

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH,
COURT NO. I

CUSTOMS APPEAL NO. 51787 OF 2021

[Arising out of the Order-in-Appeal No. CC (A) CUS/D-II/Prev./NCH/665/2021-2022 dated 09/08/2021 passed by The Commissioner of Customs (Appeals), New Delhi – 110 037.]

M/s Videojet Technologies (I) Pvt. Ltd.Appellant
C/o Geet Enterprises,
428, Ground Floor,
F.I.E. Patparganj Industrial Area,
New Delhi – 110 092.

Versus

Joint Commissioner of Customs,Respondent
Preventive Commissionerate,
New Customs House,
New Delhi – 110 037

APPEARANCE:

Shri Gopal Mundra, Advocate for the appellant.
Shri Rakesh Kumar, Authorized Representative for the
Department

CORAM:

HON'BLE JUSTICE MR. DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 50753/2025

DATE OF HEARING : 07.04.2025
DATE OF DECISION: 23.05.2025

P.V. SUBBA RAO

The order-in-appeal dated 09.08.2021 passed by the
Commissioner (Appeals)¹ whereby he upheld the order in
original dated 30.9.2019² passed by the Joint Commissioner
and dismissed the appeal filed by **M/s. Videojet**

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- 1. impugned order**
 - 2. OIO**

Technologies (I) Pvt. Ltd.³ is assailed in this appeal. The operative part of the order of the Joint Commissioner is as follows:

ORDER

- (i) I reject the declared classification of goods mentioned in Annexure to Panchnama dated 25.9.2017 having declared value of Rs. 1.5 crore as accepted in their Supurdginama both dated 25.9.2017 reported to be imported at JNCH, Mumbai by M/s. Video Jet Technologies (I) Pvt. Ltd. and transferred to M/s. Geet Enterprises, 428, Ground Floor, FIEE, Patparganj Area, Delhi, their C&F agent as declared under Chapter 32 of Customs Tariff Act, 1975 and order to reclassify the declared items in Customs Tariff Head 29141200 of the Customs Tariff Act, 1975.
- (ii) I order confiscation of the impugned goods seized as per Annexure to Panchnama dated 25.9.2017 under section 111(d) of the Customs Act, 1962.
- (iii) I impose penalty of Rs. 10,00,000/- (Rupees ten lakh only) on M/s. Videojet Technologies (I) Pvt. Ltd. under section 112 of the Customs Act, 1962.
- (iv) I impose penalty of Rs. 25,00,000/- (Rupees Twenty Five Lakh only) on M/s. Videojet Technologies (I) Pvt. Ltd. under section 114AA of the Customs Act, 1962.

2. The above order was affirmed in the impugned order of the Commissioner (Appeals). In this appeal, the appellant prayed for setting aside the impugned order and to restrain the departmental officers from taking any proceedings for recovery of duty, interest and penalty. Since the appellant made the mandatory pre-deposit under section 129E of the Customs Act, 1962⁴ and filed this appeal, recovery of the remaining amount automatically stands stayed as per section

3. appellant

4. Customs Act

129E. We only need to decide whether the Commissioner (Appeals) was correct in upholding:

- a) Rejection of the classification of the imported goods under **Chapter 32** of the Customs Tariff and reclassifying them under **Customs Tariff Item⁵ 29141200** (as Methyl Ethyl Ketone) [neither the impugned order nor the appeal indicate the **CTI** under **Chapter 32** under which various goods were classified by the appellant];
- b) Confiscation of the goods under section 111(d) of the Customs Act;
- c) Imposition of penalty under section 112 of the Customs Act; and
- d) Imposition of penalty under section 114AA of the Customs Act;

3. The facts which led to the issue of the impugned order are as follows. The appellant imports and sells high-quality industrial printers, ink-jet printers, laser marking systems and case coding systems, ink and ink related consumables which are used by various industries. The ink and ink related consumables imported by the appellant contain various ingredients including Methyl Ethyl Ketone (MEK) ranging from 35% to 99%.The appellant imported the consumables and cleared them through the customs at Jawahar Custom House, Nhava Sheva self-assessing the Bills of Entry classifying the goods under various **CTI** of **Chapter 32** of the Customs Tariff. This chapter covers '*Tanning or dyeing extracts; tannins and their derivative; dyes, pigments and other coloring matter; paints and varnishes; putty and other mastics; inks*'.

5. CTI

4. The Joint Commissioner of the Special Intelligence and Investigation Branch⁶ of Nhava Sheva, sent a letter to the Commissioner of Customs (Preventive), New Delhi stating that the appellant had imported and cleared MEK without obtaining a No Objection Certificate (NOC) from the Narcotics Commissioner. In pursuance of this letter, the officers of Commissioner of Customs (Preventive) Delhi seized the goods imported by the appellant from its warehouse at Patparganj, Delhi. They drew samples of two goods. Later, on 4.10.2017, they drew sample of another good. The three samples were as follows:

- (i) 20577 one gallon Exp 10-Marc-19 S.No. 170691457EG (sample drawn on 4.10.2017)
- (ii) V720-D expiry dated 12.7.2019 Serial No. 170930817ZH
- (iii) V902-Q Expiry date 20.12.2019 Serial No. 171710720ZH

5. They sent the samples for testing to the Chief Examiner, Central Revenue Control Laboratory⁷ with test memos as follows:

- (i) Description & ingredient along with percentage of each sample.
- (ii) Whether Butanone (Methyl ethyl Ketone/MEK) present or otherwise.
- (iii) % of Butanone/MEK in each part number.
- (iv) Presence of intoxication or psychotropic substances or effects thereof.

6. SIIB
7. CRCL

6. CRCL sent reports on 2.11.2017 which did not exactly answer the four questions in the test memos. The test reports were as follows:

- (i) Representative sample 20577, one gallon Expiry date 10.3.2019, S.No. 170691457EG

Report - The sample is in the form of dark blue coloured liquid. It is mainly composed of volatile organic solvent (Butanone=Methyl ethyl Ketone) along with organic colouring matter & polymeric compound based on acrylate.

NVR=8.4% by mass.

(Butanone) Volatile Organic solvent=89.0% by volume.

It gives tack free adherent coating.

- (ii) Representative sample V720-D expiry date 12.7.2019, Serial No.171930817ZH (750 ml)

Report- The sample is Butanone (methyl ethyl ketone) in the form of clear colourless liquid).

- (iii) Representative sample V-902Q expiry date 20.12.2019, Serial No.171710720ZH (1L)

Report- The sample is Butanone (methyl ethyl ketone) in the form of colourless liquid.

7. Thereafter, the officers of Commissioner of Customs (Preventive), New Delhi completed their investigation and issued Show Cause Notice dated 23.3.2018⁸ and the proposals in the SCN were confirmed by the Joint Commissioner in his OIO and upheld by the Commissioner (Appeals) through the impugned order.

8. The undisputed legal position is that MEK is notified as a 'controlled substance' under the Narcotic Drugs and

8. SCN

Psychotropic Substances Act, 1985⁹ and it can be imported only after obtaining a No Objection Certificate (NOC) from the Narcotics Commissioner as per clause 11 read with Schedule-C of the NDPS (Regulation of Controlled Substances) Order, 2013¹⁰ issued under the NDPS Act.

9. The dispute in this case is whether an NOC from the Narcotics Commissioner as per the RCS Order is also required to import goods which, according to the appellant, are ink and ink consumables which are not MEK but which contain MEK to extent of 35% to 99%. According to the Revenue, such an NOC is required before importing the goods which contained MEK and since the appellant had imported them without obtaining an NOC, the imported goods were liable to confiscation under section 111(d) of the Customs Act, 1962 and the appellant is liable to penalties under sections 112 and 114AA of the Customs Act. According to the Revenue, the imported goods should also be re-classified under **CTI 29141200** as MEK.

10. According to the appellant, an NOC from the Narcotics Commissioner was not required because it had not imported MEK but only imported certain goods which contained MEK and as per the RCS Order, there is no requirement to obtain NOC for their import. According to the appellant, the imported

9. NDPS Act
10. RCS Order

goods, being inks and ink consumables, deserve to be classified under Chapter 32 of the Customs Tariff.

11. The Joint Commissioner held in his OIO that the imported goods, as per the admission of the appellant, had 35% to 99% MEK and therefore, they deserve to be classified as MEK under **CTI 29141200**. On the question of requirement of NOC from the Narcotics Commissioner, since the imported goods were mainly composed of MEK, he held that NOC from the Narcotics Commissioner was required. To arrive at this conclusion, he relied on the order dated 3.11.2017 passed by the Narcotics Commissioner stating the NOC will be required if MEK is present in any item and such MEK can either be extracted from such item and/or such an item can be used in place of MEK (may not be as efficiently as MEK) for manufacture of Narcotic Drugs or Psychotropic Substances.

12. Since the appellant had not obtained an NOC before import, he held that the goods were liable for confiscation under section 111(d) of the Customs Act. He also held that the appellant had, through various acts of omission and commission, rendered themselves liable to penalty under section 112 and 114AA of the Customs Act.

13. In the impugned order, the Commissioner (Appeals) upheld the order of the Joint Commissioner only on the ground that the appellant had not made any new submissions which were not raised before the Joint Commissioner. In other words,

he did not apply his mind to the submissions made by the appellant because there were no new submissions and on the submissions already made before the Joint Commissioner, he simply accepted the findings of the Joint Commissioner and did not apply his own mind to the issues. The relevant portion of the impugned order is reproduced below:

"5.1 I have gone through the case records, grounds of appeal, written submission made by the advocate of the appellant and case laws cited by the appellant. Before proceeding further, I note that the appellant has mainly based appeal on the ground that the original adjudicating authority should have kept the proceedings in abeyance till final disposal of the case pending before the Hon'ble High Court. On this point, I observe that the original adjudicating authority has recorded his detailed findings in para 14.4 of the OIO and the appellant has not brought on records any additional material to distinguish the findings of the original adjudicating authority. On going through the impugned OIO, I find that the appellant had mis-declared the impugned goods and the same was confirmed by the CRCL report that the impugned goods were mis-declared. The appellant has failed to counter specific findings of the adjudicating authority and has reiterated their contentions raised before the adjudicating authority. Since no reasons have been cited to counter the findings of the adjudicating authority except grounds taken before him, I find that the order of the adjudicating authority needs to be upheld and merits no interference".

14. Thus, the Joint Commissioner followed the Order of the Narcotics Commissioner dated 3.11.2017 clarifying to the appellant that NOC was required for the imported goods. The Commissioner (Appeals) accepted the views of the Joint

Commissioner without independently applying his mind to the issues.

15. We have heard learned counsel for the appellant and learned authorised representative for the Revenue and perused the records.

16. Learned counsel for the appellant asserts that what the appellant had imported were inks and ink consumables and not MEK. These were correctly classifiable under Chapter 32 of the Customs Tariff and the lower authorities erred in changing the classification to **CTI 29141200** (which is the CTI for MEK). He also asserts that as per the RCS order, NOC was required to import MEK and not to import any goods containing MEK. Therefore, the appellant had not violated any provision of the law by not obtaining an NOC from the Narcotics Commissioner. Consequently, the confiscation of the imported goods under section 111(d) of the Customs Act and the penalties imposed under section 112 and 114AA on the appellant also cannot be sustained.

17. Learned counsel submits that the short issue to be decided is if import of the disputed goods which contain MEK requires an NOC from the Narcotics Commissioner as per the RCS Order. Consequently, whether the appellant violated the RCS Order and whether the goods were liable for confiscation under section 111(d) of the Customs Act and whether the appellant was liable to penalties.

18. Even before importing the imported goods, the appellant had met the Narcotics Commissioner on 11.6.2015 and submitted a representation on 8.6.2015 stating that the inks which they import contain MEK ranging from 35% to 90% and seeking clarification if any NOC is required for their import under the RCS Order. The appellant followed it up with reminders. No reply was received and hence they had filed Writ Petition No. 10730 of 2017 in Bombay High Court and the High Court passed order dated 13.10.2017 directing the Narcotics Commissioner to decide on the representations of the appellant. Thereafter, the Narcotics Commissioner passed an Order dated 3.11.2017. In this order, the Narcotics Commissioner recorded clearly that 'preparations of MEK are not covered by the RCS order' in paragraph 13 which reads as follows:

"13. It is nobody's case that preparation of MEK are covered under the scope of RCS order, the whole dispute is whether the items which contains MEK will be considered as MEK per se or as preparation of MEK. The plain reading of definition of "preparation" gives an impression that irrespective of percentage of drug/precursor chemical, an item is a "preparation" even if it contain quiet a high concentration of even 1 gram of sugar in a litre of water would be termed as sugar solution, though such a solution w8ill not have any distinct characteristics of sugar. Therefore, literal meaning of term preparation should not be adopted to resolve the present dispute specially when the whole purpose of RCS order is to exercise control over the substances which are capable of being misused for manufacture of narcotic drug and/or psychotropic substance. Looking at this ambiguous position, I am of the

opinion that a reasonable and logical meaning has to be discerned from the definition of "preparation" to take a proper view".

19. After clarifying that preparations of MEK are not covered by the RCS Order, however, the Narcotics Commissioner passed the order stating "In view of this position, considering the larger purpose behind framing of RCS Order, 2013 to regulate trade of precursor chemical (which are capable of being used for manufacture of Narcotic Drugs or Psychotropic Substances), I hold that for the purpose of interpretation for scope of term MEK in RCS Order, 2013, principles as mentioned in Para 14 of Article 12 of the said Convention should be adopted i.e., NOC will be required if MEK is present in any item and such MEK can either be extracted from such item and/or such an item can be used in place of MEK (may not be as efficiently as MEK) for manufacture of Narcotic Drug or Psychotropic Substances."

20. Thus, the undisputed legal position is that preparations which contain MEK are not covered by the RCS Order and no NOC is required. The expansion of the scope of the RCS Order by the Narcotics Commissioner in his Order is not correct. The appellant assailed the order of the Narcotics Commissioner before the Bombay High Court and a decision is pending. The appellant prays that the impugned order may be set aside and the appeal may be allowed.

21. Learned authorised representative for the Revenue vehemently supported the impugned order and submitted that the appellant violated the RCS Order by importing the inks and ink consumables which have a large percentage of MEK without obtaining an NOC from the Narcotics Commissioner. He further asserted that since the major composition of the imported goods was MEK, they should be classified as such under **CTI 29141200**. He therefore, prays that the impugned order may be upheld and the appeal may be dismissed.

22. We have considered the submissions on both sides and perused the records. We now proceed to decide the issues identified by us in paragraph 2 above.

Rejecting the classification of the imported goods under Chapter 32 of the Customs Tariff and reclassifying them under Customs Tariff Item¹¹ 29141200 (as Methyl Ethyl Ketone)

23. The appellant classified the imported goods as inks and ink consumables under Chapter 32. As per the order of the Joint Commissioner, upheld by the Commissioner (Appeals), they deserve to be classified as MEK under **CTI 2914 1200** for the reason that on testing all three samples were found to be predominantly MEK.

24. There is no dispute that the goods were imported as inks/ink consumables and were packed and labelled as such. On the other hand, it is also not in dispute that they have a

11. CTI

very large proportion of MEK. In fact, the appellant's representation to the Narcotics Commissioner referred to above also clarifies that they can contain up to 90% MEK.

25. The question is how such preparations should be classified. The General Rules of Interpretation¹² determine how the goods should be classified. The relevant Rules are as follows:

Rule 1. The titles of Sections, Chapters and sub-chapters are provided for ease of reference only; for legal purposes, **classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes** do not otherwise require, according to the following provisions:

Rule 2. (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished articles has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.

(b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.

Rule 3. When by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally

specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, in so far as this criterion is applicable.

(c) When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

(emphasis supplied)

26. Applying Interpretation Rule 1, we proceed to examine the chapter notes of the two chapters. Chapter note 1(a) states that 'Except where the context otherwise requires, the headings of this chapter apply only to "separate chemically defined organic compounds, where or not containing impurities". Chapter Note 1(a) to Chapter 32 states that 'this chapter does not cover "separate chemically defined elements or compounds except those of heading 3203 or 3204, inorganic products of a kind used as luminophores (heading 3206) glass obtained from fused quartz or other fused silica in the forms provided for in heading 3207, and also dyes and other colouring matter put up in forms or packings for retail sale, of heading 3212).

27. What is evident from the chapter notes of the two chapters is that specially defined chemicals fall under Chapter 29 and they are excluded from the scope Chapter 32. The undisputed fact is that the imported goods were inks or ink

consumables and that they had a very large content of MEK. Therefore, they were not specially defined chemicals and therefore, they get excluded from the scope of Chapter 29.

28. It needs to be pointed out that the appellant claimed classification under Chapter 32 and Revenue proposed to change the classification to Chapter 29, more specifically **CTI 29141200** which is MEK. Therefore, it is for the Revenue to prove that the goods were MEK and nothing else. The test memos sent with the three samples did not ask if the samples were inks or ink consumables as claimed by the appellant. The test memo asked four questions, viz., (i) Description & ingredient along with percentage of each sample, (ii) Whether Butanone (Methyl ethyl Ketone/MEK) present or otherwise, (iii) percentage of Butanone/MEK and (iv) Presence of intoxication or psychotropic substances or effects thereof. The test memos were not designed to ascertain if the appellant had mis-declared the goods. The irresistible conclusion is that the investigation proceeded under the belief that the appellant had correctly declared the nature of the goods but they contained MEK. The test memos wanted to know the if MEK was present and if so, its percentage in the good and also the details of all the ingredients. Interestingly, the test memos also wanted to know presence of intoxication (sic) and psychotropic substances or effects thereof. Evidently, MEK is not a drug but a chemical which is a controlled substance under the RCS Order.

29. The test reports did not answer all the four questions with respect to each of the three samples. Representative sample 20577, one gallon Expiry date 10.3.2019, was reported to be in the form of dark blue coloured liquid, mainly composed of volatile organic solvent (Butanone=Methyl ethyl Ketone) (89%) along with organic colouring matter & polymeric compound based on acrylate. The proportion of other materials has not been indicated. Sample V720-D expiry date 12.7.2019, and Sample V-902Q expiry date 20.12.2019 were reported to be Butanone (methyl ethyl ketone) in the form of colourless liquid. It is not clear if there were any other ingredients also and if so, what the percentage of MEK was.

30. A question which may arise is if the goods are predominantly MEK, why can they not be classified as MEK by treating the other materials as impurities, etc.? If a good has over 90% of one ingredient and only 10% of others, why cannot it be classified based on the overwhelming ingredient? The answer to these questions lies in interpretative rule 3(a) which holds that 'Goods which are mixtures of two or more substances should be classified based on that substance which gives it its essential character'.

31. One ingredient may be overwhelming by quantity quite a different ingredient may give the good its essential character and if so, the latter is relevant for classification. For example, a tablet of 500 mg of say, Amoxycillin, will actually weigh

several grams. The active ingredient, Amoxycillin will be only 500 mg and the rest will be inert materials such as talc, glue, etc. The overwhelming ingredient of such a tablet will be talc but what gives the tablet its essential character is the miniscule quantity of Amoxycillin. It has to be classified as Amoxycillin and not as talc. Similarly, most tonics are just alcohol or some sugar syrup by weight, most injections are just water by weight but they should be classified as per the active ingredient, which, though in a miniscule quantity, give the essential character of the good. An easy way of identifying the essential character of a good is knowing how it is being sold and bought in the market. Is it being sold as a piece of talc or as Amoxycillin? Similarly, in this case, what needs to be seen is if the imported goods were being sold as inks or ink consumables as claimed by the appellant or is there any evidence that they are being sold as MEK? We do not find anything on record to justify the change of classification of the goods to **CTI 29141200**. This classification of the goods by the Joint Commissioner which was upheld in the impugned order needs to be set aside for this purpose.

Confiscation of the goods under section 111(d) of the Customs Act

32. Section 111(d) of the Customs Act renders goods which are imported contrary to any prohibition under the Customs Act or under any other law liable to confiscation. It reads as follows:

Section 111. Confiscation of improperly imported goods, etc. -

The following goods brought from a place outside India shall be liable to confiscation: -

(d) any goods which are **imported** or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, **contrary to any prohibition imposed by or under this Act or any other law for the time being in force;**

33. The case of the Revenue is that the appellant had imported the disputed goods which are MEK without obtaining the NOC from the Narcotics Commissioner, they were liable to confiscation under section 111(d).

34. In passing the OIO, the Joint Commissioner relied on the order passed by the Narcotics Commissioner. We understand that the order of the Narcotics Commissioner has been assailed by the appellant before Bombay High Court and it is pending.

35. In this case, the limited question before us is the confiscation under section 111(d). As per this section, goods will be liable to confiscation if they are imported contrary to any prohibition imposed under the Customs Act or any other law for the time being in force. There cannot be any dispute that the RCS Order being a sub-ordinate legislation under the NDPS Act, is a law for the time being in force.

36. The Joint Commissioner confiscated the goods referring to the order passed by the Narcotics Commissioner which is not 'a law for the time being in force'.

37. A plain reading of the relevant portions of the RCS Order shows that it has been issued under section 9A of the NDPS Act and it regulates various controlled substances including MEK. It has the following three Schedules and each controlled substance is listed in one or more of these schedules :

- (i) Schedule-A Controlled substance whose manufacture, distribution, sale, purchase, possession, storage and consumption are regulated
- (ii) Schedule-B Controlled substance whose export from India is subject to controls
- (iii) **Schedule-C Controlled substance whose import into India is subject to controls**

38. Schedule C and the corresponding clause 11 of the RCS Order are relevant to this appeal. These are reproduced below.

Schedule-C substances are those controlled substance whose import into India is subject to controls as specified in this Order.)

1. Acetic anhydride
2. N-Acetylanthranilic acid
3. Anthranilic acid
4. Ephedrine, its salts and preparations thereof
5. Ergometrine and its salts
6. Ergotamine and its salts
7. Isosafrole
8. Lysergic acid and its salts
9. 3,4-methylenedioxyphenyl 2-propanone
- 10. Methyl ethyl ketone**
11. Norephedrine (Phenylpropanolamine), its salts and preparations thereof
12. 1-phenyl 2-propanone
13. Phenylacetic acid and its salts
14. Piperonal
15. Potassium permanganate
16. Pseudoephedrine, its salts and preparations thereof
17. Safrole and any essential oil containing 4% or more safrole
18. [4-Anilino-N-phenethylpiperidine (ANPP)
19. N-Phenethyl-4-piperidone(NPP)]

11. Import of controlled substance in Schedule-C.

(1) No person shall import any controlled substance in Schedule-C except in accordance with the conditions of the No Objection Certificate issued by the Narcotics Commissioner.

(2) Anyone who intends to import a controlled substance included in Schedule-C shall apply to the Narcotics Commissioner in Form-K for a No Objection Certificate.

(3) The Narcotics Commissioner shall issue or deny the No Objection Certificate within twenty one working days from the date of receipt of application and in case the No Objection Certificate is not issued within the stipulated time period or denied, the Narcotics Commissioner or any other officer authorised by him in this regards shall inform the applicant the reasons thereof.

(4) The No Objection Certificate for import issued by the Narcotics Commissioner shall be valid for a single consignment only.

(5) Every importer shall submit the details and documents relating to the import, such as invoice, cargo manifests, customs, transport and shipping documents relating to the import of the controlled substance in Schedule-C which shall contain the details such as name of the controlled substance, quantity and the name and address of the consignee, exporter and the importer, to the Narcotics Commissioner within a period of seven days of import.

39. The short point to be seen is if the imported goods are covered in Schedule C of the RCS Order. A plain reading shows that MEK is covered at S.No. 10 of Schedule C. Goods or materials which contain MEK or preparations of MEK or salts of MEK are not covered by S.No.10. Wherever the intention was to cover not only the controlled substance but also its salts Schedule C indicates so. The relevant entries are:

- 5. Ergometrine and its salts
- 6. Ergotamine and its salts
-
- 8. Lysergic acid and its salts
-

13. Phenylacetic acid and its salts

40. Wherever the intention was to cover not only the controlled substance but also its salts and preparations, the Schedule indicates so. The relevant entries are:

4. Ephedrine, its salts and preparations thereof

.....

11. Norephedrine (Phenylpropanolamine), its salts and preparations thereof

.....

13. Phenylacetic acid and its salts

.....

16. Pseudoephedrine, its salts and preparations thereof

41. In respect of one precursor, viz., Safrole, any essential oil containing Safrole of 4% or more is also covered. The relevant entry in the Schedule reads as follows:

17. Safrole and any essential oil containing 4% or more safrole

42. Clearly, salts or preparations or goods containing MEK were not included in Schedule C of the RCS Order. The Narcotics Commissioner also clarified in paragraph 13 of his order that salts or preparations containing MEK are not included in Schedule C to the RCS Order.

43. We, therefore, find that the undisputed legal position is that an NOC from the Narcotics Commissioner was not required to import goods which contain MEK and such an NOC is required only to import MEK. The Joint Commissioner confiscated the goods under section 111(d) referring to not

just the RCS Order but to the Order passed by the Narcotics Commissioner.

44. In our considered view, the order passed by the Narcotics Commissioner cannot be called 'any other law for the time being in force' as per section 111(d). Law can only mean a law passed by the legislature or a subordinate legislation (such as the RCS Order). The confiscation of the goods under section 111(d), therefore, cannot be sustained and is liable to be set aside and is set aside.

Penalty under section 112 of the Customs Act

45. Section 112 renders one liable to penalty for acts or omissions which rendered some goods liable to confiscation under section 111. Since we have found that the confiscation of the goods under section 111 cannot be sustained, the penalty under section 112 cannot also be sustained and needs to be set aside.

Penalty under section 114AA of the Customs Act

46. This section reads as follows.

Section 114AA. Penalty for use of false and incorrect material. - If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.

47. No reasons were given by the Joint Commissioner in his OIO or by the Commissioner (Appeals) in the impugned order for imposing penalty under section 114AA. Nothing in the records shows that the appellant had made any declaration or statement or produced any document which is false or incorrect, let alone, doing so knowingly. The appellant had declared the goods as inks/ink consumables and they were seized as such. The appellant was always open about the fact that they contain MEK and had also declared so to the Narcotics Commissioner in its representations made well before the imports were made. Penalty under section 114AA cannot be sustained and needs to be set aside.

48. In view of the above, the impugned order cannot be sustained and needs to set aside. The impugned order is set aside and the appeal is allowed. The appellant will be entitled to consequential relief.

(Order pronounced in open court on 23/05/2025.)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

PK