CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH - COURT No. III

Excise Appeal No. 41894 of 2017

(Arising out of Order-in-Appeal No.119/2017 (CXA-I) dated 22.05.2017 passed by Commissioner of Central Excise (Appeals-I), 26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai 600 034)

M/s.Piramal Enterprises Ltd. **.... Appellant**
(formerly known as M/s.Piramal Healthcare Ltd.)
Ennore Express Highway,
Ennore,
Chennai 60 067.

VERSUS

The Commissioner of GST &
Central Excise, **... Respondent**
Chennai North Commissionerate,
26/1, Mahatma Gandhi Road,
Nungambakkam
Chennai 600 034.

APPEARANCE :

Shri M. Karthikeyan, Advocate for the Appellant
Shri M. Selvakumar, Authorized Representative for the Respondent

CORAM :

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

FINAL ORDER No.40156/2026

DATE OF HEARING : 09.09.2025
DATE OF DECISION : 29.01.2026

Per: Shri P. Dinesha

Brief and relevant facts are that Appellant is a 100% EOU manufacturing Bulk drugs falling under Chapter 29 of the Central Excise Tariff Act, (CETA) 1985. From perusal of ER-2 returns filed by Appellant-Assessee, it was found that during the period October 2009 to May 2014, the Appellant cleared packing materials like HDPE drums, MS barrels/Carbyous at 'nil' rate of duty declaring them as "Organic Compounds" falling under Chapter Heading 29420090 of CETA. Further enquiry revealed that they purchased raw materials contained in the impugned packing materials without payment of duty in terms of Notification No.52/2003-Cus dated 31.03.2003 and 22/2003-CE dated 31.03.2003, as the case may be, and after using them cleared the empty containers without payment of duty as per Board's Circular F.No.305/68/86-FTT dated 15.07.1986. After detailed investigation and recording statements from various persons, a Show Cause Notice No.17/2014 dated 03.11.2014 was issued to the Appellant alleging that they cleared the empty containers as such without crushing or puncturing them under the guise of 'scrap' and that since they were capable of reuse/repeated use the same cannot cleared duty-free. The notice proposed to demand Customs duty of Rs.10,00,248/- under Section 28(4) of Customs Act, 1962 with appropriate interest and to impose penalty under Section 114A ibid. After due process of law, the Adjudicating Authority vide Order-in-Original No.14/2016 dated 03.03.2016 confirmed the demand with interest and imposed equal penalty. Aggrieved by the Order of Adjudicating Authority (*supra*), Appellant filed an Appeal before the First Appellate Authority who vide impugned Order-in-Appeal No.119/2017 dt. 22.05.2017 while upholding the OIO, however remitted the matter to the Adjudicating Authority for the limited purpose of quantification of duty demand. It is aggrieved by this order of First Appellate Authority that the present Appeal has been filed by Appellant before this forum.

2. Heard Shri M. Karthikeyan, Ld. Advocate for the Appellant and Shri M. Selvakumar, Ld. Assistant Commissioner for the Revenue, perused the documents placed on record and the judicial precedents filed during the course of hearing.

3.1 Ld. Advocate would submit that Appellant vide letter dt. 11.12.2015 requested for cross-examination of persons from whom statements were recorded. However, only Shri M. Suresh (AO) was made available for Cross examination wherein he deposed that the MS barrels/HDPE drums cleared were only ‘scrap’;

3.2 Non-resuable packing materials are eligible for clearance without duty in terms of Export-Import Policy (EXIM Policy) and Notification No.52/2003-Cus and Board circular dt. 15.07.1986. However, demand is made on the basis of statements recorded. Our attention is drawn to the statement of Shri P.S. Dawooth, Proprietor of M/s.P.S.D. Traders, wherein it is stated that he purchased drums in good condition on “rate per drum basis” and sold to M/s.Benny Trading Company, who in turn converts such drums into HDPE Chips. Thus, ultimately the drums have not been put to repeated use, and only serve as ‘scrap’. The Adjudicating Authority disregarded the statements for the reason that either the witnesses have not turned up for cross-examination or have turned hostile. The Adjudicating Authority has held that the disparity between the rate of drums and the rate of scrap is huge and hence, it could be easily made out that Appellant had indeed cleared MS Barrels/HDPE drums; the Adjudicating Authority did not record a finding or evidence that MS barrels / HDPE drums is not scrap but drums which are capable of repeated use. Instead, he stopped with the finding that, in view of the rate difference there are clearances of drums/barrels as well as scrap and accordingly, proceeded to confirm the duty. Therefore, the demand is not sustainable.

3.3 The First Appellate Authority though accepted that the sales on 'per kg' basis are treated as 'scrap' and excluded them from the duty demand however, erroneously treated clearances shown in "Nos." as re-usable and confirmed duty to that extent. In this regard, Ld. Advocate placed reliance on the decision of Chennai Bench Tribunal in **Sun Pharmaceuticals Industries Ltd**. **Vs CGST & CE Puducherry** - 2019 (366) ELT 166 (Tri.-Chennai).

3.4. Ld. Advocate argued on the issue of limitation also. Appellant clearly mentioned the description of product as 'scrap' in their invoices; however they have shown the CTH as 29420090 by mistake in their returns and the same cannot be attributed as 'mis-declaration with intent to evade payment of tax'; hence, invocation of extended period of limitation is not sustainable. He prayed that Appeal may be allowed.

4. Ld. A.R Shri M. Selvakumar supported the findings in the impugned order.

5. We find that the following issues that arise for our consideration are :

(i) On the facts and circumstances of the case whether the Revenue has proved that what was cleared by the Appellant was 'scrap' ? (ii) whether invocation of extended period is justified ?

6. We have carefully gone through the documents placed on record and we have also carefully considered the rival contentions. A perusal at the SCN indicates that initially the Appellant relied on the Board's Circular F.No.305/68/86-FTT (*supra*) in support, we find that it is not an absolute one; rather conditional. One of the conditions that we notice from the above circular reads "….*The Collectors may accordingly, permit such packing material to be cleared into the Domestic Tariff Area after devising the necessary safeguards to ensure that facility is not abused*...". The above indicates that a prior permission is required before exercising the option of clearance which, apparently is not done in the case on hand. It is a different matter altogether when clearance as such is reflected in the Appellant's returns or not, when a condition

is not followed, the presumption as to non-adherence of conditions of notification would survive as it is a conditional notification and it is for the Assessee to establish with evidence that other than that it had followed the guidelines in the CBEC circular. A further perusal of the reply filed in response to the SCN as well as the arguments advanced before us indicate that it was a case made out based on arguments rather than with the support of any evidence, rather the Appellant has only tried to contend that it was for the Department to establish that it did not follow the conditions. It is settled position that the burden is always on the claimant.

7. We find that the period is from October 2009 to May 2014 for which SCN dt. 03.11.2014 was issued under Section 28 (4) of the Customs Act, 1962 and the allegation in the SCN is that they have also suppressed the fact of clearance of packing material as such in the guise of 'scrap' and misdeclared the same as 'other organic compounds' but however, nothing was brought on record establishing the fact of suppression with an intention to evade payment of duty. From a perusal of the pleadings advanced by the Appellant both before the lower authorities as well as before us, it is their case that the mention of CETH (as 29420090) was by

mistake in their returns since the above classification was for their final product. However, the Department would normally go by the returns (E.R.2) filed which is the foundation and hence, it is not expected of an Assessee to declare something and claim bonafides, because going by the very such returns, the Department would start the proceedings as prescribed under the statute, if required. It may be therefore that such declaration is by taking a chance that the Department might accept which would ultimately result in loss to the exchequer. Hence, we do not agree with the contentions of the Appellant that there was no suppression as according to us, the same was very much evident from their own returns which lead or mislead the Department into initiating the proceedings which has resulted in demand of lawful duty.

8. In view of the above, we do not find any merit in the Appeal and hence, we dismiss the same.

(Order pronounced in open court on 29.01.2026)

sd/-

(VASA SESHAGIRI RAO)
Member (Technical)

sd/-

(P. DINESHA)
Member (Judicial)

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