CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH - COURT No. I

Customs Appeal No. 40959 of 2015
(Arising out of Order-in-Appeal C. Cus I No. 31/2015 dated 30.01.2015 passed by the Commissioner of Customs (Appeals – I), Chennai)

M/s. Godrej Consumer Products Ltd., **.... Appellant**
R.S.No.131/1-4, Cuddalore Road,
Kattukupam, Manpet Post,
Puducherry – 607 402.

VERSUS

Commissioner of Customs (Air) **...Respondent**
Chennai VII Commissionerate,
New Custom House, Meenambakkam,
Chennai 600 027.

APPEARANCE :
Shri. M. Karthikeyan, Advocate for the Appellant
Ms. Anandalakshmi Ganeshram, Authorised Representative for the Respondent

CORAM :

HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V, MEMBER (JUDICIAL)

FINAL ORDER No.41441/2025

DATE OF HEARING: 11.08.2025
DATE OF DECISION:08.12.2025

Per Ajayan T.V.

M/s. Godrej Consumer Products Ltd., the appellant, has challenged the Order in Appeal C. Cus I No. 31/2015 dated 30.01.2015 passed by the Commissioner of Customs (Appeals – I), Chennai.

2. Brief facts are that, the appellant is stated to be a manufacturer of electronic mosquito repellent machines, repellent refills, mosquito repellent mats etc. and had obtained a duty credit certificate bearing No.0310424790 dated 28-03-2007 from JDGFT, Mumbai under target plus scheme. The appellant utilized the scrip in terms of Notification No.73/2006-Cus dated 10.07.2006 for import of 'PTC Thermistors'. The appellant is stated to have availed Cenvat credit of the CVD and SAD portion of the duty thus paid utilizing the scrip. In the course of the appellant's business, the appellant sends the imported 'PTC thermistors' and other raw materials to M/s. EMOX Device and Company on job work

basis for manufacture of electronic mosquito repellent machines. The appellant is stated to have reversed the credit taken while sending the goods to the job work manufacturer who sends the manufactured goods back to the appellant on payment of applicable excise duty. The appellant is stated to be availing Cenvat credit of the same. Thereafter, the appellant undertakes testing, repacking, shrink-wrapping, palletization, etc. and exports the said goods.

3. Based on investigation conducted, the Department was of the *prima facie* view that the appellant had not complied with the conditions of the Customs Notification No. 73/2006 -Cus ibid. The notification exempted goods when imported into India against a duty credit entitlement certificate issued under Target Plus scheme in accordance with paragraph 3.7 of the Foreign Trade Policy, from the whole of the duty of customs leviable thereon under the first schedule to the Customs Tariff Act, 1975 and the whole of the additional duty leviable thereon under section 3 of the Customs Tariff Act. The exemption is subject to conditions, among other things, that the said certificate and goods imported against it shall not be transferred or sold, provided that where the goods are imported by a merchant exporter having supporting manufacturer(s) whose name and address is specified on the said certificate, the said goods may be utilised by the said supporting manufacturer(s). Since the said condition required the merchant exporters to mandatorily endorse the name of the supporting manufacturer in the scrip, the Department formed a view that the facility of transferring to a specified supporting manufacturer is applicable only to merchant exporters and since the appellant is a manufacturer exporter and given that the licence was not containing any such endorsement of a supporting manufacturer, it appeared that the goods were to be used by the appellant itself for the manufacture of the resultant products and the appellant could not have sent these goods to M/s. E Mox Device Co for manufacture of the electronic mosquito repellent machines.

4. Hence, a Show Cause Notice (SCN) dated 01.05.2012 was issued under section 124 and section 28 of the Customs Act 1962 to the appellant, alleging that the appellant has violated the conditions of the notification

while sending the imported material under the scrip to the job worker for manufacture. The notice proposed to deny the benefit of the notification and to recover the duty of Rs.41,24,764/- not paid in respect of the goods imported under the above script vide 14 bills of entry during 24-06-2008 to 27-12-2008, along with interest and penalty. Pursuant to the appellant's reply dated 27-02-2012, contesting the allegations made in the SCN, after due process of law, the adjudicating authority issued the Order in Original No. 474/2014 dated 04-08-2014, denying the benefit of the Notification No.73/2006 ibid and ordering recovery of Rs.41,24,764/- along with applicable interest. The goods imported were ordered to be confiscated under section 111 (o) of the Customs Act 1962, but as they were not available for confiscation, a redemption fine of Rs.25,00,000/- in lieu of confiscation was imposed under section 125 of the Customs Act. A penalty of Rs.20,000/- under section 114A, of the Act was also imposed on the appellant. Aggrieved, the appellant preferred an appeal before the Commission of Customs (Appeals-I), Custom House, Chennai. The appellate authority rejected the appeal vide the impugned Order in Appeal. Hence, the instant appeal.

5. Shri M Karthikeyan, Ld. Advocate, appearing, for the appellant, drawing attention to condition 3 of the Notification No. 73/2006 ibid and para 3.7.6 of the FTP (2004-09), submitted that on a perusal of the said provisions, it can be seen that the term ‘use’ is used not for identifying the place of use and rather it only puts forth that it should be for the use of the exporter. In the case of merchant exporter, it could be understood from para 3.7.6 that it can be for the exporter's use or for the use of the declared supporting manufacturer. The stipulation in the customs notification that in case of merchant exporter, the goods may be utilized by the supporting manufacturer can only mean that generally the goods should be for the exporters own use, and in case of merchant exporter, it can also be for the use of the supporting manufacturer. The above provisions do not stipulate anything as to the place of use. Therefore, even if the goods are used in a job worker's premises, but for the use of the manufacturer or exporter, then it would satisfy the requirements of the above provision and there is no violation.

6. Learned Counsel further submits that the goods imported under the target class scheme are subject to actual use of condition.

The term actual user has been defined in Para 9.4 and 9.5 of the FTP which reads as follows:

> *Para 9.4 "Actual user" means an actual user who may be either industrial or non industrial*
>
> *Para 9.5- "Actual user (Industrial)" means a person who utilizes imported goods for manufacturing in his own industrial unit or manufacturing for his own use in another unit including a jobbing unit.*

In view of the above definitions, it is clear that actual user condition or the phrase "for their own use" is satisfied even when the goods are used in another unit including jobbing unit.

7. The Learned Counsel submits that the Honorable High Court of Delhi in the case of ***Indian Exporters Grievance Forum, 2013 (8) TMI 131-DELHI HIGH COURT***, while dismissing the writ appeal by Union of India, had considered the clarification provided by the DGFT vide their letter dated 1-8-2006. The DGFT had clarified in the context of target plus scheme that the imported goods can be processed and converted by any processor who is at liberty to choose the processor to convert the goods into value added resultant product and thereafter free to sell the resultant products in the market.

8. Learned Counsel also placed reliance on, the Public notice No.113 (RE-2007)/2004-09 dated 15/2/2008 wherein it has been clarified as follow:-

> *"The beneficiary status holder (Manufacturer Exporter of Merchant Exporter) can utilise full value of the duty credit scrip issued to him for his 'own use'. Beneficiary may decide to make any possible resultant product for utilizing the imports permitted under the scheme, when imported for 'own use'. Job workers can be used for conversion of imports permitted under the scheme into any possible resultant products. Upon conversion in the factory of job worker, the resultant product can be sold in the open market, upon payment of duties as applicable to the resultant product; including to the conversion unit (i.e. job worker). Sale of permitted imported products to job workers prior to conversion (into any possible resultant products) shall be treated as a violation of AU and non-transferability conditions, as imports permitted under Target Plus Scheme*

as per para 3.7.6 of the Policy (RE2004) are with the Actual user condition and non-transferable (except to listed supporting manufacturers)".

9. Learned Counsel placed reliance on the decisions in,

   a. ***M/s. Silver Line Plastpack Pvt. Ltd. V CCE & ST, Bhavnagar, 2015 (10) TMI 2262-CESTAT AHMEDABAD.***
   b. ***Commissioner of Customs (Airport & Aircargo) v. M/s. Sunstar Overseas Ltd., 2025 (5) TMI 670-CESTAT Chennai.***
   c. ***CC, (Airport) Integrated Cargo Complex v. M/s. Bharat Industrial Enterprises, 2025 (6) TMI 554-CESTAT CHENNAI***

10. Learned Counsel submits that the demand of duty along with interest for the alleged contravention of the notification as well as redemption fine and penalty imposed are not legally sustainable and the impugned order is liable to be set aside.

11. Ms. Anandalakshmi Ganeshram, learned authorized appeared on behalf of the respondent, reiterates the findings of the appellate authority. She submitted that the Hon'ble Apex Court has issued notice in the petition for Special Leave to Appeal (Civil) filed by Union of India against the Judgement of the Delhi High Court in the case of Indian Exporters Grievance Forum and placed reliance on Union of India v. Indian Exporters Grievance Forum- 2017 (350) ELT A 176 (SC).

12. Heard the rival submissions, carefully perused the appeal records and the citation submitted.

13. To appreciate the rival contentions, the relevant portions of the said Notification 73/2006-Cus dated 10-07-2006 is reproduced below:

Target Plus Scheme — Exemption to imports against duty credit certificate issued thereunder

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts goods when imported into India against a duty credit certificate issued under the Target Plus Scheme in accordance with paragraph 3.7 of the Foreign Trade Policy (hereinafter referred to as the said certificate) from, -

(a) the whole of the duty of customs leviable thereon under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975); and
(b) the whole of the additional duty leviable thereon under section 3 of the said Customs Tariff Act, -
subject to the following conditions, namely :-
(1) that the benefit under this notification shall be available only in respect of duty credit certificate issued under the said Scheme to a Star Export House on the basis of incremental growth in FOB value of exports made during the financial year 2005-06 over the exports made during the financial year 2004- 05;
(2) that the said certificate has been issued to a Star Export House by the Regional or licensing authority and it is produced before the proper officer of customs at the time of clearance for debit of the duties leviable on the goods, but for this exemption :
Provided that exemption from duty shall not be admissible if there is insufficient credit in the said certificate for debiting the duties leviable on the goods, but for this exemption;
(3) ***that the said certificate and goods imported against it shall not be transferred or sold :***
Provided that where the goods are imported by a merchant exporter having supporting manufacturer(s) whose name and address is specified on the said certificate, the said goods may be utilised by the said supporting manufacturer(s);

xxxxxx

14. It is seen from the impugned order that the Ld. Appellate Authority too, after reproducing the condition (No.3) of the said notification given above, has further held as under :

" It is also useful to refer to the Para 3.7.6 of the Foreign Trade Policy. The Para 3.7.6 of the FTP 2004-09 read as below:-

"the duty credit may be used for import of any inputs, capital goods including spares, office equipment, professional equipment and office furniture provided the same is freely importable under ITC (HS), for their own use or that of supporting manufacturers as declared in Appendix 17D"

From the above it is clear that the condition is applicable only to the merchant-exporters where the goods imported by them and transferred to a specified supporting manufacturer for usage. That too, the name of such supporting manufacturer should have been mentioned in the Certificate. The appellant contested that they were not transferred or sold the imported goods against the condition of the notification and under the Duty Credit Entitlement Certificate. In instant case, the investigation has revealed that the appellant instead of using the imported goods in their manufacturer of resultant products as per the provisions of the scheme as per the subject notification had illegally transferred the imported goods to M/s. E Mox Device Co, for their manufacture of Electronic Mosquito Repellant Machines. The appellant does not dispute this

fact. By not using the goods himself for manufacture and by transferring the goods to some other manufacturer the appellants has clearly violated the condition of the notification, the relevant para's in the Foreign Trade Poplicy governing the Target Plus Scheme read with Handbook of Procedures. In fact the appellant being a manufacturer exporter is not at all allowed to transfer the goods to others. He has to use the goods himself. Thus by violating the condition of the Notification the appellants has rendered himself ineligible for the benefit. The appellant has pleaded that the Electronic Mosquito Repellants were not sold outright but only transferred to the manufacturer, viz., M/s. E Mox and on manufacture the goods will be sent back to the appellant for labelling etc and for export finally. This plea is not acceptable. The very fact that the appellants being a manufacturer did not use the inputs himself and sent the goods to other place in itself is enough to hold that he has violated the condition"

15. Thus the Ld. Appellate Authority has sought to deny the benefit of the exemption on the ground that that a manufacturer exporter who imports the material utilizing such script, has to use the materials on their own and cannot send it to job work for conversion into the certain products.

16. We are of the considered view that on a plain reading of the said condition No.3 and its proviso, we do not find the said condition placing any embargo on the manufacturer importer utilising the services of a job worker to manufacture the products utilising the imported goods. The Public Notice No.113 (RE-2007)/2004-09 dated 15/2/2008 also corroborates the said view.

17. Furthermore, it is seen that in the decision ***M/s. Silver Line Plastpack Pvt. Ltd. V CCE & ST, Bhavnagar, 2015 (10) TMI 2262-CESTAT AHMEDABAD,*** relied upon by the Appellant, a similar provision as existing in the notification No.32/2005-Cus had come up for analysis before a coordinate bench of this Tribunal and the Tribunal has held that "own use" also means "use by utilising the facilities of the job worker". It was also observed that the customs notification does not prohibit processing of the import goods into finished final goods by the job worker. The relevant portions of the decision is reproduced below:

"5. For better appreciation of the provisions of the notification, the relevant portion of the Notification No.32/2005-Cus., is reproduced below:-

> *"Exemption to imports against a duty credit certificate issued during 2004-05 under Target Plus Scheme"*

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government being satisfied that it is necessary in the public interest so to do, hereby exempts goods when imported into India against a duty credit certificate issued under the Target Plus Scheme in accordance with paragraph 3.7 of the Foreign Trade Policy (hereinafter referred to as the said certificate) from, -

> *(a) the whole of the duty of customs leviable thereon under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975); and*
>
> *(b) the whole of the additional duty leviable thereon under section 3 of the said Customs Tariff Act, -subject to the following conditions namely :-*
>
> *(1) that the benefit under this notification shall be available only in respect of duty credit certificate issued under the said scheme to a Star Export House on the basis of incremental growth in FOB value of exports made during the financial year 2004-05 over the exports made during the financial year 2003-04;*
>
> *(2) that the said certificate has been issued to a Star Export House by the licensing authority and it is produced before the proper officer of customs at the time of clearance for debit of the duties leviable on the goods, but for this exemption :*
>
> *Provided that exemption from duty shall not be admissible if there is insufficient credit in the said certificate for debiting the duties leviable on the goods, but for this exemption;*
>
> *(3) that the said certificate and goods imported against it shall not be transferred or sold :*

Provided that where the goods are imported by a merchant-exporter having supporting manufacturer(s) whose name and address is specified on the said certificate, the said goods may be utilised by the said supporting manufacturer(s)"

6. It is observed from the above that the Appellant is eligible to import the goods under the Target Plus Scheme, subject to various conditions. Condition No.3 is relevant in the present case. The proviso to Condition 3 is applicable to the merchant exporter. It is not applicable to the Appellant who is a manufacturer exporter. Therefore, the Condition 3 as is relevant to the Appellant is that the imported goods shall not be "transferred or sold". It is observed that the Appellants have sent the imported goods to their job workers for manufacture of the final products, and the title and the ownership of the goods remained with them during the said dispatch of the imported goods to the job worker. Moreover, the said goods were sent, following the established procedure under Notification No.214/86-CE(NT), dt.25.03.1986.

7. The Public Notice 113/2007, dt.15.02.2008, issued by DGFT, though not binding since it was issued on a later date, still has a reference value. Annexure 'A' to the Public Notice is reproduced below:-

"Application for Listing of Job-Workers Annexure to Appendix 17D

(Sr.No.10A of Appendix 17D, application form for Target Plus Scheme 2004-05)'

10A: Listing of Job-Worker(s) for the purpose of conversion of permitted imports into possible resultant products, when imports are made for "own use".

Note: The beneficiary status holder (Manufacturer Exporter or Merchant Exporter) can utilize full value of credit scrip issued to him for his "own use". Beneficiary may decide to make any possible resultant product for utilizing the imports permitted under the Scheme, when imported for "own use". Job-Workers can be used for conversion of imports permitted under the scheme into any possible resultant products. Upon conversion

in the factory of Job-Worker, the resultant product can be sold in the open market, upon payment of duties as applicable to the resultant product; including to the conversion unit (i.e. job worker). Sale of permitted products to Job Workers prior to conversion (into any possible resultant products) shall be treated as a violation of AU and Non-transferability conditions, as imports permitted under Target Plus Scheme as per Para 3.7.6 of the Policy (RE2004) are with Actual User Condition and non-transferable (except to listed supporting manufacturers)."

The said Annexure mentions about listing of job workers for conversion of permitted imports into possible resultant products, when imports are made for "own use". ***It further states that the job workers can be used for conversion of imports permitted under the scheme into possible resultant products. Therefore, it is clear that "own use" also means "use by utilizing the facilities of job worker". It is also observed that the Customs notification does not prohibit processing of the imported goods into finished final goods by the job worker****. It is also seen that when imported plastic granules were sent to various job workers for conversion into plastic films/sheets, necessary permissions were obtained from the jurisdictional Central Excise authority (under the terms of Notification No.214/86-CE) and a list of job workers were also submitted to the Central Excise authorities. The job worker converted the plastic granules into plastic films/sheets and thereafter the appellants sold the said plastic films/sheets to the independent buyers as well as at times to the job workers themselves also. We are not able to accept the contention of the learned Authorised Representative for the Revenue that since when the goods are sold to the job worker, the job worker pays the invoice amount less the job work charges to the Appellant, it will amount to "transfer" of the imported goods to the job worker. It is observed that this transaction (sale) takes place only at the final stage, and when the sale takes place only the ownership changes from the Appellants to the buyer. The Appellant is sending plastic granules to the job worker, and the buyer is purchasing plastic films. Thus, there is no transfer of the imported plastic granules.*

8. In the light of above analysis, the impugned Order-in-Original is not sustainable. As there is no transfer of the imported goods, the Appellants are eligible for availing the CENVAT Credit. Interest and penalties are liable to be set aside. The confiscation of the goods and redemption fine are also liable to be set aside. The penalties on all other Appellants, who are job workers, are also liable to set aside. We hold accordingly." ***(Emphasis supplied)***

18. We find that in this case too, neither the SCN has any allegation that the Appellant has sold the goods to the job worker, nor does the impugned order render such a finding. The citation produced by the Ld. AR. does not indicate any stay of operation of the order and hence the reliance thereon is misconceived. We do not find any persuasive reason to differ from the aforesaid view taken by a coordinate bench of this Tribunal. Therefore, respectfully following the aforesaid decision, we hold that the dispatch of the imported goods by the appellant to the jobworker for manufacture is not violative of the condition (3) of the exemption notification No.73/2006 ibid. We are of the considered view that the impugned order in appeal cannot sustain and is liable to be set aside. Ordered accordingly.

The appeal is allowed with consequential relief(s) in law, if any.

(Order pronounced in open court on 08.12.2025)

(AJAYAN T.V.)
Member (Judicial)

(M. AJIT KUMAR)
Member (Technical)

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