

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, CHENNAI**

Customs Appeal No.42775 of 2014

(Arising out of Order-in-Appeal No. 96/2014-TTN (CUS) dated 22.8.2014 passed by the Commissioner of Customs (Appeals), Trichy)

M/s. Sennar Paper and Boards Ltd.

(now M/s. Vamsadhara Paper Mills Ltd.)

Karambedu Village

Gummidipoondi – 601 212.

Appellant

Vs.

Commissioner of Customs

No. 1, Williams Road

Cantonment, Trichy – 620 001.

Respondent

APPEARANCE:

Ms. A.S.K. Swetha, Advocate for the Appellant

Ms. O.M. Reena, Authorized Representative for the Respondent

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Hon'ble Shri P. Dinesha, Member (Judicial)

Hon'ble Shri M. Ajit Kumar, Member (Technical)

Final Order No. 41292/2024

Date of Hearing : 09.09.2024

Date of Decision: 15.10.2024

Per M. Ajit Kumar,

This appeal is filed against Order in Appeal No. 96/2014-TTN (CUS) dated 22.8.2014 passed by the Commissioner of Customs (Appeals), Trichy (impugned order).

2. Brief facts of the case are that the appellants filed two Bills of Entry dated 27.5.,2011 for the import of 167.114MTs and 166.363 MTs of waste paper (double sorted corrugated) falling under CETH 47079000 under concessional rate of duty by availing end-used based exemption Notification No. 21/2002-Cus dated 01/03/2002. As per the above conditions, the imported waste paper should be used in the manufacture of final product 'kraft paper' falling under CETH 48042900

of CETA 1985. In the meanwhile, the Deputy Commissioner of Central Excise, Chennai vide his letter dated 3.4.2012 has informed the appellant that Internal Audit Group of Chennai II Commissionerate who audited the accounts of the appellant's unit noted that there was stated to be a fire accident in the factory premises on 10.6.2011 in which a quantity of 333.482 MTs of imported waste papers was destroyed fully for which the appellant had filed necessary claim with the concerned insurance company. Further, the appellant had suppressed the fact of the fire accident which had occurred in their factory premises on 10.6.2011 with an intention to evade payment of customs duty. The appellant also have not produced the necessary end-use certificate from the jurisdictional Central Excise Authorities or requested for extension of time period from the Customs Authorities. Hence Show Cause Notice was issued to the appellant proposing to recover differential duty and for imposing penalty. After due process of law, the Adjudicating Authority vide Order in Original dated 28.2.2014 demanded the differential duty amount of Rs.3,69,347/- along with applicable interest and imposed an equal penalty under sec. 114A of the Customs Act, 1962. Aggrieved by the said order, the appellant preferred an appeal before Commissioner (Appeals). The Commissioner (Appeals) rejected the appeal filed by the appellant. Hence the present appeal.

3. Ms. A.S.K. Swetha, learned Counsel appeared for the appellant and Ms. O.M. Reena, learned Authorized Representative appeared for the respondent-department.

3.1 The Ld. Counsel for the appellant stated that after the fire accident which occurred on 10.06.2011, they had on the same day

intimated the matter to the department through email and further in writing vide their letter dated 23.06.2011 as required under Rule 21 of Central Excise Rules, 2002 & under Section 23 of Customs Act, 1962. At the time of personal hearing, they had produced these correspondences before the Hon'ble Commissioner (Appeals) but the impugned order has neither discussed these evidences nor disputed the receipt of intimation to the department. The fire accident which occurred in the factory led to the destruction of imported waste paper of 333.482 Mts. which was stored in the factory, with the intention of being used in the manufacture of Kraft paper. These waste materials were imported by availing the benefit of Notification No 21/2002 Cus. The wording used in the said notification under Sr. No 152 stated, "if imported for use in manufacture of paper or paper board". She stated that the phrase "for use in manufacture", means intended to be used only, because if the intention of the legislature was different then the wording would have been like "should be used in the manufacture". Accordingly, it would not be correct to say that the appellants have failed to fulfill the condition of the 'end use' based Notification. In this context the Ld. Counsel placed reliance on following Supreme Court citation, (i) State of Haryana Vs Dalmia Dadri Cement Ltd., 1987 (Suppl) SCC 679 and (ii) BPL Display Devices Ltd. Versus Commissioner of Central Excise, Ghaziabad 2004 (174) ELT 5 (SC). She further stated that in Vamsadhara Paper Mills Ltd. Versus Commissioner of Customs, Vishakhapatnam 2009 (247) E.L.T 751 (Tri. Bang.) it was held that when a fire accident was beyond the control of an assessee and the goods intended for use under the relevant notification was destroyed duty could not be demanded. The learned

Counsel further stated that the show cause notice was issued in 2013 by invoking larger period of limitation, however since the information regarding the fire accident had been clearly given through email and in writing immediately after the occurrence of the accident, there should not be any allegation towards suppression of facts and accordingly the show cause notice itself is to be quashed as time barred. She prayed that the order be set aside.

3.2 The Ld. AR has taken us through the impugned order. She stated that the appellant not only did not intimate the department of the alleged loss of goods due to fire but also claimed insurance including the taxes paid on goods with an intention to get double benefit and hence the appeal may be rejected. She reiterated the other points given in the OIO and the impugned order.

4. We have gone through the appeal and have heard the rival parties. We find that S.No 152 of Notification No 21/2002 Cus. provides for concessional rate of duty for all goods falling under CTH 4707 if imported for use in, or supply to, a unit for manufacture of paper or paperboard, provided that the condition given at S. No 20 of the notification is fulfilled. The said condition is reproduced below;

Condition No. 20	If, - (a) the importer furnishes an undertaking to the Deputy Commissioner of Customs or the Assistant Commissioner of Customs, as the case may be, that such imported goods will be used for the purpose specified and in the event of his failure to comply with this condition, he shall be liable to pay, in respect of such quantity of the said goods as is not proved to have been so used, an amount equal to the difference between the duty leviable on such quantity but for the exemption under this notification and that already paid at the time of Importation, and (b) the importer produces to the said Deputy Commissioner or Assistant Commissioner, as the case may be, within six months or such extended period, as
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	that Deputy Commissioner or Assistant Commissioner may allow, a certificate issued by the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, in whose jurisdiction the said goods have been used in such unit, that the said goods have been so used.
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5. The issues raised in the proceedings below are that the appellant;

i) did not intimate the department regarding the loss of the impugned goods due to fire, and;

ii) claimed insurance including the taxes paid on goods with an intention to get double benefit

with an intention to evade payment of duty. The Commissioner Appeals also felt these actions;

iii) proved that the impugned goods were not used in the manufacture of the kraft paper, violating the conditions of the undertaking given.

6. We find that as per the correspondence placed before us and not refuted by revenue, the appellant had intimated the department of the loss of the impugned goods both by email and by letter. In fact the charge by revenue that the appellant claimed insurance for the goods destroyed by fire shows that the fire accident and loss of goods has been correctly made by the appellant and it was not a case of a false claim. The department should have examined the survey report and the insurance Co's final settlement order before coming to a conclusion. The survey report No. MSPL/F/UH/6217/SE/2011 dt 14/11/2011 is quite detailed and has not been shown to be false. There is no allegation that the goods on which duty was demanded had been diverted for other purposes. Hence this charge does not hold good.

7. No proof has been submitted by revenue that the appellant had received insurance money towards the tax amounts involved. The appellant has stated that their claim for CVD and ED was disallowed and the claim for the damage for material alone was accepted. This fact is established from para 9 of Survey Report dt 14/11/2011. Hence it is not correct to hold that appellant benefited twice. Assumptions, presumptions and allegations do not constitute proof. Merely stating that the appellant claimed insurance including the taxes paid on goods with an intention to get double benefit, will not suffice. Revenue should have proved their case with documentary proof, which could easily have been collected. However, with the survey report stating to the contrary, this charge of revenue is rejected.

8. We now examine, the issue raised by the Ld. Commissioner Appeals i.e. the impugned goods were not used in the manufacture of the kraft paper, violating the conditions of the undertaking given. We find that the Hon'ble Apex Court in **State of Haryana Vs Dalmia Dadri Cement Ltd.** [1987 (11) TMI 94 - SUPREME COURT / 2004 (178) E.L.T. 13 (SC)], has examined the words 'for use' as appearing in an exemption Notification and held it to mean 'intended for use'. The relevant portion is extracted below;

“10. . . . On a plain reading of the relevant clause it is clear that the expression "**for use**" must mean "**intended for use**". If the intention of the legislature was to limit the exemption only to such goods sold as were actually used by the undertaking in the generation and distribution of electrical energy, the phraseology used in the exemption clause would have been different as, for example, "goods actually" used or "goods used".” (emphasis added)

[Also see: **BPL Display Devices Ltd. Vs Commissioner of Central Excis, Ghaziabad** [2004 (10) TMI 92 - SUPREME COURT / 2004 (174) E.L.T. 5 (SC) / 2005 (10) SCC 275]

9. A Coordinate Bench of this Tribunal in **National Organic Chemical Indus. Ltd. v. Collector of Customs (Import), Mumbai**, [2000 (126) E.L.T. 1072] held that the benefit of the Notification concerned, could not be denied in respect of goods which were intended for use for manufacture of the final product but could not be so used due to shortage or leakage. The appeal preferred by the Department from the decision of the Tribunal was dismissed by the Apex Court - **Commissioner of Customs Vs M/s. National Organic Chemical Indus. Ltd.** [C.A. No. 6764/99, dated: 20/02/2002]. The situation caused by a loss due to fire is similar to the situation where the input could not be used due to shortage or leakage. Rule 21 of the Central Excise Rules covers goods that have been lost or destroyed by unavoidable accident at any time before removal and provides for remission of the duty payable on such goods. Similarly, Section 23 of the Customs Act 1962, provides specifically for remission of duty on lost, destroyed or abandoned goods. Destruction by fire is one such unavoidable accident. A legal position that inputs which are destroyed etc. were not used in the manufacture of the final product and hence were not eligible for remission, would make Rule 21 of the Central Excise Rules and Section 23 of the Customs Act, 1962 redundant. A provision of an Act or Rule cannot be read in a manner to render its purpose otiose. Hence on this ground too, the impugned order fails.

10. In **Vamsadhara Paper Mills Ltd. Vs Commr. Of Cus., Visakhapatnam** [2009 (247) E.L.T 751 (Tri. Bang.)] the Tribunal examined a similar matter and held as under;

6. We have gone through the records of the case. The goods were imported duty free claiming benefit of Notification No. 17/2001, dt. 17-3-2001. The undisputed fact is that in respect of quantity of 50.571 MTs, no end-use certificate could be produced as the goods were

destroyed due to fire. In the case of **CCE v. Foods, Fats and Fertilisers Ltd. - (Trib.)**, the goods intended for use were removed free of duty from the place of production to the hydrogenation plant within the same factory for further manufacture. There was a fire accident and the goods were destroyed. There was no allegation that the goods had been diverted for other purposes. In those circumstances, the Department demanded duty. However, the Commissioner (Appeals) held that the intention to use for the specified purpose would be sufficient. The Department did not accept the order of the Commissioner (Appeals). It was challenged before the CEGAT, Special Bench. The Tribunal upheld the order of the Commissioner (Appeals). It was held that no duty could be demanded on the materials intended for use in the factory, when they were destroyed by fire accident. The other decision **CCE v. Welspun Terri Towels** deals with remission of duty u/s 23 of the Customs Act in respect of the goods destroyed by fire accident. In both the above decisions, a sympathetic view has been taken by the Tribunal as the fire accident is beyond the control of the assessee's concerned. In the present case also, the goods which were intended for the use under the relevant notification were destroyed by fire accident. The ratio of the above cases is clearly applicable. In these circumstances, the demand of duty is not sustainable. The same is set aside and we allow the appeal.

(emphasis added)

We are of the opinion that the judgment clearly covers the legal issue involved in this case.

11. For the reasons discussed, we are of the view that the demand cannot sustain, and the question of imposing fine and penalty does not arise. The impugned orders are set aside, and the appeal is allowed with consequential relief, if any, as per law.

(Order pronounced in open court on 15.10.2024)

(M. AJIT KUMAR)
Member (Technical)

(P. DINESHA)
Member (Judicial)