CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE

REGIONAL BENCH - COURT NO. 2

Customs Appeal No. 20622 of 2022

(Arising out of Order-in-Appeal No.1578/2022 dated 31.05.2022 passed by the Commissioner of Customs (Appeals), Bengaluru)

M/s. Dalmia Cement (Bharat) Ltd.,
Yadwad Village, Gokak Taluk,
Belgaum-591 136. ....**Appellant(s)**

VERSUS

Commissioner of Customs,
Mangalore,
New Customs House,
Panambur,
Mangaluru-575 010. ....**Respondent(s)**

APPEARANCE:

Ms. Purvi Asati and Shradha Pandey, Advocates for the Appellant.
Mr. Maneesh Akhoury, Asst. Commissioner (AR) for the Respondent

CORAM:

HON'BLE MR. P. A. AUGUSTIAN, MEMBER (JUDICIAL)
HON'BLE MR. PULLELA NAGESWARA RAO, MEMBER (TECHNICAL)

Final Order No. 21020 /2026

Date of Hearing: 26.02.2026
Date of Decision: 26.02.2026

PER: P. A. AUGUSTIAN

The issue in the present appeal is regarding payment of Social Welfare Surcharge (SWS) on account of the exemption available to basic customs duty under Sl. No.1 of Notification No.24/2015-Cus dated 08.04.2015.

2. The Appellant had imported PET coke in bulk under Bill of Entry dated 23.07.2019 and the clearance of the same was on

self-assessment basis. Thereafter alleging that Social Welfare Surcharge is not exempted under the Notification as claimed by the Appellant, proceedings were initiated by the Department. The appellant filed a Writ petition No.38798/2019 before the Hon'ble High Court of Karnataka for directing the Respondent to assess the Bills of entry by granting exemption of the SWS amount in terms of Notification No. 24/2015-Customs dated 08.04.2015. The Hon'ble High Court vide Order dated 02.01.2020 has directed the Respondent to consider the representation for exemption of SWS. Aggrieve, by said order, Revenue filed an appeal before the Division Bench and Hon'ble High Court vide order dated 01.02.2021 in Writ Appeal No.168/2020 has clarified that the representation has to be considered in accordance with law and disposed the appeal filed by the department.

3. Accordingly, Adjudication Authority as per the Order-in-Original dated 23.03.2021 confirmed the demand and held that Appellant is liable to pay SWS in cash along with applicable interest. Aggrieved by said order, an appeal was filed before the Commissioner (Appeals) and Commissioner (Appeals) as per the impugned order dated 31.05.2022, remanded the matter. Aggrieved by said order, present appeal is filed before the Tribunal.

4. When the appeal came up for hearing, Learned Counsel for the Appellant submits that the issue is no more *res integra* and Hon’ble High Court of Orissa in Appellant’s own case (**M/s Dalima Cement (Bharat) Limited Vs. Union of India 2024 (11) TMI 1055 - Orissa High Court)** considered the issue regarding payment of SWS where BCD has been exempted by Debit of MEIS duty credit scripts. In the present case, the case of the Department pertains to the demand of SWS in cash on the ground that the exemption from BCD in terms of Sl. No. 1 of the impugned Notification No. 24/2015 is not an exemption from the levy and collection of BCD rather it is an exemption against payment of BCD in cash as BCD is debited through scripts. Further, SWS being a levy imposed under Section 110 of the Finance Act, 2018,

is an independent levy and thus, the same is neither exempted nor can be debited through scripts.

5. As regards the scope of the Notification issued in exercise of the power conferred by sub-section 1 of Section 25 of the Customs Act, Learned Counsel draws our attention to Section 25 of the Customs Act, 1962. The relevant portion of the Section is extracted hereinbelow:

> *"SECTION 25. Power to grant exemption from duty. (1) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, exempt generally either absolutely or subject to such conditions to be fulfilled before or after clearance as may be specified in the notification goods of any specified description from the whole or any part of duty of customs leviable thereon...."*

From the above, it is evident that Section 25 of the Customs Act, 1962 provides for exemption from payment of duty. The same could be an absolute exemption or conditional. Reference is also made to the judgment of the Hon'ble Supreme Court in the case of **M/s. Adani Power Ltd. & Anr. vs. Union of India & Ors., 2026 (1) TMI 224 - Supreme Court,** wherein it was held that Section 25 of the Customs Act is a power to grant exemption i.e. to relax duty, not a power to invent it. In the present case, the impugned notification has been issued under Section 25 of the Customs Act, 1962 and provides an exemption from BCD by debit of a MEIS script. The exemption from BCD under the impugned notification is an exemption from the collection of BCD. Thus, if the BCD itself is exempted, then SWS which is computed on the BCD value cannot be levied on the Appellant and the SWS will also be nil. Learned Counsel further submits that this issue has been clarified in the case of **Dalmia Cement (supra)** wherein the Hon'ble Orissa High Court held that the impugned notification is an exemption notification issued under Section 25 and the debit in the scrip is only for purpose of keeping track of the quantum of exemption availed by holder of the scrip. No tax can be said to have been paid, when exempt. The relevant extract is as follows:-

> *"...14. Fulfilment of requirement under clause 5 in General Exemptions no. 162 of notification no.24 of 2015-Cus., dated 8th April, 2015 as amended is only for purpose of keeping track of quantum exemption availed by holder of the scrip. No tax can be said to have been paid, when exempt……….”*

6. Learned Authorized Representative (AR) for the revenue reiterated the finding in the impugned order.

7. Heard both sides and perused the records.

8. We find that the matter was considered by the Hon’ble High Court of Karnataka in the appeal filed by the Department and as per the order of Hon’ble High Court in Writ Appeal No. 168/2020, direction was issued that the Appellant’s representation must be considered in accordance with law and directed the Department to decide the matter within a period of six months. We find that there is no specific finding given by the Hon’ble High Court of Karnataka and matter was remanded to Adjudication authority to consider the issue in accordance with law. Further we find that the issue is settled as per the judgment of the Hon’ble High Court of Orissa in Appellant’s own case and appeal filed by the Department before the Hon’ble Supreme Court is also dismissed vide order dated 20.05.2025 in Special Leave Petition in Diary No. 17606/2025. Further the issue was also considered by the Tribunal in Appellant’s own case in **Dalmia Cement (Bharat) Ltd. v. Commissioner of Customs Preventive- Vijayawada, 2024 (5) TMI 632 - CESTAT Hyderabad,** wherein on the identical issue, it was held that the assessee is not liable to pay Social Welfare Surcharge (SWS) when BCD is exempted in terms of Notification No. 24/2015-Cus dated 08.04.2015 issued under the MEIS Scheme. The said decision also was followed in the case of **M/s. Emami Agrotech Limited vs. Commissioner of Customs (Port), Kolkata, 2025 (3) TMI 788 - CESTAT KOLKATA**. Thus, we find that in view of the about decisions of the Hon'ble Apex Court and Coordinate Benches of the Tribunal, Appellant is not liable for payment of Social Welfare Surcharge (SWS)

on the impugned goods, hence the impugned order is unsustainable and liable to be set aside.

9. Accordingly, the impugned order is set aside, and the appeal is allowed with consequential relief, if any, in accordance with law.

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

(P. A. AUGUSTIAN)
MEMBER (JUDICIAL)

(PULLELA NAGESWARA RAO)
MEMBER (TECHNICAL)

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