

GAHC010110482026



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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/3018/2026

BHABANI OFFSET AND IMAGING SYSTEMS PVT. LTD. AND ANR
A COMPANY REGISTERED UNDER THE COMPANIES ACT, 1956 AND
PRESENTLY A COMPANY WITHIN THE AMBIT OF THE COMPANIES ACT,
2013, HAVING ITS PLACE OF BUSINESS AT 7, LACHIT LANE, RAJGARH
ROAD, GHY- 781007, ASSAM, REPRESENTED BY ITS DIRECTOR SRI ANJAN
SARMA.

2: ANJAN SARMA
S/O LATE ARJUN CHANDRA SARMA
A DIRECTOR OF BHABANI OFFSET AND IMAGING SYSTEMS PVT. LTD.
RESIDENT OF SATYA NARAYAN ENCLAVE
HARABALA PATH
ULUBARI
GHY
DIST- KAMRUP METRO
ASSAM
PIN- 781007

VERSUS

THE UNION OF INDIA AND 9 ORS
REPRESENTED BY THE SECRETARY, DEPARTMENT OF COMMERCE,
MINISTRY OF COMMERCE AND INDUSTRY, GOVT. OF INDIA, UDYOG
BHAVAN, MAULANA AZAD ROAD, NEW DELHI- 110011.

2:THE SECRETARY

GOVT OF INDIA
DEPARTMENT OF COMMERCE
MINISTRY OF COMMERCE AND INDUSTRY
UDYOG BHAVAN
MAULANA AZAD ROAD
NEW DELHI- 110011.

3:THE DIRECTORATE GENERAL OF FOREIGN TRADE
REPRESENTED BY THE DIRECTOR GENERAL OF FOREIGN TRADE
DEPARTMENT OF COMMERCE
MINISTRY OF COMMERCE AND INDUSTRY
UDYOG BHAVAN
MAULANA AZAD ROAD
NEW DELHI 110011.

4:THE DEPUTY DIRECTOR GENERAL OF FOREIGN TRADE
DIRECTORATE GENERAL OF FOREIGN TRADE
DEPARTMENT OF COMMERCE
MINISTRY OF COMMERCE AND INDUSTRY
GOVT OF INDIA
UDYOG BHAVAN
MAULANA AZAD ROAD
NEW DELHI 110011

5:THE JOINT DIRECTOR GENERAL OF FOREIGN TRADE
GUWAHATI
DIRECTORATE GENERAL OF FOREIGN TRADE
GUWAHATI OFFICES
DEPARTMENT OF COMMERCE
MINISTRY OF COMMERCE AND INDUSTRY
GOVT OF INDIA
R G BARUAH ROAD
GHY
ASSAM- 781024.

6:THE FOREIGN TRADE
DEVELOPMENT OFFICER
GUWAHATI
DIRECTORATE GENERAL OF FOREIGN TRADE
GUWAHATI OFFICES
DEPARTMENT OF COMMERCE
MINISTRY OF COMMERCE AND INDUSTRY
GOVT OF INDIA
R G BARUAH ROAD
GHY
ASSAM
PIN -781024.

7:THE DEPUTY DIRECTOR GENERAL OF FOREIGN TRADE
GUWAHATI
DIRECTORATE GENERAL OF FOREIGN TRADE
GUWAHATI OFFICES
DEPARTMENT OF COMMERCE
MINISTRY OF COMMERCE AND INDUSTRY
GOVT OF INDIA

R G BARUAH ROAD
GUWAHATI
ASSAM
PIN 781024

8:THE PRINCIPAL CHIEF COMMISSIONER OF CUSTOMS
OFFICE OF THE CHIEF COMMISSIONER OF CUSTOMS
KOLKATA CUSTOMS
PRO
CUSTOM HOUSE
15/1
STRAND ROAD
KOLKATA
WEST BENGAL- 700001.

9:THE SECRETARY
GOVT. OF INDIA
MINISTRY OF MICRO
SMALL AND MEDIUM ENTERPRISES
UDYOG BHAWAN
MAULANA AZAD ROAD
NEW DELHI- 110011.

10:THE SECRETARY
GOVT. OF INDIA
MINISTRY OF DEVELOPMENT OF NORTH EASTERN REGION (DONER)
VIGYAN BHAVAN ANNEXE
MAULANA AZAD ROAD
NEW DELHI- 110011

Advocate for the Petitioner : MR P K GOSWAMI, MR. S K DEKA,A GAUTAM,Y A SARKAR

Advocate for the Respondent : DY.S.G.I.,

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

22.06.2026

Heard Mr. P.K. Goswami, learned Senior Counsel assisted by Mr. A. Gautam, learned counsel for the petitioner and Mr. K. Gogoi, learned Central Government Counsel [CGC] for the respondent nos. 1 - 7, 9 & 10.

2. The petitioner no. 1 is a private limited company wherein the petitioner no. 2 is one of the Directors. The petitioner no. 2 represents the petitioner no. 1 company in the present proceeding.

3. The petitioner company in order to enhance its printing capability, imported a machine viz. 'Heidelberg Speed Master SM 74-4H SE' along with other associated accessories availing the benefit of Duty Exemption Scheme under Chapter 5 of the Export-Import Policy prevailing during the period from 2002-2007. The respondent Union of India in exercise of the powers under Section 5 of the Foreign Trade [Development and Regulation] Act, 1992 [the Foreign Trade Act, for short] notified the Export and Import [EXIM] Policy for the period 2002-2007, which came into effect from 01.02.2002. The Policy allowed import of new capital goods @ 5% customs duty, subject to an export obligation equivalent to 8 times of Cost, Insurance and Freight [CIF] value of capital goods, to be fulfilled over a period of 8 years to be reckoned from the date of issuance of license. Subsequently, the petitioner company also imported another machine viz. Top Setter P – 24 with Princet Print – ready system and a high – speed cutter. The value of the first imported machine was Rs. 3,05,28,830/- and the duty exempted was Rs. 1,04,40,860/- and the export obligation was Rs. 8,35,26,880/-. On the other hand, the CIF value of the second imported machine was Rs. 1,08,74,118/-, the duty exempted was Rs. 38,46,794/- and the export obligation was Rs. 3,07,74,352/-.

4. It is an admitted position that under the aforesaid two licenses, the total exempted amount was Rs. 1,42,87,654/- and during the subsequent period, the petitioner company failed to meet the export obligation of Rs. 8,35,26,880/- and Rs. 3,7,74,352/- respectively. As there is provision for seeking exemption in Clause 2.5 of the Export Import [EXIM] Policy whereunder the export permission of capital good was floated, the petitioner in view of its failure to meet the export obligation submitted application seeking its exemption from meeting the export obligation during the period : 2011-2016 before the respondent no. 3 and the concerned Ministry in the Government of India.

5. The present writ petition is preferred to assail the actions on the part of the

respondent nos. 5 to 7 authorities in view of their contemplated penal action under the provisions of the Foreign Trade Act. The petitioner has submitted that despite pendency of the exemption prayer before the concerned Ministry, the respondent nos. 5 to 7 have proceeded to issue notices in the form of show cause notice whereby the petitioner has been asked to submit documents on the premise that the petitioner company has failed to fulfill the export obligation against the exemption availed by it. One of such notices is dated 22.04.2026 as a final reminder to submit the documents regarding fulfillment of export obligation or else, necessary action would be initiated against the petitioner company under the Foreign Trade Act.

6. It is the contention of the learned Senior Counsel appearing for the petitioner that the show cause notices issued by the respondent authorities from time to time including the Show Cause Notice dated 22.04.2026, suffer from jurisdictional error in that failure to meet export obligation under the EXIM Policy and the Scheme framed thereunder will not invite an action under Section 11[2] of the Foreign Trade Act. In support of his submissions, he has submitted that the issue is already covered by a decision of the Hon'ble Supreme Court in **Embio Ltd. vs. Director General of Foreign Trade, [2024] 6 SCC 633**.

7. In response, Mr. Gogoi, learned CGC appearing for the aforesaid respondent authorities has vehemently opposed the contention advanced on behalf of the petitioner by submitting that the notice has only asked for the documents regarding meeting of export obligation against the benefit already availed by the petitioner company. He has submitted that it is an admitted position that the petitioner company has failed to meet the export obligation. Mr. Gogoi has submitted that the petitioner has alternative remedy of appeal and review under Section 15 and Section 16 of the Foreign Trade Act and therefore, the present writ petition is premature and is not to be entertained.

8. The matter would require consideration.

9. Issue notice, returnable on 31.07.2026.

10. As Mr. Gogoi, learned CGC has appeared and accepted notices on behalf of the respondent nos. 1 - 7, 9 & 10, issuance of formal notice to the said respondents is dispensed with. Mr. Gautam, learned counsel for the petitioner shall furnish requisite nos. of extra copies of the writ petition along with the annexures, to Mr. Gogoi within 2 [two] working days from today. The learned counsel for the petitioner shall also serve a copy of the writ petition along with annexure to the learned Standing Counsel, Customs within 2 [two] working days from today for service of notice upon the respondent no. 8.

11. It is a settled proposition that a show cause notice does not ordinarily give rise to a cause of action for preferring a writ petition under Article 226 of the Constitution of India. But in the event any notice in the form of show cause suffers from jurisdictional error, it cannot be said that a writ petition against such notice is not to be entertained. In the Notice dated 22.04.2026, the respondent authorities have asked the documents regarding the failure on the part of the petitioner company to meet the export obligation with the contemplated action under the Foreign Trade Act. Admittedly, the petitioner company failed to meet the export obligation.

12. In **Embio Ltd.** [supra], Section 11 of the Foreign Trade Act has been considered, more particularly, sub-section [2] thereof. In that context, the Hon'ble Supreme Court has held that in the event there is no allegation of attempt to make an export or import, the action cannot be covered by Section 11[2] of the Foreign Trade Act. Only in the event an export or import is in contravention of Foreign Trade Policy the provision of Section 11[2] of the Foreign Trade Act would be operational and since the same is a penal provision it has to be strictly construed.

13. Having regard to the provision of Section 11[2] of the Foreign Trade Act and the interpretation given in **Embio Ltd.** [supra]; considering the facts that there is no final decision on the exemption application till date and there was non export made by the petitioner company at all after importing the machines under the EXIM Policy with duty waiver; this Court finds prima facie force in the submissions advanced on behalf of the petitioner company. In such view of the matter, it is ordered, in the interim, that there shall

not be any coercive action against the petitioner company in terms of the notices including the Notice dated 22.04.2026 till the returnable date issued by the respondent authorities regarding failure to meet export obligation with the contemplated action under the Foreign Trade Act.

14. List the case on 31.07.2026.

JUDGE

Comparing Assistant