

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

REGIONAL BENCH - COURT NO. 2

Customs Appeal No. 20140 of 2024

(Arising out of Order-in-Original No. MLR-CUSTM-VS-COM-004-2268/2023-24 dated 10.10.2023 passed by the Commissioner of Customs, Mangalore.)

**M/s. Catasynth Speciality
Chemicals Private Ltd.,**

Industrial Plot # 42A,
Mangalore SEZ Ltd., Bajpe,
Dakshina Kannada,
Mangaluru – 574 142.

Appellant(s)

VERSUS

**The Principal Commissioner of
Customs,**

New Customs House,
Panambur,
Mangaluru – 575 010.

Respondent(s)

APPEARANCE:

Mr. Anil Kumar. B, Advocate for the Appellant

Mr. Sanjay Venkat, Superintendent (AR) for the Respondent

CORAM:

**HON'BLE MR. P.A. AUGUSTIAN, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)**

Final Order No. 20973 / 2025

DATE OF HEARING: 13.06.2025

DATE OF DECISION: 13.06.2025

PER : R. BHAGYA DEVI

This appeal is filed by the appellant M/s. Catasynth Speciality Chemicals Pvt. Ltd. against Order-in-Original No. 2268/2023 dated 10.10.2023 passed by the Principal Commissioner of Customs, Mangaluru.

2. Briefly the facts are that the appellant's unit is located at Mangalore Special Economic Zone Ltd., (MSEZ), Dakshina

Kannada operating under Rule 19(4) of SEZ Rules, 2006 for manufacture of certain speciality chemicals. They had executed Bond-cum-Legal undertaking in the prescribed Form-H under Rule 22(i) of SEZ Rules, to fulfil the obligations cast on them. A major fire accident had occurred in the appellant's Plant No.4 manufacturing chemical products which resulted in loss of raw materials, semi-finished goods, finished goods and capital goods on account of the fire. The insurance surveyors report based on the various inspections carried out, observed that the duty foregone in respect of goods damaged in the fire accident was to extent of Rs.1,80,90,233/-. In view of the above, show-cause notice dated 12.04.2023 was issued to the appellant demanding duty amount of Rs.1,80,90,233/- along with interest. The Commissioner in the impugned order accordingly confirmed the above duty amount along with interest and confiscated the goods and allowed to redeem the goods on payment of fine of Rs.1,00,00,000/- under Section 125 of the Customs Act, 1962 and imposed penalty of Rs.20,00,000/- under Section 112(a)(ii) of the Customs Act, 1962.

2. The Learned Counsel submitted that the goods are still lying with the Revenue and hence, the matter needs to be disposed of at the earliest in view of the directions of the Hon'ble High Court of Karnataka in Writ Petition No. 3097/2025 dated 13.02.2025. The Learned Counsel narrating the incident of fire and the destructions of the goods seeks release of the damaged goods without payment of redemption fine pending disposal of the appeal. It is also submitted that the goods are not liable for confiscation under Section 111(o) of the Customs Act, 1962 and it is also stated that the redemption fine imposed on them exceeds the market value of the damaged goods which is liable to be set aside. The appellant disputed the duty liability of Rs.1,80,90,233/- since capital goods are partially used and requests for setting aside fine and penalty.

3. The Learned Authorised Representative (AR) on behalf of the Revenue submitted that the appellant had executed a Bond-cum-Legal undertaking in terms of the SEZ Act / Rules and had procured duty-free goods for their manufacturing activity in terms of the SEZ Act / Rules. On account of the fire accident on 24.04.2021, in which there was a considerable loss of Plant and Machinery, Raw Material, Work-in-progress and Packing material Stock as also Damage to Building. Consequently, a show-cause notice was issued demanding duty on the goods destroyed in the fire accident which was adjudicated by the Commissioner of Customs, Mangalore vide OIO No. 04/2023-4 dated 10.10.2023 wherein duty of Rs.1,80,90,233/- was demanded under Section 28(1) of the Customs Act, 1962 and Section 26(1) of the SEZ Act, 2005 read with Rules 22, 25, 27, 34 and 47 of the SEZ Rules, 2006 along with interest under Section 28AA of the Customs Act, 1962 and Rs.1,80,90,233/- Penalty U/s 111(o) was imposed apart from Rs.20,00,000/- Penalty under Section 112(a)(ii). The Bond-cum-Legal undertaking was also liable to be enforced if the appellant failed to pay the above-mentioned dues. Aggrieved by the said order, the appellant had filed this appeal before Hon'ble CESTAT. In the meanwhile, the appellant had filed a Writ Petition before the Hon'ble High Court of Karnataka vide Writ Petition No. 3097/2025 on the following grounds:

- (i) Reading down of Sec 111 (o) and 125 of the Customs Act, 1962;
- (ii) Permitting release of the damaged goods by the appellant without payment of RF and
- (iii) Disposal of the appeal pending before CESTAT in a time bound manner.

It may kindly be noted that during the hearing of the Writ Petition, the appellant had categorically stated that they would not press their prayer for Sl. No (i) and (ii) and restricted their submission with respect to prayer at Sl.No. (iii). The Hon'ble High Court had disposed the Writ Petition with a direction to the Hon'ble CESTAT to dispose of the appeal within a period of four months. Hence, the appeal has come up for hearing.

3.1 He further submitted that it is a fact on record that appellant had not utilized the duty-free goods for the intended purpose after the fire accident and therefore, the liability prescribed under the SEZ Act or customs law is automatically attracted. It is not out of the way to mention that the appellant had received compensation from the insurance company on the Plant and Machinery, Stocks etc., destroyed in fire inclusive of the IGST / Customs duty and therefore, liable to pay the same immediately to the government exchequer, which he has failed to do so and their contention that the amount is to be paid at the time of Domestic Tariff Area (DTA) sales is not tenable. Neither the department has asked the appellant to consume the goods nor fastened him with the duty liability to be paid out of his own pocket. The amount of insurance has been received well in time even before issue of the show-cause notice and the impugned order, therefore, it was laded duty of the appellant to have paid the amount to the government exchequer. The insurance report also mentions that the GST liability being a government liability is admitted and paid to the appellant. The impugned order had discussed this aspect that the duty amount once received from the insurance is necessarily to be paid by the appellant to the government exchequer. By not paying the same, appellant is only enjoying the amount what is rightfully due to the government.

3.2 He further submits that the appellant had erred in stating that interest would start from the date of damage by fire and that interest is liable to be paid if appellant fails to discharge duty at the time of sale of destroyed or damaged goods in DTA, which is actually incorrect. Nowhere in the impugned order, it has been discussed that the interest is payable from the date of damage by fire as stated by the appellant. Further, as per Section 28AA of the Custom Act, 1962 interest is liable on the person chargeable to duty in terms of Section 28 and such interest shall be calculated from the first day of the month

succeeding the month in which the duty ought to have been paid. The duty in the present case ought to have been paid at the time of import of damaged goods and the interest would be charged accordingly as per the provisions under Section 28AA of the Customs Act, 1962 which was clearly stated in para 27 of the impugned order. As stated by the appellant that that interest would start from the date of damage by fire is actually incorrect as no such discussions have been made in the impugned order. Further, there is no specific instructions / circular / instructions with regard to waiving of the interest in such cases.

3.3 Further, he submitted that the aspect of confiscation of goods has been discussed in para 28 of the impugned order and that the appellant had executed bond in terms of Rule 22 of the SEZ Rules for proper utilization and accounting of the goods imported or procured duty-free and the fact on record indicate that they could not utilize the subject goods for authorized operations after the fire and hence, they have to pay back the duty foregone. In spite of receiving the compensation amount on the damaged goods from the insurance company, the appellant has not come forward to pay the applicable duty which was exempted at the time of clearance of the goods in question. Non-payment of applicable custom duty and non-fulfilment of condition of the exemption Notification attracts improper importation under Section 111(o) of the Customs Act, 1962 and hence, the goods were liable for confiscation as discussed in the impugned order. The appellant had upfront received the compensation from the insurance company towards the duty or tax amount liable to be paid against damaged good and hence, breached the condition of the Bond-cum-Legal undertaking executed by them and thus, liable to pay the final penalty, which has been imposed correctly.

3.4 The learned AR also submitted that even in case of the salvaged goods where the appellants are requesting for release of goods without payment of the redemption fine, kind attention

is drawn to the Para 10.04J of the insurance report, wherein it is clearly stated that the appellant tried to e-auction the salvaged goods but no successful bidders were there and thus, the insurance company had persuaded the appellant to retain the salvage for an amount of Rs.50/- Lakhs. This clearly shows that the appellant had already been compensated by the insurance company to retain the salvage and their request for allowing the clearance of the same is unfounded as they have agreed to retain the same.

3.5 The learned AR also further submitted that the appellant in the grounds of appeal or in their prayer had only requested for waiver of redemption fine and penalty and nothing beyond. He had admitted his liability to pay duty and after the first hearing, having realised that they have no choice but to pay the duties; had deposited the amount after deducting the pre-deposit amount from the total amount of Rs.1,80,90,233/-; and the interest is automatic and needs to be paid. Further, they have collected an amount of Rs.2,32,42,827/- as duties from the insurance company but as the liability had been pegged at Rs.1,80,90,233/-, the same has been paid. The appellant having been compensated with more amount in guise of duties, should have no problem to pay the interest out of this extra amount received.

3.6 The learned AR submitted that appellant is now trying to raise new grounds which cannot be considered for the sole reason that they have admitted their liability and have paid the duty amount and should not have any problem to pay the interest from the excess amount received by them from the insurance company. Having admitted their liability, any new grounds that the appellant is trying to bring in at this stage cannot go beyond the grounds of appeal and it is prayed that the remand may also be limited to that extent only.

4. Heard both sides.

5. The appellant vide impugned order dated 10.10.2023 was directed to pay Customs Duty of Rs.1,80,90,233/- along with interest under Section 28(1) of the Customs Act, 1962 and Section 26(1) of the SEZ Act, 2005 read with Rule 22 to 27, Rule 34, Rule 47 of the SEZ Rules, 2006. The Commissioner also held that the goods were liable for confiscation and accordingly, imposed redemption fine under Section 125 and penalty under Section 112(a)(ii) of the Customs Act, 1962. It is pertinent to note that the appellant in their reply dated 11.05.2023 to the show-cause notice has stated as follows 'the capital goods destroyed in the fire accident were still lying within their SEZ unit and they will be liable to pay duty only on disposal of damaged goods and materials in DTA as per Rule 34 of SEZ Rules, that interest should be liable to be paid if they fail to discharge the duty at the time of sale of destroyed goods in DTA and they have informed that they would be paying the duty at the time of sale of goods in DTA'. During the personal hearing vide reply dated 04.09.2023, they once again submitted that they were not seeking to evade payment of duties on the goods destroyed by fire and that duty was payable on removal of goods destroyed by fire. However, on issuance of the impugned order, the appellant filed a Writ Petition before the Hon'ble High Court of Karnataka stating the prayer as follows:

- "(a) Reading down sections 111(o) and 125 of the Customs Act [Annexure A], so as not to apply for *force majeure* events beyond the assessee's control.
- (b) Permitting release of the damaged goods by the Petitioner without payment of redemption fine, pending disposal of the Petitioner's appeal before the CESTAT, Bangalore bench [Annexure K].
- (c) Alternatively, directing the CESTAT, Bangalore Bench to decide the Petitioner's appeal (Appeal No.C./20140/2024) [Annexure K] expeditiously in a time-bound manner.
- (d) Granting such further and other reliefs, as this Hon'ble Court may deem fit and proper in the nature and circumstances of the case.

INTERIM PRAYER

Pending disposal of this writ petition, in the interest of justice, the petitioner most humbly prays that this Hon'ble Court may be pleased to permit release of the damaged goods without payment of redemption fine, on submission of a bond or any other security as deemed appropriate by this Hon'ble Court."

6. The above Writ Petition was disposed of by the Hon'ble High Court of Karnataka by observing as follows:

"Heard learned counsel Sri Abhishek A. Rastogi for Sri Shivaji H. Mane, learned counsel for petitioner through video conference. At the outset, the learned counsel submits that he would not press prayer Nos.(a) and (b) and restricts his submission to prayer No.(c), wherein the petitioner has prayed for a direction to the CESTAT, Bangalore to decide the appeal dated 10.01.2024 in a time bound manner.

2. Learned counsel for the petitioner would submit that the petitioner has filed appeal before the CESTAT against the order dated 10.10.2023 of the Commissioner of Customs and it is the grievance of the petitioner that the said appeal is pending for the last one year and petitioner's damaged goods would get destroyed. Therefore, he prays for a direction to the CESTAT to dispose of the appeal in a time bound manner.

3. Learned counsel Sri Aravind V. Chavan for respondent Nos.2 to 4 submits that in view of huge pendency, the CESTAT could not dispose of the appeal and prays for six months' time to dispose of the appeal filed by the petitioner.

4. Learned counsel for the petitioner also prays for an interim direction to the respondents to release the damaged goods.

5. Admittedly, the petitioner has filed appeal against the impugned order dated 10.10.2023 passed by the Commissioner of Customs and the said appeal is pending before the CESTAT in Appeal No. C/20140/2024. Hence, it would be appropriate to direct the CESTAT to dispose of the appeal within four months. In the meanwhile, it is open for the petitioner to seek for any interim relief by filing separate application. Ordered accordingly.

6. With the above, writ petition stands disposed of."

Hence, this appeal before us was on a priority basis as per the directions of the Hon'ble High Court of Karnataka.

7. The appellant's prayer in their appeal before us is as follows:

- "a) The appellant may kindly be allowed to make payment of duty liability of Rs.1,80,90,233/- on removal of the remnants of utilized / consumed damaged goods, materials and plant and machineries from the SEZ unit.
- b) Please remove order for confiscation of the fire damaged goods and materials.
- c) The fine of Rs.1,00,00,000/- may kindly be deleted.
- d) The penalty of Rs.20,00,000/- may kindly be deleted.
- e) Enforcement of Bond cum Legal undertaking in Form H may kindly be stayed till final disposal of this appeal.
- f) The stay may kindly be granted against entire impugned order demand of duty, interest, penalty and fine as the appellant has paid requisite pre-deposit amount.
- g) The appellant crave leave to add/alter/delete/modify any of the grounds of appeal before its final disposal.
- h) Any other relief, as may be deemed fit in this case."

8. The fact of the fire accident and the fact that the goods were damaged in the process is not in dispute. The fact that the insurance company has paid the appellant duty amount of Rs.1,80,90,233/- is also not in dispute. It is also on record that the appellant vide letter dated 16.02.2023 as noted by the Commissioner in the impugned order had submitted that:

"19. I find that in their **written reply dated 11.05.2023**, the notice has stated as under:

"B) The Noticee submits that the liability towards Customs duty amounting to Rs. 1,80,90,233- (Rupee one crore eighty lakh ninety thousand two hundred thirty-three only) equal to the duty leviable foregone on the goods burnt/lost/destroyed in the fire accident under Section 26 of SEZ Act. 2005 and section 28(1) of the Customs Act, 1962 read with Rule 22, 25, 27, 34 and 47 of SEZ Rules, 2006, was confirmed by Noticee vide letter dated 16.02.2023, and Para 3.7 of the above referred Show Cause Notice confirms that the Noticee vide their letter dated 16.02.2023 informed that **they will be paying duty amount**, and had requested additional time to pay the same due to the financial issues being faced by the Noticee as a consequence of the delay in stabilisation of operations post the fire incident"

20. Further, in their **letter dated 16.02.2023**, the noticee has *inter alia* stated as under:

"As per Loss Assessment, we will be paying the Duty Amount GST (Reversal) together Interest amounting to Rs.2,32,42,827/-.

As you are aware, due to the COVID restrictions which delayed our project completion and the subsequent fire incident in April 2021, both unforeseen and beyond our control, and the delayed ramp-up of operations as a result, our cash flows have been temporarily affected. **We request some additional time to make the Duty Payment."**

23. It is to be noted that in this instance, as the subject goods were damaged/lost/destroyed due to the fire accident, the same could not be utilised for authorised operations. Therefore, the Customs duty of Rs.1,80,90,233/- has been charged on the noticee as if such goods were cleared for home consumption and this is in line with the clarification given by EPCES in the newsletter.

25. In this regard, I would like to note that in Para 10.03 of the document "Insurance Surveyors Joint Final Survey and Loss Assessment Report of Material Damage Claim" dated 17.09.2022 furnished by the noticee, it has been clearly recorded that the insured party CSCPL has also claimed compensation of tax amount liable to be paid by them on the stock of raw material, semi-finished goods, work-in-progress, packing material, building, plant and machinery etc., damaged in fire and the insurer (insurance company) too has agreed with the said claim. From this document, it is clear that apart from claiming compensation for material loss, the noticee has also claimed compensation towards duty/tax amount liable to be paid on the goods destroyed/lost in the fire accident. In this context, I find that the insurer has paid total compensation of Rs.14 crore to CSCPL before final settlement of claim. However, CSCPL chose not to discharge their duty liability and pay the dues to the Government, the benefit of which they had claimed by way of duty/tax exemption at the time of procurement of goods. Hence, I reject their claim to allow payment of Customs duty of Rs.1,80,90,233/- under demand at the time of disposal of salvage in the DTA, particularly considering that they have not given any timeline for such disposal and that they have already received the duty foregone amount as loss compensation from the insurer.

It is a fact that the appellant had recovered duty amount of Rs. 1,80,90,233/- from the insurance company and admitted to discharge the same at the time of clearance of the goods. As seen from the above prayer of the appellant before us, it is clear that the payment of duty liability is not disputed.

9. As per Section 28B of the Customs Act, 1962, which is reproduced below, any amount collected in the name of duty has to be necessarily be deposited with the Government.

Section ¹[28B. Duties collected from the buyer to be deposited with the Central Government. -

⁴[(1A) Every person who has collected any amount in excess of the duty assessed or determined or paid on any goods or has

collected any amount as representing duty of customs on any goods which are wholly exempt or are chargeable to nil rate of duty from any person in any manner, shall forthwith pay the amount so collected to the credit of the Central Government.]

⁵ [(2) Where any amount is required to be paid to the credit of the Central Government under ⁶ [sub-section (1) or sub-section (1A), as the case may be,] and which has not been so paid, the proper officer may serve on the person liable to pay such amount, a notice requiring him to show cause why he should not pay the amount, as specified in the notice to the credit of the Central Government.]

⁷ [(3) The proper officer shall, after considering the representation, if any, made by the person on whom the notice is served under sub-section (2), determine the amount due from such person (not being in excess of the amount specified in the notice) and thereupon such person shall pay the amount so determined.]

⁷ [(4) The amount paid to the credit of the Central Government under ⁸ [sub-section (1) or sub-section (1A) or sub-section (3) as the case may be,] shall be adjusted against the duty payable by the person on finalisation of assessment or any other proceeding for determination of the duty relating to the goods referred to in ⁹ [sub-section (1) or sub-section (1A).]]

¹⁰ [(5) Where any surplus is left after the adjustment made under sub-section (4), the amount of such surplus shall either be credited to the Fund or, as the case may be, refunded to the person who has borne the incidence of such amount, in accordance with the provisions of section 27 and such person may make an application under that section in such cases within six months from the date of the public notice to be issued by the Assistant Commissioner of Customs for the refund of such surplus amount.]

In view of the above, the duty confirmed by the Commissioner and now paid by the appellant is upheld. However, the appellant has pleaded that interest will be liable to be paid only if appellant fails to discharge duty at the time of

sale of the destroyed goods in DTA. It is further submitted by the appellant in such a case of fire accident, the goods cannot be liable for confiscation and therefore, the question of fine and penalty does not arise.

9. It is also to be noted that during the second round of hearing, the appellant had produced challans of payment of duty minus the pre-deposit already made, which amounts to customs duty of Rs.1,80,90,233/-, which is also placed on record. Since the Revenue's interest is protected by discharge of duty liability, the appellant's request for clearance of goods is accepted on executing a bank guarantee for payment of interest from the date of the insurance claim till the date of payment of duty.

10. In view of the exceptional nature of the circumstances such as fire accident and the duty liability arose only for the reason that the appellant had collected the duty amount from the insurance company, the question of confiscation and imposition of redemption fine and penalty does not arise. Hence, the same are set aside.

11. However, considering the fact that duty liability arises only on account that the appellant had collected the duty amount from the insurance company which is not disputed, the liability to pay interest in such unforeseen circumstances needs to be re-examined. In the interest of justice, we remand the matter to the Commissioner to reexamine the interest liability.

Appeal is remanded.

(Operative portion of the order was pronounced in Open Court on conclusion of hearing.)

(P.A. AUGUSTIAN)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)