CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD

Division Bench

Court – I

Customs Appeal No. 30437 of 2021

(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs Vijayawada
D.No. 55-17-3, Road No.2, Industrial Estate, Vijayawada, AP – 522 007 **......Respondent**

with

Customs Appeal No. 30438 of 2021

(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs Visakhapatnam
Port Area, Visakhapatnam, Andhra Pradesh – 530 035 **......Respondent**

with

Customs Appeal No. 30439 of 2021

(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs Visakhapatnam
Port Area, Visakhapatnam, Andhra Pradesh – 530 035 **......Respondent**

with
Customs Appeal No. 30440 of 2021
(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs Visakhapatnam
Port Area, Visakhapatnam, Andhra Pradesh – 530 035 **......Respondent**

with
Customs Appeal No. 30441 of 2021
(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs Visakhapatnam
Port Area, Visakhapatnam, Andhra Pradesh – 530 035 **......Respondent**

with
Customs Appeal No. 30442 of 2021
(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs Visakhapatnam
Port Area, Visakhapatnam, Andhra Pradesh – 530 035 **......Respondent**

with
Customs Appeal No. 30443 of 2021
(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs Visakhapatnam
Port Area, Visakhapatnam, Andhra Pradesh – 530 035 **......Respondent**

with

Customs Appeal No. 30444 of 2021

(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs
Visakhapatnam
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035 **......Respondent**

with

Customs Appeal No. 30445 of 2021

(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs
Visakhapatnam
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035 **......Respondent**

with

Customs Appeal No. 30446 of 2021

(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs
Visakhapatnam
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035 **......Respondent**

with

Customs Appeal No. 30447 of 2021

(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs
Visakhapatnam
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035 **......Respondent**

with
Customs Appeal No. 30448 of 2021
(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs Visakhapatnam
Port Area, Visakhapatnam, Andhra Pradesh – 530 035 **......Respondent**

with
Customs Appeal No. 30449 of 2021
(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs Visakhapatnam
Port Area, Visakhapatnam, Andhra Pradesh – 530 035 **......Respondent**

with
Customs Appeal No. 30450 of 2021
(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs Visakhapatnam
Port Area, Visakhapatnam, Andhra Pradesh – 530 035 **......Respondent**

with

Customs Appeal No. 30451 of 2021
(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs Visakhapatnam
Port Area, Visakhapatnam, Andhra Pradesh – 530 035 **......Respondent**

with
Customs Appeal No. 30452 of 2021
(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs Visakhapatnam
Port Area, Visakhapatnam, Andhra Pradesh – 530 035 **......Respondent**

with
Customs Appeal No. 30453 of 2021
(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs Visakhapatnam
Port Area, Visakhapatnam, Andhra Pradesh – 530 035 **......Respondent**

with
Customs Appeal No. 30454 of 2021
(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs Visakhapatnam
Port Area, Visakhapatnam, Andhra Pradesh – 530 035 **......Respondent**

with
Customs Appeal No. 30455 of 2021
(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs Visakhapatnam
Port Area, Visakhapatnam, Andhra Pradesh – 530 035 **......Respondent**

with
Customs Appeal No. 30456 of 2021
(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs Visakhapatnam
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035 **......Respondent**

with
Customs Appeal No. 30457 of 2021
(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs Visakhapatnam
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035 **......Respondent**

with
Customs Appeal No. 30458 of 2021
(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs Visakhapatnam
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035 **......Respondent**

with
Customs Appeal No. 30459 of 2021
(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs Visakhapatnam
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035 **......Respondent**

with

Customs Appeal No. 30460 of 2021

(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs Visakhapatnam
Port Area, Visakhapatnam, Andhra Pradesh – 530 035 **......Respondent**

with

Customs Appeal No. 30461 of 2021

(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs Visakhapatnam
Port Area, Visakhapatnam, Andhra Pradesh – 530 035 **......Respondent**

with

Customs Appeal No. 30462 of 2021

(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs Visakhapatnam
Port Area, Visakhapatnam, Andhra Pradesh – 530 035 **......Respondent**

with

Customs Appeal No. 30463 of 2021

(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs Visakhapatnam
Port Area, Visakhapatnam, Andhra Pradesh – 530 035 **......Respondent**

with
Customs Appeal No. 30464 of 2021
(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs Visakhapatnam
Port Area, Visakhapatnam, Andhra Pradesh – 530 035 **......Respondent**

with
Customs Appeal No. 30465 of 2021
(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs Visakhapatnam
Port Area, Visakhapatnam, Andhra Pradesh – 530 035 **......Respondent**

with
Customs Appeal No. 30466 of 2021
(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs Visakhapatnam
Port Area, Visakhapatnam, Andhra Pradesh – 530 035 **......Respondent**

with
Customs Appeal No. 30467 of 2021
(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs Visakhapatnam
Port Area, Visakhapatnam, Andhra Pradesh – 530 035 **......Respondent**

with

Customs Appeal No. 30468 of 2021

(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs Visakhapatnam
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035 **......Respondent**

with

Customs Appeal No. 30469 of 2021

(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs Visakhapatnam
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035 **......Respondent**

with

Customs Appeal No. 30470 of 2021

(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs Visakhapatnam
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035 **......Respondent**

with

Customs Appeal No. 30471 of 2021

(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs Visakhapatnam
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035 **......Respondent**

with

Customs Appeal No. 30472 of 2021

(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs Visakhapatnam
Port Area, Visakhapatnam, Andhra Pradesh – 530 035 **......Respondent**

with

Customs Appeal No. 30473 of 2021

(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs Visakhapatnam
Port Area, Visakhapatnam, Andhra Pradesh – 530 035 **......Respondent**

with

Customs Appeal No. 30474 of 2021

(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs Visakhapatnam
Port Area, Visakhapatnam, Andhra Pradesh – 530 035 **......Respondent**

with

Customs Appeal No. 30475 of 2021

(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs Visakhapatnam
Port Area, Visakhapatnam, Andhra Pradesh – 530 035 **......Respondent**

with
Customs Appeal No. 30476 of 2021
(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs Visakhapatnam
Port Area, Visakhapatnam, Andhra Pradesh – 530 035 **......Respondent**

with
Customs Appeal No. 30477 of 2021
(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs Visakhapatnam
Port Area, Visakhapatnam, Andhra Pradesh – 530 035 **......Respondent**

with
Customs Appeal No. 30478 of 2021
(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs Visakhapatnam
Port Area, Visakhapatnam, Andhra Pradesh – 530 035 **......Respondent**

with
Customs Appeal No. 30479 of 2021
(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs Visakhapatnam
Port Area, Visakhapatnam, Andhra Pradesh – 530 035 **......Respondent**

with

Customs Appeal No. 30480 of 2021

(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs Visakhapatnam
Port Area, Visakhapatnam, Andhra Pradesh – 530 035 **......Respondent**

with

Customs Appeal No. 30481 of 2021

(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs Visakhapatnam
Port Area, Visakhapatnam, Andhra Pradesh – 530 035 **......Respondent**

with

Customs Appeal No. 30482 of 2021

(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs Visakhapatnam
Port Area, Visakhapatnam, Andhra Pradesh – 530 035 **......Respondent**

with

Customs Appeal No. 30483 of 2021

(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs Visakhapatnam
Port Area, Visakhapatnam, Andhra Pradesh – 530 035 **......Respondent**

with
Customs Appeal No. 30484 of 2021
(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs Visakhapatnam
Port Area, Visakhapatnam, Andhra Pradesh – 530 035 **......Respondent**

with
Customs Appeal No. 30485 of 2021
(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs Visakhapatnam
Port Area, Visakhapatnam, Andhra Pradesh – 530 035 **......Respondent**

with
Customs Appeal No. 30486 of 2021
(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs Visakhapatnam
Port Area, Visakhapatnam, Andhra Pradesh – 530 035 **......Respondent**

with
Customs Appeal No. 30487 of 2021
(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs Visakhapatnam
Port Area, Visakhapatnam, Andhra Pradesh – 530 035 **......Respondent**

with

Customs Appeal No. 30488 of 2021

(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs Visakhapatnam
Port Area, Visakhapatnam, Andhra Pradesh – 530 035 **......Respondent**

with

Customs Appeal No. 30489 of 2021

(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs Visakhapatnam
Port Area, Visakhapatnam, Andhra Pradesh – 530 035 **......Respondent**

with

Customs Appeal No. 30490 of 2021

(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs Visakhapatnam
Port Area, Visakhapatnam, Andhra Pradesh – 530 035 **......Respondent**

with

Customs Appeal No. 30491 of 2021

(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs Visakhapatnam
Port Area, Visakhapatnam, Andhra Pradesh – 530 035 **......Respondent**

with
Customs Appeal No. 30492 of 2021
(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs Visakhapatnam
Port Area, Visakhapatnam, Andhra Pradesh – 530 035 **......Respondent**

with
Customs Appeal No. 30493 of 2021
(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs Visakhapatnam
Port Area, Visakhapatnam, Andhra Pradesh – 530 035 **......Respondent**

with
Customs Appeal No. 30494 of 2021
(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs Visakhapatnam
Port Area, Visakhapatnam, Andhra Pradesh – 530 035 **......Respondent**

with
Customs Appeal No. 30495 of 2021
(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs Visakhapatnam
Port Area, Visakhapatnam, Andhra Pradesh – 530 035 **......Respondent**

with
Customs Appeal No. 30496 of 2021
(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs Visakhapatnam
Port Area, Visakhapatnam, Andhra Pradesh – 530 035 **......Respondent**

with
Customs Appeal No. 30497 of 2021
(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs Visakhapatnam
Port Area, Visakhapatnam, Andhra Pradesh – 530 035 **......Respondent**

with
Customs Appeal No. 30498 of 2021
(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs Visakhapatnam
Port Area, Visakhapatnam, Andhra Pradesh – 530 035 **......Respondent**

with
Customs Appeal No. 30499 of 2021
(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs Visakhapatnam
Port Area, Visakhapatnam, Andhra Pradesh – 530 035 **......Respondent**

with
Customs Appeal No. 30500 of 2021
(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs Visakhapatnam
Port Area, Visakhapatnam, Andhra Pradesh – 530 035 **......Respondent**

with
Customs Appeal No. 30501 of 2021
(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs Visakhapatnam
Port Area, Visakhapatnam, Andhra Pradesh – 530 035 **......Respondent**

with
Customs Appeal No. 30502 of 2021
(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs Visakhapatnam
Port Area, Visakhapatnam, Andhra Pradesh – 530 035 **......Respondent**

with
Customs Appeal No. 30503 of 2021
(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs Visakhapatnam
Port Area, Visakhapatnam, Andhra Pradesh – 530 035 **......Respondent**

with
Customs Appeal No. 30504 of 2021
(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs Visakhapatnam
Port Area, Visakhapatnam, Andhra Pradesh – 530 035 **......Respondent**

with
Customs Appeal No. 30505 of 2021
(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs Visakhapatnam
Port Area, Visakhapatnam, Andhra Pradesh – 530 035 **......Respondent**

with
Customs Appeal No. 30506 of 2021
(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs Visakhapatnam
Port Area, Visakhapatnam, Andhra Pradesh – 530 035 **......Respondent**

with
Customs Appeal No. 30507 of 2021
(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs Visakhapatnam
Port Area, Visakhapatnam, Andhra Pradesh – 530 035 **......Respondent**

with
Customs Appeal No. 30508 of 2021
(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs Visakhapatnam
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035 **......Respondent**

with
Customs Appeal No. 30509 of 2021
(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs Visakhapatnam
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035 **......Respondent**

with
Customs Appeal No. 30510 of 2021
(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs Visakhapatnam
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035 **......Respondent**

with
Customs Appeal No. 30511 of 2021
(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs Visakhapatnam
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035 **......Respondent**

with

Customs Appeal No. 30512 of 2021

(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs Visakhapatnam
Port Area, Visakhapatnam, Andhra Pradesh – 530 035 **......Respondent**

with

Customs Appeal No. 30513 of 2021

(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs Visakhapatnam
Port Area, Visakhapatnam, Andhra Pradesh – 530 035 **......Respondent**

with

Customs Appeal No. 30514 of 2021

(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs Visakhapatnam
Port Area, Visakhapatnam, Andhra Pradesh – 530 035 **......Respondent**

with

Customs Appeal No. 30515 of 2021

(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs Visakhapatnam
Port Area, Visakhapatnam, Andhra Pradesh – 530 035 **......Respondent**

with

Customs Appeal No. 30516 of 2021

(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs Visakhapatnam
Port Area, Visakhapatnam, Andhra Pradesh – 530 035 **......Respondent**

with

Customs Appeal No. 30517 of 2021

(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs Visakhapatnam
Port Area, Visakhapatnam, Andhra Pradesh – 530 035 **......Respondent**

and

Customs Appeal No. 30518 of 2021

(Arising out of OIA No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Emami Agrotech Ltd
Survey No. 501-510, Near Zero Point, Krishnapatnam Port, Nellore Dist., Andhra Pradesh – 524 323 **......Appellant**

VERSUS

Commissioner of Customs Visakhapatnam
Port Area, Visakhapatnam, Andhra Pradesh – 530 035 **......Respondent**

Appearance
Shri Arvind Baheti, Advocate for the Appellant.
Shri P.R.V. Ramanan, AR for the Respondent (Special Counsel).

Coram:
HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON’BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)

FINAL ORDER No. A/30089-30170/2024

Date of Hearing: 02.11.2023
Date of Decision: 29.02.2024

[Order per: ANIL CHOUDHARY]

The issue in these Appeals is whether Social Welfare Surcharge (SWS) is leviable when the Basic Customs Duty (BCD) is exempted in terms of Notification No. 24/2015-Cus & 25/2015-Cus dt.08.04.2015, issued in terms of sub-section (1) of Sec 25 of the Customs Act, 1962, for the goods imported under Merchandise Exports from India Scheme (MEIS) and Service Exports from India Scheme (SEIS).

2. The Appellant is engaged in the business of refining and selling edible oils. For the said purpose, the Appellant imports crude edible oil from various countries and had imported vide 82 Bills of Entry during the period August 2020 to December 2020, crude palm oil availing exemption of BCD under Notification No. 24/2015-Cus & 25/2015-Cus, issued under the MEIS/SEIS Scheme, which are export promotion schemes.

3. Vide Finance Act 2018, SWS was imposed as a duty of Customs to be levied and collected in accordance with Chapter VI of the Finance Act 2018, on the goods specified in the First Schedule to the Customs Tariff Act, 1975, being the goods imported into India, to fulfil the commitment of the Government to provide and finance education, health and social security.

4. Further, Sec 110(3) of the Finance Act, 2018 provides - that SWS levied under sub-sec (1), shall be calculated at the rate of ten percent on the aggregate of duties, taxes and cesses, which are "levied and collected" by the Central Government under Sec 12 of the Customs Act, 1962, and any sum chargeable on the goods specified in sub-sec (1) under any other law for the time being in force, as an addition to, and in the same manner as a duty of customs, but not including –

(a) The safeguard duty referred to in Sec 8B & 8C of the Customs Tariff Act;
(b) The countervailing duty referred to in Sec 9 of the Customs Tariff Act;
(c) The anti-dumping duty referred to in Sec 9A of the Customs Tariff Act;
(d) The Social Welfare Surcharge on imported goods levied under sub-sec (1)

5. Further, sub-sec (4) of Sec 110 of the Finance Act 2018 provides that the Social Welfare Surcharge on imported goods shall be in addition to any other duties of customs or taxes or cess chargeable on such goods, under the Customs Act, 1962 or any other law for the time being in force.

6. It has been clarified by the Board and is generally understood that a surcharge, by whatever name called, is calculated on the basic duty or tax. Where the basic duty/tax is 'nil', then surcharge calculated on such 'nil' amount also is 'nil'. In these Appeals, the fact is that the Revenue allowed the exemption of BCD under the aforementioned notifications. However, the Appellant was constrained to pay SWS in cash for taking clearance of the consignments as it was not considered as covered by any exemption. The Appellant was of the view that since BCD was not collected pursuant to the exemption, supra, no further liability for SWS could have been determined with reference to the notional BCD. Admittedly, BCD is nil in respect of the 82 Bills of Entry filed.

7. Being aggrieved, due to charging of SWS by the Revenue while assessing the Bills of Entry, the Appellant challenged the assessments on levy of SWS in each of the Bills of Entry, by filing as many Appeals before the learned Commissioner (Appeals) and seeking consequential refund on various grounds. These Appeals were rejected vide the impugned Order-in-Appeals bearing No. VJD-CUSTM-PRV-APP-001 to 082-2021-22 dt.24.05.2021.

8. Being aggrieved, the Appellant has filed these Appeals (82 in number) before this Tribunal.

9. Learned Counsel for the Appellant, inter alia, urges the following grounds:

(a) In terms of Section 110(3) of the Finance Act, 2018, SWS is required to be computed at the rate of 10% on the aggregate of duties "levied and collected" under Section 12 of the Customs Act, 1962. Further, in terms of the judgement of the Hon'ble Supreme Court in the case of Somaiya Organics Limited Vs State of Uttar Pradesh [2001 (130) E.L.T. 3] "collection" in the context of tax laws means "physical realization of tax". Since, no BCD is collected in view of the exemption conferred under Notification Nos. 24/2015 – Cus., and 25/2025 - Cus., both dated 08.04.2015, the SWS computed at the rate of 10% on "zero" should also be "zero". The CBIC in its later Circular No. 03/2022 - dated 01.02.2022 has also clarified the said position at Para 4 set out hereunder:

> *"4. Thus, it is clarified that the amount of Social Welfare Surcharge payable would be "Nil" in cases where the aggregate of customs duties (which form the base for computation of SWS) is zero even though SWS has not been exempted."*

It is further stated that the aforesaid Circular, being a beneficial one shall be retrospectively applicable to the facts of the current case in terms of the judgement of the Hon'ble Supreme Court in the case of Suchitra Components Vs. Commissioner of Central Excise, Guntur [2007 (208) E.L.T. 321].

(b) The same very issue involved in the present proceedings stands decided by the Hon'ble Division Bench of the Bombay High Court in the Appellant's own case vide order dated 27.09.2022 passed in Writ Petition bearing No. 1447 of 2021. Pursuant to the said order, refund of SWS amount has also been sanctioned to the Appellant vide refund sanction order dated 13.04.2022. The said legal position has been reiterated by the Bombay High Court in the case of La Tim Metal & Industries Limited Vs. The Union of India reported in 2022 (11) TMI 1099.

(c) Education Cess (EC) and Secondary and Higher Education Cess (SHEC), introduced vide the Finance (No.2) Act, 2004 and Finance Act, 2007 respectively, are also in the nature of surcharges, akin to SWS and are calculated at a certain percentage of the aggregate of duties of Customs "levied and collected" under Section 12 of the Customs Act, 1962. Apropos the said surcharges, the Board vide its Circular No. 345/2/2004–TRU dated 10.08.2004 had clarified in response to Issue No. 2 that duties which are both "levied and collected" shall be taken into account for the purpose of calculation of the surcharges and as such when the duties/ cesses are themselves not collected owing to an exemption or clearance under a specified procedure, there would be no leviability of EC. Further, in the context of goods imported against exemption Notifications operationalizing DEPB and Target Plus Scheme, dealing with a similar question of leviability of EC and SHEC, a consistent view has been taken by various High Courts and Tribunal that there would be no liability for EC and/or SHEC despite the Circular No. 5/2005–Cus dt.31.01.2005. Reliance in this regard has been placed upon the following decisions:

1. Gujarat Ambuja Exports Vs. Government of India [2013 (289) E.L.T. 273 (Guj.)]
2. Commissioner of Central Excise, Vishakhapatnam Vs. Kedia Overseas Limited [2014 (305) E.L.T. 268 (AP)] Maintained SC [2015 (326) E.L.T. A134]
3. Commissioner of Central Excise, Tuticorin Vs. DCW Limited [2014 (306) E.L.T. 398 (Mad.)]
4. Commissioner of Customs (Export) Vs. Reliance Industries Limited [2015 (322) E.L.T. 121 (Bom.)]
5. Commissioner of Customs, Kandla Vs. Bhushan Steel & Strips Limited [2010 (259) E.L.T. 155].

(d) The decision of the Hon'ble Supreme Court in the case of Unicorn Industries, reported in 2019 (370) ELT 3 (S.C.) has no application to the facts of the present case. In the said case, the Hon'ble Supreme Court was dealing with an exemption notification no. 71/2003 – CE dated 09.09.2003, granting certain duty concessions to the units located in the Northeastern states. Under the said notification, the assessee was entitled to refund of specified duties paid on value addition and the question before the Hon'ble Court was whether EC and SHEC shall also come within the scope of exemption although not specified therein. Since refund of the specified duties was only possible post collection, the question of leviability of EC and SHEC was not gone into by the Hon'ble Supreme Court in the said decision. The appellant on the other hand in these proceedings is questioning the liability/computation of SWS with reference to notional BCD under Section 110(3) of the Finance Act, 2018 when BCD is specifically exempted under Notification No.. 24/2015 – Cus., and 25/2025 - Cus., both dated 08.04.2015. Therefore, the ratio of the decision of the Hon'ble Supreme Court in Unicorn Case (supra) is clearly not applicable in view of the principle laid down by the Hon'ble Supreme Court in the case of IndusInd Media and Communications Limited Vs. CC, New Delhi [(2019) 17 SCC 108] as also in light of the judgement of the Hon'ble Supreme Court in the case of CCE Vs. Srikumar Agencies [2008 (232) E.L.T 577].

(e) The jurisprudence available in the context of quantification of Education Cess (EC) and Secondary and Higher Education Cess (SHEC) (which are also in the nature of surcharge) in case of imports against other duty credit scrips (DEPB and Target Plus) fully supports the case of the Appellant.

(f) EC & SHEC, introduced vide the Finance Act, 2004 and Finance Act, 2007 respectively, are also in the nature of surcharges, akin to SWS and are calculated at a certain percentage of the aggregate of duties of Customs levied and collected under Sec 12 of the Customs Act, 1962. Apropos the said surcharges, the Board vide its Circular No. 345/2/2004-TRU dt.10.08.2004 had clarified in response to Issue No.2 that duties which are both "levied and collected" shall be taken into account for the purpose of calculation of the surcharges and as such when the duties/cesses are themselves not collected owing to an exemption or clearance under a specified procedure, there would be no leviability of education cess. It is being reiterated that similar being Circular dt.01.02.2022 was also issued with reference to the SWS, whereby it was stated that when the aggregate of duties of customs is zero, the SWS shall also be computed as nil.

(g) The Appellant in the instant Appeals, is not seeking an exemption from the payment of SWS. Instead, the leviability of SWS is itself being challenged. In this regard, the Appellant would like to state that exemption presupposes a liability, and it can only operate when there is a valid levy/liability. Reliance in this regard is being placed on the judgment of the Hon'ble Supreme Court in the case of Associated Cement Companies Ltd vs State of Bihar [2004 (7) SCC 642] and in the case of Peekay Re-Rolling Mills Pvt Ltd vs Assistant Commissioner [2009 (13) STR 305].

10. Learned Counsel further urges that the Commissioner (Appeals) has erred in holding that the debit to the MEIS/SEIS scrips is an alternative method of discharge of duty liability and the same cannot be equated with an exemption simpliciter. He urged that aforementioned Notification Nos. 24/2015 & 25/2015 of the Customs Act are unambiguous and the same deserves a strict literal interpretation, as held by the Hon'ble Supreme Court in the case of CC (Import), Mumbai vs Dilip Kumar & Company [2018 (9) SCC 1]. Customs exemption notification should be construed on its own terms without any intendment of the provisions of FTP. Reliance is placed on the ruling of the Hon'ble Supreme Court in CC, Hyderabad vs Pennar Industries Ltd [2015 (322)

ELT 402]. Hon'ble Supreme Court in the case of Somaiya Organics Ltd vs State of Uttar Pradesh (supra) has held in no uncertain terms that the expression "collection" in the context of tax laws would mean "physical realization of tax". In the facts of the instant case, collection of BCD is absent, which is ex-facie evident on the face of the Bills of Entry. The debit to the scrip is only a matter of procedure not vitiating the factum of exemption from BCD as held in the decision of the Hon'ble Gujarat High Court in Gujarat Ambuja Exports Ltd (supra).

11. Learned Commissioner (Appeals) has erred by relying upon the provisions of FTP to hold that since the amount debited to the scrips is allowable as Cenvat credit or drawback, there is no absolute exemption under the aforementioned notifications. Assailing, learned Counsel urges that the conditions as regards entitlement of drawback and Cenvat credit of duties debited to the scrips had also fallen for consideration before this Tribunal in the case of Bhushan Steel & Strips Ltd (supra) in the context of goods imported against Target Plus Scrips and this Tribunal held that the said conditions did not alter the factum of BCD having been exempted under Notification No. 32/2005 dt.08.04.2005. Thus, the learned Commissioner (Appeals) has erred in holding that BCD in fact was not exempted. In any event, eligibility of drawback is contingent upon the inputs imported against the scrips only when used for manufacturing export goods. In so far as the Cenvat credit on additional duties is concerned, since the goods imported are not subject to additional duties but IGST (which is not exempted) this condition is not applicable in the instant case and cannot be used against the Appellant.

12. The learned Commissioner (Appeals) has erred in placing reliance upon the ruling of the Hon'ble Madras High Court in the case of Tanfac Industries Ltd vs Asst. Commissioner, Cuddalore [2009 (240) ELT 341 (Mad)], rendered in the context of DEPB scheme to hold that the goods imported under such schemes cannot be treated as exempted. Assailing the findings, it is urged that in Tanfac Industries Ltd (supra), the Hon'ble High Court dealt with the issue of interest on warehoused goods, where such demand arose on account of clearance of goods beyond 90 days. The issue in the instant case was not involved therein. Further, the said judgment in Tanfac Industries Ltd (supra) has been considered by the Hon'ble Gujarat High Court in Gujarat Ambuja Exports (supra), whereby, it was held that notifications issued under Sec 25 of the said Act grants total exemption from the payment of BCD and ACD and the conditions contained in such notifications are only procedural in nature. The judgment in the case of

Gujarat Ambuja Exports (supra) being passed at a later point of time needs to be considered based on the principle of "the latter the better". Further urges that the jurisdictional High Court of Andhra Pradesh in CCE vs Kedia Overseas Ltd (supra) has held that the condition of debit of the exempted duties to the scrips is merely procedural as the scrip has value and would not change the nature of benefit, from one being of exemption having been issued in exercise of powers conferred under Sec 25 of the Customs Act, thereby waiving the actual collection. It has also been held in Bhushan Steel & Strips Ltd (supra) that the condition as regards the availability of drawback or Cenvat credit against the amount debited from the said scrips does not alter the factum of exemption.

13. Further, the learned Commissioner (Appeals) has erred in holding that SWS is not specifically exempted under Notification No. 24/2015 & 25/2015 and as such the same cannot be assumed to be nil or exempted. Learned Counsel urges that Appellant is not seeking an exemption from SWS in the instant Appeals. Rather, the leviability of SWS is itself being challenged when the BCD is nil. It is a well stated principle in law that exemption presupposes a liability and it can only operate when there is a valid levy/liability. The issue of leviability of SWS is no more res integra, in view of the judgment of the Division Bench of the Hon'ble Bombay High Court in La Tim Metal & Industries (supra) as also in the Appellant's own case. Further, the self-same issue was considered by the Kolkata Bench of this Tribunal and vide Final Order No. 76944-77103/2023 dt.22.09.2023, the issue has been decided in favour of the Appellant. In La Tim Metal & Industries Ltd (supra), the Hon'ble Bombay High court, after considering the judgment in Unicorn Industries (supra) has held that when the BCD is nil, SWS amount, being 10% of the aggregate of duties, shall also be calculated as nil.

14. Opposing the Appeals, Special Counsel for Revenue – Mr. P.R.V. Ramanan urges that the Revenue's stand is that notwithstanding the availment of exemption from BCD, under the aforementioned notifications, SWS would be attracted on the goods imported and payment of the same by cash is in order. Further urges that MEIS is intended to reward the exporters and also to provide downstream benefits to importers who use the duty credit scrips issued under the scheme. The scheme is devised such that the scrips are used by the exporters as a saleable commodity. Thus, an exporter who possesses a scrip can either sell it or use it himself to import goods and pay duty thereon by debit to the scrips. A person in possession of scrip may either use it or sell it in the

market. When he opts to use the same, the person uses the scrip as 'deemed-to-be' currency to pay the customs duty and the Customs department accepts the same in lieu of cash or other modes of payment of duty, in terms of FTP and the relevant Customs notifications. The importer cannot use the scrip for any other purpose.

15. As per Para 3.15 of the FTP and conditions No. 8 & 9 of the Notification No. 24/2015, the duty so paid on the goods imported using the scrip is allowed to be adjusted for duty drawback. Duties debited in the duty credit scrip are also taken into account while determining the All-Industry Rates and Brand Rate of duty drawback. Similarly, ACD paid on imported goods and/or Central Excise Duty paid on domestic procurement of goods is also allowed to be adjusted as Cenvat credit or duty drawback. Thus, the duty debit on the scrips is taken as duty paid in normal course of clearance for home consumption of any goods.

16. Moreover, as was the case in DEPB scheme, if there was even a small difference between duty assessed and the scrip value, the importer was required to pay the difference in cash. This clearly indicates that the subject goods were dutiable.

17. Further urges that from perusal of one of the Bills of Entry, it is evident that the BCD rate is indicated as 37.5%, which is paid by way of debit on the scrip with respect to each license, is indicated in the last column. SWS has been paid @10% of the aggregate of the duties so paid by debit. There is an endorsement by the proper officer of Customs – 'Importer has used MEIS licenses for payment of BCD'. Thus, the Bills of Entry indicate clearly that BCD has been paid through the mode of MEIS scrips, in lieu of cash or other modes normally used.

18. Further urges that Para 3.02 of the FTP with respect to nature of rewards, provides as follows:

> *"Duty credit scrips shall be granted as rewards under MEIS and SEIS. The Duty Credit Scrips and goods imported/domestically procured against them shall be freely transferable. The Duty Credit Scrips can be used for:*
>
> *(i) Payment for Customs Duties for import of inputs or goods including capital goods;*
> *(ii) Payment of Excise Duties on domestic procurement of inputs or goods including capital goods, as per DOR notification;*
> *(iii) Payment of Service Tax on procurement of services as per DOR notification;*
> *(iv) Payment of Customs duty and fee as per Para 3.18 of FTP."*

19. Thus, it is abundantly clear that the very intention of the MEIS is to provide the importer the means to discharge the duty liability on the goods he imports through the medium of duty credit scrips, which are used as 'deemed-to-be' currency.

20. So far, the reliance placed by the Appellant on the ruling of the Apex Court in Somaiya Organics (supra), the judgment refers to Sec 3 of Central Excise Act and observed that 'levy' and 'collect' are not synonymous terms. While 'levy' would mean assessment or charging or imposing tax, 'collect' as per Article 265 of Constitution of India would mean physical realization of tax, which is levied or imposed. In the instant case, the duty liability on the goods imported stood discharged not because the same were exempted but because duty credit scrips were used to discharge the duty liability. In the instant case, duty due on the imported goods was discharged through the scrips. Further urges that the goods imported in the instant case are not exempted goods even though the use of the said scrips for payment of duty is governed by an exemption notification. In other words, physical realization of BCD is very much evident herein. BCD paid is not zero as purported. Accordingly, SWS is very much leviable.

21. As regards the reliance placed by the Appellant on the ruling of the Hon'ble Bombay High Court in their own case as well as the ruling of the coordinate Bench of this Tribunal at Kolkata, it is urged that the Court has upheld the stand of the Appellant and taken the view that the Department should not auto debit the MEIS/SEIS scrips with the SWS and where it has already debited the SWS, the amount so debited should be refunded within 8 weeks. The Hon'ble High Court followed its own decision in the case of La Tim Metal & Industries (supra) and also on the Board Circular dt.01.02.2022.

22. The Kolkata Bench of this Tribunal, in Appellant's own case, has upheld the stand of the Appellant and allowed the Appeals with consequential relief. The Kolkata Bench has followed the ruling of the Hon'ble Bombay High Court and also taken the view that the Circular of the Board dt.10.01.2020, which is specifically issued in respect of MEIS/SEIS, cannot be given primacy over the Circular dt.01.02.2022. The Kolkata Bench has distinguished the ruling of the Apex Court in the case of Unicorn Industries (supra) on facts and held that the ratio of Unicorn Industries cannot be applied in the case of imports made by the Appellant. Further urges that Revenue has preferred a review petition before the Hon'ble Bombay High Court against the aforementioned decision

dt.27.09.2022, which is pending consideration. In the review petition, it has been pointed out that the Hon’ble High Court has relied on the CBIC-TRU Circular dt.01.02.2022, whereas the said circular dealt with only the general implication of charging SWS in those cases where the BCD and/or ACD payable is nil. It does not deal with cases where the duty due has been paid out of the MEIS/SEIS scrips.

23. Further urges that as per Board Circular dt.10.01.2020, there appears to be no exemption from SWS in the FTP in the relevant Customs exemption notification. Keeping in view the ruling of the Hon’ble Apex Court in Unicorn Industries (supra), it has been clarified that SWS is not exempted and has to be levied and collected on the imported goods.

24. Further urges that the Hon’ble Madras High Court (Single Judge) has, in the case of Gemini Edibles and Fats India Pvt Ltd held that the petitioner is liable to pay the appropriate SWS on BCD in respect of the subject imported goods either in cash or any other mode and that necessary debit and recredit entries may be made on the scrips.

25. Further urges that Hon’ble Bombay High Court has erred in accepting that proper officer has assessed the Bills of Entry charging nil BCD and ACD. Whereas, in fact, the Bills of Entry has been assessed with BCD at the prescribed percentage of Tariff and the same has been paid by the Appellant by debiting to the scrips, which, in other words, is in lieu of cash. Further, the CBIC Circular dt.10.01.2020 was also not placed before the Hon’ble Bombay High Court.

26. It is further urged that the Kolkata Bench of this Tribunal, in the Appellant’s own case, has distinguished the ruling of the Apex Court in Unicorn Industries (supra) on facts but has not given any consideration to the point of law decided by the Apex Court. Further, the Hon’ble High Court has gone by the claim that in the Bill of Entry, the duty payable was shown as nil, whereas, the same is contrary on facts. Duty was payable but for the exemption, as indicated on the Bill of Entry, and it is also endorsed on the Bill of Entry that importer has paid BCD by using MEIS scrips.

27. Further urges that the jurisprudence is available in the context of quantification of EC/SHEC in the case of imports against duty credit scrips. It is urged that kind reference is invited to the observations of the Hon’ble Supreme

Court about DEPB scheme, in the case of CC, Calcutta vs Indian Rayon & Industries [2008 (229) ELT 3 (SC)] –

> *"The difference between DEEC and DEPB schemes can be seen from the following:*
>
> *<u>DEEC Scheme</u>:*
>
> *Under this scheme, the importer is issued an Advance License to procure the raw material for manufacturer of the export product. The goods which are cleared under Advance License are meant for use in the manufacture of export product or replenishment of the raw materials already used. The clearance is allowed duty free. The details of items allowed for import against a specific export product are published by the Ministry of Commerce in their Input Output Norms which are part of the Exim Policy.*
>
> *<u>DEPB Scheme</u>:*
>
> *Under this scheme, the exporters are issued DEBP scrips which allows them the specific amount to be utilized for payment of Customs duty. The amount for which DEPB scrip is issued depends upon the rate for a particular export product. The Ministry of Commerce notifies DEPB credit rates for export of an item. The DEPB scrip is freely transferable and can be used to debit the payment of duty at the time of clearance of goods except capital goods and goods mentioned in negative list."*

28. The Apex Court has thus acknowledged the fact that under the DEPB scheme, which is similar to MEIS, the debit to scrips reflects payment of duty.

29. Following the aforementioned observations of the Apex Court, the Hon'ble Madras High Court in Tanfac Industries Ltd (supra) has held that it is clear that under DEEC scheme, the clearance is allowed duty free, whereas, under DEPB scheme, the exporters are issued DEPB scrips, which allows them specific amount to be utilized for payment of duty. Therefore, the importers who use DEPB scrips pay duty not by cash but by way of credit. Thus, it is evident that goods cleared under DEPB scheme cannot be treated as exempted goods but they can only be treated as duty-paid goods and therefore, attracts consequential interest. The debit of any amount under the DEPB scheme is a mode of payment of duty on the imported goods and cannot be treated as exempted goods, unlike the goods under DEEC scheme.

30. Significantly, it is also seen that Notification No. 11/2018 as amended by Notification No. 41/2018, fully exempts a large number of goods from the levy of SWS and the preamble invokes Sec 25 read with Clause (108) of the Finance Bill 2018 (later to become Sec 110 of the Finance Act 2018).

31. Further urges that Circular dt.10.08.2004 clarifying the issue – whether goods that are fully exempted from Excise duty/Customs duty or are cleared without payment of duty would be subjected to cess, the Board directed – if

goods are fully exempted from Customs duty/Excise duty or chargeable to nil duty or are cleared without payment of duty under special procedures, such as clearance under bond, there is no collection of duty. Thus, no Education Cess would be leviable on such clearances.

32. Further, TRU Circular dt.01.02.2022, on the issue – applicability of SWS on goods that are exempted from BCD or taxes or cesses, which are leviable as a duty of Customs, in absence of any specific exemption on SWS, with respect to the view taken by certain field formations, that SWS shall be payable on the notional customs duty as determined on Tariff rate, the Board clarified that the amount of SWS payable would be nil in cases where aggregate of Customs duties (which form the base for computation of SWS) is zero, even though SWS has not been exempted.

33. Learned Special Counsel further urges that the aforementioned circular is contrary to the judgment of the Hon'ble Apex Court in the case of Modi Rubber Ltd vs UOI [1986 (25) ELT 849 (SC)], in the context of automatic exemption from Special Excise Duty (SED) when Basic Excise Duty (BED) is exempted. The charging provision for the SED was similar to the formulation in respect of EC & SWS.

34. In the instant case, the Notification Nos. 24/2015 & 25/2015 provided exemption only with respect to BCD & ACD under the Customs Act read with Customs Tariff Act and not under the relevant Section of Finance Act, which has imposed EC & SWS. In other words, for the goods covered in the aforementioned notification, there is no exemption provided as far as EC or SWS is concerned.

35. Further urges that Board Circulars dt.10.08.2004 & 01.02.2022 do not have a binding effect on this Tribunal even though the Hon'ble Bombay High Court in the case of La Tim Metal & Industries (supra) has adopted the reasoning in the said circulars.

36. Further urges that Circular No. 02/2020 dt.10.01.2020 is with specific reference to the imports under the MEIS and the same should be followed in the instant case.

37. Heard both the parties and perused the records.

38. It is not in dispute that the Appellant had imported goods by availing benefit of exemption Notification Nos. 24/2015 & 25/2015 and were allowed the

exemption from BCD on finding that the Appellant fulfilled the conditions thereunder. The aforementioned notifications have been issued in exercise of power to grant exemption under Sec 25 of the Customs Act. BCD stands exempted subject to condition, inter alia, of debit to the MEIS/SEIZ scrips (as the case may be) of the BCD leviable on the goods, but for the exemption. Thus, we find that there is no actual collection of BCD in view of the exemption. As per Sec 110(3) of the Finance Act 2018, SWS leviable under sub-sec (1) has to be calculated @10% on the aggregate of duties/taxes and cesses, which are levied and collected under Sec 12 of the Customs Act. Thus, in the instant case, admittedly, the aggregate of duties/taxes and cesses collected is nil, as is evident from the perusal of the Bills of Entry. Thus, we hold that SWS will be nil, as anything multiplied with zero is also zero. There is no specific provision made under Statute for calculation of SWS on notional BCD, when the actual BCD is exempted subject to fulfilment of stipulated conditions of the notification.

39. The contention of Revenue is that debit of BCD to the scrip under the said notifications is an alternate method of payment and not an exemption, per se, so as to justify the computation of SWS on notional BCD. We find that such contention of Revenue is not in consonance with the method of calculation of SWS provided in Sec 110(3) of the Finance Act 2018. The Hon'ble Apex Court in Somaiya Organics (supra), has held categorically that the expression 'collection' in the context of tax laws would mean physical realization of tax, whereas, in the instant case, the Commissioner (Appeals) has himself accepted in the Impugned Order that no money representing BCD goes to the exchequer under the said notifications. Meaning, thereby, that the context of physical realization of tax is clearly not met and the debit of BCD to the scrip is at best a notional collection of tax, when the said notifications are read in entirety. Had the debit to scrip been equivalent to cash payment or any other admissible mode of payment, there was no need to grant any exemption as duty levied would have been discharged in full using such scrips. The statutory provision is quite clear that power to exempt any duty of Customs is within section 25 only and thus, once BCD is exempted in terms of notification issued under Sec 25, it would tantamount to exemption from duty and no other interpretation is possible.

40. Similar view has also been taken by various High Courts including the jurisdictional High Court, while considering the condition of debit to the duty credit scrips as prevalent in the notifications operationalizing the DEPB scheme and the Target Plus Scheme in the context of levy and collection of EC, which is

imposed under Finance (No.2) Act, 2004, in the case of CCE, Visakhapatnam vs Kedia Overseas Ltd (supra). In the case of Kedia Overseas Ltd (supra), the Hon'ble High Court of Andhra Pradesh was considering similar exemption under Sec 25(1) of the Act, where exemption was provided from whole of the Customs duty leviable including additional duty subject to the condition, inter alia, that the importer has been issued a Duty Entitlement Pass Book (DEPB) by the Licensing Authority in terms of the FTP. The Hon'ble High Court observed that the intention of the Government is to exempt the whole of BCD/ACD/SAD. It is, therefore, not possible to read any further restriction as to levy of EC in respect of duty free imports under DEPB scheme. Further, the Hon'ble High Court has also taken notice that under similar facts and circumstances, the ruling of this Tribunal in Ruchi Health Foods Ltd (Chennai Bench) and Reliance Industries Ltd (Mumbai Bench) have become final as the Revenue has not challenged the same in further Appeal. Accordingly, the Hon'ble High Court dismissed the Appeal of Revenue.

41. The Hon'ble Gujarat High Court in the case of Gujarat Ambuja Exports (supra) has held that the condition of debit of the exempted duties to the scrips is merely procedural as the scrip has value and would not change the nature of benefit from one being of exemption, having been issued in exercise of powers conferred under Sec 25 of the Customs Act. It was also held that merely because the conditions are provided for adjustment of credit in the DEPB scrip, it cannot be stated that either there was no exemption from payment of customs duty or that the Central Government was levying and collecting Customs duty from the importers in the form of adjustment of credit in the DEPB scrips.

42. The aforementioned view of the Hon'ble Gujarat High Court has been followed by the Hon'ble Bombay High Court in CC (Export) vs Reliance Industries Ltd (supra).

43. Since both EC and SWS are in the nature of surcharge and the provisions pertaining to their quantification as contained in Section 94(1) of the Finance (No. 2) Act, 2004 and Section 110(3) of the Finance Act, 2018 as extracted above are pari materia, the jurisprudence as regards non applicability/non levy of Education Cess in respect of goods imported against the DEPB and/or Target Plus Scheme should equally apply in the context of SWS in respect of goods imported against the MEIS/SEIS Schemes.

44. Even otherwise, the same issue of non leviability of SWS in case of goods imported under the said notifications with which we are concerned in these proceedings, had fallen for consideration before the Hon'ble Division Bench of the Bombay High Court in the Appellant's own case in Writ Petition bearing No. 1447 of 2021. The Hon'ble Court after considering the Circular dated 01.02.2022, decided the issue in favour of the Appellant vide its order dated 27.09.2022. No stay has been brought to our notice, against the said order of the Hon'ble Bombay High Court. On the contrary, pursuant to the said order, refund of SWS amount has also been sanctioned to the Appellant vide refund sanction order dated 13.04.2022. The grievance of the revenue before us is that an earlier Circular dated 10.01.2020, which was specific to the issue at hand and which has not been rescinded was not considered. We find that both the Circulars deal with levy and collection of SWS, while the earlier one is oppressive and provides for payment of SWS in case of imports against the MEIS/SEIS Scrip, the latter Circular contemplates that the amount of SWS payable would be "NIL", where the BCD which forms the basis for computation of SWS is "Zero" even though SWS has not been exempted. The latter Circular does not contemplate that its operation is limited to situations not covered by the earlier circular. It is settled by the Hon"ble Supreme Court in the case of Suchitra Components Ltd reported in [2007 (208) ELT 321] that a beneficial circular is to be applied retrospectively. Moreover, both the Circulars were considered by the Hon"ble Bombay High Court in the La Tim Metal Case (supra) in its order dated 15.11.2022 passed in WP No. 12183/2022 at para 6 thereof, while holding that when the BCD is "nil", SWS, being computed at the rate of 10% of BCD, shall also be "nil". Further, as already observed above, Circular No. 5/2005 dt.31.01.2005 which provided for levy and collection of Education Cess in case of goods imported under the notifications operationalizing the DEPB Scheme was held to be not in consonance with provisions of Section 94 of the Finance (No.2) Act, 2004. Therefore, the circular dated 10.1.2020 which takes the same view for SWS as was canvassed in Circular dt.31.01.2005 for Education Cess cannot be given primacy over the latter circular dt.01.02.2022.

45. We further find that reliance placed by Revenue on the ruling of the Hon'ble Apex Court in Unicorn Industries (supra) is misplaced as the same was concerned with the interpretation of Exemption Notification No. 71/2003-CE granting area based exemption to units located in the North-East. Such units were entitled to refund of specified duties paid on value addition and the question before the Court was – whether EC/SHEC/NCCD imposed vide Finance

Act, which were not specifically exempted under the Notification No. 71/2003 shall also come within the scope of the said exemption for the purposes of refund. For ease of reference, we reproduce Para 2 & Para 22 of Unicorn Industries (supra) as follows:

> *"2. The question involved in the appeals is with respect to the levy of education cess, higher education cess and National Calamity Contingency Duty on it. The appeals arise out of common judgement. The High Court has held that duties in question are not part of the exemption notification. The writ petitions have been dismissed. Hence, the appeals have been preferred.*
>
> *22. The main question arising for consideration is when 100 percent exemption had been granted for excise duty for a period of 10 years, whether the exemption notification issued for the state of Sikkim on 9-9-2003 shall be confined to the basic excise duty under the Act of 1944, additional duty under the Act of 1957 and additional duty under the Act of 1978, which were specifically mentioned in the notification issued on 9-9-2003 or it also includes cess/duty imposed by Finance Acts of 2001, 2004 and 2007."*

46. The Hon'ble Apex Court denied the refund of the unspecified cess/duty under Notification No. 71/2203-CE since the refund of specified duties under the said notification was only possible post collection. The question of non-leviability of EC for want of collection of the underlying duty was not germane to the issue before the Hon'ble Apex Court and was therefore, not gone into. Thus, we find that the ratio of the Hon'ble Apex Court in Unicorn Industries (supra) is clearly distinguishable on facts and not applicable to the facts of the instant case.

47. We further find that the ruling of the Hon'ble Bombay High Court in the case of La Tim Metal & Industries (supra) is directly on the same issue of levy of SWS, where BCD is nil and duty paid/debited using MEIS scrip. In the said case also, the proper officer had assessed SWS on notional BCD. Under similar set of facts and stand taken by Revenue, the Hon'ble High Court observed that when, admittedly, BCD is zero, anything multiplied by zero is zero. The Hon'ble High Court further held that the earlier circular dt.10.01.2020 is not applicable and placed reliance on the subsequent circular dt.01.02.2022, wherein it is clarified that SWS is applied at a percentage of the aggregate of Customs duty payable on the import of goods and not on the value of the imported goods. The Hon'ble High Court categorically held that when BCD is nil, SWS shall also be computed nil.

48. We also find that in Appellant's own case, having similar facts, the coordinate Bench has also taken similar view.

49. Therefore, in view of discussions and observations hereinabove, we find that goods imported under aforesaid notifications were exempted from BCD and Additional duty of Customs in full and there was no liability to pay BCD by the importer. This fact is an admitted fact. Further, the leviability of SWS is based on levy and collection of BCD, which itself is exempted. There cannot be any collection of SWS on such goods cleared under the aforesaid exemption notifications.

50. In view of our aforementioned observations and findings, we allow all the Appeals and set aside the Impugned Orders. The Appellant shall be entitled to consequential benefits, including refund of SWS paid with interest, as per law.

(Pronounced in the Open Court on 29.02.2024)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

Veda