

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

REGIONAL BENCH - COURT NO. 2

Customs Appeal No. 20942 of 2019

(Arising out of Order-in-Original No. COC-CUSTOMS-000-COM-24-19/20 dated 24.07.2019 passed by the Commissioner of Customs, Cochin.)

Midas Treads (India) Pvt Ltd.

Midas marketing building Varissery Junction,
Mariathuruthu PO, Kottayam,
Kerala- 686017.

....Appellant(s)

VERSUS

Commissioner of Customs, Cochin

Custom House, Willingdon Island,
Cochin, Kerala - 682009.

....Respondent(s)

WITH

(i) Customs Appeal No. 20943 of 2019 (Paulose Vargughese)

(Arising out of Order-in-Original No. COC-CUSTOMS-000-COM-24-19/20 dated 24.07.2019 passed by the Commissioner of Customs, Cochin.)

(ii) Customs Appeal No. 20944 of 2019 (Manoj Mathews)

(Arising out of Order-in-Original No. COC-CUSTOMS-000-COM-24-19/20 dated 24.07.2019 passed by the Commissioner of Customs, Cochin.)

(iii) Customs Appeal No. 20945 of 2019 (Jayaprakash K)

(Arising out of Order-in-Original No. COC-CUSTOMS-000-COM-24-19/20 dated 24.07.2019 passed by the Commissioner of Customs, Cochin.)

APPEARANCE:

Mr. G. Shivadass, Sr. Advocate, Mr. Rishab. J, Advocate for the Appellant

Mr. M. Sreekanth, Asst. Commr. (AR) for the Respondent

CORAM:

HON'BLE MR. P.A. AUGUSTIAN, MEMBER (JUDICIAL)

HON'BLE MR. PULLELA NAGESWARA RAO, MEMBER (TECHNICAL)

Final Order Nos. 20445-20448 /2026

Date of Hearing: 20.01.2026

Date of Decision: 30.03.2026

PER : P.A. AUGUSTIAN

The issue in the present appeals is regarding demand of customs duty and interest on the ground that the test report submitted by the Appellant are forged.

2. The brief facts are the Appellant is manufacturing various products and also exporting pre-cured Tread Rubber, Rubber compound sheets, etc. Alleging that for the period from 2006-2009, Appellant had used forged ISO certificate for availing the benefit of DFIA/DEPB Scheme and they were not having in-house lab for testing the composition of exported final products, investigation conducted and statements were recorded from various persons and Show Cause Notice dated 15.03.2018 was issued. Thereafter Adjudication Authority as per the impugned Order dated 23.04.2019 confirmed the demand and also imposed penalty on Appellant and co-noticee under various provisions of Finance Act, 1994. Aggrieved by said order, present appeals are filed.

3. When the appeals came up for hearing, Learned Sr. Counsel draws our attention to the impugned order where duty was confirmed and penalty imposed only on the ground that on examination of the laboratory facilities by the DRI during the search operation, it was observed that the Appellant did not have a facility to test the composition of their finished goods. The test reports were manipulated to avail the benefit of DFIA/AA scheme by showing the composition of export goods as prescribed by Standard Input Output Norms (SION). On scrutiny of the copy of the ISO certificate submitted to Customs authorities for the finalization of the AA licenses, it was found that the effective date of the certification had been forged for availing benefits under AA/DFIA schemes. The agency that has issued the aforesaid ISO certificate, M/s DAS Certification (1) Pvt. Ltd., was not authorized to issue ISO 9000 certification in line with the guidelines issued vide Circular No. 57/97 dated 31.10.1997 read with Appendix 6 notified by the DGFT vide Public Notice No. 97(RE-2007)/2004-2009 dated 04.01.2008. Learned Sr. Counsel for the

Appellant also draw our attention to the various schemes prevailing at the relevant time and submits that Appellant had obtained license under Duty Free Import Authorization (DFIA) during the period 2007-2009 and Advance Authorization (AA) during the period 2012-2015. Under the DFIA scheme, the Appellant has opted for replenishment mode, i.e. the goods were exported and then the raw materials used for the manufacture of exported goods were imported. The Appellant obtained 3(three) DFIA licenses in terms of Para 4.2 of the Foreign Trade Policy ("FTP") for the period 2007-09 and availed benefits amounting to Rs. 36,32,331/-under the said scheme. The details of the DFIA licenses along with the corresponding EODCs are tabulated below:-

Sl. No.	License No. & Date	Corresponding EODC
1	1010027596 dated 09.10.2007	Redemption letter dated 08.10.2013
2	1010033729 dated 22.05.2009	Redemption letter dated 08.10.2013
3	1010033730 dated 22.05.2009	Redemption letter dated 13.09.2013

4. The Appellant fulfilled the export obligations against the aforesaid licenses and accordingly, the Export Promotion ("EP") copies were issued by the Customs authorities and the same were submitted to the Director General of Foreign Trade ("DGFT") for obtaining Export Obligation Discharge Certificate ("EODC"). Thereafter for the period of 2012-15, the Appellant obtained 11(Eleven) AA licenses and undertook import of goods by availing duty benefit of Rs. 6,16,28,577/-. The finished goods manufactured using the imported raw materials were exported under 400 shipping bills. The details of the AA licenses along with the corresponding EODCs are tabulated below:-

Sl. No.	License No. & Date	Corresponding EODC
1.	1010049763 dated 31.05.2012	Redemption letter dated 01.09.2021
2.	1010058639 dated 16.07.2014	Redemption letter dated 17.10.2016
3.	1010058853 dated 29.10.2014	Redemption letter dated 01.09.2021
4	1010058854 dated 29.10.2014	Redemption letter dated 01.09.2021

5.	1010058873 dated 13.11.2014	Redemption letter dated 31.08.2021
6.	1010058942 dated 17.12.2014	Redemption letter dated 01.09.2021
7.	1010059112 dated 21.04.2015	Redemption letter dated 13.01.2017
8.	1010059194 dated 09.07.2015	Redemption letter dated 30.06.2017
9.	1010059219 dated 30.07.2015	Redemption letter dated 15.03.2018
10.	1010059234 dated 11.08.2015	Redemption letter dated 15.03.2018
11.	1010059277 dated 23.09.2015	Redemption letter dated 01.09.2021

5. Learned Sr. Counsel submits that the raw materials were imported for the use in the manufacture of the finished products and export of goods undertaken against the above licenses by opting for factory stuffing under the supervision of Central Excise officer. At the time of shipment, samples were drawn and as per the test report, samples have the characteristics of pre- cured tread rubber, butyl rubber, and binding gum as declared. Nothing contrary to the requirements was found in the test reports. Learned Sr. Counsel also draws our attention to the Notification No. 40/2016-Cus dated 01.05.2016 where the Duty Free Import Authorization is issued subject to following conditions:-

"(i) that the description, value and quantity of materials imported are covered by the said authorisation and the said authorisation is produced before the proper officer of customs at the time of clearance for debit:

Provided that in respect of resultant product specified in paragraph 4.55.3 of the Handbook of Procedures (Vol. I) of the Foreign Trade Policy, the materials permitted in the said authorisation or a duty free import authorisation for intermediate supply, as the case may be, shall be of the same quality, technical characteristics and specifications as the materials used in the said resultant product:

Provided further that in respect of the said resultant product the exporter shall give declaration with regard to the quality, technical characteristic and specifications of materials used in the shipping bill;

(ii) that where import takes place after fulfilment of export obligation, the shipping bill number(s) and date(s) and quantity and Free on Board (FOB) value of the resultant product are endorsed on the said authorisation :

Provided that where import takes place before fulfilment of export obligation, the quantity and FOB value of the resultant product to be exported are endorsed on the said authorisation;

²[(iii) that in respect of imports made before the discharge of export obligation in full, the importer at the time of clearance of the imported materials executes a bond with such surety or security and in such form and for such sum as may be specified by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, binding himself to pay on demand an amount equal to the duty respect of which the conditions specified in this notification are not complied with, together with interest at the rate of fifteen per cent per annum from the date of clearance of the said materials;”

6. Learned Sr. Counsel further submits that as per the Condition No.7, “that exempt material shall not disposed off or utilized in any manner except for utilization in discharge of export obligation, before export obligation under the said authorisation has been discharged in full”.

7. As regards import under Advance Authorization, Learned Sr. Counsel draws our attention to the Notification No. 96/2019-Cus dated 11.09.2019 as per its conditions it is prescribed that:-

“(i) that the said authorisation is produced before the proper officer of customs at the time of clearance for

(ii) that the said authorisation bears,-

(a) the name and address of the importer and the supporting manufacturer in cases where the authorisation has been issued to a merchant exporter; and

(b) the shipping bill number(s) and date(s) and description, quantity and value of exports of the resultant product in cases where import takes place after fulfilment of export obligation; or

(c) the description and other specifications where applicable of the imported materials and the description, quantity and value of exports of the resultant product in cases where import takes place before fulfilment of export obligation”

8. Learned Sr. Counsel submits that as per above Notification, further it is stated that:-

(ix) that the importer produces evidence of discharge of export obligation to the satisfaction of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, within a period of sixty days of the expiry of period allowed for fulfilment of export obligation, or within such extended period as the said Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, may allow;

(x) that the said authorisation shall not be transferred and the said materials shall not be transferred or sold :

Provided that the said materials may be transferred to a job worker for processing subject to complying with the conditions specified in the [relevant goods and services tax provisions] permitting transfer of materials for job work:

Provided further that, no such transfer for purposes of job work shall be effected to the units located in areas eligible for area based exemptions from the levy of excise duty in terms of Notification Nos. 49/03-C.E. and 50/03-C.E. both dated 10th June, 2003, 32/99-C.E., dated 8th July, 1999, 33/99-C.E., dated 8th July, 1999, 8/04-C.E., dated 21st January, 2004, 20/07-C.E., dated 25th April, 2007, 56/02-C.E., dated 14th November, 2002, 57/02-C.E., dated 14th November, 2002, 71/03-C.E., dated 9th September, 2003, 56/03-C.E. dated 25th June, 2003 and 39/01-C.E., dated 31st July, 2001;

(xi) that in relation to the said authorisation issued to a merchant exporter, any bond required to be executed by the importer in terms of this notification shall be executed jointly by the merchant exporter and the supporting manufacturer binding themselves jointly and severally to comply with the conditions specified in this notification.

2. Where the materials are found defective or unfit for use, the said materials may be re-exported back to the foreign supplier within six months from the date of clearance of the said material or such extended

period not exceeding a further period of six months as the Commissioner of Customs may allow :

Provided that at the time of re-export the materials are identified to the satisfaction of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, as the materials which were imported"

9. Learned Sr. Counsel further submits that during the relevant time, drawing samples and getting test report had delayed the process. To avoid such delays, as per representation received from the Trade, beneficial Circular was issued stating that "accordingly, it has been decided that in case of manufacturer-exporter, in-house test result may be relied upon for the purpose of export under various export promotion scheme provided the manufacturer-exporter has been awarded with any of the ISO 900 series certification. Other provisions of this Circular No. 57/1997-Cus dated 31.10.1997 will apply mutatis mutandis to such manufacturer-exporter. Circular No. 25/2005-Cus dated 06.06.2005". Learned Sr. Counsel also draw our attention to the Foreign Trade Policy effective from 01.04.2008 where duty exemption provision schemes were made as per the Clause 4.1.5, as reproduced below:-

"4.1.5. Advance Authorisation and/or materials imported thereunder will be with actual user condition. It will not be transferable even after completion of export obligation. However, Authorisation holder will have option to dispose off product manufactured out of duty free inputs once export obligation is completed."

10. As regarding DFIA Scheme, Learned Sr. Counsel draws our attention to the Import Policy, where it is stated that:-

Scheme 4.4.1

DFIA is issued to allow duty free import of inputs, fuel, oil, energy sources, catalyst which are required for production of export product. DGFT, by means of Public Notice, may exclude any product(s) from purview of DFIA. This scheme is in force from 1st May, 2006.

Entitlement 4.4.2

Provisions of paragraph 4.1.3 shall be applicable in case of DFIA. However, these Authorisations shall be issued only for products for which Standard Input and Output Norms (SION) have been notified.

In case of post export DFIA, a merchant exporter shall be required to mention only name (s) and address(s) of manufacturer(s) of the export product(s). Applicant is required to file application to concerned RA before effecting exports under DFIA.

Pre-export Authorisation shall be issued with actual user condition and shall be exempted from payment of basic customs duty, additional customs duty/Excise duty, education cess, anti-dumping duty and safeguard duty

In case of actual user DFIA and where CENVAT credit facility on inputs have been availed for the exported goods, even after completion of export obligation, the goods imported against such DFIA shall be utilized in the manufacture of dutiable goods whether within the same factory or outside (by a supporting manufacturer).

Import items 4.4.3

Provisions of paragraphs 4.1.11, 4.1.12, 4.1.13 and 4.1.14 of FTP shall be applicable for DFIA holder.

Value Addition 4.4.4

A minimum 20% value addition shall be required for issuance of such authorisation except for items in gems and jewellery sector for which value addition would be as per paragraph 4A.2.1 of HBP v1. Items for which higher value addition is prescribed under Advance Authorisation Scheme, shall be applicable.

Export Obligation 4.4.5

Procedure and time period related to fulfillment of Export Obligation have been laid down in Chapter 4 of HBP v1.

Transferability 4.4.6

Once export obligation has been fulfilled, request for transferability of Authorisation or inputs imported against it may be made before concerned RA. Once transferability is endorsed, Authorisation holder may transfer DFIA or duty free inputs, except fuel and any other item(s) notified by DGFT. However, for fuel, import entitlement may be transferred only to companies which have been granted authorisation to market fuel by Ministry of Petroleum and Natural Gas.

Once transferability is endorsed, imports/domestic procurement against authorisation or transfer of imported inputs/domestically procured inputs shall be subject to payment of applicable additional customs duty / excise duty. While endorsing transferability, authorisation would bear a note as to liability of such additional customs duty / excise duty. However, in case where CENVAT facility has not been availed, exemption from additional customs duty/excise duty would be available even after endorsement of transferability on DFIA.

Wherever SIONs prescribe actual user condition and in case of Acetic Anhydride, Ephedrine and Pseudo Ephedrine, DFLA shall be issued with actual user condition for these inputs and no transferability shall be allowed for these inputs even after fulfillment of export obligation.

However, for authorisations issued prior to 1.4.2007, exemption from Additional Customs Duty/Excise Duty shall continue to be available even after endorsement of transferability, as provided in FTP (RE-2006).

CENVAT Facility 4.4.7

CENVAT credit facility shall be available for inputs either imported or procured indigenously.

4.4.8 - Deleted

11. Learned Sr. Counsel further draws our attention to the Hand Book of Procedure from 27 August, 2009 to 31st March, 2014 where standard were prescribed for pre-cured tread rubber/ Rubber strips/Lugs strips.

Sl. No.	Export item	Quan tity	Impor t Item		Chemical Products Qty Allowed
A1701	Pre-cured Tread Rubber/ Rubber Strips/Lugs Strips	1 kg	1	a) Natural/Synthetic Rubber SBR-1502/1712) b)PBR Carbon Black Rubber chemical (Anti- oxidants, accelerators retardars, peptiser) (Import of antioxidant shall not exceed 50% of the rubber chemicals allowed	0.41kg 0.17 kg 0.300 kg 0.023 kg

12. Thus on the product exported by the Appellant, there are prescribed Standard Of Input And Output Norms (SION) have been notified. Learned Sr. Counsel draw our attention to the Foreign Trade Policy with effect from 05.06.2012 where it is specifically stated that Advance Authorisation are issued for inputs and export items given under SIONs. These can also be issued on the basis of Adhoc Norms or self-declared norms as per paragraph 4.7 of HPB V-I. Learned Sr. Counsel further draws our attention to the Circular No. 57/97-Cus dated 31.10.1997 and the relevant portion is re-produced below.

Public Notice

Subject: Testing of goods exported under DEEC and Pass Book Schemes - Regarding.

Attention of Importers/Exporters/CHAs and all other concerned is invited to this Custom House Public Notice Nos. 18 & 19 both dated 31-1-1995 and Public Notice No. 150 dated 20-9-1995. In terms of the said Public Notices the logging of DEEC export book is allowed only after the required test results. Wherever applicable are available similarly. In cases of Pass Book Scheme the credit is allowed in the Pass Book only after the Test results have been obtained. A number of representations have been received from the trade stating that due to delay in obtaining the test results. A lot of money is blocked as the DEEC Books are not logged/credit not allowed in the Pass Book which has a detrimental effect on the export effort. The matter has been examined. As a measure of export facilitation, it has been decided that following facilities shall be available to the manufacturer exporters in so far as testing of export samples under the DEEC/Pass Book Scheme is concerned.

2. In the case of manufacturer exporters who have Inhouse testing facilities, samples may not be drawn and the Inhouse test results may be relied upon for the purpose of logging of DEEC export book as well as verification of credit under the Pass Book Scheme; provided the Inhouse testing facility of the manufacturer exporter has been recognised as follows:

(a) the manufacturer exporter has been awarded GMP (Good Manufacturing Practice) certificate by the concerned Drug Controller; or

(b) the Inhouse testing facilities are approved by ISI/CSIR/Ministry of Science and Technology or the nodal Ministry; or

(c) the manufacturer exporter has been awarded ISO 9002 certification.

In such cases, the exporter would have to enclose a copy of the Inhouse Test Certificate with the Shipping Bill.

3. Further, where the samples of the export product have earlier been drawn by the Central Excise authorities and test results of the same are available, these test results can be relied upon for the purpose of exports under the said Schemes provided the said test reports bring out the technical characteristics of the inputs as required to be ascertained under the Scheme(s). The test results obtained from Excise test laboratories shall be valid for six months from the date of their issue, for the purpose of waiving the drawal of samples under DEEC/Pass Book Schemes.

4. The above facilities shall be allowed to only manufacturer exporters. However, Customs would have the right to draw samples by surprise, go in for a detailed verification/testing etc., without assigning any reasons whatsoever.

5. This Public Notice comes into effect immediately.

13. The Learned Sr. Counsel further submits that as far as the Import policy is concerned, specific regulation is issued to look into the alleged violation to Foreign Trade Policy and as per the Foreign Trade (Development & Regulation) Act, 1992, controls of export of specified goods, service and technologies are prescribed and as per Section 14A and as per Section 15, provisions for appeals are provided. Thus the Respondent who had proceeded against the Appellant have no jurisdiction initiate any proceeding as done in appellants case. The issue was considered by the Hon'ble High Court of Madras in the matter of **M/s IOCEE Exports Ltd Vs CC, Chennai (2021 (376) E.L.T 311 (Mad)** where it is held that:-

"7. In our view, the standard input-output norms can be treated as an indicator and that may not be a sole reason for initiation of proceedings. This aspect was considered by the High Court of Gujarat in the case of Goodluck Garments Pvt. Ltd. v. Commissioner of Central Excise & Customs, Surat-II reported in 2019 (365) E.L.T. 893, The argument of the assessee therein was that the input-output norms were in the nature of guidelines and not a fixed formula. This aspect was considered and the Court held that the mere fact that the wastage was in excess of the input-output norms, without anything more, would not

be sufficient for the Assistant Collector to arrive at the satisfaction that the imported fabric had not been used for the manufacture of the articles for export. Further, the Court pointed out that Condition No. 6 of the Notification No. 13/Customs, dated 9-2-1981 could not be read in a manner, whereby despite the fact that the assessee was in a position to show that the entire material had been used for the purpose of manufacture of goods and there was no allegation with regard to diversion of goods, merely because the wastage norms were not satisfied, the Assistant Collector of Customs could record satisfaction to the effect that the goods had not been used for the manufacture of articles for export.

8. The Learned Senior Standing Counsel appearing for the respondents would submit that the assessee himself has given a letter accepting that they have sold the wastage in the local market.

9. On a perusal of the reply given by the assessee dated 15-10-2009 to the Show Cause Notice dated 16-9-2009, the assessee has not made any unconditional acceptance of any diversion. All that they have stated is that the practice is common in the industry and they were not aware that a letter has to be obtained from the proper officer and they made it clear that they have not hidden any facts and have not caused any reason for the Adjudicating Authority to believe that the facts were suppressed. Therefore, the so called letter issued by the assessee cannot be taken to be a case where the assessee accepted the fact that they have not utilized the raw materials for the purpose for which it was imported.

10. Therefore, we are of the view that the materials which were available cannot be a reason for issuance of the Show Cause Notice dated 16-9-2009. Consequently, the Order-in-Original No. 23 of 2009 cannot be sustained.

11. In the result, the appeal filed by the assessee is allowed on a different ground than what was raised by the assessee, namely that standard input-input norms cannot be a sole basis for giving a cause of action for issuing the Show Cause Notice for determination of the wastage, when there is no allegation of diversion made against the appellant. Therefore, the reframed two substantial questions of law namely question Nos. 1 and 3 are answered in favour of the appellant.

The order passed by the Tribunal vacating the penalty is sustained. No costs. Consequently, connected miscellaneous petition is also closed."

14. Learned Counsel further draws our attention to the judgment of the Hon'ble Supreme Court in the matter of **M/s Titan Medical Systems Pvt Ltd Vs. CC, New Delhi (2003 (151) E.L.T 254 (SC)** where it is held that:-

*"13. As regards the contention that the appellants were not entitled to the benefit of the exemption notification as they had misrepresented to the licensing authority, it was fairly admitted that there was no requirement, for issuance of a licence, that an applicant set out the quantity or value of the indigenous components which would be used in the manufacture. Undoubtedly, while applying for a licence, the appellants set out the components they would use and their value. However, the value was only an estimate. It is not the respondents' case that the components were not used. The only case is that the value which had been indicated in the application was very large whereas what was actually spent was a paltry amount. **To be noted that the licensing authority having taken no steps to cancel the licence.** The licensing authority have not claimed that there was any misrepresentation. Once an advance licence was issued and **not questioned by the licensing authority, the Customs authorities cannot refuse exemption on an allegation that there was misrepresentation. If there was any misrepresentation, it was for the licensing authority to take steps in that behalf.***

14. We are, therefore, unable to uphold the impugned order or the order of the Collector. Accordingly, the same are set aside. The show cause notice shall stand dismissed."

15. Learned Sr. Counsel also draw our attention to the judgment of the Hon'ble High Court of Karnataka in the matter of **M/s Kalinga Commercial Corporation Ltd vs CC, Bengaluru (2024 (20) CENTAX 267 (Kar)** and judgment of Hon'ble Supreme Court in the matter of **M/s Caprihans India Ltd Vs. CC, Surat (2015 (324) E.L.T 8 (SC)**. In the present case, appellant fulfilled export obligation on aforesaid Licenses and accordingly Export Promotion (EP) copies were issued by Customs authority and the same were submitted to Director General of Foreign

Trade for obtaining Export Obligation Discharge Certificate. Though as per Circular No. 57/97-Cus dated 31.10.1997 and Circular dated 31.10.1997, exemption is given to such in-house test results are provided when the exporter must be awarded with International Organization for standardization of ISO 9000 certification, in Appellant's case, samples were drawn from the export product and test report also available on record. In such cases, test result can be relied upon for the purpose of export and the said scheme provided that the test report bring out the technical characteristics of the inputs required to be ascertained under the scheme. Accordingly the test report for the samples draw by the authorities would be taken into account for the export of the product which did not find anything contradictory to the export obligation.

16. Learned Sr. Counsel further submits that a similar condition requiring a value addition of 10% of the CIF value was prescribed under AA scheme provided in the Foreign Trade Policy 2009-14. In terms of the said policy, all the requirements including non-importation of restricted/prohibited goods, usage of imported goods for manufacturing exported goods without transferring or disposing them, etc. have been satisfied by the Appellant. Further. the EODC in respect of all licenses was issued to the Appellant after the examination of the documents by the Licensing Authority. All the above EODCs have attained finality and have not been subjected to any Appeal or review by the concerned authorities. Thus, the Appellant have validly availed the benefit under DFIA and AA's and impugned order is unsustainable. There is no allegation as to diversion of raw materials, the raw materials imported under the DFIA and AA have been put to use in the manufacture of exported goods. SION can be treated as an indicator and may not be a sole reason for initiation of proceedings, when there is no allegation of diversion made against the appellant.

17. As regards allegation of submitting forged ISO certificate, Learned Sr. Counsel submits that the appellant has not violated the conditions of exemption Notification and also discharged the export obligation. As regards forged ISO certification, indicating the year of certification in the year 2006 instead of 2009, the appellant had actually applied for the

certificate in 2006 and certificate was actually to the copy of the letter dated 30.07.2013 where the appellant had received the requisite ISO certificate in 2009 and was communicated to the Customs Authorities.

18. As regards the alleged production of forged documents, Learned Sr. Counsel draws our attention to the finding in the impugned order and submits that the ISO Certification is not a condition for advance authorisation and same could be availed without ISO and that the ISO holders are eligible for only procedural relaxation with respect to sampling and testing of export goods. In appellant case, the samples are drawn and test reports are available on records. Therefore, it is only a procedural violation. In this regard, Learned Sr. Counsel relied on the following decisions:-

(i) Commissioner of Customs, Bangalore Vs. Aditya Birla Nuvo Ltd. – 2021 (378) E.L.T 42 (Kar.)

(ii) Rastirya Ispat Nigam Ltd. Vs. Commissioner of Cus., Visakhapatnam – 2004 (168) E.L.T 223 (Tri. – Bang.)

(iii) Nizam Sugar Factory Vs. Collector of Central Excise, A.P. – 2006 (197) E.L.T 465 (S.C)

19. Learned Sr. Counsel also submits that there is a Central Laboratory within the premises of M/s. Midas Rubber Pvt. Ltd, an associate company of the noticee and the lab is equipped with sophisticated testing machines, most of them are imported, that the appellant had requested the Adjudicating Authority to conduct inspection and to evaluate the facilities available with the Central Lab. Further submits that the Certificate is issued by "The Rubber Research Institute of India, Rubber Board" and that all consignments of export goods were subjected to rheometer test to analyse the composition of the goods.

20. Learned Sr. Counsel also draws our attention to the in-house test report dated 11.09.2015, where the composition of the goods are as per the SION Norms. Learned Sr. Counsel also draw our attention to the statement recorded from Mr. Soby Antony, who was handling the production and inventory control of the unit herein stated that "we are

mixing the compound as per the formulation. In case of export formulation, we are manufacturing the following codes, EUMIC, EU73, DS20, EUDS10, MDX10, SNXX1 etc., The ingredients as per formulation code is also explained and it is as per SION norms.

21. Learned Sr. Counsel also draws our attention to large number of test report against the goods exported by the Appellant and there is no allegation that the material exported by the Appellant is not in accordance with the SION norms. Further as per paragraph 4.4 of the impugned order, as regarding percentage of the ingredients of the exported products, Customs lab, Cochin vide letter dated 02.09.2013 informed that the laboratory is not equipped to give the percentage composition of the ingredients used in the sample. Further Learned Sr. Counsel draws our attention to the Certificate issued by Joint Director, Technical Consultancy Division of the Rubber Board on 27.02.2018 where it is stated that the Appellant have qualified and experienced technical people to undertake the quality checking of the above said rubber products.

22. Learned Sr. Counsel also draws our attention to paragraph 15.10 of the impugned order where the Adjudication authority has stated that during personal hearing, the representative of the Noticee also submitted copy of Rubber Board certificate regarding testing, copies of customs chemical examination reports, copies of EODC obtained, copy of adjudication order No. **80/2018 dated 14.06.2018** and copy of FTP relevant for the Advance Authorisation.

23. Learned Authorized Representative (AR) reiterated the finding in the impugned order and submits that the Appellant did not possess any inhouse testing facility and have produced false test report without actual testing and this has been confirmed and agreed by the Appellant. Appellant had forged the date of issue of the ISO certificate. The ISO certificate issued by M/s.DAS Certification effective from 21.09.2009, is not a valid certificate in terms of CBIC Circular No. 57/1997-Cus. dated 31.10.1997 as the agency does not feature in the list of agencies as per Appendix 6 of the FTP. The findings in the impugned order are based on the documentary evidence including the statements of the employees of

the appellants and also the authorized signatory of M/s. DAS Certification, who has issued the ISO certificate. With regard to claim of the appellants, Learned AR submits that though the department has drawn the samples, the same has no relevance, as drawal of samples is not amounting to testing of samples. In the instant case, the appellants have submitted their in-house test reports for obtaining the benefits/EODC and later on it is found that the in-house test reports were forged /issued without actual testing, in contravention of Circular No.57/97 Cus date 31.10.1997. Learned AR further submits that in the absence of valid test reports, the appellants cannot claim the benefits of exemption notifications which requires the usage of duty-free raw materials to be used by them for export. In the instant case, the appellants have not proved that they have fulfilled the conditions of the notification Nos.40/2006 Cus dated 01.05.2006 as amended and Notification No.96/2009 Cus dated 11.09.2009. The Hon'ble Apex court has held in the case of **Indian Aluminium company ltd. Vs. Thane municipal corporation- 1991 (55) ELT. 454 (S.C)** has held that "Even non observance of a procedural condition is not to be condoned if it is likely to facilitate commission of fraud or introduce administrative inconvenience". The Hon'ble Bombay High Court in its decision in the case of **CCE & Cus, Ahmedabad Vs. Padamshree V. V. Patil SSK Ltd. reported in 2007 (215) ELT 23 (Bom.)** and upheld by Hon'ble Supreme Court of India in the case of **Padamshree V. V. Patil SSK Ltd Vs. CCE reported in 2008 (224) ELT A 34 (S.C)** held that "where the finding of the fact regarding existence of fraud, collusion, collusion, wilful mis-statement/suppression of facts of contravention of any provisions of the Act or Rules with intent to evade is confirmed, it may not be open to the assessee to claim that no penalty is imposable".

24. As regards the certificates issued by various institutes, Learned AR submits that these are issued in the year 2018 for the issue related to 2015 and have no relevance. The department has proved that there was no testing facility at the relevant time as per ISO standard and the test reports are false and forged documents. The parameters are actually filled as per the requirements without any testing and this has been

agreed by the employees who have issued the test reports. Learned AR further submits that the appellants are habitual offenders and in similar instance of misuse have foregone their DEPB benefits and have been penalized for the offence and similar action merits in the instant case also. The modus operandi is same in both the cases and in other case the appellants have accepted and foregone the benefits immediately after the department came to know of the modus operandi. As regards Jurisdiction, Learned AR submits that EODCs have been obtained on the basis of forged documents and hence become null and void and Customs have right to demand the applicable duties and to impose penalties. The appellant cannot claim ground of time bar as there is fraud, mis-declaration, suppression of facts etc., in the instant case and extended period is rightly invocable. As regards penalty on other appellants, they are also liable for penal action, as they have intentionally colluded with the main appellant and knowingly involved themselves to defraud the department and to evade payment of taxes/ avail ineligible exemption.

Learned AR relied on the following judgments:-

- i. **Sheshank Sea Foods Pvt. Ltd. Vs. Union of India - 1996 (88) E.L.T. 626 (S.C.)**
- ii. **Commissioner of Customs, Mumbai Vs. Bhawana Exports - 2004 (176) E.L.T. 155 (Tri. - Mumbai)**
- iii. **Commissioner of Customs, Hyderabad Vs. Pennar Industries Ltd - 2015 (322) E.L.T. 402 (S.C.)**
- iv. **Commissioner of Customs, Chennai Vs. Ashok Enterprises - 2014 (302) E.L.T. 191 (Mad.)**
- v. **Commissioner of Customs (Import), Mumbai Vs. Dilip Kumar & Company - [2018] 361 ELT 577 (SC)**

25. Heard both sides and perused the records.

26. We find that as per CBEC Circular No. 57/1997-Cus dated 31.10.1997, in case of an exporter availing benefits under the DEPB scheme has in-house testing facilities, samples may not be drawn and in-house testing results may be relied upon, for availing the said benefits. However, if such in-house test results are to be relied upon, the exporter,

inter alia, must have been awarded with an International Organization for Standardization ('ISO') 9002 certification. Further as per the said Circular No. 57/1997-Cus dated 31.10.1997, where the samples of the export product have been drawn earlier by the Central Excise Authorities and the test results of the same are available, these test results can be relied upon for the purpose of export under the said schemes provided the said test reports bring out the technical characteristics of the inputs required to be ascertained under the schemes. Accordingly, the test reports for the samples drawn by the respondent would be taken into account for the export of the products which did not find anything contrary to the export obligations.

27. As regarding the finding that the Appellant had submitted forged ISO certificate, we find that for the very same reason the Customs department issued a Show Cause Notice (SCN) F. No. S32A/54/2014 dated 15.03.2018. The Appellant filed a reply on 17.12.2018 to the SCN dated 09.09.2015 informing that the Appellant were not claiming any DEPB benefits against the 81 shipping bills and the Adjudicating Authority imposed a penalty of Rs. 1,00,000/- under Section 117 of the Customs Act vide Order-in-Original 80/2018 dated 14.06.2018. The Appellant paid the penalty and the proceedings were closed. As per the judgment by Hon'ble High Court of Gujarat in the case of **Goodluck Garments Pvt. Ltd. (supra)**, input-output norms were in the nature of guidelines and not a fixed formula and satisfaction that the imported fabric had not been used for the manufacture of the articles for export. The entire material had been used for the purpose of manufacture of goods and there is no allegation with regard to diversion of goods, merely because the wastage norms were not satisfied, the Assistant Collector of Customs could record satisfaction to the effect that the goods had not been used for the manufacture of articles for export. Following the ratio of the judgment in the matter of **M/s. IOCEE Exports Ltd. Vs. CC, Chennai – 2021 (376) E. L. T. 311 (Mad)**. There is no allegation as to diversion of raw material, the raw materials imported under the DFIA and AA have been put to use in the manufacture of exported goods. Further as evident from letter dated 30.07.2013, where the appellant had received the requisite ISO

certificate in 2009 and was communicated to the Customs Authority. ISO is not a condition for advance authorisation and same could be availed without ISO and that the ISO holders are eligible for only procedural relaxation with respect to sampling and testing of export goods and only a procedural violation, hence substantial benefit of export cannot be denied.

28. It is an admitted fact that the Appellant had imported the goods by availing the benefit of scheme and also complied the export obligation. There are no proceedings initiated by the DGFT for any of the violation of the import conditions. Further as evident from the certificate, ISO certified lab is not mandatory for availing the benefit of scheme and if the exporters are intent to speed up the process of export by avoiding sampling and test report from Customs authority, they have to establish ISO certified laboratory. However, in present case, when samples were drawn by the Department it is presumed that the respondent has not accepted the genuineness of the certificate produced by the appellant and test report is also available on record. In the absence of any adverse comments in such test report, no presumption can be drawn that the goods exported by the Appellant are not in compliance with the SION norms as prescribed by the DGFT as per the Import Policy. Law is well settled that substantial right of an exporter cannot be denied on procedural non-compliances.

29. As regards confiscation of the goods, penalty on appellants and confirming the demand by invoking the extended period of limitation, we find that the entire allegation is made on the ground that the ISO certificate produced by the appellant in support the export of goods was showing that they have established the accredited the lab with effect from the year 2006 whereas it was actually issued in 2009, only. We find that the production of certificate is made as per the Circular issued by the Board to avoid procedural delays in export by avoiding delay in obtaining drawing samples and further process of the claims. Such ISO certificate is not a condition for advance authorization and once the department has drawn samples from all the export goods, the only presumption is that they have not considered the Circular issued by the Board. Further we find that for the very same lapse/omission appellant has not claimed

DEPB benefits against 81 shipping bills and also imposed with penalty of Rs. 1,00,000/- under Section 117 of the Customs Act vide Order-in-Original No. 80/2018 dated 14.06.2018 and same allegation cannot be reason to continue with a penal provisions in each imports when the respondent has not taken the certificates in its face value by resorting to the standard procedures of drawing samples at the time of export. Further as regards penalty on co-noticees, we find that there is no allegation regarding their personal involvement in the alleged activity of producing forged documents and further there is no allegation of unjust gain by the co-noticees. Thus, penalties imposed on appellants, confiscation of the goods as per the impugned order, is also unsustainable.

30. In view of the above discussion, the impugned orders are set aside and the Appeals are allowed with consequential relief, if any, in accordance with law.

(Order was pronounced in open court on 30.03.2026)

(P. A. AUGUSTIAN)
MEMBER (JUDICIAL)

(PULLELA NAGESWARA RAO)
MEMBER (TECHNICAL)

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