CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT NO. III

(1) Customs Appeal No.42255 of 2015

(Arising out of Order-in-Original No.40603/2015 dated 30.07.2015 passed by Commissioner of Customs, Chennai-II, Custom House, No.60, Rajaji Salai, Chennai-600 001.)

M/s. Mylan Laboratories Ltd., **....Appellant**
Plot No.564/1/22, Road No.92,
Jubilee Hills,
Hyderabad-500 034.

Versus

Commissioner of Customs **... Respondent**
Chennai-II Commissionerate,
Custom House,
No.60, Rajaji Salai, Chennai-600 001.

WITH

(2) Customs Appeal No. 41973/2015 (C.V. Subba Rao Vs Commissioner of Customs, Chennai-II)

(3) Customs Appeal No. 42253/2015 (P. Ramesh Vs Commissioner of Customs, Chennai-II)

(4) Customs Appeal No.42281/2015 (S. Sarabhoji Vs Commissioner of Customs, Chennai-II

(Arising out of Order-in-Original No.40603/2015 dated 30.07.2015 passed by Commissioner of Customs, Chennai-II, Custom House, No.60, Rajaji Salai, Chennai-600 001.)

APPEARANCE:

Shri Y. Ravikumar, Advocate for the Appellant (Sl. No.1)
Shri S. Murugappan, Advocate for the Appellant (Sl. No.2 & 3)
Shri T. Sundaranathan, Advocate for the Appellant (Sl. No.4)

Ms. Anandalakshmi Ganeshram, Authorized Representative
for the Respondent

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)

FINAL ORDER Nos.40103-40106/2026

DATE OF HEARING: 12.08.2025
DATE OF DECISION: 20.01.2026

Per: Shri P. Dinesha

These Appeals are filed against a common impugned Order-in-Original No.40603/2015 dated 30.07.2015 passed by Commissioner of Customs, Chennai; since the issue involved in all these Appeals is identical, these Appeals are bunched together for common disposal.

2. Facts as we could gather from the impugned Order-in-Original dated 30.07.2015 and the Show Cause Notice 12.04.2000 *inter-alia*, are that:

2.1 Revenue's case is that their Intelligence has gathered that the raw material imported for manufacture of bulk drugs by some drug manufacturers were allowed for warehousing under Section 59 of the Customs Act, 1962 and same was substituted with fake materials and that the original material was sent to the importers by the CHA, M/s. Far Port International, Chennai, without payment of duty. It was also gathered that such substituted fake material was still lying under customs bonded warehouses pending clearance.

2.2 The scrutiny of the records maintained at Bonds Department (Customs) and warehouses located at C.W.C., Thiruvottiyur, ICBC - I, Manali, ICBC - II, Tollgate revealed that there were four time-expired bonds in respect of the importers M/s. Vera Laboratories Ltd., Hyderabad (1st Appellant herein, now known as Mylon Laboratories Ltd.) as given below:-

Sl. No.	**Bond No. & Date**	**Warehouse**	**Remarks**
1.	3827/17.4.95	CWC, Thiruvottiyur	Validity expired on 16.4.96.
2.	3836/17.4.95	-do-	Validity expired on 16.4.96.
3.	11517/06.10.95	-do-	Validity expired on 05.10.96.
4.	14387/12.11.95	-do-	Validity expired on 11.11.96.

2.3 The goods lying in the above warehouse were examined in detail by the officers of SIIB, Custom House, Chennai in the presence of representatives of the Importer and CHA, and representative samples were drawn for the purpose of testing. Accordingly, the goods covered under pending bonds were seized in accordance with the provisions of Customs Act, 1962.

2.4 The samples drawn were tested at the Customs House Laboratory, Chennai and as per the test report two pending Bond Nos. 3827/17.4.95 and 3836/17.4.95 contained (substituted and fake material) "Calcium Carbonate with Traces of Silica" as compared to the original imported material viz., 3,4,5 Trimethoxy Benzal Dehyde. Goods in respect of Bond No. 11517 dated 06.10.95 containing Thiophene and Bond No. 14387 dated 12.11.95 containing Triazole 1,2,4 1H were in original condition and the Importers have informed that they are in the process of clearing the same.

2.5 A list of 184 Bills of Entry along with the copies obtained from M/s. Vera Laboratories Ltd., Hyderabad (1st Appellant) pertaining to clearances made through Custom House, Chennai has been forwarded by Assistant Commissioner, SIIB, Air Cargo Complex, Chennai. The Bills of Entry were scrutinized with reference to cash numbers available on each of the Bill of Entry and as per the entries in the cash registers at Custom House, Chennai. It was found that the cash numbers available on two ex-bond Bills of

Entry Nos. 4165 dated 18.4.95 and 5720 dated 22.5.95 pertaining to the above two bonds i.e., No. 3827 dated 17.4.95 and 3836 dated 17.4.95 were incorrect. On verification, it was noticed that these cash numbers pertain to payments made by some other importers for paying duty on their imports. It was also noticed that the above two Bills of Entry though filed and assessed, the Customs duty endorsements were forged by affixing fabricated rubber stamps and indicating unconnected cash numbers. These two ex-bond Bills of Entry were also processed for MODVAT claim.

2.6 In respect of the goods covered under the ex-bond Bill of Entry No.5720 dated 22.5.95 pertaining to Bond No. 3836 dated 17.4.95, the importers appears to have instructed the CHA to clear 8,500 kgs. of 3,4,5 Trimethoxy Benzal Dehyde against Advance Licence and rest of the material on payment of duty. Details of the licence endorsed on the above Bill of Entry were verified and found to be correct. In respect of goods covered under Bond No. 3827 dated 17.4.95 the importers appears to have instructed the CHA to clear total quantity of 3,4,5 Trimethoxy Benzal Dehyde on payment of duty. But, the goods were received against fake Bill of Entry without proper clearance from Customs authorities and without payment of duty. In respect of goods covered under Bond No.11517/6.10.95 the importers M/s. Vera Laboratories have cleared 2000 kgs. out of 8000 kgs. of "Thiophene" against advance licence/payment of duty. Duty of Rs.17,08,267/- along with interest for the balance quantity is liable to be paid by the importer. Also, in respect of goods covered under Bond No. 14387/12.11.95 the importers have cleared 460 kgs. out of 1000 kgs. of "Triozole 1,2,4,1H" against advance licence/payment of duty and duty of Rs.1,51,215/-along with interest for the balance quantity is liable to be paid by the importer.

2.7 On further investigation, it was found that the CHA viz., M/s. Far Port International, Chennai had indulged in substituting the imported goods with material of no value while sending the goods to warehouse.

2.8 The 1st Appellant is claimed to have sent drafts in favour of "Collector of Customs A/c Vera Laboratories" and the same have been deposited in the Deposit Account of their CHA, M/s. Far Port International for payment of duty from the Deposit Account or for clearances against cash account, since at the relevant time Appellant did not have any Deposit Account in their own name. Depending on their requirement and convenience the importers have requested the CHA for warehousing the imported material. In the absence of proper escort of the material from Harbour to the Public Bonded Warehouse, the CHA is alleged to have diverted the material to his residence and substituted the material with locally purchased drums and fake materials. The original imported material was sent to the Importers and substituted material was sent to the warehouse, which is claimed to be lying uncleared in various bonds since 1995.

2.9 It is their further case that wherever such substitution of material was made, the CHA appears to have fabricated the Bills of Entry showing Customs duty endorsement and sent the same to the Importers. The deposits in the Deposit Account of M/s. Far Port International were utilised for clearance of goods in respect of other Importers-Clients of M/s. Far Port International. The CHA appears to have received the amounts towards customs duty from other Importers in the form of drafts drawn in favour of "M/s. Far Port International or M/s. Far Port India (a sister concern of M/s. Far Port International)" which enabled the CHA to deposit the same in their own account maintained with their bankers. The CHA had withdrawn huge amounts from these accounts and appears to have utilized for his own use.

2.10 The duty liability on two fake Bills of Entry is Rs.95,00,244/-. The Importers have claimed that they have sent Demand Drafts equal to Customs duty amount. Even assuming that the Importers have sent the demand drafts for payment of duty, the same were allowed to be used/misused by their CHA who have deposited the same in his own Deposit Account (in absence of any Deposit Account of the importer themselves) and had adjusted that amount for clearances of other Importers. The other Importers-Clients of M/s. Far Port International had sent duty amounts in favour of the CHA company which it appears were misappropriated by the CHA. However, the fact remains that the goods which were supposed to have been lying uncleared pending payment of duty in bonded warehouse had been clandestinely and unauthorisedly removed by the CHA and the duty had not been paid to customs in respect of these clearances.

2.11 The CHA is further alleged to have regularly cleared all the import consignments of M/s. Vera Laboratories Ltd., Hyderabad (1st Appellant) and during the period 1995-1999, they have handled about 170 consignments where duty payment is involved, through Custom House, Chennai; they have handled duty free clearances of M/s. Vera Laboratories Ltd. (1st Appellant) under DEEC/DEPB Schemes. Out of the total Bills of Entry recovered from the premises of 1st Appellant, two Bills of Entry were found to be fake and unauthentic as per the duty endorsements made on the Bill of Entry and scrutiny of the same with reference to the cash records available at Custom House, Chennai. The total duty amount involved in such fake and unauthentic Bills of Entry was Rs. 95,00,244/-.

2.12 Total duty amount to be paid on the time expired bonds still pending clearance is Rs. 18,59,482/-. The goods after clearance from Harbour, Chennai for the purpose of warehousing the CHA appeared to have been diverted to the residence of Shri D. Ramesh, Proprietor, M/s. Far Port International and indulged in substitution of the material by unloading the original cargo and sending locally purchased drums filled with indigenously procured lime stone powder. After such substitution the CHA have sent the material to the importers as per their requirements and appear to have fabricated Bills of Entry. The two fake Bills of Entry recovered from the importers premises appear to have been fabricated by the CHA for the above purpose.

2.13 Out of the four pending bonds the Test Reports confirm that there were two bonds where substituted and fake material was available. The remaining two bonds were correct and the original material is available.

2.14 The bonding of the consignments and ex-bonding were done by the CHA as per the instructions of the importers. In respect of two ex-bond clearances the CHA appears to have cleared the goods without proper officer of Customs permitting clearance of Warehoused goods. The goods so cleared have been received by the Importers and have been used for the purpose of manufacture of bulk drugs. The importers have also claimed MODVAT credit equal to the Central Excise duty indicated on the fake Bills of Entry. Hence, it is held by Revenue that the Importers M/s. Vera Laboratories Ltd., Hyderabad (1st Appellant) are liable to pay the entire short levied Customs duty of Rs.95,00,244/- in terms of proviso to Section 28 (1) of the Customs Act, 1962 and that wilful suppression of facts by 1st Appellant has resulted in short levy of Customs duty to the tune of

Rs.95,00,244/- and hence, the Importer-1st Appellant is also liable for penalty under Section 114A/112 (a) of the Customs Act, 1962.

3. Shri Y. Ravikumar, Shri S. Murugappan, and Shri T. Sundaranathan, ld. Advocates appeared for respective Appellants and filed written submissions and Shri Anoop Singh, Ld. Joint Commissioner for Revenue defended the impugned order.

4. Heard both sides, we have perused the records including the judicial precedence filed during the course of arguments. We find that Bangalore Bench of Tribunal dealt with an identical set of facts in the case of **Hetero Drugs Ltd. Vs Commissioner of Customs (Airport) Chennai** - 2004 (168) ELT 211 (Tri.-Bang.) and recorded as under :

> "b) The appellants are in the business of manufacturing bulk drugs and other pharmaceutical products. They have been importing various raw materials required for the manufacture of their finished goods. To handle the Customs clearing activity at the Chennai Sea and Airports, they had engaged the services of M/s. Far Port International, Chennai, a proprietary concern of one Shri D. Ramesh.
>
> (c) (i) The appellants used to pay the duty in the form of crossed demand drafts, favouring the Commissioner of Customs A/c. Hetero Drugs in respect of the imports and receive the goods as mentioned and under the cover of Bills of Entry.
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> The appellants were also taking Modvat credit on the strength of these Bills of Entry. These Bills of Entry were regularly

> scrutinised and defaced by the jurisdictional Central Excise authorities.
>
> … ….
>
> (e) On enquiries made by the appellants, it was revealed that Shri D. Ramesh, Proprietor of M/s. Far Port International, had indulged in *mala fide* activities of substituting the goods at the Bonded Warehouse; that the CHA had sent the goods imported under the cover of fake Bills of Entry to the appellants; that the amounts sent by them in the form of demand drafts in favour of the "Commissioner of Customs - A/c. Hetero Drugs" after being deposited in the deposit account at Chennai Custom House treasury had not been utilised for payment of duty on consignments belonging to and meant for the appellants; that the said clearing agent had thereby misutilised the amounts sent by other importers.
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> (ii) It is submitted that Revenue has not taken into account the total number of DDs sent by the appellants to the CHA. They have made a chart for those demand drafts, out of the total number which were utilised by the CHA for discharging duty for the imports made through the Sea Customs and the Air Customs ….."

The Tribunal after analysing the facts and records in the above decision (*supra*) held as under :

> **"7.** When into Bond and ex-Bond procedures have to be necessarily undertaken under the supervision of a Customs Preventive Officer, then it is strange that the collusion and or negligence of these officers is not even whispered in the show cause notice or considered by the Commissioner. Such large scale breech of Customs procedures prescribed under the Customs Act, 1962 could not have occasioned but for the connivance or/and collusion or/and negligence of Customs Preventive Officers in the discharge of their duties. Surely the importer-company at Hyderabad cannot be found fault with and be visited with penalty and duty liability, when amounts drawn from their bank accounts stands transferred and credited to the Commissioner of Customs, Chennai's account.
>
> **8.** The submission of the appellants that in view of the evidence that in respect of the 68 Bills of Entry the amounts in question have been sent by the appellants by way of demand drafts drawn in favour of the Commissioner of

Customs - A/c. Hetero Drugs, the duty in respect of these consignments is deemed to have been paid on the date the demand draft is deposited with the Customs authorities has to be approved. In fact the Larger Bench of this Tribunal in the case of *CCE* v. *Genus Overseas Electronics* [2003 (155) E.L.T. 541 (Tri.-LB) = 2003 (56) RLT 759 (LB)] held that payment of duty by cheque would be date of Tender of the same and not realisation following the same, the date of Tender of the demand draft would be date of payment for the duty. That the demand draft got accounted elsewhere and not as tendered by the appellants due to no fault of the appellants cannot be held to make the goods of the appellants to be non-duty paid.

... …. ...

11. In view of the above, when a demand draft is on par with a cheque that is not dishonoured, then following the Larger Bench of the Tribunal in the case of *CCE, Jaipur-I* v. *Genus Overseas Electronics Ltd.* reported in [2003 (155) E.L.T. 541 (Tri.-LB) = 2003 (56) RLT 759 (L.B)] which followed the decision of the Hon'ble High Court of Andhra Pradesh in the case of *Sanghi Polyester Ltd.* v. *CCE* - 2001 (134) E.L.T. 344 (A.P.) and of the Hon'ble Supreme Court in the case of *K. Saraswathy* v. *P.S.S. Somasundaram Chettiar* - (1989) 4 SCC 527 and *Commissioner of Income Tax, Bombay South* v. *M/s. Ogale Glass Works Ltd.* - AIR 1954 SC 429, **the date of presentation of the demand draft by the CHA to the Customs authorities would be deemed to be the date on which the appellants would have paid the duty. Any further misuse of the said amounts, either by the CHA and/or with the connivance of the officials of the Customs House by any other importer, who might have availed or might not have availed the benefit cannot result in a visit of demand of duty or penalty on the appellants.**

… … ….

13. There cannot be an allegation of the appellants having any intention to evade payment of duty when the entire amount in question has been paid by way of demand drafts in favour of the Commissioner of Customs as and when clearances were sought by them. In fact it is to establish their *bona fide* it is the appellants who had requested the Commissioner to defer the proceedings till the completion of the investigations by the CBI, which the Commissioner has rejected. Such a rejection shows undue haste to confirm the demand and impose penalty. Such an

> order passed in haste, cannot be sustained following the decision of the Tribunal in the case of *Zeenath International Supplies & Anr.* v. *Commissioner of Customs, Chennai,* Final Order Nos. 296 & 297/2003, dated 28-2-2003."

(emphasis added)

5. The above order of Tribunal in **Hetero Drugs Ltd.** was followed by the Bangalore Bench in the case of **ITW India Ltd. Vs CC Chennai –** 2006 (198) ELT 117 (Tri.-Bang.). The relevant facts of the case recorded therein read as under :

> **"2.** The brief facts of the case are as follows : Departmental investigations revealed misuse of warehousing facilities, forgery of bills of entry and misappropriation of customs duty by M/s. Farport International, Customs House Agents, Chennai involving M/s. Hetero Drugs Limited., M/s. ITW Signode India Ltd., (appellant), M/s. Natco Pharma Limited, Hyderabad and others. Consequent to the investigations, Revenue proceeded against the appellants demanding duty and imposing penalty. The appellant approached CESTAT, Bangalore. The matter was remanded to the original authority for re-determination of duty demands and penalty if any on the appeal after hearing them in the matter. The CESTAT observed that in the *de novo* proceedings both sides could make use of the decision in case of *Hetero Drugs Limited* v. *CC, Chennai* vide Order Nos. 1594 and 1595, dated 12-12-2003 [2004 (168) E.L.T. 211 (Tri.-Bang.)]. Consequent to CESTAT's remand order, the Commissioner has passed the impugned order confirming the demand of Rs. 9,72,216/-. He has imposed equal penalty under Section 114A of the Customs Act, 1962. Interest under Section 28AB of the Customs Act, 1962 has been demanded. The appellants strongly challenge the impugned order. Hence, they have come before this Tribunal for relief."

The Tribunal in **ITW India Ltd.** (*supra*) held as under :

> **"7.** In the present case, it is very clear that the non-payment of duty has arisen on account of the guilty act of the CHA and therefore, he alone would be liable to pay duty under Section 147(3) of the Customs Act, 1962. The Adjudicating authority has not gone into these aspects and has dealt with the issue in a very superficial manner, very eager to confirm the duty and penalty willy-nilly. Summing up, **we hold that there is nothing**

> **on record to doubt the *bona fides* of the appellants, as there is clear evidence that the CHA had exceeded his authority. In terms of the *Hetero Drugs* (supra) decision in the interpretation of Section 147 of the Customs Act, 1962, the CHA gets the status of an importer and he alone is liable for the non-payment of duty to the Government, in these circumstances, the *de novo* order-in-original is devoid of any merits. The same is liable to be set aside. Hence, we allow the appeal with consequential relief."**

(emphasis added)

6. The above decisions / orders have only underlined the dubious modus operandi of CHA. Further, the claim of the 1st Appellant that it had given Demand Drafts for payment of Customs duty to their CHA in the name of "Collector of Customs A/c Vera Laboratories" remains uncontroverted and hence, when payment is apparently made by the Importer/1st Appellant by giving Demand Drafts to their CHA for a bonafide reason of them to not having any deposit account in their own name, the allegation as to the intention to evade duty perhaps may not be correct. We say so because in response to the SCN, the State Bank of Hyderabad, Industrial Branch, Hyderabad had issued a certificate to the effect that they had issued a Demand Draft for Rs.31,86,154/- favouring the "Collector of Customs, Madras A/c. Vera Laboratories Ltd., Hyderabad" at their service branch, which document is also placed at page 118 of the Appeal Memo before us along with a copy of bank

payment voucher dated 20.05.1995 raised by the 1st Appellant in the name of "Collector of Customs, Madras". The above facts also find indirectly accepted by the Adjudicating Authority himself when we peruse paragraph 44 of the impugned order wherein also there is a doubt expressed by the Commissioner as "……*It is now clear that the CHA has substituted the imported bonded drugs* …. *The deposits in the Deposit Account of M/s.Far Port International were utilized for clearance of goods in respect of other importers/clients of M/s.Far Port International. The CHA has received the amounts towards customs duty from the importers in the form of drafts drawn in favour of ……. The CHA has fraudulently withdrawn the amounts from these accounts and have utilized for his own use*."

7. In the light of the above factual position and the decisions referred to (*supra*), we find that the issue in the case on hand stands squarely covered by the ratio in the above decisions / orders and hence, the demand raised in the impugned order does not survive.

8. Resultantly, the demand of duty against the 1st Appellant and the penalties against the Appellants Nos.2 to 4 cannot sustain. Accordingly, we set aside the impugned

order and allow the Appeals with consequential benefits, if any, as per law.

(Order pronounced in open court on 20.01.2026)

sd/-	sd/-
(M. AJIT KUMAR)	**(P. DINESHA)**
Member (Technical)	Member (Judicial)

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