

## Union of India & Ors. v. Cosmo Films Limited

**Case number:** Civil Appeal No. 290 of 2023 with Civil Appeal Nos. 298, 303, 297, 296, 295, 294, 293 and 292 of 2023; Transfer Petition (Civil) No. 1526 of 2020 also listed on the cover

**Citation:** 2023 INSC 463; [2023] 7 SCR 185

**Decision date:** 2023-04-28

Advance authorisation: historical pre-import condition for import IGST and compensation-cess exemption; conditional refund/credit route

**Court:** Supreme Court

**Bench:** S. Ravindra Bhat and Dipankar Datta, JJ.

**Decision stage:** Final judgment

### 01 Facts

The advance-authorisation (AA) scheme permitted duty-free imports of inputs for manufacture of export products, subject to its conditions. Before GST, Notification No. 18/2015-Customs covered specified customs levies. On GST's introduction on 1 July 2017, import IGST and compensation cess were payable because the notification did not then exempt those new levies. Delays in obtaining refunds affected exporters' working capital. On 13 October 2017, Customs Notification No. 79/2017 and DGFT Notification No. 33/2015-2020 introduced an upfront IGST/cess exemption subject to physical exports and a pre-import condition. The dispute concerned the condition applying between 13 October 2017 and 9 January 2019, before its removal from 10 January 2019. Manufacturer-exporters following continuous production cycles or exporting in anticipation of authorisation challenged the requirement to import inputs before exporting the corresponding finished goods. DRI investigations treated later replenishment imports as ineligible for this exemption. The exporters argued that the condition conflicted with the AA scheme, disrupted commercial cycles, differentiated between levies and was impossible to satisfy for exports already completed under older authorisations. The Gujarat High Court set aside the condition as arbitrary and unreasonable. The Union appealed. The issues were the validity of the conditional exemption, the significance of the FTP and procedural handbook, and whether the 2019 removal could negate the condition for the preceding period.

**Pinpoint:** Paragraphs 1-6, 12-14, 25, 28-37 and 38-48; official PDF pages 2-5, 9-11, 18-24 and 24-31.

Historical period: paragraph 28, pages 19-20; later removal: paragraphs 13 and 70-71, pages 10 and 47-48.

### 02 Court Discussion

The Court rejected the premise that the pre-import condition was alien to the AA scheme or could apply only to a fixed list of inputs. Certain goods had already been subject to it, and FTP paragraph 4.13(i) reserved power to impose it on further goods by notification. The High Court had overlooked this retained power and the significance of HBP paragraph 4.27(d). The FTP was statutory, framed under section 5 of the 1992 Act; the handbook implemented policy and could not prevent its alteration. Trade Notice No. 11/2017 of 30 June 2017 had also warned that the GST regime would require payment of IGST/cess and recourse to applicable input-credit rules. The October 2017 exemption was conditional, rather than a continuation of an unrestricted entitlement. For its physical-export limb, exports abroad and supplies to SEZs qualified under the relevant FTP provisions, but other deemed/intermediate supplies did not. The Court held that an AA not wholly discharged through qualifying physical exports did not satisfy this exemption condition.

The exporters' commercial hardship did not establish unconstitutional arbitrariness. GST introduced a new credit and refund framework, and the Constitution did not require earlier concessions to continue unchanged. The Court recognised latitude for experimentation and adjustment in fiscal and economic policy, while retaining review for patent arbitrariness, discrimination or mala fides. It also rejected the alleged equivalence between basic customs duty and IGST: BCD was a levy at import without the same credit mechanism, whereas IGST entered a multi-stage credit chain. Their different treatment was therefore justified in the context of the new regime. An exemption or refund depended on the governing statutory scheme, not an unconditional constitutional right.

The later removal of the pre-import condition did not establish that it had been invalid while in force. Treating the notification of 10 January 2019 as effective from 13 October 2017 would impermissibly confer retrospective effect. Relying on Kanak Exports, the Court noted that section 5 did not confer power to make the policy retrospective merely because it permitted amendment. It therefore rejected the High Court's reasoning that withdrawal should erase the earlier condition. This reasoning concerns the historical import exemption, not a general prohibition on every statutory retrospective tax amendment.

**Pinpoint:** Paragraphs 49-59 (notice, policy hierarchy and exemption requirements), 60-69 and 72-74 (GST framework, hardship and classification), and 70-71 (no retrospective removal); official PDF pages 31-37, 37-47 and 48-49, and 47-48 respectively.

### 03 Decision

The Supreme Court set aside the Gujarat High Court's impugned judgment and orders and allowed the Revenue's appeals subject to the terms in paragraph 75. The respondents had enjoyed interim orders before the High Court's judgments. The Court therefore directed the Revenue to permit them to claim refund or input credit, whichever was applicable and/or wherever customs duty had been paid. The respondents were required to approach the jurisdictional Commissioner with documentary evidence within six weeks from 28 April 2023, the date of this judgment. Each refund/credit claim was to be examined on its merits, case by case, and the Revenue was to issue a circular prescribing a convenient procedure. This was a historical application window, not a recurring six-week period available to every later applicant. The Court neither awarded a quantified refund nor declared that every payment generated admissible ITC or a cash refund. It did not dispense with the need to establish eligibility. The signed judgment's operative paragraphs expressly allow the appeals; although the transfer petition is on the cover, no separate transfer-petition direction is stated there.

**Pinpoint:** Paragraphs 75-76; official PDF pages 49-50. The connected appeals and transfer petition are listed on official PDF page 1.

### 04 In Favour Of

#### **Union of India / Revenue on validity; limited case-by-case refund or credit application protection for the respondents**

In favour of the Union of India / Revenue on the validity of the pre-import condition and against retrospectively removing it for the disputed period. The exporter respondents obtained a limited, evidence-based opportunity to seek whichever refund or input credit was legally available. That procedural protection was not a merits finding that any particular claim had to be granted, and did not preserve the High Court's invalidation of the condition.

**Pinpoint:** Paragraphs 67, 69-71 and 75-76; official PDF pages 44-48 and 49-50.

## 05 AKHB REVIEW POINT

AKHB REVIEW POINT: Prepare an authorisation-wise and bill-of-entry-wise chronology of import, production and export dates, identifying the exemption actually claimed and whether export obligations were met through qualifying physical exports. Completion of an overall export obligation, use of some imported goods in later export production, or possession of an AA does not by itself prove compliance with this particular historical exemption condition. Separate the substantive IGST/cess exposure from the availability of ITC, any permissible refund, interest, penalty and authorisation redemption: those are distinct questions requiring their own legal basis and evidence.

For the paragraph 75 relief, retain the interim orders, documentary application and proof of filing within the Court's six-week window. Do not present that expired, respondent-specific direction as a new universal limitation period. Later implementation extended the port procedure beyond the named respondents, but it still did not make credit or refund automatic. Verify reassessed bills of entry, electronic payment records, GSTN transmission and the applicable GST eligibility conditions. Where credit is used for zero-rated supplies, separately check the refund route and rules governing the actual period. The 2019 removal, later DGFT clarifications and the 2025 EODC clarification require date-sensitive analysis; they are not substitutes for establishing the facts of the import. This is a customs/FTP interface with import GST, not an ordinary domestic CGST ITC judgment. The bounded later-source checks below do not certify today's complete law or the finality of every subsequent proceeding.

**Pinpoint:** AKHB analysis based on paragraphs 5-6, 38-48, 56-59, 65, 69-71 and 75-76; official PDF pages 4-5, 24-31, 35-37, 41-42, 46-48 and 49-50. Later administrative sources are identified below.

## Sources and limitations

### Relevant provisions

Constitution of India: Articles 14 and 19(1)(g), in the challenge to the historical exemption conditions

Foreign Trade (Development and Regulation) Act, 1992: sections 2(e) and 5; Foreign Trade Policy 2015-2020: paragraphs 4.03, 4.05, 4.13, 4.14 and 4.16

Handbook of Procedures 2015-2020: paragraph 4.27 and Appendix 4-J, as considered in the judgment

Customs Act, 1962: section 25(1); Customs Tariff Act, 1975: sections 3(7) and 3(9); IGST Act, 2017: section 5; GST (Compensation to States) Act, 2017: section 8

Notification No. 18/2015-Customs dated 1 April 2015, amended by Notification No. 79/2017-Customs dated 13 October 2017; DGFT Notification No. 33/2015-2020 dated 13 October 2017; withdrawal of the pre-import condition from 10 January 2019

Later implementation only: CBIC Circular No. 16/2023-Customs dated 7 June 2023; CGST Act, 2017 sections 16, 17 and 18 and applicable rules remain relevant to ITC eligibility

### Statutory note

Historical scope and bounded later developments: the condition at issue ceased from 10 January 2019; it is not described here as a general condition on present-day imports. DGFT Trade Notice No. 07/2023-24, 8 June 2023, paragraph 3, stated that affected imports during 13 October 2017 to 9 January 2019 could be regularised through the payments prescribed by Customs Circular No. 16/2023. DGFT Trade Notice No. 27/2023, 25 September 2023, clarified that imports on or after 10 January 2019 were outside this condition, including remaining imports under older or partly used AAs; imports on payment of IGST and

compensation cess were not subject to it irrespective of import date. These are administrative implementation clarifications, not retrospective invalidation of the Supreme Court's holding. Sources: <https://content.dgft.gov.in/Website/dgftprod/c6b4e8a1-9b0e-4159-8318-4d1d2f357f48/Trade%20Notice%20No.7%20dated%2008%20June%202023.pdf> and <https://content.dgft.gov.in/Website/dgftprod/a44faa69-c408-417e-ad61-679c4c7f92a0/Trade%20Notice%2027.pdf>

Mangalore Customs Public Notice No. 14/2023, dated 22 June 2023, paragraphs 3-5, officially reproduces the CBIC implementation route: application at the port's assessment group (not restricted to the litigation respondents), cancellation of the out-of-charge order, reassessment, electronic payment and a notional out-of-charge order enabling GSTN transmission. It can be applied once per bill of entry. ITC remains subject to CGST sections 16-18 and the rules; refund of IGST on outward zero-rated supplies remains conditional. The 2023 text also mentions applicable interest; this historical description does not determine current interest liability or resolve later litigation. Source: [https://bangalorecustoms.gov.in/wp-content/uploads/2024/05/mcc\\_pn\\_14\\_2023.pdf](https://bangalorecustoms.gov.in/wp-content/uploads/2024/05/mcc_pn_14_2023.pdf)

DGFT Policy Circular No. 07/2025-26, 11 November 2025, paragraph 4, subsequently clarified that EODCs should not be withheld, if all other requirements are fulfilled, in specified cases: IGST paid in cash at import clearance during the disputed period; non-availment of exemptions from IGST, compensation cess or other levies except BCD; or compliance with the prescribed pre-import and other procedural requirements. This concerns authorisation redemption, not an unconditional refund or waiver of tax. Source: <https://content.dgft.gov.in/Website/dgftprod/fbf770bb-54d1-454d-ab51-5e5c39112d70/clarification%20on%20redemption.pdf>

## Treatment note

Primary judgment and the specified official administrative documents checked on 12 October 2026. The CBIC circular's relevant implementation provisions were verified through Mangalore Customs' official reproduction; the standalone CBIC PDF endpoint did not load. No comprehensive subsequent-treatment or docket audit has been completed. In particular, later litigation concerning interest, confiscation, penalties and refund restrictions has not been comprehensively reconciled, and no claim is made that the 2023 circular settles those issues today. This AI-assisted, source-based AKHB research note is not evidence of human legal review and is not a substitute for professional advice on the reader's facts.

## Scope of source review

Complete 50-page official signed judgment, paragraphs 1-76, read in full. Title, appeal numbers, date and signed bench verified on the original; neutral and SCR citations separately checked against the official eSCR result. The disputed import-exemption period is 13 October 2017 to 9 January 2019. The Court's operative relief and subsequent administrative implementation are distinguished.

## Primary source

**Source description:** Supreme Court of India official signed judgment dated 28 April 2023

**Official source:** [Open source document](#)

**AKHB source PDF:** [Open source document](#)

**Judges:** S. Ravindra Bhat; Dipankar Datta

**Outcome kind:** final

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## Disclosures and source rights

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