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

Customs Appeal No.40651 of 2016

(Arising out of Order-in-Appeal No. 14/2016 – TTN (CUS) dated 6.1.2016 passed by the Commissioner of Central Excise (Appeals – II), Trichy)

M/s. Venkraft Paper Mills (P) Ltd. **Appellant**
10th K.M. Kelamangalam Road
Aggonadapalli Village
Hosur – 635 110.

Vs.

Commissioner of Customs **Respondent**
Custom House
New Harbour Estate
Tuticorin—628 004.

APPEARANCE:

Shri S. Durairaj, Advocate for the Appellant
Shri Anoop Singh, Authorized Representative for the Respondent

CORAM

Hon'ble Shri M. Ajit Kumar, Member (Technical)
Hon'ble Shri Ajayan T.V., Member (Judicial)

FINAL ORDER NO. 40769/2025

Date of Hearing : 22.07.2025
Date of Decision: 29.07.2025

Per M. Ajit Kumar,

This appeal is filed against Order-in-Appeal No. 14/2016 – TTN (CUS) dated 6.1.2016 passed by the Commissioner of Central Excise (Appeals – II), Trichy (impugned order).

2. The appellants imported 2050 MTs of waste paper under 25 Bills of Entry, claiming a concessional rate of duty as per Notification No. 21/2002-Cus. Dated 01.03.2002. The condition for availing the concession was that the imported goods should be for use in, or supply to, a unit for manufacturing paper or paper board. They accordingly

executed a bond on the said terms before clearing the goods to their factory. They later submitted a certificate stating that the waste paper was lost in a fire on 19.04.2012 and had not been used as stipulated. As a result, the department felt that the appellant was ineligible for the concession. After following the due process, the Adjudicating Authority demanded differential duty of Rs.26,99,941/- plus applicable interest. Aggrieved by the said order, the appellant preferred an appeal before the Commissioner (Appeals). After their appeal was rejected by the First Appellate Authority, the appellants have now come before us.

3. Shri S. Durairaj, learned Counsel appeared for the appellant and Shri Anoop Singh, learned Authorized Representative appeared for the respondent-department.

3.1 The appellant's counsel stated that after the fire on 19.04.2012, they notified authorities as required under applicable rules. As a result, 2050 Mts. of imported waste paper intended for Kraft paper manufacturing were destroyed and could not be used. He contended that the phrase, "for use in manufacture," as appearing at Sr. No 152 of notification No 21/2002 Cus. implies intent rather than actual usage, so the appellants did not violate the end-use condition. In this context the Ld. Counsel placed reliance on following Hon'ble 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) and (iii) the Tribunal's decision in **Sennar Paper and Boards Ltd. Vs. Commissioner of Customs, Trichy** reported in 2024 (10) TMI 909 – CESTAT CHENNAI. He 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. He prayed that the order be set aside.

3.2 The Ld. AR Shri Anoop Singh has taken us through the impugned order. He stated that the appellant not only did not use the goods in the manufacture of paper or paperboard as required by the notification due to 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. He reiterated the other points given in the OIO and the impugned order.

4. We find that a similar issue including the issue raised by the Ld. AR in his submission has already been decided by a Coordinate Bench speaking through one of us, (Member (T), M. Ajit Kumar) vide Final Order No. 41292/2024 dated 15.10.2024, in the case of **M/s Sennar Paper and Boards** (Supra). The relevant portion of the order is as follows:-

> "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 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.

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). <u>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.</u> 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)

11. In view of the elaborate discussions of all the issues raised in this appeal, in the above order, we do not find any ground necessitating us to deviate from it. It has also not been brought to our notice that the said order has been set aside or modified in any manner. The impugned order is hence set aside, and the appeal is allowed with consequential relief, if any, as per law. The appeal is disposed of accordingly.

(Order pronounced in open court on 29.07.2025)

(**AJAYAN T.V.**)
Member (Judicial)

(**M. AJIT KUMAR**)
Member (Technical)

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