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

Division Bench – Court No. – I

Customs Appeal No. 30191 of 2018

(Arising out of Order-in-Original No. 04/17-18 dt.23.11.2017 dt.10.01.2013 passed by Commissioner of Customs (Preventive), Vijayawada)

M/s Parry Sugars Refinery India Pvt Ltd
Vakalapudi Village, Kakinada, East Godavari Dist.,
Andhra Pradesh – 533 005 **......Appellant**

VERSUS

Commissioner of Customs
(Preventive) Vijayawada
D.No.55-17-3, 2nd Floor, C-14, Road No.2,
Industrial Estate, Vijayawada, AP – 520 007 **……Respondent**

and

Customs Appeal No. 30201 of 2018

(Arising out of Order-in-Original No. 04/17-18 dt.23.11.2017 dt.10.01.2013 passed by Commissioner of Customs (Preventive), Vijayawada)

M/s Dr. Amin Controllers Pvt Ltd
D.No.3-20-8, Flat No.1, 1st floor, Rammohanraja
Nagar, Road No.4, Kakinada, AP – 533 001 **......Appellant**

VERSUS

Commissioner of Customs
(Preventive) Vijayawada
D.No.55-17-3, 2nd Floor, C-14, Road No.2,
Industrial Estate, Vijayawada, AP – 520 007 **……Respondent**

Appearance

Shri Raghavan Ramabadran, Advocate for the Appellant.
Shri M. Anukathir Surya, AR for the Respondent.

Coram: **HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)**
HON'BLE MR. ANGAD PRASAD, MEMBER (JUDICIAL)

FINAL ORDER No. A/30375-30376/2025

Date of Hearing: 05.08.2025
Date of Decision: 19.09.2025

[Order per: A.K. JYOTISHI]

M/s Parry Sugars Refinery India Pvt Ltd (formerly known as M/s Silkroad Sugars Pvt Ltd) (hereinafter referred to as appellant) are in appeal against the Order-in-Original dt.23.11.2017, vide Appeal No. C/30191/2018, whereby, certain demand in respect of import duty and export duty has been confirmed, goods and vehicles have been confiscated and penalties have been imposed on them and certain other individuals (impugned order). In Appeal No.C/30201/2018, M/s Dr. Amin Controllers Pvt Ltd have also come in appeal against the same impugned order to the extent of imposition of penalty.

2. The brief facts of the case are that the appellants have an SEZ unit in Parry Infrastructure Co. Pvt Ltd and were engaged in bringing raw sugar for processing into refined sugar. The Customs officers, based on a specific intelligence regarding certain pilferage of dutiable raw sugar from Customs Area of Kakinada Deepwater port/Customs Private Bonded Warehouse of the appellant, intercepted certain trucks on 22.08.2016, apparently, carrying pilfered/ diverted from a warehouse called 'ATR CPBW'. The appellant had obtained as Customs Private Bonded Warehouse license for storage of imported non-duty paid raw sugar in bulk at warehouse of M/s ATR Warehouse Pvt Ltd (ATR). As a follow up investigation, officers recorded statements of certain people involved in the transportation of the goods and handling of goods in the ATR and based on certain documents recovered as well as statements recorded, felt that the quantity of 1073.300 MT of dutiable raw sugar has been received without the cover of proper import documents i.e., Into-bond Bill of Entry from Kakinada Deepwater Port. They also noticed that the said ATR was not having any infrastructure like power supply or were also not maintaining records, etc., as the said records were being maintained at the appellant's unit in the SEZ. The said 1073.300 MT was, therefore, seized. On subsequent scrutiny of record and statements recorded, the department, inter alia, felt that there have been various irregularities in the ATR in terms of provisions under section 58 of the Customs Act, 1962 and other relevant provisions relating to Manufacture and Other Operations in Warehouses Regulations, 1966. It was also felt that certain other exports of 7000 MT of dutiable raw sugar pertaining to M.V.

Mackenzie were also diverted from Customs Area of Kakinada Deepwater port (NCS godown) to ATR without filing proper warehouse Bills of Entry.

3. Thereafter, based on internal records, it was noticed that certain quantity of sugar, totally weighing 13,335 MT, which was shown as cleared from ATR warehouse to SEZ plant from 15.08.2016 to 31.08.2016, were apparently not covered by any Ex-Bond BoE. It was also noted that Ex-Bond BoE No.63 dt.17.08.2016 for 7000 MT was assessed on 22.08.2016 and passed out of charge on 22.08.2016, whereas, movement of bagged raw sugar from ATR started on 15.08.2016 itself. Similarly, Ex-Bond BoE No.36 dt.28.05.2016 and BoE No.46 dt.16.06.2016 were passed out of charge on 07.07.2016 and therefore, clearance of bagged raw sugar from 15.08.2016 onwards from ATR was apparently not covered by the said Ex-Bond BoEs. It was also felt that apparently the said bagged raw sugar was cleared from ATR to Kakinada Deepwater Port directly for export and that the Ex-Bond BoE No.63 dt.17.08.2016 was filed apparently only to show purported nexus with SEZ unit. They also doubted the veracity of Shipping Bill No.38 dt.10.08.2016 for 7100 MT of raw sugar and Shipping Bill No.39 dt.10.08.2016 for 6900 MT filed by the appellant on 10.08.2016 on the grounds that movement of bagged raw sugar from ATR started from 15.08.2016 for coming to the conclusion that goods declared to have been packed and sealed by 10.08.2016 were non-existent on that day and that the shipping bills were filed only to show purported nexus with bagged raw sugar clearances from ATR.

4. Therefore, the department felt that since export has not been made from the SEZ unit, they were not entitled for exemption from export duty on raw sugar exported in terms of Entry No.9A of Second Schedule of Export Tariff of the Customs Tariff Act, 1975 and the same is required to be paid. It was also proposed to charge import duty of Rs.1,43,65,912/- on sugar received without cover of Into-Bond BoE and was held liable for confiscation. Similarly, quantity of 7000 MT involving import duty of Rs.9,79,46,218/- was held to be liable for confiscation under section 111(j). It was also proposed that quantity of 14000 MT bagged raw sugar cleared from warehouse without payment of export duty is liable for recovery of export duty of Rs.8,74,43,220/- under section 28(4). Certain penal provisions were also invoked against logistic operators such as transporters, C&F agents,

surveyors and Customs Broker including M/s Dr. Amin Controllers Pvt Ltd (C&F Agent & Surveyor) under section 114(ii). Penalty was also proposed under section 114A of Customs Act.

5. On adjudication, demand of export duty and import duty were confirmed and goods were also confiscated with option to pay redemption fine. However, certain penalties were not invoked in view of the statutory provisions. Further, a penalty of Rs.5,00,000/- was also imposed on M/s Amin Controllers Pvt Ltd under section 112(a) and Rs.50,000/- under section 114(ii) of the Customs Act.

6. Learned Advocate for the appellant has mainly submitted that in this case, it is relevant to understand the background to appreciate the facts. They were engaged in importing raw sugar and processing the same and thereafter, exporting the same. The appellants have an SEZ unit and that is the only unit or business they have and they have no other units or business activities other than their being an SEZ unit. In other words, the appellants are an SEZ unit operating within the SEZ Zone, which has not been disputed by the department. He further submits that due to heavy import of sugar and the intent to export as much as possible for meeting the shortfall in their Net Foreign Earning (NFE) in terms of the Bond executed by them, they ran short of space in their SEZ processing unit and to overcome this temporary space constraint, they hired various warehouses nearby and got the relevant permissions from the competent authority, who declared those warehouses as Private Bonded Warehouses, which entailed them to store their imported goods duty free. They used to bring non-duty paid sugar from port to such private bonded warehouse and from ATR to their SEZ unit and thereafter, used to either process or export the same, as such. He has also submitted that they got an order for export of certain grade of raw sugar itself, which required blending of sugar of a particular variety grade with the sugar already available, which has inferior quality, in the ATR and accordingly, they diverted 7000 MT of such imported duty-free sugar from port out of total quantity received and intended for transshipment to SEZ unit. Subsequently, also a quantity of 1073.300 MT was also diverted to ATR for the same reason. Further, after blending and achieving the desired specification, the same were exported without payment of export duty as their being an SEZ unit, they are not required to pay either import duty or

export duty. They have also submitted various documents in support that barring 1073.300 MT, rest of the movement from port to ATR and from ATR to SEZ are duly accounted for and the fact that there is no allegation or evidence by the department that they have diverted any of the non-duty paid raw sugar imported by them as SEZ cargo to any other place in the DTA or that such sugar has not been exported. Insofar as theft quantity of duty-free sugar pilfered (8.520 MT + 20.72 MT), Department had already confiscated the same and also allowed redemption thereof as well penalty on certain unrelated individuals, who were engaged in such pilferage/theft. He also submits that there is no dispute that exports have taken place in respect of 14000 MT of raw sugar and the only dispute between the appellant and the department is that this 14000 MT has been exported by them from the ATR warehouse directly and not from or through the SEZ unit and therefore, it cannot be considered as SEZ cargo and therefore, liable to export duty. He has also taken various other pleas including non-tenability of confiscation of goods, when goods are not available for confiscation and also imposition of certain penalties relying on certain case laws including Shiv Kripa Ispat Vs CC [2009 (235) ELT 623 (Tri-LB)], Ram Khazana Vs CC [2003 (156) ELT 122 (Tri-Del)] and CC Vs Finesse Creation Inc [2009 (248) ELT 122 (Bom)] as there was no malafide intent and certain procedural irregularities must have occurred due to urgency.

7. Learned AR has taken us through the detailed investigation carried out by the department, which proved that certain non-duty paid goods were brought into warehouse without the cover of proper documents i.e., Into-Bond BoE, etc., and also that some of the purported documents of clearance Ex-Bond from warehouse as also export from a SEZ unit is an afterthought to establish that export has been made by a SEZ unit. He has also emphasized that the adjudicating authority has clearly established that the exports have taken place from ATR and not from SEZ unit and therefore, liable to export duty. He also emphasized that it is not in dispute that they had taken the Private Bonded Warehouses, and therefore, were required to follow the provisions under the Customs Act as well as certain Regulations, which regulate maintenance of various records and accountal of the goods, etc. He also reiterated the findings of the adjudicating authority.

8. Since the facts in both the appeals are interrelated, we proceed to take up both Appeals together for disposal.

9. Heard both sides and perused the records.

10. The core issue to be decided in this case is whether there has been a diversion of duty-free imported sugar by the appellant and whether there has been non-payment of export duty payable on export of 14000 MT or otherwise. Further, consequently, whether there is a scope for confiscation of offending goods or imposition of penalty or otherwise in the facts of the case.

11. Before we proceed, some of the factual matrix needs to be reiterated. The appellants are having a Letter of Approval (LOA) for setting up a unit under SEZ scheme at Parry Infrastructure Co. Pvt Ltd, SEZ at Kakinada, which was valid up to 24.09.2020. The said LOA entitles them to import certain items duty-free and thereafter, export the said goods manufactured/imported/ procured for trading. In other words, the appellants are entitled not only to process but also to trade in imported raw sugar. For this purpose, they have also executed Bond-cum-Legal Undertaking with the Development Commissioner, Visakhapatnam SEZ. The appellants hired certain warehouses to store duty free raw materials i.e., raw sugar due to space constraints in processing unit, after restarting of their operations in the month of July, 2014 and due to surge in export orders. The appellants were following certain procedure for import and export of goods into SEZ unit. The imported goods were usually moved to SEZ unit by filing Home Consumption BoEs at the SEZ portal by declaring the goods as 'Special Economic Zone Cargo' with the authorized officer of the SEZ, who used to register and assess the BoE and thereafter, goods were permitted for transfer/transshipment to SEZ. They also used to execute Bond with transshipment authority at Kakinada Deepwater Port and after obtaining transshipment permission shipped to SEZ unit and after receipt of goods at SEZ, the authorized officer of SEZ used to make necessary endorsement in the BoE, which was presented to the Customs officer in charge at the port. During the period relevant to dispute, due to certain overwhelming export orders, the appellants had imported more consignments of raw sugar and hence they were hard pressed for storage and therefore, obtained premises, for which necessary license for operating the said premises as Private

Bonded Warehouse was taken. In respect of movement of non-duty paid imported goods to warehouse, they used to file regular Into-Bond BoE at the ICEGATE portal and subsequently, as and when goods were cleared from warehouse to SEZ, they used to file Ex-Bond BoE for home consumption at SEZ portal for bringing the same from warehouse to the SEZ unit by declaring the same as SEZ cargo. It has also been fairly conceded by them that in certain cases, due to certain operational contingency, certain quantity of goods were moved from the port, which were otherwise meant for going to SEZ unit, directly to warehouse, by filing Into-Bond BoE and in some cases, they could not file the Into-Bond BoE. It has also been fairly conceded that certain procedural irregularities might have taken place in bringing non-duty paid goods to warehouse or undertaking certain activities including blending, bagging, etc., in the warehouse without any express permission. We intend to take these issues, as under, for ease of analysis:

(A) Demand for export duty:

12. We note that the demand has been primarily confirmed on the grounds that goods have been exported directly from warehouse and not from the SEZ unit and that they have deliberately filed SEZ Shipping Bill with an intention to avoid export duty. The main argument by the appellant is that after packing and standardization operation undertaken by diverting certain quantity of sugar from the port to ATR, total quantity of 15026 MT was moved to SEZ from ATR and out of which, 14000 MT of raw sugar was shipped vide Shipping Bill No.38 & 39 dt.10.08.2016, which were assessed by the authorized officer as SEZ cargo meant for export. We have perused the relevant documents and we find that the shipping bill for export of duty-free goods was filed by the appellant declaring themselves as ‘exporter’ under shipping bill for duty free goods and the description of the goods is ‘Brazilian Raw Sugar’. The total quantity comes to 14000 MT (7100 MT + 6900 MT), which was being exported by vessel MV Rising Eagle and these shipping bills were assessed by an authorized officer of SEZ. Therefore, there is no dispute that 14000 MT of raw sugar has been exported by the appellant and the only issue to be decided is whether this is the sugar which was exported from ATR directly or it is in relation to any other sugar processed or treated from the SEZ unit itself. The stand taken by the department is that since it was assessed on 10.08.2016 itself, whereas,

blending had taken place later on. Therefore, it does not cover such sugar. However, it is to be understood in the context in which blending had taken place and such quantity cannot be exported in one go and it has to be exported in staggered manner based on the said two assessed shipping bills. The department has also not alleged that the SEZ unit was also engaged in clearing raw sugar of Brazilian origin, per se, from their SEZ unit or exported goods were not Brazilian raw sugar and in the light of the same, even though the assessment has been done based on the declaration, the authorized officer would not have allowed, had it been a case where no such goods were being exported directly by the SEZ unit or even when it was exported directly for export. The exporter remains the appellant who, as discussed, is a SEZ unit. There is also no dispute that the remittances in respect of said 14000 MT of raw sugar have been received in foreign exchange by the appellant. We have also perused the Ex-Bond BoE in respect of bagged raw sugar-traded goods of 7000 MT, which was assessed on 22.08.2016 and which also has an endorsement from the Inspector of Customs dt.06.09.2016 to the effect that the goods covered were cleared from ATR and were admitted into SEZ in full quantity. We also note that there is an allegation that 7000 MT of raw sugar coming from vessel MV Million Bell was not covered under proper BoE for home consumption.

13.1 Therefore, we find that admittedly, 7000 MT of raw sugar out of raw sugar imported by MV Million Bell and which was meant for transshipment to SEZ unit, were diverted to ATR vide Into-Bond BoE No.56 dt.21.07.2016 (Warehousing BoE), which was allowed by the Authorized Officer of the SEZ. Once the Authorized Officer has allowed it for taking a part of SEZ cargo to ATR warehouse instead of directly bringing to SEZ unit, it has to be presumed that valid permission was there to divert/remove said 7000 MT to ATR without payment of import duty as SEZ cargo. There is no denial that 7000 MT of sugar with higher ICUMSA grade was diverted from the consignment meant for transshipment to SEZ directly to the ATR for blending it with 7000 MT of sugar available in the stock already but having lower ICUMSA but the same was with valid permission of SEZ authority. Even another quantity of 1073 MT, out of consignment received by vessel MV Mackenzie and meant for SEZ unit was diverted by appellant to meet the desired standard of raw sugar, which was intended for export due to some urgent export order. However, admittedly in respect of this diversion no

Into-Bond Warehousing BoE was filed though it is not in dispute that the said consignment was ultimately received in the warehouse except for certain quantity pilfered by unrelated persons, for which separate proceedings were initiated. While 1026.7 MT was directly received in warehouse, the remaining quantity, which was pilfered, was later on also restored back to the appellant on payment of nominal redemption fine and duty and only a small quantity of 20 MT, which remained unaccounted out of 1073 MT i.e., (1073.3 MT – 8.52 MT – 20.72 MT = 1044.06 MT). However, the fact remains that the entire SEZ operation is controlled by the authorized officer and the entire accountal or receipt, product import, export, etc., are regulated in terms of various provisions by them. While it is a fact that accountal in respect of warehouse goods are regulated in terms of warehouse regulations and by the Customs department, the duty-free import and export of the goods made by SEZ is regulated by SEZ Act and Rules and is supervised by the authorized officer. Therefore, in the given circumstances, we find that it has been duly accounted for export for about 29 MT of duty free raw sugar.

13.2 Further, the evidence would suggest that the said goods were ultimately exported by the same SEZ unit as exporter and the documents submitted also indicate that it was treated as SEZ cargo. The department has not alleged that the resulting sugar after blending has either not been exported or diverted to Domestic Tariff Area. There is no tangible evidence to prove that this export was not made by the exporter themselves, who are SEZ units and that it was not in the nature of trading goods, which is a permissible operation in terms of their LOA. Thus, a holistic view would indicate that both diversion to warehouse and subsequent export under peculiar circumstances by the SEZ unit cannot be disputed. However, in the process, certain procedural irregularities have taken place especially as regards non-filing of BoE in respect of 1073 MT of sugar while being brought to warehouse from port instead of directly to SEZ unit and some dispute as regards bonafide of filing of Ex-Bond BoE from ATR to SEZ unit, however, it is to be noted that Customs Authorities have not made any case where they have alleged that duty-free imported raw sugar has been diverted to DTA and therefore, liable for import duty except to the extent of 1073 MT, where also it is not disputed that the same has not been actually received in the ATR except for some pilfered quantity and a small quantity of 29 MT, which remained unexplained and a part of which was restored subject to payment of duty and redemption fine. We also note that while a nominal redemption fine was imposed i.e., Rs.5,000/- on appellant but no penalty under section 112(a) was imposed on them by Department vide OIOs dt.27.03.2017 while adjudicating the case of pilfered goods. Thus, department itself has not considered them liable for penalty with respect to diverted goods out of 1073.3 MT. It is also observed that they have not demanded any import duty on 7000 MT, which has been diverted from the non-duty paid transshipment quantity to Into-Bond, apparently, as it was validly allowed by SEZ Authority. If they felt that there was any irregularity, they would have also demanded import duty in respect of 7000 MT also. Thus, we find that the appellant had duly accounted for the quantity of diverted sugar being small quantity, which could be on account of non-recovery of entire pilfered quantity.

14.1 At this juncture, we also need to understand that SEZ unit is regulated in terms of SEZ Act, 2005 and SEZ Rules, 2006. Section 7 of SEZ Act, 2005 exempts, inter alia, all taxes, duties or cess when any good is either imported or exported by a unit in SEZ or a developer. This is however subject to provisions under section 26. Section 26(1)(e) provides for exemption from Customs Duty on goods exported from a unit to any other place outside India. Section 53 provides for deeming provision to consider it outside the Customs territory of India for the purpose of undertaking authorized operations. Section 46 provides for procedure for export from SEZ unit through any port, seaport, etc. Section 51 provides for overriding effect of SEZ Act over other Acts or law or instrument. Even the fall back under Rule 47(5) for taking action would be available only in relation to unauthorized operations by SEZ unit. As per section 26(1), there is a general exemption from any duty of Customs on imported goods or exported goods. This is subject to certain Rules and these Rules have been framed by way of SEZ Rules, 2006. Rule 22 provides, inter alia, terms and conditions for availing exemption, which also, inter alia, provides for Bond-cum-Legal Undertaking to cover various activities including temporary removal of goods or goods manufactured in units for the purpose of repairs or testing or calibration or display or processing or sub-contracting or other temporary removal into DTA without payment of duty. Therefore, as held by Hon'ble High Court of Telangana in the case of GMR Aerospace Engineering Ltd Vs

UOI [2019 (31) GSTL 596 (AP)], which was further upheld by Hon'ble Supreme Court reported at [2023 (6) CENTAX 155 (SC)], that SEZ Act is a complete code in itself and various provisions and exemptions have been provided under section 26(1), subject to Rules.

14.2 We have noted that there is no denial that appellants are themselves the exporter in respect of 14000 MT of sugar and that they are a SEZ unit. The trading is a permissible activity in terms of LOA. Therefore, even if there are procedural irregularities, as long as it is relatable to the SEZ unit and their activities, the provisions of SEZ would prevail over Customs Act. If there is any unaccountal of either non-duty paid imported or domestic goods by the SEZ unit or resulting export thereof, the action can be taken by the SEZ authorities in terms of provisions under SEZ Act and Rules made thereunder. There is a bond executed by the appellant SEZ unit for meeting all the conditions in relation to their import and export and in case the SEZ authorities feel that the duty free imported raw sugar was not duly accounted for, they can charge duty thereon or they can charge even export duty in case they feel that the exports claimed by them are not their exports. They may even deny the inclusion of such export for calculation of NFE. We also note that the entire procedural aspect of filing various types of BoE, etc., are regulated in terms of provisions under SEZ Act and Rules itself. We also note that in this case, the department has alleged certain non-compliance based on dates of assessment of BoE and shipping bills by the authorized officer, however, we find that the quantity of bagged sugar to the tune of 14000 MT cannot be transported in a day or two and it requires multiple trips, which may take days and its further loading on vessels itself may also take substantial time. We also find force in submission that 7000 MT was cleared from ATR to SEZ under the cover of BoE No.63 dt.17.08.2016. Further, while the department is insisting that it is based on self-assessment and that Authorized Officer has not physically seen its actual receipt, we find that when there is an endorsement to the effect by him that said 7000 MT has been admitted into SEZ on 06.09.2016, it cannot be overlooked and SEZ officer must have exercised their due diligence before giving such endorsement. Therefore, the whole process of clearance till final loading on vessel, in the case of bulk quantity, could be a continuous process under the cover of one single BoE or shipping bill assessed/authorized by SEZ Authority and there cannot be a static determination to come to the conclusion that the said consignments were not cleared under the cover of impugned shipping bills in view of dates on said BE or Shipping Bills. Therefore, in the facts of the case, we find that there cannot be any demand of export duty in respect of 14000 MT of raw sugar.

(B) Demand for import duty:

15. As discussed in detail, supra, quantity of 1073.300 MT was out of certain quantity imported as SEZ cargo by vessel MV Mackenzie for which BoE was not filed for clearance under home consumption or for warehousing. However, it is an admitted fact that the said quantity was diverted in contravention of transshipment provision. However, there is no dispute that 1026.7 MT was received in bonded warehouse. There is, however, no dispute as regards movement of 7000 MT for which Into-Bond BoE dt.24.07.2016 has been filed. We find that both these consignments were basically sent to the warehouse after it was imported duty-free, for blending purposes and subsequently they were cleared for export under the cover of shipping bills by vessel MV Rising Eagle. Therefore, while we feel that the duty-free diverted sugar to the extent of 1073 MT was ultimately consumed in blending and also exported, the fact remains that its diversion was without cover of any Into-Bond BoE or any specific permission of the SEZ authorities. We, however, note that department has not brought any fact that SEZ authorities have initiated any action for recovery of any duty in respect of such diverted goods and therefore, it is apparent that they ultimately accounted for the same when the blended sugar was transferred back to the SEZ unit and onwards for export. In the facts of the case, demand of import duty, per se, is not tenable, however, goods are definitely of offending nature as they were not covered under any valid BoE or any supporting authorization from the SEZ authorities. Therefore, we do not find any infirmity in holding such quantity as liable for confiscation by the adjudicating authority. Moreover, the case laws cited by the appellant that in the absence of physical goods the confiscation is not tenable will not be applicable in respect of this quantity as the goods were physically seized and subsequently released provisionally in terms of bond. However, we find that in the facts and circumstances, as discussed, supra, there was no intentional diversion to evade import duty and this was more in the nature of

procedural irregularity for which the substantive right cannot be taken away. Accordingly, while the import duty demand is not sustainable, the confiscation and redemption fine in lieu thereof is sustainable. However, we find that the redemption fine of Rs.39,49,202/- is not proportionate to the procedural irregularity committed by them and accordingly, reduced the redemption fine to Rs.15,00,000/- which has already been appropriated by way of execution of Bank Guarantee and therefore, no further redemption fine is required to be paid in this regard.

16. Insofar as demand on 1026.7 MT of raw sugar is concerned, we find that admittedly, these goods have been bagged and standardized and they were cleared for export as discussed, supra, and in fact, exported also. Therefore, once the goods have been exported, invoking section 72 and 73A(3) for demanding duty would not be tenable. We find that as per the appellant, they had moved 1036.28 MT of blended and bagged raw sugar from ATR to SEZ on 27.08.2016 and 28.08.2016, which also included 1026.7 MT of sugar in respect of which demand of import duty has been made. In support thereof, they have given statement of truck movement of raw sugar from ATR to SEZ. Therefore, even though it is fact that no Ex-Bond BoE has been filed for 1036.28 MT or for that matter, for 1026.7 MT, however, these goods have been exported by the appellant themselves, which is an SEZ unit. Even if it is presumed that they have not been exported, they would still be either lying in the ATR warehouse or in the SEZ unit and therefore, since department is not alleging that it was lying in the ATR since it has already been cleared from there without cover of any Ex-Bond BoE, it would lead to a conclusion that it had come to SEZ and thereafter, it has been exported. Thus, no duty is leviable in terms of section 28(4) of Customs Act read with section 72 & 73A(3) of the Customs Act on said quantity.

17. Insofar as confiscation of 7000 MT of sugar is concerned, we find that since they have not demanded any import duty in respect of the same and also the fact that there is evidence that the said consignment has been sent by Into-Bond under proper document, the confiscation is not tenable. Moreover, confiscation is also not tenable in view of settled legal position that unless the goods are physically available, the same cannot be confiscated and hence, no redemption fine can be imposed thereon.

Accordingly, confiscation of 7000 MT and redemption fine thereon is not tenable. We also note that the department has proposed confiscation under section 111(j), where the provisions requires that any good on which import duty has not been paid and which are entered for exportation under claim for drawback is liable for confiscation, whereas, in the present case, the appellants have not claimed any drawback in respect of said export. Therefore, the said provision itself is also not invokable in view of the admitted facts of the case.

18. Therefore, to sum up the above findings, we find that in this case, 7000 MT + 1073.3 MT of duty-free raw sugar were diverted by appellant to ATR bonded warehouse, out of which 1073.3 MT was without the cover of Into-Bond BoE. In warehouse, they blended 7000 MT of existing stock of deteriorated raw sugar with 7000 MT + 1073.3 MT of diverted sugar to obtain desired quantity/ standard of ICMSA. This blending resulted in 15026.7 MT of upgraded sugar out of which 7000 MT was cleared Ex-Bond BoE No.63 dt.17.08.2016 and 7000 MT + 1026.7 MT also removed to SEZ for the purpose of export but without any cover of Ex-Bond BoE for same. 14000 MT out of this got exported under the cover of Shipping Bill No.38 & 39 dt.10.08.2016. We have also noted that these exports have also been made by appellant SEZ unit and due authorization/endorsement exist to that extent, except for certain quantity. Overall, it is a case where the SEZ authorities are aware of certain diversion of duty free raw sugar to ATR/bonded warehouse for storage purpose and its further receipt/export by SEZ unit. Therefore, in terms of SEZ Act and Rules, the entire import duty or export duty in respect of import and export by SEZ unit is exempt and if there is any violation, non-compliance or diversion of duty free material, SEZ authorities are competent to take appropriate action under SEZ Act and Rules thereunder.

19. There is also a proposal for confiscation under section 113(i), which provides for confiscation in respect of goods entered for exportation, which do not correspond in respect of value or in any material particular with entry made under this Act on 1026.7 MT of raw sugar bagged and standardized, which was allegedly neither accounted for in the records of the warehouse nor clearances were shown in compliances of warehouse provisions. We have already discussed in detail that despite there being some procedural

lapse regarding proper accountal of duty-free imported goods into ATR or its clearance to some extent, the fact remains that entire blended and bagged sugar was cleared and sent to SEZ and subsequently, exported. Considering the nature of raw sugar, which was already bagged after standardizing through simple mixing/blending and clearly intended for trading in raw sugar as such instead of detailed processing inside unit, it is not relevant that said goods were not physically unloaded at SEZ unit on way to port or subjected to any specific process inside their processing plant, as long as nexus is there between the export goods and appellant SEZ units. We have noted that there has been some procedural lapse, insofar as non-filing of Ex-Bond BoE in respect of 1026.7 MT cleared from ATR to SEZ, however, there was no malafide intent in clearing the same. Moreover, there is force in the contention of the appellant that such a huge quantity could not have moved out without Customs official taking note of the fact. Therefore, there is apparently no malafide intent in clearing the bagged sugar from ATR without filing Ex-Bond BoE to the SEZ unit. Therefore, in the facts of the case, section 113(i) would not be invokable and therefore, confiscation is bad in law. We place reliance on the judgment of Hon'ble High Court of Bombay in the case of Commissioner Vs Shiv Kripa Ispat Pvt Ltd [2015 (318) ELT A259 (Bom)], which has been subsequently followed in catena of judgments.

20. As regards confiscation of vehicles under section 115 and imposition of redemption fine, we find that in this case as the goods itself have not been found liable for confiscation, therefore, conveyance cannot be said to have been used for smuggling. Therefore, since we find that we have already ruled out liability for confiscation in respect of goods, except for 1073 MT and therefore, on this count itself, the vehicles cannot be confiscated. Further, in respect of even this quantity, which has been held liable for confiscation, we find that the owner of the vehicles were not having the knowledge that they were carrying any offending goods or that there is any connivance between owner of the vehicles and the appellant and therefore, vehicles are not liable for confiscation on this count also.

21. As far as imposition of penalty is concerned, once the demand of duty itself is not found sustainable, the question of levy of penalty also does not arise. In this case, reliance placed by the appellant on the case of Collector of CE Vs HMM Ltd [1995 (76) ELT 497 (SC)], wherein, the Hon'ble Supreme

Court, inter alia, held that question of penalty would arise only if department is able to sustain the demand. Similar views were also expressed by the Hon'ble Supreme Court in the case of CCE, Aurangabad Vs Balakrishna Industries [2006 (201) ELT 325 (SC)]. There are other catena of judgments in this regard and therefore, we find that penalty under section 114A is not tenable.

22. The department is also relying on various irregularities and procedural violations with regard to non-compliance with certain provisions of warehousing under Customs Act and Warehousing Regulations. As discussed supra, we find that there have been admittedly certain irregularities as regards bringing goods into bonded warehouse and clearance thereof. However, these are procedural in nature. Department has relied on the provision under section 65 of the Customs Act in support that they had carried out various activities without express permission from the competent authority. We find that the only activity carried out and as alleged is mixing/ blending of existing sugar with certain so called diverted sugar for improving the standard to desired level and its bagging from bulk into bags. These are not major operations requiring any prior permission, and in fact, the provisions under section 64 as applicable during relevant period provides that the owner of any warehoused goods can, inter alia, deal with the goods for limited activity in such manner as may be necessary to prevent loss or deterioration or damage of the goods. In this case, obviously, sugar lying in the warehouse was deteriorating and based on export order, they were required to be standardized to prevent further damage to the goods and therefore, they had the right for carrying out these activities and apparently post amendment in the relevant provision, w.e.f. 14.05.2016, there was no such requirement for having any prior sanction of proper officer for carrying out any such activity. It is an admitted fact that no manufacturing activity has taken place in the warehouse by the appellant so as to violate any substantive provisions under section 65. Thus, no penalty is leviable for violation of warehousing provisions for the procedural breach when substantive grounds for demand of import and export duty itself have not sustained.

23. In view of the above, we set aside the order to the extent of demand of export duty of Rs.8,74,43,220/-, demand of import duty of

Rs.1,43,65,912/-, order of confiscation of 1026.7 MT of goods under section 111(j), order of confiscation of 7000 MT of raw sugar under section 111(j), order of confiscation of 24 dumpers/trucks valued at Rs.3,17,00,000/- under section 115(2), penalty of Rs.10,18,09,132/- under section 114A and modify the impugned order in respect of confiscation of 1073.300 MT by reducing the Redemption Fine to Rs.15,00,000/-.

24. We find that penalty has been imposed on M/s Dr. Amin Controllers Pvt Ltd also as they were the surveyors, who had supervised the vehicles from port to warehouse. They are relying on the following judgments in support that penalty is not imposable if there is no malafide intent.

a) Kellner Pharmaceuticals Ltd Vs CCE [1985 (20) ELT 80]
b) Hindustan Steel Ltd Vs State of Orissa [AIR 1970 (SC) 253]
c) Cement Marketing Co. of India Ltd Vs ACST [1980 (6) ELT 295 (SC)]
d) Khurana Engineering Vs CCE, Ahmedabad [2011 (21) STR 115 (Tri-Ahmd)]
e) Kalsis Kitchenete Vs CCE, Pune [2010 (20) STR 772 (Tri)]
f) CST Vs Pankaj Tyre Retreads [2010 (19) STR 829 (Tri-Ahmd)]
g) Sonal Vyapar Vs CCE, Salem [2010 (19) STR 247 (Tri)]
h) Sands Hotel Vs CST, Mumbai [2009 (16) STR 329 (Tri)]

25. They have contended that they were acting as agent as per the instructions and control of the appellant. Regarding bagging operation and transportation of cargo, they had no knowledge of activities undertaken by the appellant. The Adjudicating Authority has taken note of the fact that Dr. Amin Controllers Pvt Ltd had supervised movement of vehicles from port to warehouse contrary to the provision of transshipment, filing of warehousing BoE and clearance of raw sugar after filing SEZ Home Consumption BoE. They have also admittedly supervised the movement of cargo. Therefore, the adjudicating authority felt that they have actively participated in diversion of duty free raw sugar from port to warehouse instead of clearance to the SEZ unit and, hence, liable for penalty under section 112(a) and also under section 114(ii). Since we have held that the goods are liable for confiscation under section 111(j) in respect of 1073.300 MT, therefore, we do not find any infirmity in imposition of penalty on Dr. Amin Controllers Pvt Ltd under section 112(a) as they have dealt with transportation of goods which were clearly not covered under the BoE or any valid permission and to

that extent, therefore, they are liable for penalty. Insofar as penalty under section 114(ii) is concerned, we find that the penalty liable to be imposed not exceeding 10% of the duty sought to be evaded or Rs.5,000/-, whichever is higher. In this case, since we have already said that demand of duty is not sustainable in respect of the said quantity for the procedural breach, therefore, penalty under section 114(ii) is not sustainable. However, penalty under section 112(a) is upheld as they were into this business of transporting and would have been aware of the legal regulations for movement of goods from port.

26. Department has also relied on certain case laws in support that it was an intentional attempt on their part to evade both import duty and export duty. We have perused the reliance placed on the case of Parry Sugar Industries Ltd Vs Commissioner [2013 (290) ELT A54 (AP)] and we find that the facts are different and therefore, the said judgment has no bearing on the facts of the present case. Similarly in the case of M/s Ajay Wines & Spirits Vs Pr. CC, Ludhiana [2025 (7) TMI 1016 – CESTAT Chandigarh], the coordinate bench had observed that though there was no proof by the department that there has been any clandestine removal, etc., however, penalty under section 117 was imposed and this penalty was upheld. In this case, we find that there is no penalty imposed under section 117 of Customs Act. Moreover, none of these case laws relied upon by department have examined a situation where a SEZ unit has, under authorized permissions, moved the goods duty free or removed the goods duty free from bonded warehouse involving procedural breach, hence, they are distinguished on facts and applicability of different law and statutory provisions.

27. Insofar as imposition of penalty of Rs.5,00,000/- each under section 72 and 73A(3) read with Regulation 12 of Warehouse (Custody and Handling of goods) Regulations, 2016 on the appellant is concerned, we do not find any detailed discussion as to why the said penalty is imposable as the reasons have not been discussed by the adjudicating authority. The penalty under section 72 & 73A is imposable only when there is clearance in violation of section 71 and since it has been held, supra, that in this case, the warehoused goods have been cleared for export, however, since the Act provides for clearance of goods from the bonded warehouse only under the cover of either BoE or Shipping Bill and the same has admittedly been not

followed by them in respect of at least 7000 MT, where evidence has not been clearly brought forward, as also in respect of 1026.7 MT. Therefore, even if these goods have been exported, as discussed, supra, the fact remains that the goods were cleared without cover of Ex-Bond BoE. Therefore, they will be liable for penalty. Since in this case, we have held that this consignment is also not liable to any export duty, therefore, only penalty is imposable for the procedural breach under section 72 & 73A(3). However, in view of the facts and discussions supra, as the duty itself is not demandable, this is essentially a procedural breach without any intentional evasion of payment of export duty or import duty. Accordingly, penalty under section 72 & 73A(3) is reduced to Rs.2,50,000/- each.

28. To sum up, it is ordered, as below:

- <u>Appeal No. C/30191/2018</u>:
  - a) Order of confiscation of 1073.300 MT of raw sugar is upheld to the extent of confiscation, however, modified to the extent of reduction in redemption fine to Rs.15,00,000/-
  - b) Order of confiscation of 7000 MT of raw sugar is set aside.
  - c) Order of confiscation of 1026.7 MT of raw sugar bagged and standardized is set aside.
  - d) Order of confiscation of 24 dumper/trucks under section 115(2) is set aside.
  - e) Demand of export duty amounting to Rs.8,74,43,220/- on account of export of 14000 MT of bagged raw sugar is set aside.
  - f) Demand of import duty amounting to Rs.1,43,65,912/- under section 72 & 73A(3) is set aside.
  - g) Penalty of Rs.8,74,43,220/- under section 114A is set aside.
  - h) Penalty of Rs.1,43,65,912/- under section 114A is set aside.
  - i) penalty under section 72 & 73A(3) is reduced to Rs.2,50,000/- each.
  - j) Since M/s Kanha Shipping Pvt Ltd, M/s Shree Raghu Logistics Pvt Ltd and M/s Srivalli Shipping & Transport Pvt Ltd have not come in appeal, in the said impugned order, we refrain from passing any order to the extent penalty imposed on them in the impugned order.

- <u>Appeal No. C/30201/2018</u>:

The impugned order is modified to the extent that penalty under section 114(ii) is set aside, however, penalty under section 112(a) is upheld.

29. Therefore, the impugned order of the Commissioner is modified to the extent indicated in Para 28, supra.

30. Appeals are allowed partly.

(Pronounced in the Open Court on 19.09.2025)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

Veda