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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.10.2025

CORAM

THE HONOURABLE Mr. JUSTICE N. ANAND VENKATESH

**W.P.Nos.17912, 17916, 17918, 17919, 17921, , 17923, 17924,
17925, 17928, 17929, 17932, 17933 of 2023
and
WMP.Nos.17043, 17045, 17047, 17050, 17053, 17055, 17058, 17059
17061, 17063, 17064, 17065, 17066, 17067, 17069, 17070, 17074, 17077,
17078, 17079, 17082, 17083, 17084 & 17085 of 2023**

1.M/s.Parry Enterprises India Limited
Represented by its Sr.General Manager
Shri.Dipti Ranjan Mohanty
No.2, N.S.C.Bose Road
Chennai – 600 001. ..... Petitioner in W.P.No.17912, 17916, 17918, 17921, 17923, 17925 of 2023

2.M/s.Fame Shipping Agency
Represented by its Partner
Lalith Kumar Bhandari.D
No.39, 2nd Floor,
Venkatachala Mudali Street
Park Town, Chennai – 600 003. ..... Petitioner in W.P.No.17919, 17924, 17928, 17929, 17932, 17933 of 2023

Vs

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The Additional Commissioner of Customs
O/o. The Commissioner of Customs
Chennai II Commissionerate
Chennai Customs House
60, Rajaji Salai, Chennai – 600 001. .... Respondent in all WPs

Prayer in W.P.No.17912 of 2023 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari and call for the records pertaining to the Order-in-Original No.11/2023-Gr.I dated 28.02.2023 passed by the respondent and quash the same.

Prayer in W.P.No.17916 of 2023 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari and call for the records pertaining to the Order-in-Original No.09/2023-Gr.I dated 10.03.2023 passed by the respondent and quash the same.

Prayer in W.P.No.17918 of 2023 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari and call for the records pertaining to the Order-in-Original No.10/2023-Gr.I dated 10.03.2023 passed by the respondent and quash the same.

Prayer in W.P.No.17919 of 2023 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari and call for the records pertaining to the Order-in-Original No.09/2023-Gr.I dated 10.03.2023 passed by the respondent and quash the same.

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Prayer in W.P.No.17921 of 2023 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari and call for the records pertaining to the Order-in-Original No.12/2023-Gr.I dated 10.03.2023 passed by the respondent and quash the same.

Prayer in W.P.No.17923 of 2023 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari and call for the records pertaining to the Order-in-Original No.13/2023-Gr.I dated 10.03.2023 passed by the respondent and quash the same.

Prayer in W.P.No.17924 of 2023 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari and call for the records pertaining to the Order-in-Original No.10/2023-Gr.I dated 10.03.2023 passed by the respondent and quash the same.

Prayer in W.P.No.17925 of 2023 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari and call for the records pertaining to the Order-in-Original No.14/2023-Gr.I dated 10.03.2023 passed by the respondent and quash the same.

Prayer in W.P.No.17928 of 2023 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari and call for the records pertaining to the Order-in-Original No.11/2023-Gr.I dated 28.02.2023

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passed by the respondent and quash the same.

Prayer in W.P.No.17929 of 2023 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari and call for the records pertaining to the Order-in-Original No.12/2023-Gr.I dated 10.03.2023 passed by the respondent and quash the same.

Prayer in W.P.No.17932 of 2023 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari and call for the records pertaining to the Order-in-Original No.13/2023-Gr.I dated 10.03.2023 passed by the respondent and quash the same.

Prayer in W.P.No.17933 of 2023 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari and call for the records pertaining to the Order-in-Original No.14/2023-Gr.I dated 10.03.2023 passed by the respondent and quash the same.

For Petitioners [in all WPs]	: Mr.Hari Radhakrishnan
For Respondent [in all WPs]	: Mr.Rajnish Pathiyil Senior Panel Counsel - GOI

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COMMON ORDER

The issue involved in all these writ petitions are common and hence they are taken up together, heard and disposed of through this common order.

2. The subject matter of challenge in all these writ petitions pertains to the following orders passed by the respondent.

Impugned order	***Date***
Order-in-Original No.11/2023-Gr.1	28.02.2023
Order-in-Original No.09/2023-Gr.1	10.03.2023
Order-in-Original No.10/2023-Gr.1	10.03.2023
Order-in-Original No.12/2023-Gr.1	10.03.2023
Order-in-Original No.13/2023-Gr.1	10.03.2023
Order-in-Original No.14/2023-Gr.1	10.03.2023

It is to be noted that the impugned orders are addressed to both the petitioners herein viz., M/s.Parry Enterprises India Limited and M/s.Fame Shipping Agency.

3. The first writ petitioner is engaged in the business of Importing and Trading of Wheat Gluten and the second writ petitioner is the licensed

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Custom Broker of the first petitioner (Importer). For the purpose of easy narration, the petition in W.P.No.17912 of 2023 is taken as a lead case.

4. The case of the petitioner is that during the course of business, the petitioner purchased Duty Free Import Authorisation (in short 'DFIA') dated 14.08.2012 issued by the Director General of Foreign Trade for the policy period 2009-2014. The further case of the petitioner is that the Central Government through a notification dated 11.09.2009 exempted the materials imported into India against DFIA issued in terms of Paragraph Nos.4.2.1 and 4.2.2 of the Foreign Trade Policy from the whole of duty of Customs leviable thereon which is specified in the First Schedule of the Customs Tariff Act, 1975 and the whole of the additional duty leviable therein. In the said notification, it is provided that in respect of the resultant product specified in paragraph No.4.32.3 of the Handbook of Procedures (Vol.I) of the Foreign Trade Policy, the materials permitted to be imported shall be of same quality, technical characteristics and specifications. This was further clarified by Board Circular No.46/2007 dated 21.12.2007 and DGFT Policy Circular dated 06.01.2009.

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5. The specific case of the petitioner is that the imported material Wheat Gluten is not specified in Paragraph 4.32.2 of the Handbook and there is no correlation established for the inputs used in the export product and the imported goods. The petitioner-company imported Wheat Gluten and claimed for exemption under the notification dated 11.09.2009 and filed six Bill of Entries. The petitioner-company made true and correct declaration of the description of goods imported by it and claimed the benefit of importer by producing DFIA. The authorised officers assessed the six Bill of Entries and permitted the clearance of imported Wheat Gluten, without payment of duty by allowing the exemption under notification after debiting the DFIA produced by the petitioner.

6. As a subsequent development, the respondent initiated an inquiry against the petitioner-company on the premise that the petitioner-company is not entitled to import Wheat Gluten against DFIA issued for export of biscuits and in furtherance thereof, summons were issued to the petitioner-company to produce evidence. The respondent also recorded the statements of the

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authorised persons from the petitioner-company and issued six separate show cause notices and directed the said petitioner-company to show cause as to why the benefit of exemption under notification dated 11.09.2009 should not be rejected; as to why the goods that were imported vide the Bill of Entries should not be confiscated; why the necessary duty and cess should not be demanded and recovered; and why the interest and penalty should not be imposed on the petitioner.

7. The petitioner on receipt of show cause notices, filed the written submissions and made a specific claim that the issue was already decided by the Tribunal (Ahmedabad) in a case in ***Uni Colloids Impex Pvt Ltd., Vs Commissioner of Customs*** reported in **2014 (310) ELT 583 (Tri-Ahd.)** and requested the respondent to drop the proposal contained in the six show cause notices. It is alleged that the respondent without considering the same, has passed the impugned orders and the same have been put to challenge in all these writ petitions.

8. Counter affidavit has been filed by the respondent in each writ

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petition. The respondent has taken a stand that sufficient opportunity was given to the petitioner to defend themselves and it was found that the imported Vital Wheat Gluten was not covered under DFIA Licence and that the petitioner is not eligible to claim exemption from the payment of the duty availed by them. The respondent has taken a further stand that the DFIA Licence only allows import of Wheat Flour and whereas the import of Wheat Gluten as an alternative input is not allowed under DFIA authorisation issued for export of biscuits. The further stand taken by the respondent is that the petitioner is not entitled for the duty exemption benefit claimed under notification dated 11.09.2009 and therefore, the petitioner is bound to pay the duty along with interest and also penalty, and the goods are also liable to be confiscated. Accordingly, the respondent has sought dismissal of all these writ petitions.

9. Heard Mr.Hari Radhakrishnan, learned counsel appearing for the petitioners and Mr.Rajnish Pathiyil, learned Senior Panel Counsel appearing for the respondent.

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10. The short issue that arises for consideration in all these writ petitions is that, CESTAT has already taken a decision in many cases that, wheat flour and Wheat Gluten fall under the same classification and therefore, whether the respondent who is bound by the decision taken by CESTAT can ignore the same and take an independent decision.

11. The learned Senior Panel Counsel appearing on behalf of the respondent submitted that the petitioner was provided with sufficient opportunity of hearing and the respondent has assigned sufficient reasons as to why the petitioner is not entitled to the exemption. The learned counsel further submitted that the petitioner has an alternative remedy of appeal and without filing the same, the petitioner cannot maintain the present writ petitions before this Court. The learned counsel further submitted that in terms of the notification dated 11.09.2009, it alone governs the fact of the present case and the petitioner cannot claim any exemption for payment of duty and penalty. It was further submitted that the Department did not file an appeal against the order of CESTAT, since they have accepted the monetary limits. Therefore, that will not preclude the respondent from raising this

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ground in other cases and that question is always left open. The learned Senior Panel Counsel in order to further substantiate his submissions, relied upon Section 131BA of the Customs Act, 1962, and contended that the Board from time to time can issue orders or directions fixing the monetary limits for the purpose of filing an application, appeal, revision or regulations and that by itself, cannot be put against the Department as provided under sub-section (3) of Section 131BA of the Act.

12. This Court has carefully considered the submissions made on the either side and the materials available on record.

13. The issue regarding the maintainability of the present writ petitions, in the light of the appeal remedy available to the petitioner, cannot be a bar to entertain the writ petitions. The law on this issue is too well settled. This is more so, considering the fact that the petitioner has challenged the very authority and the jurisdiction of the respondent who has passed the orders by discarding the findings of the CESTAT on the very same issue. The bar in entertaining the writ petition is more in the nature of self-imposed restrictions

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and while exercising jurisdiction under Article 226 of the Constitution of India, there is nothing called as absolute bar, considering the numerous power that is vested with the Court by the Constitution.

14. The main issue that is involved in the present writ petitions is that the impugned orders passed are without jurisdiction, since the respondent is bound by the order passed by the CESTAT on the same issue.

15. For this purpose, it will be relevant to take note of the order passed by CESTAT, Ahmedabad. in ***Uni Colloids Impex P. Ltd., Vs Commissioner of Customs, Ahmedabad*** reported in ***2014 (310) E.L.T. 583 (Tri. -Ahmd.)***. The relevant portions are extracted hereunder :

> ***"Whether Wheat Gluten is Wheat Flour:***
>
> *9. So far as the issue as to whether or not the item Amygluten 160 (Wheat Gluten) is wheat flour, it is seen that the issue was already decided in favour of the appellant by the Commissioner of Customs (Appeals), Air Cargo Complex, Mumbai Zone-III vide Order-in-Appeal No.164/Mumbai-III/2011, dated 12-9-2011 and also by Commissioner of Customs (Appeals), Nhava Sheva Custom House, Nhava Sheva*

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vide Order-in-Appeal No.703(GrVII-I)/2011(JNCH) EXP-97, dated 16-12-2011, which are not reversed, and have been stated to be accepted by the Committee of Commissioners. The technical data on record and the communication dated 30-10-2013 from the Ministry of Food Processing clearly support the appellant's contention that wheat gluten is wheat flour in which most of the starch is removed, and even the office of Jt. DGFT, at Hyderabad has clarified in a communication dated 30-7-2007 that wheat gluten flour is nothing but wheat flour with specific technical characteristics, and thus eligible for import against wheat flour and merits exemption under DFRC scheme. The Commissioner (Appeals) in the instant case has therefore clearly erred in ignoring the settled position. These decisions and clarifications backed by technical literature which are available on record, leave no room for doubt that wheat gluten under import is wheat flour with specific technical characteristics."

16. In ***Unibourne Food Ingredients LLP Vs Commissioner of Customs, Mundra*** reported in ***2022 (381) E.L.T. 810 (Tri. Ahmd.)***, the CESTAT, Ahmedabad, has held as follows :

"4. We have heard both the sides and perused the records. By the impugned decision dated 16-2-2012, Commissioner of Customs has denied the DFIA exemption

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benefit under Notification No.19 of 2015 to the appellant. The appellant has imported Vital Wheat Gluten and claimed Basic Customs Duty Exemption against the product description Wheat Flour (ITC HS No.1101 00 00), which is appearing under Serial No.1 of the list of import goods against Export of Biscuits as per SION E-5. DFIA produced by the appellant before the customs is a transferable license issued against Export of Biscuits as per SION E-5. Once the DFIA is made transferable, the Exporter is permitted to transfer the inputs to any third party as per the provisions of Para 4.29 of the FTP-2015-2020. Both wheat gluten and wheat gluten flour is mentioned in the DFIA. Therefore, it can be fairly accepted that both wheat flour and wheat gluten is used for manufacturing biscuits which is exported. Since both the inputs are used in the resultant export goods, the licensing authorities have correctly issued the DFIA to that extent. The department is also not disputing this aspect except for the sole contention that the ITC (HS) number of wheat gluten flour is not mentioned in the DFIA. The appellant has relied upon decisions of Coordinate Benches of the Tribunal on the very same issue. The Tribunal on all these occasions has taken a consistent stand by holding that Wheat Gluten is covered by the description of Wheat Flour. As such no different view can be taken and are bound to follow the ratio laid down in that case as judicial precedent. That for claiming DFIA

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*benefit, under Notification No.19 of 2015, the appellant is only required to satisfy the description, value and quantity mentioned in the DFIA. The imported goods are covered within the description, value and quantity of the DFIA. Therefore, the submission that the appellant has not satisfied with the conditions of Notification is not correct. There is no such condition either in the policy or in the procedure or in the Notification No.19 of 2015 which stipulates that ITC (HS) No. is a criteria for claiming DFIA benefits as held by this Tribunal in the case of **USMS Saffron Co. Inc. v. Commissioner of Customs, ACC, Mumbai** vide Final Order No.A/3627/15/CB, dated 30-9-2015 [2016 (331) E.L.T. 155 (Tri. - Mum.)]. Under Exemption Notification No.19 of 2015, "Materials" has been defined as "raw materials; components, intermediates, consumable, catalysts and parts which are required for manufacture of resultant products". The Hon'ble Supreme Court in the case of Commissioner of Customs, Kolkata v. G.C.Jain – 2011 (269) E.L.T. 307 (S.C.) has inter alia held that 'the term used as "material" required for manufacture of export products would encompass such entities also which are not only directly used or usable as such in the manufacturing processes but also which could be used with same processing". This Tribunal in the case of Unicolloide Impex v. Commissioner, Mumbai in Final order dated 11-6-2020 (supra) has accepted the contentions of the*

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appellant that the import of 'wheat gluten" as 'flour' stood settled by the decision of the Tribunal in Uni Colloide Impex v. CC, Ahmedabad [2014 (310) E.L.T. 583 (Tri. - Ahmd.) (supra) and that two orders dated 12th September, 2011 and 16th December, 2011, of Commissioner of Customs (Appeal), having taken this view could not be reopened by the adjudicating authority as these had been accepted as legal and proper in review proceedings prescribed by the statute.

4.1 As regards the question of compliance of Para 4.12(i) and (ii) of FTP, it is fairly agreed that Wheat Flour / Wheat Gluten are specific items and not generic or alternative inputs. The aforementioned paras shall be applicable only for items described in Generic terms or alternative entries as mentioned in the SION. A single quantity is mentioned in the DFIA. The provision of Para 4.12(ii) of FTP can be applied only when SION prescribes alternative inputs with relevant quantities, which shall be allowed in proportion to the quantities actually used in export product. No such inputs or quantities are mentioned against the input item. Therefore, the above provision cannot be applied in the present case.

4.2 As per Board Circular No.46 of 2007 and DGFT Circular 50 of 2008, no correlation is required for technical characteristics/quality and technical specification between imported goods and export goods unless item is specified under Para 4.55.3 of HBP (New Para 4.30 of FTP). Neither

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Wheat Flour nor Wheat Gluten Flour is a specified item under Para 4.30 of FTP. It is settled law that Board Circulars are binding on the department. Further DGFT Policy Circular 72 of 2008 allows import of alternative inputs either used or capable of using in the export goods, In this case, it is evident from the DFIA that the Exporter has used both Wheat Gluten as well as Wheat Gluten Flour in the Export goods i.e., Biscuits.

4.3 With respect to the actual use of goods in the export product for claiming DFIA benefits, it has already been answered by the Hon'ble Bombay High Court in the case of Shah Nanji Nagsi Export Ltd. v. UOI – 2019 (367) E.L.T. 335 (Bom.). This Tribunal has followed the said order in the appellant's own case (supra).”

17. During the course of arguments, the learned Senior Panel Counsel appearing on behalf of the respondent brought to the notice of the Court the Policy Circular No.13 dated 31.01.2011 and submitted that the same has replaced the earlier circular dated 11.09.2009. The subsequent circular dated 31.01.2011 was in fact taken into consideration in the above judgment and only thereafter, the findings were rendered.

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18. In view of the above, the consistent stand taken by CESTAT till date is that, Wheat Gluten is wheat flour with specific technical characteristics.

19. The stand taken by the respondent is that, no appeal was filed against the decision taken by CESTAT, considering the monetary limits. It was further contended that non-filing of the appeal on monetary limits by itself will not take away the right of the respondent and that issue is always left open. To substantiate the same, Section 131BA(3) of the Customs Act is relied upon.

20. The learned Senior Panel Counsel also relied upon the judgment of the Apex Court in ***C.K.Gangadharan and another Vs Commissioner of Income Tax, Cochin***, reported in ***2008 (8) SCC 739***, wherein the Apex Court had referred the issue to a larger Bench in the following terms :

> *"12. If the assessee takes the stand that the Revenue acted mala fide is not preferring appeal in one case and filing the appeal in other case, it has to establish mala fides. As a matter of fact, as rightly contended by the learned counsel for*

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the Revenue, there may be certain cases where because of the small amount of revenue involved, no appeal is filed. Policy decisions have been taken not to prefer appeal where the revenue involved is below a certain amount. Similarly, where the effect of decision is revenue neutral, there may not be any need for preferring the appeal. All these certainly provide the foundation for making a departure.

13. In answering the reference, we hold that merely because in some cases the Revenue has not preferred appeal that does not operate as a bar for the Revenue to prefer an appeal in another case where there is just cause for doing so or it is in public interest to do so or for a pronouncement by the higher court when divergent views are expressed by the Tribunals or the High Courts.

14. The matter shall be placed before the Bench concerned for disposal of the appeals."

21. After the above order was passed by the Apex Court, it is informed to this Court that the larger Bench is yet to be constituted to go into that issue. In any case, the language that is used in Section 131BA(3) of the Act, uses the term "*No person, being a party in appeal, application, revision or*

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reference", makes it clear that it will confine itself only to those parties to the proceedings and will not apply across the Board to all persons.

22. It is not necessary for this Court to further digress on this issue, since the Apex Court had made it very clear that the Assessing Officer is bound by the findings rendered by CESTAT. Useful reference can be made to the judgment of the Apex Court in ***Union of India Vs Kamlakshi Finance Corporation Ltd.,*** reported in ***1991 (55) E.L.T. 433 (S.C.)***. The relevant portion is extracted hereunder :

> *"6. Sri Reddy is perhaps right in saying that the officers were not actuated by any mala fides in passing the impugned orders. They perhaps genuinely felt that the claim of the assessee was not tenable and that, if it was accepted, the Revenue would suffer. But what Sri Reddy overlooks is that we are not concerned here with the correctness or otherwise of their conclusion or of any factual mala fides but with the fact that the officers, in reaching their conclusion, by-passed two appellate orders in regard to the same issue which were placed before them, one of the Collector (appeals) and the other of the Tribunal. The High Court has, in our view, rightly criticised this conduct of the Assistant Collectors and the harassment to the assessee caused by the failure of these officers to give effect*

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to the orders of authorities higher to them in the appellate hierarchy. It cannot be too vehemently emphasised that it is of utmost importance that, in disposing of the quasi-judicial issues before them, revenue officers are bound by the decisions of the appellate authorities. The order of the Appellate Collector is binding on the Assistant Collectors working within his jurisdiction and the order of the Tribunal is binding upon the Assistant Collectors and the Appellate Collectors who function under the jurisdiction of the Tribunal. The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not "acceptable" to the department - in itself an objectionable phrase - and is the subject-matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent Court. If this healthy rule is not followed, the result will only be undue harassment to assessees and chaos in administration of tax laws."

23. As on today, the decision that was taken by CESTAT to the effect that Wheat flour and Wheat Gluten fall under the same classification, has not been taken on appeal. This is inspite of the fact that if a substantial question

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of law is involved, it ought to be questioned by the Department, if they are aggrieved, irrespective of monetary limit. Till this position is reversed in the manner known to law, the Assessing Officer is bound by the decision taken by CESTAT.

24. The impugned orders have been passed only on the ground that Wheat Gluten is not covered under DFIA Licence and therefore, the petitioner is not eligible to claim exemption. If the CESTAT has already taken a view that Wheat flour and Wheat Gluten fall under the same classification, the entire proceedings of the respondent cannot be sustained, since all the other findings hinges upon only this issue.

25. In the light of the above discussion, this Court finds that the respondent who was bound by the decision taken by CESTAT, cannot be permitted to take a different view, in the light of judgment of the Apex Court referred supra. Thus, the impugned orders passed by the respondent, suffers from lack of jurisdiction. It goes without saying that if the Department, in an appropriate case, is aggrieved by the decision taken by CESTAT, and since it

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involves substantial questions of law on the classification, it will be left upon to the Department to file an appeal and agitate their case. Till that is done, the Assessing Officers will be bound by the findings rendered by CESTAT.

26. In the result, the impugned orders passed by the respondent in all the writ petitions stand quashed and all the above writ petitions stand allowed. No costs. Consequently, connected miscellaneous petitions are closed.

15-10-2025

Index : Yes
Neutral Citation : Yes
Speaking Order

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To:
The Additional Commissioner of Customs
O/o. The Commissioner of Customs
Chennai II Commissionerate
Chennai Customs House
60, Rajaji Salai, Chennai – 600 001.

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N. ANAND VENKATESH., J

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