

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
AHMEDABAD**

REGIONAL BENCH, COURT NO. 2

CUSTOMS APPEAL NO. 10089 OF 2019

(Arising out of OIA-MUN-CUSTM-000-APP-240-18-19 Dated- 11/10/2018 passed by Commissioner of CUSTOMS-AHMEDABAD)

INOX INDIA PVT LTD

Boru Road, Nr, Narmada Colony, Village-Katol,
Taluka-Kalol, Panchmahals, Gujarat

Appellant

Vs.

COMMISSIONER OF CUSTOMS-MUNDRA

Office of the Principal Commissioner of Customs,
5B, Port User Buld. Custom House Mundra,
Kutch, Gujarat-370421

Respondent

Appearance:

Shri Dhaval Shah, Advocate for the Appellant

Shri Himanshu Nachane, Superintendent (AR) for the Respondent

CORAM:

HON'BLE Dr. AJAYA KRISHNA VISHVESHA, MEMBER (JUDICIAL)

FINAL ORDER NO. 11449/2025

Date of Hearing : 25.08.2025

Date of Decision : 24.12.2025

Dr. AJAYA KRISHNA VISHVESHA

This appeal is directed against the impugned Order-in-Appeal dated 11th October, 2018 passed by the learned Commissioner (Appeals) Customs, Ahmedabad through which he rejected the appeal and upheld the order dated 6February, 2018 passed by Assistant Commissioner of Customs, Mundra.

1.1 The facts of the case in brief are that the appellant filed a Bill of Entry no. 4204879 dated 29th November, 2017 for clearance of one piece of cargo declared as re-import of one cryogenic tank for liquid gases returned after replacement of the damaged Tank. The Tank was exported vide Invoice No. III/1114/EXP-20-2014 dated 27th March, 2015, Shipping Bill No. 8704611

dated 30.03.2015. They received complaint from the Customer. Their engineers tried to repair the tank at the Customer's site but they were not able to repair the same and since the tank was in warranty period, they exported replacement tank free of cost on replacement basis vide their invoice dated 3rd June, 2017, Shipping Bill dated 28th June, 2017. After getting replacement tank, customer sent them back the rejected tank vide Invoice No. 802008 dated 10th November, 2017 for which they have filed Bill of Entry dated 29th November, 2017.

1.2 Final assessment was done on 19th January, 2018 with remark "there is no provision under Customs Law that export benefit can be retained in case of replacement. As such importer is requested to reverse the export benefit on the original cargo along with interest. OCC be given only after the reversal of export benefit along with interest." Assistant Commissioner, Customs House, Mundra vide order dated 6th February, 2018 upheld the assessment order and ordered to reverse all the export benefits along with applicable interest taken on the original cargo exported.

2. Aggrieved from the order of Assistant Commissioner Customs House Mundra, the appellant filed appeal before the Commissioner (Appeals). The learned Commissioner (Appeals) observed that the goods reimported by the appellant vide Bill of Entry dated 29th November, 2017 are the same goods which were exported under Shipping Bill dated 30th March, 2015. Export benefits have been availed on this shipping bill. As export benefits have been availed, the reimport of these goods falls under Sr. no. 1 of the Notification No. 46/2017-Customs dated 30th June, 2017 and the appellant are required to reverse the export benefits along with interest. The Adjudicating Authority has rightly ordered to reverse all the export benefits along with applicable interest taken on the original cargo exported against shipping bill dated 30th

March, 2015. With these observations, the learned Commissioner rejected the appeal. Feeling aggrieved from the impugned order passed by the learned Commissioner (Appeals) dated 11th October, 2018, the present appeal has been filed before this Tribunal.

2.1 The learned counsel for the appellant has submitted that the learned Commissioner has not appreciated the factual position while arriving at the erroneous conclusion. The compressed liquefied gas tank CVA 6K 240 was first exported vide shipping bill dated 30th March, 2015 availing benefits under duty draw back. The aforesaid consignment was defective, therefore, it was reimported vide Bill of Entry dated 29th November, 2017. The replacement goods were exported vide shipping bill dated 28th June, 2017

2.2 He has further submitted that the Chartered Accountant issued a certificate dated 6th January, 2018 certifying that the appellant have not charged any extra amount for the replacement of the tank dispatched vide their invoice dated 3rd June, 2017 sent to M/s. Muscat Gases Company SAOG vide shipping bill dated 28th June, 2017. It was further certified that the appellants have availed export benefits only once on original supply vide shipping bill dated 30th March, 2015 and they have not availed any export benefits on replacement goods dispatched vide shipping bill dated 28th June, 2017. Therefore, in view of the above factual position, condition no. 1 of the Notification No. 46/2017-Customs dated 30th June, 2017 is not attracted and assessment is required to be done as per Sr. No. 5 of Notification No. 46/2017-Customs dated 30.06.2017.

2.5 The learned Counsel for the appellant further submitted that the case of the appellants is not covered under Sr. No. 1 of Notification no. 86/2017-Customs dated 13th June, 2017 for the reason that appellants have first

exported the consignment. When they have received complaint from the customers, they tried to repair the same but it could not be repaired. So the appellants provided replacement tank to the customer under warranty. Thereafter, the appellant have reimported the original consignment as it was defective. Thus, when appellants have exported the goods, they have availed export benefits only once on original supply vide shipping bill dated 30th March, 2015 and not availed any export benefits on replacement goods exported vide shipping bill dated 28th June, 2017. Therefore, when the goods were exported, there is no reason to deny the export benefits. The appellants are entitled for the benefits of Sr No. 5 of Notification No. 46/2017-Cusotms dated 30th June, 2017 and Sr No. 1 of the Notification is not applicable as wrongly held by the Adjudicating Authority. Sr No. 1 of the Notification will be applicable only when replacement is not exported. The moment, the replacement consignment is exported, it is as good as the goods are exported and once the goods are exported the export benefits are admissible. Therefore, assessment order dated 19th January, 2018, in case of Bill of Entry dated 29th November, 2017 is erroneous. The appellants are not liable to reverse the export benefits along with applicable interest taken on the original cargo exported against shipping bill dated 30th March, 2015 before clearance of the reimported goods against Bill of Entry dated 29th November, 2017, as Sr No. 1 of the notification is not applicable. The respondent has erroneously held that there is no provision in the Customs Law under which it is permitted to retain the export benefits in case of reimport of goods. This finding is erroneous, as respondent has not taken cognizance of export replacement consignment in place of reimported goods. Once the replacement consignment is exported the goods are deemed to have been exported. When the goods are exported export benefits are also admissible.

2.6 The learned Counsel for the appellant also submitted that in view of urgency, the appellant have deposited 100% amount of Bill of Entry dated 29th November, 2017 amounting to Rs. 15,30,561/- vide challan dated 21st February, 2018. Vide these challans, the appellants have deposited/ surrendered export benefits amounting to Rs. 3,19,094/-, IGST amount Rs. 11,91,600/- and interest for the period, from the date of first assessment order dated 19.01.2018, to final payment date, 21st February, 2018 i.e. Rs. 19,08,067/-. The appellants have deposited full amount to get the shipment cleared, as they were incurring heavy Detention and Demurrage Charges.

2.7 The learned Counsel for the appellant submitted that in view of the above position, the impugned Order-in-Appeal together with the assessment order dated 19th January, 2018 is liable to be set aside. The appellants are not liable to reverse export benefits taken on original cargo exported against shipping bill dated 13th March, 2015. Since, the appellants have already deposited Rs. 3,19,094/- towards surrender of export benefits to get the imported goods cleared, the appellants claim refund of the same. It has also been prayed that re-imported goods against bill of entry dated 29th November, 2017 be assessed as per Sr. No. 5 of Notification No. 46/2017-Customs, dated 30th June, 2017.

3. The learned Authorised Representative for the department reiterated the Order-in-Appeal dated 11.10.2018 passed by the learned Commissioner (Appeals) and submitted that benefit of Sr. No. 5 of the Notification No. 46/2017-Customs dated 30th June, 2017 does not appear to be applicable to the appellants as the original shipping bill is not free shipping bill. There is no provision in Customs Act under which it is permitted to retain the export benefits in case of reimport of goods. They had taken export benefit on the goods exported and therefore their reimport falls within Sr. No.1 of the above

mentioned Notification. So the export benefits availed are liable to be reversed with interest.

4. I have heard the learned counsel for the appellant and learned Authorised Representative for the department and perused the record.

5. I agree with the learned Counsel for the appellant that impugned order passed by the learned Commissioner is erroneous as he failed to appreciate the facts of the case in true perspective. The learned Commissioner has observed in para 8 of the impugned order that the issue to be decided in the appeal is whether the export benefit availed by the appellant on the goods exported are liable to be reversed when the goods 'one cryogenic tank for liquid gases' are re-imported vide Bill of Entry No. 4204879 dated 29.11.2017 which are the same goods which were exported under the shipping Bill No. 8704611 dated 30.03.2015. Export benefits have been availed on this shipping Bill, therefore, the re-import falls under Sr. No. 1 of the Notification No. 46/2017-Cus. dated 30.06.2017 and the appellant are required to reverse the export benefits along with interest. The Adjudicating Authority has rightly ordered to reverse all the export benefits along with applicable interest taken on the original cargo exported against shipping bill No. 8704611 dated 30th March, 2015.

5.1 The above findings of the learned Commissioner would have been sustainable if the goods mentioned in para-8 of the impugned order would have been re-imported after their export, but it is not the factual position. The factual position is that the said goods "compressed liquefied gas tank" was first exported vide Shipping Bill dated 30.03.2015 availing benefit of duty draw back. The aforesaid consignment was defective therefore, it was re-imported vide Bill of Entry dated 29.11.2017. The replacement goods were

again exported vide shipping bill dated 28.06.2017. From the above facts, it becomes clear that first the goods were exported thereafter, as the goods were defective, it was re-imported and thereafter the replacement goods were re-exported again. The learned Commissioner failed to take cognizance of the fact that replacement goods were exported vide shipping bill dated 28.06.2017. Therefore, I agree with the learned Counsel for the appellant that provisions of Sr. No.1 of the Notification No. 46/2017-Cus. dated 30.06.2017 are not attracted but the provisions of Sr. No. 5 of the Notification No.46/2017-Cus. dated 30.06.2017 are in fact attracted.

5.2 Further, Chartered Accountant issued a certificate to the effect that appellant has not charged any extra amount for the replacement of the tank dispatched vide invoice dated 03.06.2017 against shipping bill dated 28.06.2017. It has also been certified that the appellants have availed export benefits only once on original supply vide shipping bill dated 30.03.2015 and they have not availed any export benefits on replacement goods dispatched vide shipping bill dated 28.06.2017. I agree with the learned Counsel for the appellant that when the goods were again exported in the form of replacement then there is no reason to deny export benefit to the appellant and they are entitled to get benefit of provisions of Sr. No. 5 of the Notification No. 46/2017-Cus. dated 30.06.2017. I also agree with the learned Counsel for the appellant that the moment, the replacement consignment is exported, it is as good as the goods are exported and once the goods are exported, the export benefits are admissible. Therefore, assessment order dated 19.01.2018, in case of Bill of Entry dated 29.11.2017 is erroneous and cannot be sustained. I am of the view that appellant are not liable to reverse the export benefits along with interest, taken on the original cargo exported

against shipping bill dated 30.03.2015 before clearance of the re-imported goods against Bill of Entry dated 29.11.2017.

5.3 The learned Counsel for the appellant fairly admitted that in view of urgency, the appellant had deposited 100% amount of Bill of Entry dated 29.11.2017 amounting to Rs. 15,30,561/- vide challan dated 21.02.2018 which included the export benefits amounting to Rs. 3,19,094/-, IGST amount Rs. 11,91,600/- and interest for the said period as they were incurring heavy detention and demurrage charges.

6. In view of above discussion, I have arrived at the conclusion that the impugned order passed by learned Commissioner is erroneous and not sustainable and the impugned order is liable to be set-aside whereas the appeal is liable to be allowed.

7. Consequently, the appeal is allowed. The impugned Order-in-Appeal and the assessment order dated 19.01.2018 are set-aside. It is held that appellant will not reverse the export benefits taken on original cargo exported against shipping bill dated 30.03.2015. Since the appellant have already deposited Rs. 3,19,094/- towards surrender of export benefit to get refund of the same by applying before the concerned authority, the refund of the same shall be made to the appellant.

(Order pronounced in the open Court on 24.12.2025)

(Dr. AJAYA KRISHNA VISHVESHA)
MEMBER (JUDICIAL)