

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT AHMEDABAD**

REGIONAL BENCH, COURT NO. 1

CUSTOMS APPEAL NO. 11738 OF 2013

[Arising out of OIA-148/2013/RAJ/CE/AK/COMMR-A/AHD dated 28/03/2013 passed by
Commissioner of Central Excise-RAJKOT]

DEEP RECYCLING INDUSTRIES & ORS.

.....Appellant

Plot No. 773, GIDC, Phase-ii, Dared,
Jamnagar, Gujarat

VERSUS

C.C.E & S.T-RAJKOT

.....Respondent

Central Excise Bhavan,
Race Course Ring Road...Income Tax Office,
Rajkot, Gujarat-360001

WITH

- **CUSTOMS APPEAL NO. 11740 OF 2013 (Deep Recycling Industries)**
- **CUSTOMS APPEAL NO. 12035 OF 2013 (Western Impex)**
- **CUSTOMS APPEAL NO. 12036 OF 2013 (Western Impex)**
- **CUSTOMS APPEAL NO. 12037 OF 2013 (Western Impex)**
- **CUSTOMS APPEAL NO. 12606 OF 2013 (Divine Impex)**
- **CUSTOMS APPEAL NO. 12607 OF 2013 (Divine Impex)**
- **CUSTOMS APPEAL NO. 12608 OF 2013 (Divine Impex)**
- **CUSTOMS APPEAL NO. 13205 OF 2013 (Indu Overseas Pvt Ltd)**
- **CUSTOMS APPEAL NO. 13206 OF 2013 (Indu Overseas Pvt Ltd)**

[Arising out of OIA-134/2013/RAJ/CE/AK/COMMR-A/AHD dated 18/03/2013 passed by
Commissioner of Central Excise-RAJKOT]

[Arising out of OIA-177/2013/RAJ/CE/AK/COMMR-A/AHD dated 04/04/2013 passed by
Commissioner of Central Excise-RAJKOT]

[Arising out of OIA-178/2013/RAJ/CE/AK/COMMR-A/AHD dated 04/04/2013 passed by
Commissioner of Central Excise, CUSTOMS (Adjudication)-RAJKOT]

[Arising out of OIA-168/2013/RAJ/CE/AK/COMMR-A/AHD dated 04/04/2013 passed by
Commissioner of Central Excise, CUSTOMS (Adjudication)-RAJKOT]

[Arising out of OIA-190-2013-RAJ-CE-AK-COMMR-A-AHD dated 26/04/2013 passed by
Commissioner of Central Excise-RAJKOT]

[Arising out of OIA-189-2013-RAJ-CE-AK-COMMR-A-AHD dated 26/04/2013 passed by
Commissioner of Central Excise-RAJKOT]

[Arising out of OIA-188-2013-RAJ-CE-AK-COMMR-A-AHD dated 26/04/2013 passed by
Commissioner of Central Excise-RAJKOT]

[Arising out of OIA-RJT-EXCUS-000-APP-250-251-13-14 dated 21/06/2013 passed by Commissioner of Central Excise and Service Tax-RAJKOT(Appeal)]

[Arising out of OIA-RJT-EXCUS-000-APP-254-13-14 dated 21/06/2013 passed by Commissioner of Central Excise and Service Tax-RAJKOT(Appeal)]

APPEARANCE:

Shri Manish Jain, Advocate for the Appellant

Shri Sanjay Kumar, Superintendent (AR) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. SOMESH ARORA
HON'BLE MEMBER (TECHNICAL), MR. RAJU**

FINAL ORDER NO. A / 10625-10634 / 2024

DATE OF HEARING: 15.02.2024

DATE OF DECISION: 19.03.2024

SOMESH ARORA

The present set of appeals involve common issue. For reference of details appeal of M/s. Deep Recycling Industries Vs. Commissioner of Central Excise-Rajkot bearing appeal No. E/11738/2013 has been chosen. In all the EOU's common issue involved (in the bunch litigation) is that they imported mix metal brass scrap and produced various items from the same. For the purpose of wastage, SION norms by DGFT were taken and applying the same, for excess of wastage over permitted, department worked out that 10.841 tones of excess imported scrap was used during impugned period by M/s. Deep Recycling Industries and was therefore to be subjected to duty.

2. The wastage norm was applied by the department after segregation of scrap in which plastics and other non-usable material was included and was found still in excess in the instant case. Department was thus of the view that benefit of the Notification No. 52/2003-customs to input/raw material imported by EOU used, was deniable on the ground that appellant had consumed inputs and generated wastage beyond the norms fixed by norms committee. It was further noted that all the waste generated by the

appellants in the manufacture of finished goods was cleared on payment of applicable Customs duty, with permission of Development Commissioner.

3. Department on the other hand was of the view that appellant not having regulated and conducted their operation in accordance with the norms and the condition of Notification No. 52/2003-Cus dated 31.03.2003, was to be visited with duty and other consequences.

4. Appellants during course of hearing made various submissions, inter alia, as follows:

4.1 It was submitted that the impugned order is unsustainable in law as it denies the benefit of exemption under Notification No. 52/2003-Cus. On inputs which have been used in manufacturing of finished goods and the resultant waste/scrap/remnants/by-products etc. cleared into DTA, with due permission of Development Commissioner. The relevant part of the Notification is produced for the ease of reference:

"Notwithstanding anything contained in this notification, the exemption herewith shall also apply to goods which on importation into India or procurement, are used for the purpose of manufacture of finished goods or services and such finished goods and services, (including by-products, rejects, waste and scrap arising in the course of production, manufacture, processing or packaging of such goods) even if not exported, are allowed to be sold in Domestic Tariff Area in accordance with the Export and Import Policy and subject to such other limitations and conditions as may be specified in this behalf by Development Commissioner, or the Board of Approval or the Inter Ministerial Standing Committee, as the case may be, on payment of appropriate duty of excise leviable thereon under section 3 of the Central Excise Act, 1944 (1 of 1944) or where such finished goods (including by-products, rejects, waste and scrap) or services are cleared to the warehouse appointed or registered under notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 26/98-Central Excise (NT), dated the 15th July, 1998 or No. 46/2001-Central Excise (NT), dated the 26th June, 2001 or cleared to the warehouse authorised to carry out manufacturing process or other operation under section 65 of the Customs Act, 1962 (52 of 1962) and under the Manufacture and Other Operations in Warehouse Regulation, or cleared to the holders of certificate from Apparel Export Promotion Council and Council for Leather Export for duty free imports as referred to in clause (e) of the paragraph 6.9 of the Export and Import Policy, without payment of duty. "

(Emphasis Supplied)

4.2 It was submitted that para 3 of the concerned Notification has a non-obstante clause as it starts with the word "notwithstanding anything contained in this notification".

4.3 Thus, it was submitted that there is no dispute that waste generated was cleared in DTA on payment of applicable duty of customs with permission of Development Commissioner. Thus, demand of customs duty on imported inputs is not sustainable. The issue is thus covered in favour of appellants by decision in case of Meridian Impex Vs. CCE & ST, 2018 (7) TMI 865-CESTAT as confirmed by Hon'ble High court of Gujarat in case of Commissioner of Customs (Preventive) Vs. Monarch Overseas, 2019 (1) TMI 1513- Gujarat High Court.

5. The present case it was submitted is also entirely covered by the case of Meridian Impex Vs. CCE & ST, 2018 (7) TMI 865-CESTAT, wherein it was held that after segregation of the mixed imported scrap, the segregated scrap, if cleared, cannot be considered as clearance of the 'inputs as such'. The relevant para of the judgment is produced below;

"13. On the issue of payment of duty on the excess use/consumption scrap material, in the activity of segregation/manufacture of finished goods, then the norms fixed by the norms committee or mentioned in the Notification, as the case may be, we find that the Ld. Commissioner (Appeals), in his subsequent Orders, has rightly referred to and relied upon clause (3) of the said Notification. For better appreciation the said clause is reproduced as below:

"3. Notwithstanding anything contained in this notification, the exemption herewith shall also apply to goods which on importation into India or procurement, are used for the purpose of manufacture of finished goods or services and such finished goods and services, (including by-products, rejects, waste and scrap arising in the course of production, manufacture, processing or packaging of such goods) even if not exported, are allowed to be sold in Domestic Tariff Area in accordance with the Foreign Trade Policy and subject to such other limitations and conditions as may be specified in this behalf by Development Commissioner, or the Board of Approval or the Inter Ministerial Standing Committee, as

the case may be, on payment of appropriate duty of excise leviable thereon under section 3 of the Central Excise Act, 1944 (1 of 1944) or where such finished goods (including by-products, rejects, waste and scrap) or services are cleared to the warehouse appointed or registered under notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 26/98-Central Excise (NT), dated the 15th July, 1998 or No. 46/2001-Central Excise (NT), dated the 26th June, 2001 or cleared to the warehouse authorized to carry out manufacturing process or other operation under section 65 of the Customs Act, 1962 (52 of 1962) and under the Manufacture and Other Operations in Warehouse Regulation, or cleared to the holders of certificate from Apparel Export Promotion Council and Council for Leather Export for duty free imports as referred to in clause (e) of the paragraph 6.9 of the Foreign Trade Policy, without payment of duty :

14. Interpreting the said provision, the Ld. Commissioner (Appeals) observed that even if the imported goods are used in the manufacture of the finished goods (including by products, rejects waste and scrap arising in the course of production, manufacturing processing or packaging of such goods) even if not exported, are allowed to be sold in DTA, in accordance with the Exim Policy on payment of appropriate excise duty leviable thereon, the exemption Notification No. 53/ 2003-Cus. dated 31/03/2003 cannot be denied. In the present case, the scrap generated during the course of segregation/manufacture of brass articles had been permitted to be cleared in the DTA by the Development Commissioner and the Appellant-assessee had cleared the scrap pursuant to the said permission and discharged appropriate excise duty on its sale. Hence, demanding customs duty foregone on the excess quantity of imported scrap worked out on the basis of the Norms fixed by the Committee, in our view, is not sustainable in law. We summarize our findings as follows;

(i) The activity of Segregation of imported mixed brass scrap into foundry and non-foundry grade, results into manufacture, hence, the Revenue's Appeals on this count fails, accordingly, rejected.

(ii) The excess quantity of scrap generated during the activity of segregation/manufacture of the Brass articles cleared on payment of applicable excise duty in DTA as per the permission of Development commissioner, is covered by clause(3) of the Exemption Notification 50/2003cus. Dt.31.3.2003, as amended, and the respective Orders of the Id. Commissioner

(Appeals) which are passed on same line are upheld and the Orders contrary to above, are set aside and the Appeals filed by the respective, assessee-Appellants are allowed .”

The same has been affirmed by the Gujarat High Court in the decision of Commissioner of Customs (Preventive) Vs. Monarch Overseas, 2019 (1) TMI 1513- Gujarat High Court. The relevant para of the judgment is extracted below:

"11. That brings us to the second question, as to whether clearance of such scrap upon payment of excise duty would fall within the ambit of paragraph 3 of Notification No. 52/2003-Cus., dated 31-3-2003? On behalf of the appellant it has been contended that the clearance of foundry scrap beyond the ratio/norms of scrap laid down by the Norms Committee is in contravention of the provisions of Notification No. 52/2003-Cus., dated 31-3-2003. In this regard, reference may be made to the provisions of the said notification. Clause (3) of the said notification to the extent the same is relevant for the present purpose provides that notwithstanding anything contained in that notification, the exemption therewith shall also apply to goods which on importation into India or procurement, are used for the purpose of manufacture of finished goods or services and such finished goods and services, (including by-products, rejects, waste and scrap arising in the course of production, manufacture, processing or packaging of such goods) even if not exported, are allowed to be sold in Domestic Tariff Area in accordance with the Export and Import Policy and subject to such other limitations and conditions as may be specified in this behalf by Development Commissioner, or Board of Approval or the Inter Ministerial Standing Committee, as the case may be, on payment of appropriate duty of excise leviable thereon under Section 3 of the Central Excise Act, 1944. Thus, waste and scrap arising in the course of production or manufacture of finished goods are also exempt from the duty of customs leviable thereon under the First Schedule to the Customs Tariff Act, 1975 and the additional duty, if any, leviable thereon under Section 3 of the said Customs Tariff Act. Reverting to the facts of the present case, as noticed hereinabove, the segregated waste has arisen in the course of production/manufacture of the finished goods viz. brass articles; the Commissioner of Customs has recorded that the segregated waste had in fact been cleared on payment of duty after being duly permitted by the Development Commissioner in accordance with the provisions of the EXIM Policy.

The requirements of clause (3) of Notification [No.] 52/2003-Cus., dated 31st March, 2003 are therefore, wholly satisfied. Under the circumstances, there does not appear to be any legal infirmity in the view adopted by the Tribunal."

5.1 It was submitted that the Order of the High Court must be given effect by the lower authorities until and unless the same is stayed by the Supreme Court. Further, mere filing of the Special Leave Petition does not amount to the stay of the order of the High Court. The reliance for the same is placed on the case of the TATA Steels Ltd. Vs. Union of India, 2023 (386) E.L.T. 729 (Jhar.). Where the generation of the waste is not otherwise doubted by the revenue, denial of the benefit of the Notification on the sole ground that such a wastage is more than laid down in the norms, is not justifiable.

5.2 It was submitted that in the present case, the generation of the waste is not otherwise doubted by the revenue. Thus once the imported inputs are used in manufacture of finished goods in EOU, the benefit of exemption under notification No. 52/2003-Cus would be available. Therefore, denial of the benefit of the Notification on the sole ground that such a wastage is more than what is laid down in the norms, is not justified.

6. In this regard reliance was also placed on the case of Kiran Syntex Ltd. Vs. Commissioner of Central Excise, Surat-I, 2009 (238) E.L.T. 481 (Tri. Ahmd.) affirmed by the Supreme Court in 2022 (361) E.L.T. 580 (S.C.) wherein the Hon'ble Court held that where the generation of the waste is not otherwise doubted by the revenue, denial of the benefit of the Notification on the sole ground that such a wastage is more than laid down in the norms, is not justifiable. The relevant para of the judgment is produced below;

"4. After going through the impugned order, we find that the Commissioner has confirmed the demand on the sole ground that the wastage generated during the course of manufacture is in excess than

the maximum percentage laid down in the Handbook of Procedures, 2002-2007, and as such proportionate customs duty apportionate to the inputs used in the generation of excess wastage is required to be recovered from the appellant. First of all, we note that the excess wastage, even if it is there, the same exceeds the prescribed norms only marginally. In any case, we find that there are no norms laid down in the Notification No. 53/97-Cus. as regards wastage. The only requirement is that such wastage should be cleared on payment of duty. Admittedly, the appellants have cleared the same on appropriate payment of Central Excise duty. It is not the Revenue's case that such excess generation of wastage is a modus operandi adopted by the assessee to otherwise divert the raw material or final product in the open market. When generation of wastage is not otherwise being doubted by Revenue to deny the benefit of notification, on the sole ground that the same is more than the laid down norms, is not justifiable. We find that the Tribunal in case of M/s. RLC Engineers (P) Ltd. v. CCE, Thane - 2006 (203) E.L.T. 105 (Tri.-Mumbai) dealt with an identical question and held that the duties of Customs cannot be recovered on the inputs contained in such wastage which arose in the excess of norms. As such, we do not find any reason to either uphold the duty or confiscation of the goods, or to impose any penalty upon the appellant."

It was submitted that the imported inputs are consumed in EOU and utilized for the manufacturing operations in bonded warehouse. Thus customs duty demand is not sustainable on bonded goods which are used in customs bonded warehouse.

6.1 It was submitted that customs duty can be demanded only on the finished goods or goods which go out of the EOU not on the inputs which come into the EOU. In this regard, reliance was placed on the cases of Paras Fab International versus CCE Kandla- 2010 (256) ELT 556 (Tri. - LB) and M/s Eurotex Industries & Exports Ltd. Vs. Commissioner of Customs, Nhava Sheva, 2016 (10) TMI 75- CESTAT Mumbai. The Tribunals have held that no duty demand is applicable where in the inputs are used by the EOU. The relevant para of Paras Fab International versus CCE Kandla- 2010 (256) ELT 556 (Tri. - LB) is extracted below for the ease of reference:

"10. *On a perusal of the provisions relating to warehousing in the Customs Act, 1962 and the provisions relating to EOU Scheme under the Customs Manual, we find that the entire premises of a 100% EOU is required to be licensed as a customs bonded warehouse and the imported goods are required to be imported directly to such premises. The manufacturing is also required to be done within the bonded premises. Hence, we find support for the contention of the appellants that the entire premises of 100% EOU is a bonded warehouse. Neither the Manual nor the Customs Act speaks of any requirement to pay any duty on the warehoused goods which are used for manufacture in bond nor it requires filing of any ex-bond bills of entry at that stage. Section 68 of the Act deals with clearance of warehoused goods for home consumption and it requires filing of an ex-bond of Bill of entry payment of import duty and other charges and an order for clearance for home consumption. Section 65 of the Act which deals with manufacturing in bond on the other hand, does not require any filing of ex-bond bills of entry or payment duty before taking warehoused goods for manufacture inside the bonded premises. We also find that Section 66 of the Act empowers the Central Government to exempt imported material used in a warehouse. It is thus clear that neither the scheme of the Act nor the provisions contained in the Manual require filing of ex-bond bills of entry or payment of duty before taking the imported goods for manufacturing in bond nor there is any provision to treat such goods as deemed to have been removed for the purpose of Customs Act, 1962. The Warehousing provisions under the Customs Act, 1962 deals with two kinds of removals from the Customs bonded warehouse;-*

(i) Removal under order of clearance of the proper officer after filing ex-bond bill of entry and payment of duty, etc. as provided under Section 68, and;

(ii) Improper removal for which Section 72 provides for demand of duty, penalty, interest etc."

6.2 It was submitted that the duty cannot be demanded on the raw material where the waste and scraps are cleared by 100% EOU in domestic market as per the permission granted by Development Commissioner. The reason for the same is that there is no case for the removal of raw materials as such and duty is to be demanded on the final product. The reliance was placed on the decision of Commissioner of C. Ex. & Cus., Surat Vs. Raju

Fabrics, 2008 (231) E.L.T. 655 (Tri. Ahmd.), affirmed by Supreme Court in 2016 (339) E.L.T. A148 (S.C.), Commissioner of C. Ex., Surat Vs. Angana Textiles Pvt. Ltd., 2009 (234) E.L.T. 506 (Tri.- Ahmd.), affirmed by Supreme Court in 2016 (338) E.L.T. A154 (S.C.) and Commissioner of C. Ex., Surat Vs. Indian Polyfins Ltd., 2016 (335) E.L.T. 732 (Tri.- Ahmd.) affirmed by Supreme Court in 2016 (335) E.L.T. A213 (S.C.).

6.3 It was submitted that Chapter 6 of the Foreign Trade Policy (*hereinafter referred to as "FTP"*) nowhere mentions that for the excess generation of waste and scrap, duty equivalent to the duty on proportionate quantity of imported raw material is required to be paid. Chapter 6 of the FTP provides that there should be no duty demand even in case where the waste or scrap is destroyed in EOU. Further, it was also stated that the by-products included in the LOP can be sold in DTA with the permission of the Deputy Commissioner on the payment of applicable duties. The relevant part of the FTP is produced for the ease of reference:

"Para 6.8 (e), (f) and (g) of the FTP read as under;

(e) Scrap / waste / remnants arising out of production process or in connection therewith may be sold in DTA, as per SION notified under Duty Exemption Scheme, on payment of concessional duties as applicable, within overall ceiling of 50% of FOB value of exports. Such sales of scrap / waste / remnants shall not be subject to achievement of positive NFE. In respect of items not covered by norms, DC may fix ad-hoc norms for a period of six months and within this period, norms should be fixed by Norms Committee. Ad-hoc norms will continue till such time norms are fixed by Norms Committee. Sale of waste / scrap / remnants by units not entitled to DTA sale, or sales beyond DTA sale entitlement, shall be on payment of full duties. Scrap / waste / remnants may also be exported.

(f) There shall be no duties / taxes on scrap / waste / remnants, in case same are destroyed with permission of Customs authorities.

(g) By-products included in LoP may also be sold in DTA subject to achievement of positive NFE, on payment of applicable duties, within

the overall entitlement of sub-para 6.8(a). Sale of by-products by units not entitled to DTA sales, or beyond entitlements of sub-para 6.8 (a), shall also be permissible on payment of full duties”

7. Thus, nowhere, it was mentioned that duty amount on proportionate raw materials is to be paid in case, there is no excess clearance of waste and scrap and therefore the same cannot be demanded. Further, the only restriction on the excess clearance of the waste and scrap is that the same can be cleared on the payment of full duty which the appellants have already paid.

8. Moreover, as per Chapter 10 of the CBEC's Custom Manual of instruction issued on 11.09.2001 duty on bonded goods can only be demanded in certain specified circumstances. The relevant para is extracted for the ease of reference:

"Recovery of Duty on Bonded Goods:

Customs Officers may demand from the owner of bonded goods the full amount of duty chargeable on such goods, along with all penalties, rent, interest and other charges payable in the following cases:-

i) where any warehoused goods are removed in contravention of the Customs Act, 1962;

ii) where such goods have not been removed from a warehouse at the expiry of the period permitted under section 61;

iii) where any warehoused goods have been taken under section 64 as samples without payment of duty; and

iv) where any bonded goods have not been cleared for home consumption or exportation or are not duly accounted for to the satisfaction of the Customs.”

Development commissioner while intimating the norms has directed industry to pay applicable customs duty on value of waste in case excess waste is generated

8.1 It was submitted that while intimating the wastage norms, development commissioner has directed the industries to pay applicable custom duty on the value of excess waste so cleared it in excess to the specified norms. It does not provide for payment of customs duty on inputs contained in such excess waste and scrap. Therefore, appellant have sought setting a side of the impugned order as in any case wrong duty has been demanded in S.C.N. The Learned Advocate thus pleaded that such a course of action becomes justified, as there are always some invisible losses, which becomes difficult to recover or to make available for clearance and the onus to show removal which is on the department cannot discharged by a mere presumption.

9. Department on the other hand, seeks to place reliance on the impugned order and the findings therein, particularly reliance on Final Order No. 10267-10272/2024 Amardeep Exports V/s. C.C. Jamnagar, which was particularly concerned with wastage norms fixed and in which it was inter alia, decided that the wastage norms fixed by DGFT was including all losses and wastages in manufacturing of brass items and therefore it also included as per the language of DGFT letter produced in that case, all kind of losses including slag. Further, the learned AR also relied upon the decision of Pelican Grani Morgo Pvt Ltd reported in (2003) 4 Centax 434 (Tri-Del.), in the case of GKB Ophthalmic Ltd reported in 2018 (364) ELT 266 (Tri-Mumbai) and in the case of Good luck Garments Pvt. Ltd. reported in 2006 (206) E.L.T. 911 (Tri.-Mumbai) to buttress the department's case with the proposition that when material in excess of SION norms issued by DGFT are consumed, 100% EOU would be liable to pay duty along with interest.

9.1 AR Also places reliance on various findings in the impugned order.

10. Considered. We find the case law relied upon by the department were per incuriam as they did not consider scope of the non-obstante clause of

Notification No. 52/2003-Cus (ibid). In the instant case for material consumed over and above the SION notification issued by the DGFT, Department views that duty or at least penalty is liable to be charged in case excess wastage comes into play. However, it is found that Hon'ble Gujarat High Court in the matter of Commissioner of Customs (Preventive) Vs. Monarch Overseas as reported in 2019 (1) TMI 1513 (Gujarat High Court), While dealing with scope of Notification No. 52/2003-Cus. Dated 03.01.2003 31.03.2003 particularly clause (3) construed the non-obstante clause by interpreting that once the material procured are used for the purpose of manufacture of finished goods or services then even if, waste and scrap arises in course of production and manufacture over the norm then same is also exempt from the duty of custom leviable or the additional duty. Till the time the waste is cleared on payment of duty, and is not shown to have been removed without permission The decision was based on and affirmed decision of Meridian Impex Vs. CC & ST as reported in 2018 (7) TMI 865 CESTAT which has summarized findings as follows:

"We find that as been correctly pointed out by the learned advocate for the appellant the Clause (3) of the relevant notification i.e. 52/2003-Cust specifically provides exemption to the goods which are imported into India and are used for the purpose of manufacture of finished goods. The condition for exemption, therefore, is such imported goods should be used for the purpose of manufacture of finished goods. In the instant case, the department is not in denial that the goods imported were all actually used for and issued for manufacture. The dispute is only about 10.841 MTs of imported material which as per the department have been excess consumed. There is no allegation or evidence, that the same has been diverted to or removed into Domestic Tariff Area. The waste arising in the manufacturing process and physically available has been duly cleared on the applicable excise duty. Therefore, we find that the dispute falls within the parameter of

Clause (3) of the relevant notification and the decision quoted by the appellant including of Hon'ble Gujarat High Court is applicable and the case law quoted by the revenue are distinguishable or per incuriam. In our view, clause (3) of the Notification 52/2003-Cus takes invisible losses that arise in various industries in its ambit and wastage thus can be at variance from industry to industry.

11. In view of aforesaid finding, we find that the appeals are allowable. Ordered accordingly.

12. Appeals allowed.

(Pronounced in the open Court on 19.03.2024)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)