

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

Division Bench – Court No. – I

Customs Appeal No. 30490 of 2018

(Arising out of Order-in-Original No. 05/17-18 dt.07.02.2018 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

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/30469/2025

Date of Hearing: 12.08.2025

Date of Decision: 12.11.2025

[Order per: A.K. JYOTISHI]

M/s Parry Sugars Refinery India Pvt Ltd (hereinafter referred to as appellant) are, inter alia, engaged in import and processing of bulk raw sugar. The appellants are an SEZ unit and had also obtained licenses for three private bonded warehouses under section 58 of Customs Act, viz., (i) Gowthami Godown, (ii) Fairmacs Shipping & Transport Services Pvt Ltd plot in Vakalpudi, Kakinada, and (iii) JM Baxi & Co.'s plot in New Port Area, Kakinada. They were importing raw sugar and transporting the same to their SEZ unit from the port of import on the strength of Bills of Entry (BE) filed on SEZ portal, however, some times, the same goods were cleared from port of import to private bonded warehouse on filing of Into-Bond BE on the ICEGATE portal and subsequently, such warehoused goods were cleared to SEZ unit upon filing of Ex-Bond BE for home consumption on the SEZ portal.

These BEs were examined and assessed by relevant authorities at the time of exit from warehouse and entry into SEZ area. Based on certain investigations by the Customs department, the department, inter alia, felt that there are certain unaccounted goods at Gowthami Godown and certain other irregularities as regards accountal of imported goods and its clearance to SEZ unit as well as for export and hence SCN dt.07.04.2017 was issued. The adjudicating authority adjudicated the matter and, inter alia, demanded duty of Rs.1,34,19,320/- under section 72(1)(d) and also imposed various penalties under section 72(1)(d), section 112(a), section 117 and section 114AA of the Customs Act. Further, the goods were also confiscated and Redemption Fine (RF) was imposed thereon under section 125 of the Customs Act, 1962.

2. Learned Advocate for the appellant has mainly contested that the demand is not sustainable due to various grounds. For the ease of reference, these grounds and the arguments put forth by the Advocate are summarized below:

Issue (A) – Unaccounted goods to the tune of 1145.52 MT resulting into demand of non-payment of customs duty of Rs.1,34,19,320/-:

3. Learned Advocate has submitted that demand has been made by department based on certain assumptions and computations, as under:

i.	Opening Balance as per Warehouse (WH) stock record as on 01.04.2016	48822.63
ii.	Receipt quantity shown on 07.06.2016 in WH stock record (No bill had apparently been filed for such receipt)	328.66
iii.	Total (i & ii)	49151.29
iv.	Ex-Bond Bill of Entry No. 32/09.05.16 qty	26250.00
v.	Ex-Bond Bill of Entry No. 45/16.06.16 qty	22397.00
vi.	Total quantity of 2 BE (iv + v)	48647.00
vii.	Quantity for which Ex-Bond BE not filed (iii-vi)	504.29
viii.	Short receipt quantity against Ex-Bond BE 45/16.06.16	222.23
ix.	Total (vii + viii)	726.52
x.	Stock as on 26.06.2016 as per warehouse record	6878.51
xi.	Stock as on 26.06.2016 as per Insurance Claim	6459.51
xii.	Difference between x & xi	419
xiii.	Total quantity unaccounted for (ix + xii)	1145.52

4. Insofar as demand for 504.29 MT is concerned, he has submitted that this is not correct as the opening balance was wrongly taken as 48822.63 MT, whereas, it was only 48647 MT, therefore, resulting in excess demand

to the extent of 175.63 MT. Further, there was no fresh intake of stock on 07.06.2016 of about 328.66 MT as these goods were basically rejected goods at the time of shipment, which were meant for export and rejected by the chief officer of vessel. He has also pointed out that due to certain weather conditions, there was genuine weight loss also. Further, there was a loss of 222.23 MT of sugar due to flood, which is corroborated by the insurance claims made by them. He has also submitted that section 72(1)(d) cannot be invoked where the goods have not been cleared/exported.

5. He has further submitted that they had imported about 22397 MT of subject goods and cleared it for warehousing under Warehousing Bill of Entry (WBE) No.289210 dt.13.10.2015 on the ICEGATE portal, which were stored in the warehouse and thereafter, during the period 27.05.2016 to 30.05.2016, Cyclone Roanu caused heavy flooding due to which about 742.45 MT of goods suffered quality degradation and about 222.23 MT was washed out completely. They had, however, without quantifying actual physical damage and due to business exigencies filed Ex-Bond BE No. 45 dt.16.06.2016 for ex-bonding 22397 MT of goods, which were imported vide WBE No.289210 and the same were transported to SEZ unit, however, only 22174 MT was transported (22397 – 222.23) and this shortage was noticed on arrival at their SEZ unit. He has also given details of salvaging certain amount of sugar from the damaged sugar.

6. Therefore, his main contention is that the computation of demand for unaccounted bonded goods itself is not correct and has not considered various factual submissions including documents, as also, the invocation of section 72(1)(d) is not tenable as the entire quantity has been properly ex-bonded and sent to SEZ/exported. In addition, he has also submitted that even for lost quantity of 222.23 MT, the duty thereon needs to be remitted under section 23 of the Customs Act as the loss is due to natural calamities and the adjudicating authority has not considered this request and has doubted the veracity of the insurance claim itself.

Issue (B) – Penalty under section 117 is not sustainable:

7. He has submitted that there was no need for any permission for undertaking bagging exercise etc., even within the private warehouse as

such handling is well within the permissible activity and bagging operation is an operation, which can be inferred as having led to manipulation, alteration or processing of the goods. He has also submitted that since there is no loss to the exchequer, thus, penalty under section 114AA is also not tenable keeping in view the intent behind bringing section 114AA. According to the learned Advocate, section 114AA was brought in to curtail the fraudulent practice being followed at the time of export of goods outside India and the intent was always to punish those people who avail export benefits without exporting anything. It is not the case of the department that they had fraudulently exported goods with an intent to avail undue export benefit. He has relied on the following judgments:

- a) Interglobe Aviation Ltd Vs Pr.CC, Bangalore [2022 (379) ELT 235 (Tri-Bang)]
- b) CC, Sea Chennai-II Vs Sri Krishna Sounds & Lightings [2019 (370) ELT 594 (Tri-Chennai)]

8. He has also argued that department has solely relied on the dispatch statement dt.21.05.2016 to 07.06.2016 maintained by Dr. Amin Controllers for demanding duty and imposing penalty without having any other corroborative evidence. He has relied on, inter alia, the following judgments.

- a) Bareilly Electricity Supply Co. Ltd Vs Workmen & Ors., [1971 (2) SCC 617]
- b) State of Kerala Vs MM Mathew & Anr., [1978 (4) SCC 65]
- c) Arya Fibres Pvt Ltd Vs CC Ex [2014 (311) ELT 529 (Tri-Ahmd)]
- d) CC Ex Vs Raj Lakshmi Dyeing & Printing Mills [2014 (312) ELT 379 (Tri)]
- e) Centurian Laboratories Vs CCE, Vadodara [2013 (293) ELT 689]
- f) Hindustan Machines Vs CC Ex [2013 (294) ELT 43]
- g) Hilton Tobaccos Ltd Vs CC Ex [2005 (183) ELT 378 (Tri-Bang)]

Issue (C) – Redemption Fine and Penalty under section 112(a) in respect of 10673.82 MT of goods, not available for confiscation:

9. Learned Advocate has submitted that RF is not imposable as goods are not available and the same has already been cleared for export and hence it could not have been confiscated. He has relied on the judgment in the case of Bussa Overseas & Properties Pvt Ltd Vs CL Mahar, Asst. CC, Bombay

[2004 (163) ELT 304 (Bom)] in support that once the goods are cleared for home consumption, they cease to be imported goods. Further, since the goods cannot be confiscated, the RF can also be not imposed under section 125. Reliance was placed on the judgment in the case of Shiv Kripa Ispat Vs CC [2009 (235) ELT 623 (Tri-LB)], which was affirmed by Hon'ble Bombay High Court reported at [2015 (318) ELT A259 (Bom)] and Hon'ble Supreme Court reported at [2010 (255) ELT A120]. Learned Advocate has submitted that penalty under section 112(a) is also not imposable when goods are not available for confiscation. In view of the same, in respect of 10673 MT, the imposition of RF and penalty are not sustainable.

Issue (D) – Redemption Fine on Export of 26250 MT of goods:

10. Learned Advocate has submitted that the said goods were exported vide Ex-Bond BE No. 32 dt.09.05.2016, wherein, the department alleged that the said export is without transshipment permission. He further submitted that in terms of Board Circular No.22/2012-Cus dt.07.08.2012, an exporter is entitled to file shipping bill 14 days in advance and therefore, department cannot impose RF merely because Ex-Bond BE has been filed 14 days prior to transshipment clearance. He has also submitted that minor procedural violations cannot be a ground for imposing penalty. He has also submitted that no opportunity was accorded for cross examining the statements of the persons relied upon, as provided under section 138B of the Customs Act.

11. Learned AR, on the other hand, reiterated the findings of the adjudicating authority and, inter alia, highlighted that various claims of the appellant are not correct, inasmuch, as they had failed to inform the loss of sugar to the customs authority as well as Development Commissioner and they had not given any details of such loss nor filed any remission application, etc. There was also no evidence that 742.45 MT out of 1145.52 MT was cleared from warehouse to SEZ. Insofar as issue concerning bagging/ standardization in bulk and export directly from warehouse, he has submitted that the adjudicating authority has held that 14000 MT of raw sugar was cleared from 3 warehouses to port directly and that the goods have returned to SEZ unit was not correct, as there was no evidence such as transport document or weighment slip to substantiate their claim. It was also highlighted that the goods were not physically examined in the SEZ unit

and the documents were signed only on a self-declaration. Insofar as issue of clearance from Gowthami Godown without Ex-Bond BE is concerned, he has submitted that quantity of 10673.82 MT was cleared without filing any Ex-Bond BE and without requisite transshipment permission. He further submitted that these are not mere procedural irregularities and are substantive in nature and therefore, confiscation of 26250 MT with RF of Rs.2.5 crores is correct. He has also highlighted certain irregularity and non-reconciliation keeping in view the Ex-Bond BE No. 45 dt.16.06.2016.

12. Heard both sides and perused the records.

13. Since there are various issues involved, we would take up the same, issue wise, however, before we do that, we find that there is no dispute that the appellants are an SEZ unit, who had also taken private bonded warehouse license. Therefore, essentially, they are SEZ unit, who are engaged in importing raw sugar duty-free and thereafter, either they are processing it in their plant or exporting, as such, as trading. It is also apparent that the entire operation of import and export and its due accountal are regulated by SEZ Act and Rules made thereunder and they have executed bond with SEZ Authorities for proper accountal of duty-free imported goods and resulting exports. In case of failure to reconcile, the SEZ authorities are imposed to take action under SEZ Act and Rules made thereunder.

Issue (1) – Duty demand in respect of 1145.52 MT of goods:

14. We find that the demand has been made in terms of certain non-accountal of goods by the appellant to the satisfaction of proper officer of Customs, which were brought inside the private bonded warehouse i.e., In-bonded. The appellants have given detailed breakup to account for the same, which includes loss due to cyclone, damaged goods, rejected goods, clearance to SEZ unit under Ex-Bond BE duly acknowledged by the SEZ authorities, etc. We find that in the first place, it is not disputed that the entire goods which were stored in the warehouse were initially imported duty-free by the appellant, who are SEZ unit and were placed in the warehouse. Therefore, its accountal is necessary and any non-accountal would entail demand of duty as well as other penal provisions in terms of Customs Act and Warehousing provisions. However, we find that this

reconciliation has not been done properly and this needs to be recalculated keeping in view the amount, which has actually been lost due to cyclone/flood, or exported or ex-bonded and transported to SEZ unit, duly acknowledged, etc. For this purpose, the evidence in the form of insurance claim by them would suffice. Insofar as clearance to SEZ unit for export, the same also would be based on the Ex-Bond BE filed by them. Therefore, to the extent of explained loss due to natural cause, they would be entitled for remission of duty, whereas, for the remaining quantity, if it is duly established that it was either brought into SEZ unit or exported directly by them under the cover of statutory documents, the same would also be accounted for and demand to that extent would not sustain. Therefore, the entire demand of Rs.1,34,19,320/- is set aside and the matter is remanded back to the adjudicating authority to redetermine the amount of duty recoverable, if any, keeping in view the observations made, supra. It is made clear that an endorsement by the SEZ authority would be presumed that the same has been received by the SEZ unit and there is no other corroboration required to establish that the goods have not gone to SEZ unit or exported by the SEZ unit. It is also noted that there is no evidence to suggest that such unaccounted goods have been diverted to DTA or not exported at all.

Issue (2) – Imposition of Penalty under various sections and Redemption Fine under section 125 of the Act:

15. Insofar as penalty under section 72(1)(d) is concerned, we find that there was no such specific provision to seek any prior approval for carrying out any bagging operation and to that extent, penalty cannot be imposed and especially so when the goods have been cleared to SEZ unit or exported. Penalty under section 72(1)(d) would depend on their having not able to properly account for the goods, which were initially warehoused. In other words if the appellants are able to explain the Into-Bond quantity and Ex-Bond quantity, then penalty is not imposable. We find that they have given various explanations to account for the goods, which were brought into the warehouse, as also clearance of the remaining quantity to the SEZ unit or for export. In this regard, we have already observed that any clearance to the SEZ unit on which endorsement has been made will be treated as clearance to SEZ unit for export and thus, will have to be duly

accounted for arriving at unexplained quantity. This unexplained quantity shall be leviable to customs duty in terms of Custom Act. This is the subject matter of remand, where this penalty under section 72(1)(d) will also require to be determined after proper reconciliation is done and if any unexplained quantity still remains. Similarly, penalty under section 117 is also set aside. Insofar as penalty under section 114AA is concerned, we find that the goods have been exported and they being SEZ unit and have not claimed any export benefit on the said export, the penalty of Rs.1 crore under section 114AA is also not tenable. We place reliance on the judgment in the case of Interglobe Aviation Ltd (supra) and Sri Krishna Sounds & Lightings (supra). Insofar as confiscation of goods is concerned, we find that these goods have not been physically available and hence, in view of the various case laws cited, the same cannot be confiscated. Further, if the goods cannot be confiscated, the RF also cannot be imposed. In view of the same, RF imposed under section 125 is also not tenable. We find force in the case laws cited by the appellant in support of their submissions in this regard.

16. We have also gone through the earlier judgment of this Bench vide Final Order No. A/30375-3037/2025 dt.19.09.2025, in the appellant's own case, where certain issues having bearing on present appeal also, were discussed. Relevant paras of the Final Order dt.19.09.2025 are cited below for ease of reference.

"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.

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."

17. Therefore, one has to take a holistic view when the goods are imported by the SEZ unit and temporarily stored in any private bonded warehouse but the ultimate account of such duty-free imported goods by the SEZ unit either directly or through private bonded warehouse and its use in SEZ unit and resulting export, etc., are regulated by the SEZ authorities

in terms of SEZ Act and Rules. Thus, even if certain goods have been stored in private bonded warehouse, which was imported by the SEZ unit, the provisions of the Customs Act would be applicable only to the extent where purely In-bonded duty-free goods were not cleared to SEZ unit or exported or not accounted for properly to the proper officer of Customs having jurisdiction over private bonded warehouse but the overall accountal would still be within the purview of the SEZ authority. Therefore, while the customs authorities are very much within their rights to raise demand to the extent of clearly unexplained stock in respect of In-bonded materials but whether the said goods, as claimed by the appellant, have been either received in SEZ unit or exported or otherwise would be in the domain of SEZ authority, who would decide whether such goods have been duly accounted for or otherwise.

18. Therefore, in view of above, we sum up, as under:

- a) Demand of Rs.1,34,19,320/- is set aside and the matter is remanded back for redetermination to the adjudicating authority.
- b) Penalty of Rs.10,00,000/- under section 72(1)(d) is set aside and remanded for redetermination subject to determination of duty, if any, on accounted goods in the private bonded warehouse.
- c) Penalty under section 117 is set aside.
- d) Penalty of Rs.1,00,00,000/- under section 114AA is set aside.
- e) Redemption Fine of Rs.1,00,00,000/- on 10673.8 MT and Rs.2,50,00,000/- on 26250 MT of raw sugar are set aside.
- f) Penalty of Rs.1,00,00,000/- under section 112(a) is set aside.

19. Accordingly, the appeal is allowed partly by way of remand.

(Pronounced in the Open Court on 12.11.2025)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)