CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT No. III

Excise Appeal Nos. 41348 to 41353 of 2016

(Arising out of Order-in-Original No. 32-37/2016/CE/COMMR dated 28.03.2016 passed by Commissioner of Central Excise, Central Revenue Buildings, NGO 'A' Colony, Tirunelveli – 627 007)

M/s. Polyspin Exports Ltd. **...Appellant**
No. 1, Railway Feeder Road,
Cholapuram South,
Rajapalayam – 626 139.

Versus

Commissioner of GST and Central Excise **...Respondent**
Tirunelveli Commissionerate,
Central Revenue Buildings,
NGO 'A' Colony,
Tirunelveli – 627 007.

APPEARANCE:
For the Appellant : Mr. S. Muthuvenkataraman, Advocate
For the Respondent : Mr. Anoop Singh, Authorised Representative

CORAM:
HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER Nos. 41450-41455 / 2025

DATE OF HEARING : 16.06.2025
DATE OF DECISION : 09.12.2025

Per Mr. VASA SESHAGIRI RAO

These Central Excise Appeals Nos. E/41348-41353/2016 have been preferred by M/s. Polyspin Exports Ltd. (hereinafter referred to as 'Appellant') assailing the Order-in-Original Nos. 32-37/2016 dated 28.03.2016 passed by Commissioner of Central Excise, Tirunelveli.

2. The brief details of the proceedings are as under: -

a. The Appellant manufactures a range of polypropylene products such as woven bags, flexible intermediate bulk containers (FIBC), liners, fabrics, strips, and yarn. They use various raw materials including polypropylene granules and coating grades, color master batches, UV master batches, and LDPE and LLDPE granules. For making fabrics and slings, PP granules and master batches are primarily used, while LDPE and LLDPE granules are mainly used for liners and pouches.

b. These goods are imported without payment of customs duty in terms Notification No. 52/2003-Cus dated 31.03.2003. The Appellant also procure indigenous materials claiming exemption from central excise duty under Notification No. 22/2003-CE dated 31.03.2003. These exemptions are consistent with applicable Foreign Trade Policies from 2004-09 and 2009-14.

c. During an audit, the Internal Audit Party, Tirunelveli found that the quantity of raw materials such as Master Batches, LDPE and LLDPE granules were consumed over and above the Standard Input Output Norms (SION) fixed by the DGFT and accordingly issued show

cause notices for the following periods involving the following Raw materials:

Sl. No.	Show Cause Notice No. and date	Period covered	Input Materials	Duty demanded (Rs.)
A	SCN No. 13/CE/COMMR /2013 dated 03.07.2013	June,2008 to March,2013	Master Batches alone	71,70,522/-
B	SCN No. 2/COMMR/2014 dated 23.01.2014	January,2009 March,2013	LDPE and LLDPE Granules	1,29,10,681/-
C	SCN No.08/CE/JC/2014 dated 25.04.2014	April 2013 September 2013	Master Batches, LDPE and LLDPE Granules	26,83,767/-
D	SCN No. 14/CE/JC/2014 dated 27.10,2014	October 2013 to March 2014	Master Batches, LDPE and LLDPE Granules	43,26,880/-
E	SCN No. 10/ADC/CE/2015 dated 23.04.2015	April 2014 to September 2014	Master Batches, LDPE and LLDPE, Granules	30,04,510/-
F	SCN No. 17/JC/CE/2015 dated 13.10.2015	October 2014 to March 2015	Master Batches, LDPE and LLDPE Granules	30,23,486/-
TOTAL				**3,31,19,846/-**

d. The Appellant *vide* their reply dated 09.04.2014 has submitted their contentions as follows: -

i. The Appellant Export Oriented Unit (EOU) manufactures a variety of products like PP Woven Bags, FIBC Bags, PP Woven Fabrics using imported and domestic raw materials obtained duty-free under Customs Notification 52/2003-Cus and Excise Notification 22/2003-CE.

ii. The EOU exports these products without paying duty and also sells them in the Domestic Tariff Area (DTA) on payment of applicable duties complying

with warehousing rules and executing the required bonds.

iii. Customs Notification 52/2003-Cus exempts duty on goods imported for export manufacture without mandating demand on excess consumption beyond Standard Input Output Norms (SION), except for waste and scrap up to 2%.

iv. The notification allows EOUs to declare their input-output norms until official SION is fixed and further permits representations to authorities for norm variations, indicating that mere non-compliance with SION does not automatically trigger a duty demand.

v. The department alleged excess consumption beyond SION and demanded duty but failed to prove misuse or diversion of duty-free materials and totally ignored their previous permission for waste generation up to 12%.

vi. The audit did not raise objections to consumption patterns, and the department’s claim of suppression and invoking extended limitation was challenged based on acceptance of returns and lack of inspection or query.

vii. The Notice calculated the duty demand assuming excess consumption of imported materials without

proper segregation of records and applied incorrect valuation methods.

viii. That SION norms only serve as an average benchmark and is not rigid; consumption can vary due to machinery, labor efficiency, and processes. Past Tribunal's decisions and Supreme Court's rulings have rejected demands based solely on deviation from average norms.

ix. The appellant has asserted that there was no excess consumption or misuse, supported by accepted audit reports and no proper objection by authorities during the period.

x. Penalty under relevant Customs/ Central Excise enactments was disputed as not applicable since no intentional misuse or evasion was established.

e. The Commissioner of Central Excise, after perusing the records, confirmed the demands and other proposals made raised in the Show Cause Notice regarding demand of interest and imposition of penalties.

3. Aggrieved by the aforesaid impugned order, the Appellant have filed these appeals before this Tribunal. The Ld. Counsel Mr. S. Muthu Venkataraman represented the Appellant and submitted written submissions dated 07.08.2025 which *inter-alia* contained the following: -

i. That where the appellant has violated any terms and conditions of the licenses issued by the DGFT, the Department should have referred the matter to the Licensing Authority for appropriate action rather than acting *suo moto* relying upon the following judicial precedents: -

   a. *Titan Medical Systems Private Limited vs. Collector of Customs, New Delhi [2003 (151) ELT 254 (S.C)*
   b. *Svam Toyal Packaging Industries Pvt. Ltd. v. Principal Commissioner of Customs (Import), ICD, Tughlakabad New Delhi 2025 (2) TMI 965*
   c. *Hindustan Lever Limited v. CC(EP), Mumbai - [2012 (281) E.L.T. 241 (Tri.-Mumbai);*
   d. *PSL Ltd. vs. Commissioner of Customs reported in 2015(328)ELT 177 (Tri.-Ahmd.)*
   e. *CC v. Balkrishna Industries reported in 2021 (11) TMI 126 - CESTAT Ahmedabad*

ii. The issues covered by various Show Cause Notices can be classified under two categories for ease of discussion as under: -

Category -1: Pertains to alleged excess consumption of UV Stabiliser, Master Batches and Colour Master Batches for FIBC production.

Category -2: Pertains to LLDPE/LDPE, wherein the Department allowed only the materials used for liner production ignoring the

same inputs used for Extrusion process to produce strips for FIBC products.

iii. That the finished products include polypropylene granules, UV stabilizer master batch, LDPE/LLDPE granules, Color Master Batches, Multi Filament Yarn, Filler Cord. For manufacturing FIBC bags, the process involves weaving polypropylene fabric, and to enhance the strength and functionality, the appellant also stitches liners inside the bags.

iv. That the Department has erred in considering the following:

a. The Department treated both UV Master Batches and Colour Master Batches as the same, leading to the incorrect conclusion of excess utilization by the Appellant. However, SION norms apply only to UV Master Batches, not to Colour Master Batches.

b. The Department calculated the 2% norm as 2% of the total finished product quantity, whereas according to SION, the 2% norm should be applied only to the basic polypropylene resin content.

c. The Department calculated excess consumption under SION by including the liner production and waste of raw materials, whereas the correct

approach should consider only the LDPE/LLDPE content in the final product.

d. SION norms are based on the quantity of raw materials used, not merely the weight of the final product. The Department erred by assessing raw material usage without accounting for the actual content of polypropylene granules, LDPE/LLDPE granules, liners, and filler cords in the manufactured FIBC bags. This oversight makes their calculations inaccurate.

e. It was also contended that several Courts and Tribunals have ruled that SION norms alone cannot justify recovery of duty, as deviations from these norms do not imply that imported materials were not used in manufacture as required under the notification. In support of this contention, the appellant has relied upon the following case laws: -

   i. *PSL Ltd. Vs. Commissioner of Customs reported in 2015(328) ELT 177 (Tri.-Ahmd.)*
   ii. *Commissioner of Central Excise, Indore Vs. Agarwal Indotex Ltd reported in 2010 (261) ELT 935)*
   iii. *Goodluck Garments Pvt Ltd. Vs. Commissioner of Central Excise & Customs., SURAT-II, Surat reported in 2019 (365) E.L.T. 893*

iv. *IOCEE Exports Ltd. Vs. Commissioner of Central Excise reported in 2021 (376) E.L.T. 311 (Mad.)*

v. *Adsorbent Carbons Private Ltd Vs. Commissioner of CGST and Central Excise, The Joint Commissioner of CGST and Central Excise reported in 2021 (4) TMI 72.*

v. That since the demand for duty itself is legally untenable, the imposition of interest and penalty is unjustified. Penalty is not an automatic consequence and requires proof of wrongdoing, which is absent in this case. The Appellant considers the situation to be a matter of interpretation, not a deliberate act warranting penalty. The appellant further contends that penalties should not be a source of revenue and should be imposed only on those who have committed a genuine wrong.

vi. That the adjudicating authority incorrectly states that SION violations for warehouse inputs have no limitation. *[PSL Ltd. Vs. Commissioner of Customs reported in 2015(328) ELT 177 (Tri.-Ahmd.)]*

4. The Ld. Authorized Representative Mr. Anoop Singh represented the Department and re-iterated the findings in Order in-Original and prayed that Appeal be dismissed.

5. The Ld. Authorized Representative further, submitted the following: -

i. In the present case, while there exists an allegation concerning the excessive consumption of raw materials, it is important to consider the practical realities of manufacturing operations. Typically, no prudent or commercially oriental / rational manufacturer would intentionally utilize raw materials in quantities significantly beyond the standard norms, which indicates presence of clandestine removal.

ii. As a 100% Export Oriented Unit (EOU), the Appellant is obligated to strictly comply with the conditions laid down in the relevant notification. The Standard Input Output Norms (SION), being a key regulatory benchmark, play a crucial role in monitoring input-output ratios. Any violation of these norms is a serious compliance lapse and cannot be disregarded.

iii. To support the above, reliance was placed on the ruling of the Hon'ble Supreme Court in *Dilip Kumar and Company 2018 (7) TMI 1826 - Supreme Court (LB)* which has ruled that exemption notifications under tax laws must be interpreted strictly. The Court clarified that the burden of proving eligibility for an exemption

lies entirely on the assessee, and they must demonstrate that their case falls squarely within the scope of the notification which has not been discharged by the Appellant.

iv. The Learned AR relied on the following judgments: -

a. *Amardeep Exports Vs. C.C Jamnagar (Prev) reported in 2024(2) TMI 206- CESTAT Ahmedabad*
b. *M/s. Pelican Grani Marmo Pvt Ltd Vs. Additional Commissioner, Commissionerate, Jodhpur (Rajasthan) reported in 2023(2) TMI 740- CESTAT New Delhi*
c. *GKB Ophthalmic Ltd. And GKB Vision Ltd. Vs. Commissioner of Customs reported in 2017(9) TMI 1662-CESTAT Mumbai*
d. *Ms. GKB Ophthalmics Ltd., M/S. GKB Vision Limited Vs. Commissioner of Customs, Mormugao Harbor, Goa reported in 2020 (2) TMI 1087 Bombay High Court*
e. *Commissioner of Customs (Import), Mumbai Vs. M/S. Dilip Kumar and Company & Ors. reported in 2018 (7) TMI 1826 - Supreme Court (LB)*

6. Heard both sides and carefully considered the rival submissions including the evidence available on appeal records and the case laws relied upon.

7. The issues to be decided in these appeals are: -

i. Whether the Appellant's consumption of inputs namely Master Batches, LDPE, and LLDPE is in compliance with

the Standard Input Output Norms (SION) as prescribed in Notifications No. 52/2003-Cus dated 31.03.2003, No. 22/2003-CE dated 31.03.2003, and the relevant Foreign Trade Policy provisions, and whether excess consumption as compared to SION can justify recovery of any alleged short payment of duty?

ii. Whether the demands are barred by limitation? And,

iii. Whether the penalties imposed are sustainable in the facts of these appeals?

8. The examination of the appeal records indicate that M/s. Polyspin Exports Ltd., the appellant herein are a 100% EOU engaged in the manufacture of PP Woven Bags, FIBC Bags, PE Liner, PP Woven Fabrics, PP Strip and PP Yarn. For the manufacture of FIBC Bags, the appellant had used LDPE/LLDPE Liner which is called inner layer bag which are inside the bags in order to avoid the leakage of the product. UV Master Batches are used by the appellant for the protection of the bags from UV radiation and Colour Master Batches are used for giving colour to the bags.

9. As many as six Show Cause Notices were issued demanding duty for non-compliance to SION norms for the period from June 2008 to March 2015 as tabulated in para 2 *supra.*

10. For production of the FIBC bags, the following inputs are used: -

a. Polypropylene granules: 89.5%
b. Colour granules (Master Batches): 7%
c. LDPE/LLDPE granules: 2%
d. UV master Batch: 1.5%

11. Main allegation against the appellant is that master batches and other raw materials were used in excess as compared to admissible SION. The Ld. Advocate has referred to the Order-in-Appeal No. 113/2017 dated 30.11.2017 passed for the subsequent period from April 2015 to September 2015 wherein the Commissioner (Appeals) has remanded the matter to the Original Adjudicating Authority. In order to understand the dispute involved in these appeals in right perspective, it is essential to go through this appeal order dated 30.11.2017 which is extracted below for ready reference: -

> *"7. The provisions allowing procurement of duty free raw-materials for manufacture of export goods by an EOU are governed by Notification No. 22/2003-CE dated 31.03.2003, in case of indigenous procurement and Notification No. 52/2003-Cus dated 31.03.2003 in case of import procurement. The notifications stipulate certain conditions for the purpose of enjoying the benefits extended thereunder and these conditions have to be fulfilled. One of the conditions is that the person availing the benefit of notification has to prove to the satisfaction of the officer to have been used in connection with the production or packaging of goods in accordance with SION. Here, the condition Tays emphasis on the usage of goods in accordance with SION and not just whether the goods are used in the manufacture of export goods, which implies that for the goods used in excess of the norms prescribed in SION the exemption is not available*

8. (a) On perusal of the SION for Plastic Products it is seen that for some of the items like ABS Briefcases /Suitcases/ Beauty Cases (Sl. No. H1), Articles made of HDPE/PP twine/Rope or Articles made of blend of HDPE & PP Twine /Ropes (Sl. No. H24), HDPE/PP Beautycase /Briefcase/ Suitcases (31. No. H115) separate notes have been given for coloured export items allowing coloured master batch as an input but reducing the relevant polymer weight by 0.02kg/kg. In the list of SION for the item Coloured PP Woven tube/sack with U.V. Stabilization (Sl. No. H59) the quantity of Colour Master batch allowed as input has been prescribed as 0.03 kg/kg. Similarly for the item Coloured HDPE Tarpaulin with UV Stabilizer (Sl. No. H60) the quantity of Colour Master batch has been prescribed as 0.03 kg/kg. However, in respect of Flexible Intermediate Bulk Containers (Sl. No. H97) the colour master batch has not been mentioned in the Input-Output norms. It is pertinent to note that for manufacturing Coloured Flexible Intermediate Bulk Containers, Colour Master batch is essential. UV Master batch and Colour Master batch are distinct items and therefore cannot be clubbed together for determining the excess consumption of inputs as per SION.

(b) As per show cause notice the total quantity of UV master batches and colour master batches consumed has been arrived at 10.94%, whereas the UV stabilizer master batch required as per SION (Sl. No. H97) is 0.02 kg, i.e. 2%. As discussed in para 8(a) above, the quantity of colour master batch required for usage as inputs for some of the export products ranges from 0.02 kg/kg to 0.03 kg/kg and presuming that the same quantity of colour master batch is required as input for FIBC, the total quantity of UV master batch and Colour master batch required as input comes to 0.04 kg/kg or 0.05 kg/kg, i.e., 4% or 5%. However, the actual consumption worked out by the respondent has been 10.94% which is more than double the combined input quantity presumed above. Since, demand cannot be confirmed on presumptive basis, the legal recourse to arrive at the input norms for colour master batch is to refer the matter to the jurisdictional Development Commissioner by the appellant in terms of proviso (b) to condition (d)(1)(ii) of Notification No. 52/2003-Cus dated 31.03.2003, as amended and in terms of proviso (b) to condition 4(a)(i) of Notification No. 22/2003-CE dated 31.03.2003. The relevant provisions in the said notifications are reproduced below: -

Notification No. 52/2003-Cus dated 31.03.2003 & Notification No. 22/2003-CE dated 31.03.2003,

> *"Provided that -*
>
> *(a) ……*
>
> *(b) where additional items other than those given in SION are required as input or where generation of waste, scrap*

and remnants is beyond 2% of the input quantity, use of such goods shall be allowed on the basis of self-declared ad hoc norms till suck norms are fixed on ad hoc basis by the jurisdictional Development Commissioner within a period of three months from the date of self declared norms and the unit shall undertake to adjust the self-declared/ad hoc norms in accordance with norms as finally fixed by the Norms Committee for the unit. The ad hoc norms will continue till such time the final norms are fixed by the Norms Committee:"

8. In view of the foregoing, I pass the following order.

Order

The appellant are hereby ordered to make a representation, within one month from the date of receipt of this order, to their jurisdictional Development Commissioner for fixing of input-output norms for Colour Master batches, being an additional item other than those given in SION. The appellant on receipt of the order fixing the norms from the Development Commissioner may inform the same to the Original Authority along with a copy thereof within 15 days from the date of receipt of the fixation order.

The appeal in A.No. 30/2017(TVL) is remanded back to the Original Authority to re-determine the demand based on the input norms to be fixed by the Development Commissioner for Colour Master batches, after extending personal hearing to the appellant. The Order-in-Original No. 19/CE/AC/2016 dated 26.12.2016 passed by the Assistant Commissioner of Central Excise, Rajapalayam Division is set aside."

12. Thus, in terms of the above, the appellant was directed to make a representation to the jurisdictional Development Commissioner for fixing of input / output norms for colour master batches for which no SION was fixed. Accordingly, the appellant has addressed Letters to the Development Commissioner, Madras Export Processing Zone, Chennai for fixing of input / output norms for colour master batches in terms of the direction issued in the Commissioner (Appeals)'s order as above *vide* their Letters dated 14.12.2017 and 19.04.2018 and the appellant has received

certain responses from the MEPZ which are all part of the appeal record. Further, the appellant has contended that the Notification allows to declare their input / output norms till SION fixed and also norms variation is permitted subject to observations of certain procedures. It appears that the unit was permitted waste generation upto 12% before fixing SION norms for their products previously. It was vehemently contended by the appellant that the demands cannot be solely raised for deviation from the norms relying on the case laws discussed in detail below.

13. It is the contention of the appellant that UV Stabiliser Master Batches and Colour Master Batches are not one and the same and SION norms do not apply to the colour batches but only to UV Master Batches. He has further submitted that the Department has wrongly computed 2% limit as 2% of the total finished product quantity whereas as per SION 2% should be applied only to Polypropylene content and that the Department calculated the excess consumption by including liner production and waste of raw materials whereas should be considered only for LDPE / LLDPE content in final products. The above contentions of the appellant have not been considered / discussed while confirming the demands raised.

14. Another important contention of the Appellant is that demand raised purely on the basis of excess consumption of raw materials as compared to SION is not legally sustainable placing reliance on the judicial precedents discussed *infra.* In the case of *Commissioner of Central Excise, Indore vs. Agarwal Indotex Ltd* reported in *2010 (261) ELT 935*, the Tribunal, New Delhi held that no presumption can be drawn from SION norms alone that materials procured were in excess of the requirement. The relevant extract of the ruling is reproduced below: -

> *"**5**. I have carefully considered the submissions and perused the records. At the outset, it is to be noted that SION norms are based on average consumption in the industry. The actual consumption by any manufacturer could be more or less. If the variation is very wide then it definitely calls for investigation. However, no presumption can be made that excess raw materials have been used merely because the quantity is in excess of SION norms. In the present case, certain presumptions have been made that the raw materials procured is in excess of the requirement merely based on SION norms. The respondents have used certain quantities of duty-paid Cenvatable inputs in the manufacture of export products. There is no dispute about export of the final products. The inputs going into export product need not suffer duty. It could be procured duty-free or if it was duty-paid, the same can be taken as Cenvat Credit. The said Cenvat Credit is useable for paying duty on the goods cleared to the domestic market or the same is eligible as refund. Under these circumstances, the order of the Commissioner (Appeals) holding that the/refund claim is admissible cannot be faulted.*
>
> ***6**. In view of the above the appeal by the Department is rejected. The cross objection, which is merely in support of the order of the Commissioner (Appeals) is also disposed of."*

15. The appellant has drawn our attention to the decision in the case of *Goodluck Garments Pvt. Ltd. vs. Commissioner of Central Excise & Customs, Surat reported in*

2019 (365) E.L.T. 893, where the Hon'ble Gujarat High Court examined a similar issue and concluded that the goods imported or procured locally in excess of permitted quantities cannot be inferred solely based on the wastage generated during the manufacturing process. The relevant extract of the ruling is reproduced below for reference: -

> *"**16**. In this case, there is no dispute that the duty free imported goods were used in the manufacture of final products for export and the waste was generated during the course of the manufacturing process. The export obligation against the goods imported as per the letter of intent has been fulfilled. It is also not in dispute that the waste was disposed of after due permission being obtained from the Deputy Commissioner, Central Excise. The department has nowhere alleged that the duty free imported goods were not consumed in the manufacturing of the finished goods or that such goods have been cleared in the guise of removal of waste. There is no allegation relating to removal of goods with intent to evade payment of duties. In the opinion of this Court, once it is not disputed that the goods were used in the manufacturing of finished goods and the export obligation has been duly fulfilled, the benefit of exemption provided under the notification in question cannot be denied to the appellant.*
>
> ***17**. Insofar as the Notification No. 13-Cus., dated 9-2-1981 is concerned, the same does not lay down any criteria for waste nor does the same provide any conditions regarding extent of wastage allowed. On reading Notification No. 13-Cus., dated 9-2-1981 in its entirety, there is nothing therein to indicate that raw material imported and contained in such waste in excess of norms shall be rendered ineligible for the benefit of such notification. Notification No. 13-Cus. is primarily concerned with fulfilment of export obligation from the goods imported into India and the satisfaction required to be recorded by the Assistant Collector as contemplated by Condition (6) is not in the context of wastage generated, but in the context of manufacture of articles for export from the imported goods. Therefore, such satisfaction would be relatable to actual use of the goods for the purpose of manufacture to ensure that there is no diversion of goods or that imported raw material is not clandestinely removed. In the present case, as noticed earlier, it is not the case of the respondent that any part of the imported fabric has been diverted or clandestinely removed. The only allegation is that the waste generated is more than the standard input-output norm, which has nothing to do with the fulfilment of export obligation or compliance with the conditions*

of the exemption notification.Under the circumstances, the raw material being exempted under Notification No. 13/81-Cus., dated 9-2-1981, the demand of Customs duty on imported raw materials contained in wastage in excess of input-output norms is not justified."

16. In the instant case, it was contended by the Appellant that there was no specific evidence to indicate that the materials procured *vis-à-vis* the final products that were exported, were not accounted for nor unsubstantiated to indicate any excess materials have been imported or procured locally, or that the exemption had been claimed without authorization. It was further put forth that the Appellant have manufactured and exported the products and there has been no positive evidence to allege that goods supposed to be exported were diverted for local consumption. Further that the adjudicating authority had only cited the reference to a previous investigation made to show diversion of the materials and arrived at a conclusion that diversion has taken place of the exempted imported materials, which alone could not be the basis for confirmation of demands in the absence of any evidence of diversion or misutilization.

17. Further, the appellant has placed reliance on the ruling of the Hon'ble Supreme court in case of *Oudh Sugar Mills Ltd., [1978 (2) E.L.T. (J 172) (S.C.)]* wherein it was held that while calculating the output the department cannot

rely on inferences involving assumptions. Additionally, the Appellant referred to the case of *IOCEE Exports, 2021 (376) E.L.T. 311 (Madras),* wherein Hon'ble Madras High Court held that Standard Input Output Norms (SION) alone cannot be the sole basis for issuing a show cause notice for wastage determination, especially when there is no allegation of diversion against the Appellant. Similar reliance was placed on the case of *M/s. Adsorbent Carbons Private Ltd. Vs. Commissioner of CGST and Central Excise, the Joint Commissioner of CGST and Central Excise reported in 2021 (4) TMI 72 - Mad.,* wherein the Court reiterated its earlier ruling in IOCEE Exports. It held that Standard Input Output Norms cannot be the sole basis for issuing a show cause notice for wastage determination when no allegation of diversion exists against the assessee. The matter was remanded to the adjudicating authority for re- verification, and upon review, the authority accepted the assessee's contentions and dropped the proceedings. An appeal against this decision was dismissed by the Tribunal.

18. However, we find that the Ld. Authorized Representative appearing on behalf of the Department has submitted that there is no prudent nor commercially feasible nor rational that the manufacturers would intentionally utilize

raw materials in quantities significantly beyond the standard norms. Further, he states that as an EOU, the Appellant ought to have complied with the conditions laid down in the notification and that violation of SION norms is a serious compliance lapse. In support of his submissions reliance was placed on the following discussed case laws.

19. We have carefully considered the submissions made by both the sides. The Ld. AR has relied upon the following decisions *viz., Amardeep Exports Vs. C.C Jamnagar (Prev) [2024(2) TMI 206- CESTAT Ahmedabad], M/s. Pelican Grani Marmo Pvt Ltd Vs. Additional Commissioner, Commissionerate, Jodhpur (Rajasthan) [2023(2) TMI 740-CESTAT New Delhi], GKB Ophthalmic Ltd. and GKB Vision Ltd. Vs. Commissioner of Customs [2017(9) TMI 1662 CESTAT Mumbai], Ms. GKB Ophthalmics Ltd. & M/S. GKB Vision Limited Vs. Commissioner of Customs, Mormugao Harbor, Goa [2020 (2) TMI 1087 - Bombay High Court]* and *Commissioner of Customs (Import), Mumbai Vs. M/S. Dilip Kumar and Company & Ors. [2018 (7) TMI 1826 - SC(LB)]* to support his contention that where SION norms are not followed, duty demands are sustained. However, as the issue is being remanded to the Original Adjudicating Authority, the

relevancy and applicability of these decisions may be examined in detail.

20. Further, we find that the above judicial precedents and jurisprudence on this topic have evolved over period of time and the adjudicating authority did not have the benefit of these precedents at the time of concluding these proceedings. Hence, it would be just and appropriate to remand the matter to the adjudicating authority to consider the submissions of both Appellant and Department afresh and pass a well-reasoned speaking order. Needless to say, sufficient opportunity of being heard needs to be provided to the Appellant and the Appellant is further permitted to raise all the contentions before the Adjudicating Authority.

21. Now adverting to the issue as to whether in the facts and circumstances whether the demands are barred by limitation, the Appellant have contested the demand both on merits and limitation. On merits, considering the rival contentions involved, we have remanded back the matter for fresh consideration. However, with respect to limitation, we

observe that the adjudicating authority has invoked extended period of limitation for the following reasons: -

A. In SCN No.13/CE/COMMR/2013 dated 03.07.2013, extended period of limitation was invoked on the ground that the excess availment over and above SION was found by the internal Audit party of the Department while auditing the accounts of the noticee.

B. For SCN No.02/COMMR/CE/2014 dated 23.01.2014, extended period has been invoked on the ground that all inputs have been allowed for procurement or import without payment of duty are required to be indicated in terms of unit of quantity (i.e. Kgs). The Assessee had furnished unit of goods manufactured and cleared in numbers instead of Kgs. The Assessee had furnished the clubbed figures of PP Granules, PP quoting grade, LDPE, LLDPE in their ER-2 returns and the liner production was not furnished in ER-2 returns and the excess consumption of inputs over and above SION was found by the Department as pointed out by the audit.

22. In the facts and circumstances, taking note of the arguments put forth by both sides, we find that various contentions as regards non-invocation of extended period

also requires a thorough re-examination keeping the following facts under consideration.

23. As appeal records indicate, the Appellant has been subjected to multiple audits conducted by the Department as tabulated below: -

Sl. No.	Particulars
1.	**Central Excise – New System of Audit of Accounts No. C.No. III/10/2/2003-IA dated 12.12.2003**
2.	**Central Excise – New System of Audit of Accounts no. C.No. III/10/53/2005-IAD dated 26.04.2006**
3.	**Central Excise – New System of Audit of Accounts no. C.No. III/10/210/2006-IAD dated 24.05.2007**
4.	**Central Excise – New System of Audit of Accounts no. C.No. III/10/5/2009-APC dated 03.04.2009**
5.	**Central Excise – New System of Audit of Accounts no. C.No. III/10/276/2009-IA dated 06.12.2010**

24. We find in this context, the Hon'ble Allahabad High Court in the case of Commissioner of *C. EX., Noida Versus Accurate Chemical Industries 2014 (310) E.L.T. 441 (All.)* has held that extended period of limitation cannot be invoked in a case where short payment could have been detected by the jurisdictional officer.

25. Furthermore, with regard to the contention that for non/incorrect disclosure of relevant details in ER-2 returns, the Appellant have placed reliance on the following rulings to substantiate non invocability of extended period: -

i. *CCE Vs. Chemphar Drugs & Linments, 1989 (40) ELT 276 (SC),*

> *"8. Aggrieved thereby, the revenue has come up in appeal to this Court. In our opinion, the order of the Tribunal must be sustained. In order to make the demand for duty sustainable beyond a period of six months and up to a period of 5 years in view of the proviso to sub-section 11A of the Act, it has to be established that the duty of excise has not been levied or paid or short-levied or short-paid, or erroneously refunded by reasons of either fraud or collusion or wilful misstatement or suppression of facts or contravention of any provision of the Act or Rules made thereunder, with intent to evade payment of duty. Something positive other than mere inaction or failure on the part of the manufacturer or producer or conscious or deliberate withholding of information when the manufacturer knew otherwise, is required before it is saddled with any liability, before the period of six months. Whether in a particular set of facts and circumstances there was any fraud or collusion or wilful misstatement or suppression or contravention of any provision of any Act, is a question of fact depending upon the facts and circumstances of a particular case. The Tribunal came to the conclusion that the facts referred to hereinbefore do not warrant any inference of fraud. The assessee declared the goods on the basis of their belief of the interpretation of the provisions of the law that the exempted goods were not required to be included and these did not include the value of the exempted goods which they manufactured at the relevant time. The Tribunal found that the explanation was plausible, and also noted that the Department had full knowledge of the facts about manufacture of all the goods manufactured by the respondent when the declaration was filed by the respondent. The respondent did not include the value of the product other than those falling under Tariff Item 14E manufactured by the respondent and this was in the knowledge, according to the Tribunal, of the authorities. These findings of the Tribunal have*

not been challenged before us or before the Tribunal itself as being based on no evidence."

ii. *Pushpam Pharmaceuticals Company Vs. CCE, Bombay 1995 (78) ELT 401 (SC)*

"4. Section 11A empowers the Department to re-open proceedings if the levy has been short-levied or not levied within six months from the relevant date. But the proviso carves out an exception and permits the authority to exercise this power within five years from the relevant date in the circumstances mentioned in the proviso, one of it being suppression of facts. The meaning of the word both in law and even otherwise is well known. In normal understanding it is not different that what is explained in various dictionaries unless of course the context in which it has been used indicates otherwise. A perusal of the proviso indicates that it has been used in company of such strong words as fraud, collusion or wilful default. In fact it is the mildest expression used in the proviso. Yet the surroundings in which it has been used it has to be construed strictly. It does not mean any omission. The act must be deliberate. In taxation, it can have only one meaning that the correct information was not disclosed deliberately to escape from payment of duty. Where facts are known to both the parties the omission by one to do what he might have done and not that he must have done, does not render it suppression."

iii. *Uniworth Textiles Vs. CCE, Raipur, 2013 (288) ELT 161 (SC)*

***"24.** Further, we are not convinced with the finding of the Tribunal which placed the onus of providing evidence in support of bona fide conduct, by observing that "the appellants had not brought anything on record" to prove their claim of bona fide conduct, on the appellant. It is a cardinal postulate of law that the burden of proving any form of mala fide lies on the shoulders of the one alleging it. This Court observed in Union of India v. Ashok Kumar & Ors. - (2005) 8 SCC 760 that "it cannot be overlooked that burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very*

seriousness of such allegations demand proof of a high order of credibility."

25. *Moreover, this Court, through a catena of decisions, has held that the proviso to Section 28 of the Act finds application only when specific and explicit averments challenging the fides of the conduct of the assessee are made in the show cause notice, a requirement that the show cause notice in the present case fails to meet. In Aban Loyd Chiles Offshore Limited and Ors. (supra), this Court made the following observations :*

> *"21. This Court while interpreting Section 11-A of the Central Excise Act in Collector of Central Excise v. H.M.M. Ltd. (supra) has observed that in order to attract the proviso to Section 11-A(1) it must be shown that the excise duty escaped by reason of fraud, collusion or willful misstatement of suppression of fact with intent to evade the payment of duty. It has been observed :*
>
> *'...Therefore, in order to attract the proviso to Section 11-A(1) it must be alleged in the show-cause notice that the duty of excise had not been levied or paid by reason of fraud, collusion or willful misstatement or suppression of fact on the part of the assessee or by reason of contravention of any of the provisions of the Act or of the Rules made thereunder with intent to evade payment of duties by such person or his agent. There is no such averment to be found in the show cause notice. There is no averment that the duty of excise had been intentionally evaded or that fraud or collusion had been practiced or that the assessee was guilty of wilful misstatement or suppression of fact. In the absence of any such averments in the show-cause notice it is difficult to understand how the Revenue could sustain the notice under the proviso to Section 11-A(1) of the Act.'*
>
> *It was held that the show cause notice must put the assessee to notice which of the various omissions or commissions stated in the proviso is committed to extend the period from six months to five years. That unless the assessee is put to notice the assessee would have no opportunity to meet the case of the Department. It was held :*
>
> *...There is considerable force in this contention. If the department proposes to invoke the proviso to Section 11-A(1), the show-cause notice must put the assessee to notice which of the various commissions or omissions stated in the proviso is committed to extend the period from six months to 5 years. Unless the assessee is put to notice, the assessee would have no opportunity to meet the case of the department. The defaults enumerated in the proviso to the said sub-section are more than one and*

if the Excise Department places reliance on the proviso it must be specifically stated in the show-cause notice which is the allegation against the assessee falling within the four corners of the said proviso....”

(Emphasis supplied)

26. *Hence, on account of the fact that the burden of proof of proving mala fide conduct under the proviso to Section 28 of the Act lies with the Revenue; that in furtherance of the same, no specific averments find a mention in the show cause notice which is a mandatory requirement for commencement of action under the said proviso; and that nothing on record displays a willful default on the part of the appellant, we hold that the extended period of limitation under the said provision could not be invoked against the appellant.”*

26. Hence, taking note of the above judicial precedents the contentions of the Appellant as regards the invocation of extended period is required to be re-looked into afresh.

As regards the issue as to whether in the facts and circumstances of the present case, penalty is imposable, it is legally settled principle in tax jurisprudence that penalty provisions are not attracted in cases where the issue involved is highly debatable or interpretative. When the assessee has taken a plausible view based on available legal interpretations or judicial precedents, and there is no element of deliberate concealment or misstatement, moreso when the said discrepancies were found during audit proceedings itself, the imposition of penalty is unwarranted.

The Hon'ble Supreme Court and various High Courts have consistently held that penalty is not imposable where the Appellant have filed regular returns and audits have taken place. In such cases, the conduct of the Appellant herein cannot be termed as contumacious or mala fide. In view of the above observation and following the ratio laid down by the Hon'ble Supreme Court in the of *International Merchandising Company, LLC Vs. Commissioner Of Service Tax, New Delhi* reported in *2022 (67) G.S.T.L. 129 (S.C.).,* the Hon'ble Punjab Harayana High Court *Commissioner Of Central Excise Vs. Jai Ganesh Processors* reported in *2016 (343) E.L.T. 47 (P & H)* and *Hon'ble Madhya Pradesh High Court in Union Of India Vs. Beryl Drugs Ltd.* reported in *2015 (322) E.L.T. 261 (M.P.)*, we hold that penalties are unsustainable in the facts of the present case. Further, prescribed records are to be maintained by any EOU for duty free import of raw materials or for local procurement without payment of duty.

27. Taking note of the rival contentions, it is clear that various contentions raised by the Appellants have not been considered nor any findings rendered thereon in the impugned Order-in-Original No. 32-37/2016/CE/COMMR

dated 28.03.2016. As such, the matter requires to be remanded for *de novo* proceedings.

28. In view of the above findings, the following order is passed: -

a) With respect to demand on merits and on invocation of extended period the matter is remanded back to the Original Adjudicating Authority to consider the submission of both the assessee and the Department afresh and pass a well-reasoned speaking order in strict compliance to principles of natural justice. Needless to say, sufficient opportunity of being heard needs to be provided to the Appellant and the Appellant is further permitted to raise all the contentions before adjudicating authority.

b) With regard to penalty, penalties imposed are set aside.

29. The appeals are disposed off on the above terms.

(Order pronounced in open court on 09.12.2025)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

MK