOI – 2020 (371) E.L.T. 34 (All).

3.7 In view of the above, he submits that the benefit under the DFIA read with Notification be allowed to the Appellant and the Respondents ought not to insist on fulfilment of the actual user condition.

3.8 Further, it is submitted that the Appellant is presently holding number of Transferable DFIAs from the open market in respect of the disputed items. However, owing to the pendency of litigation, the said DFIAs could not be utilized, and during this period, the validity of the licenses expired. Accordingly, the Appellant prays that appropriate directions be issued to the Respondents / Customs Department to issue a certificate to the DGFT, confirming the aforesaid factual position, so as to enable them to seek revalidation of the DFIAs. In this regard, he relies on the decision of this Tribunal in the case of Pushpanjali Floriculture Private Limited v. C.C. (Export) Nhava Sheva, 2015 (327) E.L.T. 77 (Tri. - Mumbai). Further, this Tribunal in the case of Frunuts (supra) after following the order and judgment of the Hon'ble Punjab & Haryana High Court in the case of Pushpanjali Floriculture Pvt. Ltd. Vs Union of India, 2016 (340) ELT 32 (P&H) permitted the revalidation of the DFIA under consideration in that appeal and this Tribunal in the Appellant's own case reported at 2015 (329) E.L.T. 507 (Tri. – Mumbai) was permitted such revalidation. He, therefore, prays for setting aside the impugned order and the appeal filed by the appellant be allowed with consequential benefits.

4. The ld.A.R. for the Revenue has justified the impugned order.

5. Heard both the parties and considered the submissions.

6. We find that in this case, by way of Public Notice issued by DGFT, actual user conditions were imposed on the items imported by the appellant. Therefore, the issue arises in case of DFIA, which is issued on post-export basis against the export whether actual user condition can be imposed through Public Notice or not ? The said issue has been

examined by the Hon'ble Rajasthan High Court in the case of Nrapen Shankar Acharya Vs. Union of India (supra), wherein the Hon'ble High Court has observed as under :

> *"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 Authorisation 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 and 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 inputs under Chapter 4 can be issued only by the Ministry of Commerce and Industry subjecting the import items under appendix 4-3 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 pre-import conditions for 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."*

7. Further, in the case of Viraj Impex Pvt. Ltd. Vs. Union of India & Anr. (supra), the Hon'ble Apex Court has analyzed the issue and observed as under :

"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. …….

18. …….

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 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. "

8. We further take note of the fact that in this case, DFIA Scheme is a post export benefit Scheme. In that circumstances, the appellant is not required to fulfill the actual user conditions. The same view has been taken by this Tribunal in the case of Frunuts Exim LLP (supra), wherein this Tribunal has observed as under :

"19.....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-cumexporter 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 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."

9. Further, in the case of Shah Nanji Nagsi Exports Pvt. Ltd. (supra), the Hon'ble Bombay High Court has observed as under :

> ***"26.*** *It reveals that DFIA scheme is distinct than 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."*

10. In view of the above observations, we hold that the appellant is not required to fulfill the actual user conditions for import made in DFIA

11. Therefore, we hold that mere Public Notice issued by DGFT, cannot impose the actual condition. In view of that, the actual condition is not binding on the appellant for the import made under DFIA, which was issued post export basis against the Export of Assorted Confectionary Products covered by Standard Input Output Norm. Therefore, the goods in question cannot be denied the benefit of exemption claimed by the appellant. Accordingly, the appellant is entitled for the consequential benefit thereof.

12. We further take note of the fact that this Tribunal is having the power to test the vires of statutory legislations or not ? The said issue has examined by the Hon'ble Apex Court in the case of L.Chandrakumar (supra), wherein the Hon'ble Apex Court has observed as under :

> *"The Tribunals created under Article 323-A and Article 323-B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose Jurisdiction the Tribunal concerned falls. The Tribunals will, nevertheless, continue to act like courts of first instance in respect*

of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is Challenged) by overlooking the jurisdiction of the Tribunal concerned."

13. Further, the Hon'ble Delhi High Court in the case of Select Impex Ltd. (supra), has observed as under :

"2.*The Additional Director General of Foreign Trade in its detailed order has opined that the question which had arisen in those proceedings were altogether different. Unfortunately, it has incorrectly been observed that "CEGAT is not competent to decide upon the Import and Export Policy. DGFT is the final authority on interpretation of Import and Export Policy. .... None of the DGFT offices/officers are impleaded in the CEGAT and therefore CEGAT would not be enlightened on the nuances of DEPB Scheme; fixation of DEPB rates, administering the scheme etc." It does not behove a high functionary such as the Additional Director General of Foreign Trade to make these statements which may tantamount to Contempt of Court. One of the Departments of the Government was given a detailed hearing by CEGAT and it was always open to it to seek impleadment of the DGFT. It is true that Appeals against the Order of the DGFT do not lie to the CEGAT. However, it is quasi judicial authority deserving and commanding the respect of the Executive. I shall say no more."*

and the said decision of the Hon'ble Delhi High Court in the case of Select Impex Ltd. (supra) was confirmed by the Hon'ble Apex Court in the case as reported supra.

14. Therefore, we hold that this Tribunal is competent to examine the vires of statutory legislations and having jurisdiction thereof.

15. We find that the appellant further made a request that during the pendency of litigation, the DFIAs could not be utilized and during

this period, the validity of the licenses has been expired. Therefore, it was prayed that the appropriate directions be issued to the Respondents/Customs Departments to issue a Certificate to the DGFT, confirming the aforesaid conditions, so as to enable them to seek revalidation of the DFIAs.

16. We find that the similar issue came before the Punjab & Haryana High Court in the case of Pushpanjali Floriculture Pvt. Ltd. (supra), wherein the Hon'ble High Court has observed as under :

> ***"44.****It is seen that the DFIA is issued with a limited validity of 24 months. Due to the actions of the respondents the DFIAs could not be utilised by the petitioner. The Hon'ble Supreme Court in the matter of Sandeep Exports Ltd., 2004 (9) SCC 128 = 2004 (164) E.L.T. 133 (S.C.), had directed the respondents to issue certificate for the purpose of revalidation of expired licenses due to disputes raised by the department. We are satisfied that due to the impugned invalid notifications/ Public Notice/Circular, licenses could not be utilised by the petitioner. The petitioner cannot be expected to present licenses for debit in such circumstances. Therefore, a case for directing revalidation of the licence is also made out."*

17. The similar view was taken by this Tribunal in their own case (supra), wherein this Tribunal has observed as under :

> ***"9.*** *The whole scheme of DFIAs is to allow duty free imports against exports. Denial of benefit under the scheme only because of expiry of Licenses due to refusal by Customs to allow import of such goods under the Licenses and their resultant non-utilization, would amount to denial of substantial benefits. This is more so when the appellants have invested huge sums of money in purchasing such licenses. And for non-utilization of licenses, they cannot be faulted. Now that the goods have been permitted to be imported against such Licenses by the Tribunal and the Bills of*

Entry finalized, the appellants must get the favour of revalidation for all Licenses held by them during the period of litigation.

10. *……..*

11. *The request made by the appellant to the Customs Department is very legitimate. The request is not for revalidation of Licenses by Customs, but only a certificate to be issued, to DGFT confirming the sequence of events from the date of first refusal of duty free clearances of imported Boric Acid till the date when the Customs started finalising Bills of Entry and releasing PD Bonds/Bank Guarantees. This factual certificate will enable the appellant to approach the DGFT who can consider the appellants' case on merits for revalidation of such expired licenses."*

18. In view of this, we find that the request made by the appellant to the Customs Department is to be correct. Therefore, we direct the Respondents/Customs Departments to issue a Certificate to the DGFT, confirming the aforesaid conditions, so as the appellant gets revalidation of the DFIAs.

19. In view of the above, it is concluded that imposing actual user condition through Public Notice is illegal and cannot be imposed on the appellant for import made under DFIAs and we direct the Department to issue a Certificate to the DGFT within a period of two weeks from the date of receipt of this order for the purposes of revalidation of licences under Paragraph 2.13.1 of the Handbook of Procedures.

20. In view of the above, the appeal is disposed off.

(Pronounced in the open court on **18.06.2026**)

(Ashok Jindal)
Member (Judicial)

(K.Anpazhakan)
Member (Technical)

mm