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

REGIONAL BENCH-COURT NO. 3

Customs Appeal No. 11891 of 2014 – SMB

(Arising out of OIA-RJT-EXCUS-000-APP-698-13-14dated 06.02.2014 passed by Commissioner (Appeals) Rajkot)

Agarwal Exports **........Appellant**
Plot No. 493, GIDC,
Phase-II, Dared,
JAMNAGAR,GUJARAT

VERSUS

Commissioner of C.E. & S.T.-Rajkot **......Respondent**
CENTRAL EXCISE BHAVAN,
RACE COURSE RING ROAD...INCOME TAX OFFICE,
RAJKOT, GUJARAT-360001

APPEARANCE:
Shri Rahul Gajera, Advocate Appeared for the Appellant
Shri Himanshu P Shrimali, Superintendent(AR) Appeared for the Respondent

CORAM: HON'BLE DR. AJAYA KRISHNA VISHVESHA, MEMBER (JUDICIAL)

Final Order No.11021/2025

DATE OF HEARING: 02.07.2025
DATE OF DECISION: 31.10.2025

DR. AJAYA KRISHNA VISHVESHA

1. This appeal is directed against the impugned Order in Appeal dated 06.02.2014 passed by Commissioner (Appeals) through which he upheld the order passed by the Adjudicating Authority and rejected the appeal.

2. The fact of the case are that the appellant is engaged in the manufacturing of brass ingots, processed brass scrap, etc. classifiable under various headings CETA, 1985, out of imported raw materials, viz. mixed brass scrap/ mixed brass scrap with iron attachment and other impurities etc., procured duty free under Notification No. 52/2003-Cus. dated 31.03.2003 read with Foreign Trade Policy, 2004-2009 and as per procedure laid down under the scheme for the EOUs. The appellant is holding Private bonded warehouse License issued by the Assistant Commissioner, under Section 58 of Customs Act, 1962 with permission to manufacture in-bond

under Section 65 of the Act and he is also holding Central Excise Registration. The appellant is working as a '100% Export Oriented Unit' and have been issued a letter of permission by the Development Commissioner, Kandla, Special Economic Zone for the above purpose.The appellant have made application for fixation of Standard Input Output Norms to Director General of Foreign Trade, Ministry of Corporate Affairs, Department of Commerce, New Delhi vide application dated 06.10.2008 wherein, the appellant have submitted their whole quantitative performancelike raw material imported, raw material consumed, net brass scrap used, finished goods manufactured, wastage obtained etc. for financial years 2005-06, 2006-07 and 2007-08 certified by an independent Chartered Accountant as well as Chartered Engineer.

2.1 Thereafter, Development Commissioner, KASEZ, Kandla has fixed ad-hoc norms vide letter dated 12.06.2009 against their application/letter for Fixation of SION dated 06.10.2008. The ad-hoc norms fixed by above letter is as under:

<u>For manufacturing of 100 Kgs. Of Finished Good:</u>

Particulars	**Quantity in Kgs.**
Finished Goods	100.00
Burning Loss	5.58
Slag	6.13
Total Raw Material required	111.71

2.2 The Joint Commissioner, Central Excise has not considered the above norms at the time of issuing Show Cause Notice and has drawn reference to the letter dated 06.04.2010 of the Development Commissioner, KASEZ, Gandhidham in which ad-hoc norms are fixed as under and also worked out excess consumption of Raw Material of 11.652 MT and thereby levied custom duty, interest, penalty and redemption fine.

Name of the Finished Product	**Input Output Norms**	
Recycle Metals Scrap Ingots etc.	Item of manufacture	Quantity of relevant Metal/ Alloy scrap
	Non ferrous Metals Ingots	1.06 g/kg content in the product

2.3 The appellant has submitted in the Memo of Appeal that the letter referred by Joint Commissioner as mentioned above has not been received by the appellant and appellant's Norms has been finally fixed by Directorate General of Foreign Trade, New Delhi vide letter dated 09.05.2011 and the same revised norms need to be considered in the proceedings for the period under consideration. The appellant has recalculated the alleged excess consumption of Raw material considering the Final Norms fixed by the DGFT, New Delhi, wherein, appellant's consumption of Segregated Raw material is well within the norms. This is evident from the fact that the SCN was for Rs. 6,12,830/- whereas, the final adjudication has been made at Rs. 34,555/-. The quantitative performance made by the appellant against the Show Cause Notice has been enclosed with the Memo of Appeal. While considering the quantitative performance, the learned Additional Commissioner has considered sales of 9.86 MT as DTA sales of Raw Material which is in fact a finished product and therefore, the appellant challenged the order passed by the Additional Commissioner before the Commissioner (Appeals). The learned Commissioner (Appeal), Rajkot considered the sales of 9.86 MT goods as raw material sale and upheld the order-in-original passed by the learned Additional Commissioner and rejected the appeal. Feeling aggrieved from the impugned order passed by the learned Commissioner (Appeal) dated 06.07.2014, the present appeal has been filed before this Tribunal.

3. Learned Advocate for the appellant submitted that the issue to be decided in the present appeal is whether the appellant has properly availed

the benefit of the input-output ratio, as statutorily prescribed under the Notification No. 52/2003-Cus dated 31.03.2003 read with the final 'wastage norms' as fixedby the Norms Committee, in respect of 'segregation' and 'manufacturing' of the final products, out of the 'mixed brass scrap with impurities', or not? He has also submitted that the issue mentioned above is no longer *res-integra* and has been settled by the Hon’ble Gujarat High Court in **Commissioner, Customs (Preventive)** Versus **Monarch Overseas** reported in 2019 (1) TMI 1513 (GUJ.) and followed by this Hon'ble Tribunal in the case of **Deep Recycling Industries & Ors** V **CCE & ST. Rajkot**reported in 2024 (3) TMI 970.

3.1 The learned Counsel for the appellant submitted that in **Deep Recycling Industries & Ors**, this Tribunal has held in para 10 of the order that once the raw material procured are used for the purpose of manufacture of finished goods, then even if waste and scrap arise in course of production and manufacture over the norm, then same is also exempt from the Duty of Customs leviable or the Additional Duty. The learned Counsel for the appellant also submitted that in the present case also, clearance of excess waste on payment of applicable duty is not in dispute. However, it is the case of department that excess waste beyond permissible limit as per norms are liable to import duty of customs. Therefore, issue is squarely covered by the above mentioned decisions in favour of appellant.He has prayed that theimpugned order passed by the learned Commissioner is not sustainable and liable to be set aside, whereas, the appeal is liable to be allowed.

4. The learned Authorised Representative for the department reiterated the Order-in-Appeal passed by the learned Commissioner and submitted that during the course of adjudication, the learned Commissioner after considering the defence reply filed by the appellant and after applying the final “Norms of Wastage” as fixed by the Norms Committee as per Para 6.8(e) of the FTP, re-calculated the ratio of quantity of input material

consumed and observed that appellant had consumed 0.657 MT of excess raw material for manufacturing of final product. It has also been submitted that 'Final Wastage Norms' were communicated by the DGFT, Delhi to the Development Commissioner KASEZ, Gandhidham vide letter F.NO. 01/81/162/313/AM 10/DES-II/2016 dated 04.05.2011 and it's copy was endorsed to the appellants. After applying statutory 'Final Norms', it has been held that consumption was in excess to the norms and therefore, duty demand was confirmed by the Adjudicating Authority for quantity of 0.657 MT which was upheld alongwith confiscation of the imported goods-raw material by the Commissioner. It has also been observed that provision of Notification. No. 52/2003-Cus dated 31.03 2003, read with Foreign Trade Policy 2004-2009 relating to scheme for the EOU's has been violated by appellant by not adhering to the prescribed norms and the demand was rightly upheld by the learned Commissioner.

4.1 Learned Authorised Representative for the Department relied upon the Final Order no. 10267-10272/2024 dated 30.01.2024 in case of **Amardeep Exports** Vs **CC, Jamnagar (Prev)** of CESTAT-DB, Ahmedabad, in which it has been held that from the letter of DGFT dated 04.05.2011, it is apparent that the 'Wastage Norm' for the stage of manufacturing brass items from segregated process mix brass scrap is 1.26 and is obviously inclusive of all kind of losses including slag. Thus, the calculation given by the appellant in their appeal cannot be adopted for the purpose of calculating unexplained consumption of scrap and the Tribunal dismissed the appeal filed by the appellants.

5. I have heard the learned Counsel for the appellant and the learned Authorised Representative for the department and perused the records.

5.1 As mentioned above, the issue to be decided by this Tribunal is whether the appellant has properly availed the benefit of the input-output ratio, as statutorily prescribed under the Notification No. 52/2003-Cus dated

31.03.2003 read with the final 'Wastage Norms' as fixed by the Norms Committee, in respect of 'segregation' and 'manufacturing' of the final products, out of the 'mixed brass scrap with impurities', or not?

5.2 The learned Commissioner has observed in the impugned order at page 6 (para 7) that, "Show Cause Notice was issued to the appellant on the ground that they have failed to account for the 'wastage of brass', as per Notification No. 52/2003-Cus read with the 'Norms', which were fixed *ad-hoc* by the Norms Committee as intimated by the Development Commissioner vide his letter dated 06.04.2010. The Show Cause Notice was issued on 28.09.2010, when the 'Final Wastage Norms' fixed by the Norms Committee were not in existence. However, the fixation of 'Final Norms of Wastage', in respect of the appellant were statutorily informed to the Development Commissioner, KSEZ, Gandhidham, by the Foreign Trade Development Officer vide letter dated 04.05.2011 and it's copy was also endorsed to the appellant. Thus, final Norms fixed by the 'Norms Committee' came to be finalised on 04.05.2011 though applicable for the past period. The impugned order was passed on 31.01.2013/07.02.2013 when the 'Final Norms' fixed by the statutory 'Norms Committee' were already in existence and they were considered by the lower authority and applied by him while adjudicating the instant case. After allowing the benefit of the final 'norms' laid down by the 'Norms Committee' by their letter dated 04.05.2011, and made applicable to both the stages of segregation' and 'manufacture', the excess quantity of the brass scrap that was left after applying the statutory 'Final Norms' came to 0.657 MT. This has been held to be excess consumption vis-à-vis norms and therefore, the duty demand confirmed by the lower authority vide the Order-in-Original for the quantity of 0.657 MT is required to be upheld alongwith the confiscation of the imported duty free raw materials of 0.657 MT under section 111(o) of the Act, as the same was found to be in violation of the provisions of Notification No. 52/2003-Cus dated 31.03.2003 read with FTP, by the appellant by not adhering to the 'prescribed norms'.

5.3 It is also pertinent to mention here that the learned Adjudicating Authority, Additional Commissioner, Customs and Central Excise, Rajkot has held at page No.7 & 8 of his Order-in-Original in para 24-25 as follows:-

> "24. I find that in the Noticee's case the DGFT vide their letter F.No. 01/81/162/313/AM'10/DES-II/216 dated 04.05.2011 as communicated by the Development Commissioner, KASEZ, Gandhidham, vide letter F.No. KASEZ/100%EOU/II/10/2005-06 dated 20.05.2011, re-fixed the wastage norms in terms of Para 6.8 (e) of Foreign Trade Policy 2009-14 for the manufacture of brass items; that the ratio of 'segregated brass scrap' from 'mixed brass scrap' is fixed as 1MT: 1.50 MT, the ratio for finished goods i.e. brass ingots from Segregated brass scrap is fixed as 1MT: 1.08 MT and in the case of brass components/articles/ bars etc. the same has been fixed as 1 MT: 1.26 MT. In accordance with the revised norms, since the annexure-B prepared & attached to the SCN was equipped with the figures of finished goods manufactured only and no figures of foundry scrap generated have been shown, therefore, the same has been called for from the ACCE, Jamnagar. The Assistant Commissioner, Central Excise, Jamnagar vide his letter dated 31.01.2013 submitted the revised Annexure B & B1 after taking into consideration final norms fixed by the DGFT and re-calculating the excess quantity of raw material consumed by the noticee on which duty has to be demanded. The same is calculated as below:-

<u>Annexure-B and Annexure B-1</u>

(I)	RAW MATERIAL IMPORTED		MIXED BRASS SCRAP	ZINC SCRAP	COPPER SCRAP BIRCH
1	OPENING BALANCE	01.11.2008	2.141	1.342	0
2	IMPORTED COPPER SCRAP BIRCH CLIFF	01.11.2008 TO 31.03.2010	0	0	19.91
3	TOTAL		2.141	1.342	19.91
4	CLOSING BALANCE	31.03.2010	0	0	0
	CLEARED INTO DTA	3.2009	0	0	9.86
5	RAW MATERIAL CONSUMED	01.11.2008 TO 31.03.2010	2.141	1.342	10.050
6	NON FOUNDRY SCRAP GENERATED AS PER ER		0.557	0	0

	FOUNDRY SCRAP GENERATED (5-6)		1.584	1.342	10.050
7	AS PER NORMS PERMISSIBLE	1 MT: 1.50 MT & 2%	0.792		
8	RAW MATERIAL EXCESS CONSUMED	THEREFORE WITHIN NORMS	-0.235		
9	TOTAL FOUNDRY SCRAP		1.584	1.342	10.050

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(II)	PROCESSED BRASS SCRAP				
1	OPENING BALANCE	01.11.2008	28.461		
2	PROCEDURE/ OBTAINED AFTER SEGREGATION (ZINC SCRAP/COPPER SCRAP BIRCH)	01.11.2008 to 31.03.2010	12.976		
3	TOTAL		41.437		
4	CLOSING BALANCE	31.03.2010	9.573		
5	BRASS SCRAP CONSUMED (SEGREGATED)		31.864		
6	FINISHED GOODS MANUFACTURED I.E BRASS INGOTS		28.895		
7	BRASS SCRAP REQUIRED AS PER NORMS	NORMS 1:1.08	31.207		
	EXCESS CONSUMED (5-7)		0.657		

25. I find that the SCN has been issued for recovery of Customs duty on excess consumption of raw material used than the norms fixed for the purpose of segregation of non foundry scrap from mixed brass scrap and manufacturing of finished brass parts from foundry scrap (cleaned brass scrap). As per revised Annexure B &B-1, the Noticee has not generated non foundry scrap in excess of the norms fixed. From the verification report, I find that the Noticee has manufactured 28.895 MT of brass ingots, for which the Noticee has consumed foundry scrap of mixed brass scrap/zinc scrap/copper scrap birch of 31.864 MT, whereas, maximum quantity allowable to them was 31.207 MT in the ratio of 1: 1.08, which is excess by 0.657 MT and the Noticee is required to pay Customs duty of Rs.34,555/- calculated proportionately on the said excess consumption of raw materials

i.e.0.657 MTs valued at Rs.2,12,128/-, consequential with penalty and confiscation of goods in accordance with the violation of the provisions of Customs Act and FTP."

5.4 I am of the view that the conclusion arrived at by the learned Adjudicating Authority/ Additional Commissioner in para 24-25 mentioned above is against the law laid down by Hon'ble Gujarat High Court in **Commissioner, Customs (Preventive)** Versus **Monarch Overseas** reported in 2019 (1) TMI 1513 (GUJ.). In paragraphs 11 & 12 of the judgment, it has been observed and held as follows:-

> ***"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."*
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> ***12.*** *In the light of the above discussion, it is not possible to state that the impugned order passed by the Tribunal suffers from any legal infirmity so as to give rise to any question of law, much less, a substantial question of law, warranting interference. The appeals, therefore, fail and are accordingly summarily dismissed."*

5.5 Further in **Deep Recycling Industries & Ors** Vs **CCE & ST. Rajkot** reported in 2024 (3) TMI 970- CESTAT Ahmedabad, it has been held that 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 has taken the view 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 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 the 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 it has been correctly pointed out by the learned advocate for the appellant, the Clause (3) of the relevant notification No. 52/2003-Cus. specifically provides exemption to the goods which are imported into India and are used for the purpose of manufacture of finished goods. The conditions for exemptions, 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 wastagethus can be at variance from industry to industry." With these observations, the Tribunal allowed the appeals.

6. I am of the view that the facts of the case are covered by the decision of the Tribunal in **Deep Recycling Industries & Ors** (supra) and **Commissioner, Customs (Preventive)** Versus **Monarch Overseas**(supra).

6.1 It is pertinent to mention here that the Authorised Representative for the Department has referred to the order passed in Customs Appeal No.13282 of 2013- DB **Amardeep Exports** Vs **CC, Jamnagar (Prev)** in which Hon'ble Tribunal has held that the point raised by the appellant in their calculation relates to the loss on account of slag. From the letter of DGFT dated 04.05.2011, it is apparent that the wastage norm for the stage of manufacturing brass items from segregated processed mix brass scrap is 1.26 and it is obviously inclusive of all kind of losses including slag. Thus, the calculation given by the appellant in their appeal cannot be adopted for the purpose of calculating unexplained consumption of scrap. The Hon'ble Tribunal further held that we do not find any merit in appeals filed by the appellant and the same are dismissed.

6.2 I am of the view that the legal propositions laid down in **Deep Recycling Industries & Ors** (supra) are binding on this Tribunal because they are based on judgment of Hon'ble Gujarat High Court in **Commissioner, Customs (Preventive)** Versus **Monarch Overseas**(supra). Therefore, the learned Commissioner and the Adjudicating Authority erred in holding that noticee is further required to pay Customs duty of Rs.34,555/-. They also erred in imposing penalty of Rs.5,000/- on the noticee and imposing redemption fine of Rs.20,000/-. Therefore, the appeal is liable to be allowed whereas, the impugned order passed by the learned Commissioner is liable to be set aside.

7. Consequently, the appeal is allowed. The impugned order passed by the learned Commissioner dated 06.02.2014 is set aside.

(Pronounced in the open court on 31.10.2025)

(Dr. AJAYA KRISHNA VISHVESHA)
MEMBER (JUDICIAL)

Bharvi