# Customs, Excise & Service Tax Appellate Tribunal
# West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO. 02

## Customs Appeal No. 10777 of 2021

[Arising Out Of OIA-AHM-CUSTM-000-APP-81-83-21-22 Dated- 31/05/2021 passed by the Commissioner of CUSTOMS-AHMEDABAD)

**HINDALCO INDUSTRIES LIMITED** **.....Appellant**
Unit Birla Copper, Village: Lakhigam, Po: Dahej,
Bharuch, Gujarat

*VERSUS*

**C.C.-AHMEDABAD** **.....Respondent**
Custom House, Near All India Radio Navrangpura,
Ahmedabad,, Gujarat

**WITH**

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**APPEARANCE:**
Shri. Manish Jain, Advocate for the Appellant
Shri. Himanshu Nachane, Superintendent (AR) for the Respondent

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

**Final Order No. __10703-10705/2025_**

DATE OF HEARING:01.09.2025
DATE OF DECISION:09.09.2025

**SOMESH ARORA**

These are the three appeals involving identical issues against three OIOs passed by the Deputy Commissioner of Customs, division, Surat who was the adjudicating authority and which was later confirmed by the Commissioner (Appeals). Feeling aggrieved by the order of the Commissioner (Appeals). The appellant has filed the appeals before us.

2. Briefly, the facts of the case are that the appellant filed the BoEs for import of Copper Concentrate falling under tariff CTI 2603 00 00 at different times. The BoEs were filed provisionally as the appellant was not having final invoices. The proper officer verified the provisional assessment and the appellant paid the duty on merit rate without claiming benefit of any notification for exemption/ or duty payment under any licence or duty scrip. Later on, on receipt of final invoices, appellant self-assessed their duty liability and voluntarily paid the part of differential duty arising as a result of increase in final invoice value through Focus Product Scheme License (FPS) and Vishesh Krishi and Gram Udhyog Yojana License (VKGUY). It appeared to the department that since the appellant while filing the BoEs had claimed no exemption from duty under FPS Licence as per Notification No.92/2009-Cus and under VKGUY vide Notification No.95/2009-Cus, the payment of differential duty through Focus Product Scheme License (FPS) Licence and Vishesh Krishi and Gram Udhyog Yojana License (VKGUY) was not allowed in terms of Notification No.92/2009-Cus and Notification No.95/2009-Cus.

3. The adjudicating authority, after hearing the appellant in person and after considering appellant's submissions, passed the impugned order

finalizing the BoES by denying the benefit of payment of customs duty through Focus Product Scheme License (FPS) Licence and Vishesh Krishi and Gram Udhyog Yojana License (VKGUY) Licences. The adjudicating authority ordered to pay the differential duty through cash only, along with interest under section 18(3) read with section 28AA of the Customs Act, 1962. Same order was confirmed by the Commissioner (Appeals) reasoning that scrips were not produced at the time of clearance therefore party could not have availed the exemption.

4. Aggrieved by the aforesaid order, appellant have approached this Court for seeking suitable relief on the ground that the Learned Commissioner failed to appreciate the meaning of expression, “clearance” in the context of factual matrix of the present case, in which provisional assessment was resorted to. In support of their argument, they have relied upon the decision of Zuari Agro chemical Ltd Vs. Collector as reported in 1997 (89) ELT 707 (Tribunal) and has upheld by Supreme Court in Collection Vs. Zuari Agro chemical Ltd as reported in 1196 (86) ELT A78 Supreme Court and also Super Cassettes Industries Ltd Vs. Commissioner of Customs reported in 2006 (202) ELT 739 (S.C). To buttress the proposition that there is no bar in claiming the benefit of two notifications if one notification does not bar specifically to avail the benefit of other notification (s). It was also argued that exemption can be claimed at any stage, unless specifically barred by any law or notifications.

5. Learned AR has reiterated the findings pointing out that once the goods are cleared even if provisionally even then as per the expressions used in the notification, benefit is not permissible.

6. This Court has gone through the rival contentions for appreciation of legal position. The relevant text of two notifications involved i.e. Notification No. 92/2009-Cus. dated 11.09.2009 and Notification No. 95/2009-Cus. dated 11.09.2009 is reproduced below:

***Notification No 92/2009-Customs dated 11.09.2009***

*G.S.R. 658 (E)--In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts goods when imported into India against a duty credit scrip issued under the Focus Product Scheme in accordance with paragraph 3.15 of the Foreign Trade Policy (hereinafter referred to as the said scrip) from,-*

*(a) the whole of the duty of customs leviable thereon under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975); and*

*(b) the whole of the additional duty leviable thereon under section 3 of the said Customs Tariff Act,*

subject to the following conditions, namely :-

*(i) that the benefit under this notification shall be available only in respect of duty credit scrip issued against exports of the products notified in Appendix 37-D of the Handbook of Procedures, Vol. I of the Foreign Trade Policy;*

*(ii) that the said scrip is produced before the proper officer of customs at the time of clearance for debit of the duties leviable on the goods, but for this exemption;*

***Notification No 95/2009-Customs dated 11.09.2009***

*"G.S.R 661 (E)-in exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts inputs or goods including capital goods, when imported into India against a duty credit scrip (hereinafter referred to as the said scrip) issued under Vishesh Krishi and Gram Udyog Yojana (Special Agriculture and Village Industry Scheme) in accordance with paragraph 3.13.2 of the Foreign Trade Policy :-*

*(a) from the whole of the duty of customs leviable thereon under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975); and*

*(b) from the whole of the additional duty leviable thereon under section 3 of the said Customs Tariff Act, 1975,*

*subject to the following conditions, namely :-*

*(i) that the said scrip has been issued to an exporter of products specified in paragraph 3.13.2 of the Foreign Trade Policy by the Licensing Authority or Regional Authority and it is* ***produced before the proper officer of customs at the time of clearance for debit of the duties leviable on the goods;"***

6.1 On the basis of aforesaid conditions as are contained in the bold with emphasis as above. Department formed the view that unless scripts are produced and exemption claimed at the time of clearance under FPS and VKGUY scripts, the benefit could not have been availed. This court also finds that the decision of Zuari Agro Chemicals Ltd Vs. Collection of Customs, Bombay reported at 1197 (89) ELT 707 (Tribunal) was also cited before the Learned Commissioner (Appeals) and dealt with by him on the following basis:-

> *"The appellant has endeavoured to create a distinction between removal and clearance in view of Hon'ble Tribunal's decision in the case of Zuari Agro Chemicals Ltd v. Collector of Customs, Bombay [1997(89) ELT 707 (Tribunal)). however, this decision was passed in a different context involving certificate of origin. The fact remains that the goods get cleared after out of charge is given by the customs. In absence of any standard definition of the term 'clearance under the said notifications or in the Customs Act, 1962, once out of charge was given by the customs. the goods became available for taking out of the customs control and that step is nothing but clearance of goods by customs. Therefore. considering that the exemption provided in terms of Notifications 92/2009-Cus and 95/2009-Cus is conditional and since the condition of producing the scrips at the time of clearance for debiting the duties leviable was not fulfilled, exemption cannot be allowed. "*

6.2 However, as pointed by the Learned Advocate this Court finds that in the same judgement Para 25 is relevant to the legal proposition, as to how expression "clearance" and "removal" should be construed. Same is reproduced below:-

> *Para "25. In this particular case, another fact which is of significance is the distinction between 'removal and 'clearance'. The goods can be removed for home consumption or otherwise after provisional assessment under bond but they can be said to be cleared for home consumption only after final assessment and orders of the proper officer in respect of such clearance. Therefore, while Collector (Appeals) is right in pointing out that the touch stone is clearance for home consumption, such clearance could not have been deemed to have been allowed unless the goods had been finally assessed and out of charge order is given because it is this act of customs which puts the seal of finality and the goods thereafter go out of Customs Control free to get mixed with the stream of commerce (or put to personal use) Ie. for home consumption."*

7. In view of the foregoing, this Court is of the view that irrespective of context as to whether in that case certificate of origin was disputed or not. Para 25 provides guiding light as to how the matter should have been decided. Therefore, till the time the goods were not cleared under final assessment, Department could not have taken the “removal” as “clearance”. In view of foregoing stated position, this Court pronounces that till the time, the goods were not finally cleared the Principle as laid down above is a good law and needs to be followed, if exemption otherwise permits.

7.1 The matter is therefore remanded with direction to original authority to consider the benefit of licenses and consequently the exemption if eligible certificates and other conditions were complied with prior to final clearance consequent upon final assessment.

8. Appeals allowed by way of remand.

(Pronounced in the open court on 09.09.2025)

**(SOMESH ARORA)**
**MEMBER ( JUDICIAL )**

Prachi