

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

Division Bench – Court No. – I

Customs Appeal No. 21317 of 2015

(Arising out of Order-in-Original No.GUN-EXCUS-000-COM-089-14-15-Cus dt.19.02.2015
passed by Commissioner of Central Excise & Service Tax, Guntur)

M/s Diehard Dies Pvt Ltd

Ameenabad Village, Phirangipuram (M),
Guntur, Andhra Pradesh – 522 004

.....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. 21316 of 2015

(Arising out of Order-in-Original No.GUN-EXCUS-000-COM-089-14-15-Cus dt.19.02.2015
passed by Commissioner of Central Excise & Service Tax, Guntur)

Sri Tulasi Yogish Chandra, Director

M/s Diehard Dies Pvt Ltd, Ameenabad Village,
Phirangipuram (M), Guntur, AP – 522 004

.....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 R. Nageswara Rao, Consultant for the Appellants.

Shri Ch. Venkat Reddy, Pr. Commissioner & Shri A. Rangadham, AR for the
Respondent.

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

FINAL ORDER No. A/30589-30590/2025

Date of Hearing: 07.10.2025

Date of Decision: 18.12.2025

[Order per: A.K. JYOTISHI]

M/s Diehard Dies Pvt Ltd, a 100% Export Oriented Unit (EOU) (hereinafter referred to as the appellant) are in appeal vide Appeal No. C/21317/2015 against OIO dt.19.02.2015 (impugned order), whereby the demand of customs duty made vide SCN dt.27.11.2013 was confirmed along with penalty and confiscation of imported capital goods and raw material as well as indigenously procured capital goods and consumables. Similarly, in Appeal No. C/21316/2015, Sri Tulasi Yogish Chandra, Director of the appellant company, is in appeal against the imposition of penalty under section 112 of the Customs Act, 1962 and also under Rule 26 of the Central Excise Rules, 2002, arising out of same proceedings.

2. Based on certain observations, the department felt that the appellant has failed to fulfil export obligation and has not achieved the positive NFE (Net Foreign Exchange) during the period 2009-10 to 2011-12 and therefore, they have contravened the provision under Notification No.52/2003-Cus dt.31.03.2003 and Notification No.22/2003-CE dt.31.03.2003 as well as various terms and conditions of B-17 bond executed by them and therefore, both customs duty and Central Excise duty in respect of imports and domestic procurement, without payment of duty, was demanded.

3. The appellants are a 100% EOU, who were issued Letter of Permission (LOP) dt.29.05.2008 by the competent authority, which, inter alia, provided for meeting certain conditions relating to achievement of positive NFE. In pursuance thereto, the appellants imported certain goods duty free in terms of Notification No.52/2003-Cus as well as procured certain indigenous goods without payment of excise duty in terms of Notification No.22/2003-CE. The appellants were registered under Central Excise and were also having private bonded warehouse license valid up to 21.10.2013 for storage of imported as well as indigenous capital goods, spares, consumables, raw materials and final products, etc. The appellants also executed B-17 bond binding themselves to fulfil certain conditions. The department noticed that the appellant had not exported any consignment till 2012-13 despite starting production from 01.11.2009 and had also requested the Development Commissioner (DC) for 'In-principle' permission to exit from

100% EOU scheme and the same was granted by DC on 13.04.2011 in terms of Para 6.18 (a) and (b) of FTP 2009-14. This permission was further extended up to 12.08.2013.

4. The adjudicating authority has mostly held that since the appellants had failed to fulfil export obligations and has also failed to achieve positive NFE during the period 2009-10 to 2011-12, they have contravened the provisions of both the notifications, *supra*, as well as terms and conditions of B-17 bond and therefore, liable to pay duty amount equal to the duty foregone in respect of said imported capital goods/raw materials as well as indigenous capital goods/consumables.

5. Learned Advocate for the appellants has mostly contended that the demand has not been made in accordance with provisions under referred notifications itself, which allows certain adjustment and mode of calculation of duty, both in the case of imported as well as indigenous as well as capital goods, raw materials, consumables, etc., in the event of breach of NFEE condition. He has also submitted that they have been making exports of goods including deemed exports during the period from 2011 to 2014-15 and this should have been taken into consideration while computing the demand in accordance with provisions under the notifications itself. He has also submitted that while clearing goods to DTA, as permitted by the DC up to 31.10.2011, vide letter dt.26.10.2010, they had paid much more duty than what was legally required to be paid on such clearances and the same also needs to be adjusted against total duty liability of the appellant. He has relied on the judgment in the case of *Nikhil Industries Pvt Ltd Vs CCE, Jaipur* [2005 (190) ELT 321 (Tri-Del)] in this regard. He emphasized that the exports including deemed export up to November, 2014 by the appellant will have to be accounted and adjusted in accordance with provisions in the notifications, *supra*, while computing the duty demand and similarly, the depreciation on capital goods, while demanding duty has to be reworked out as per the provisions in the notifications itself. He has also additionally submitted that there is no scope for confiscating the capital goods, as there is no allegation that the said capital goods were not installed or for that matter, not used in manufacture of goods, which were either exported or cleared in DTA, with valid permission from the DC till the time permission to exit was finally accorded by the DC.

6. Learned AR has reiterated the findings of the adjudicating authority and has also submitted that the judgment relied upon by the appellant is not applicable in the facts of the case.

7. Heard both sides and perused the records.

8. We find that in this case, there is no dispute that certain customs duty along with interest would become payable in respect of goods imported duty free as well as procured indigenously without payment of excise duty, due to non-fulfilment of stipulated positive NFE condition. We also find that it is not in dispute that they had valid registration and LOP from the DC to run the unit as 100% EOU. We note that due to certain business conditions, they decided to exit from EOU scheme as they were not able to export anything till FY 2010-11. Therefore, they approached the DC for in-principle permission to exit from the EOU scheme vide their letter dt.18.01.2011 and 17.02.2011. The DC, in the meanwhile, had also issued SCN dt.13.04.2011 under the FTDR Act, 1992 for not making any export till then and thereafter, passed an order imposing penalty of Rs.5,00,000/- for non-achievement of positive NFE for cumulative period from 01.11.2009 to 31.03.2011 and the said penalty was also paid by the appellant. Subsequent thereto, the DC granted in-principle approval to the unit to exit from EOU scheme, vide letter dt.13.04.2011 and also advised to file for final exit after completing relevant procedure. The validity of said permission was further extended up to 12.08.2013, vide letter dt.01.03.2013. The appellants were, in the meanwhile as permitted by the DC, cleared certain quantity in the DTA in excess of earlier permitted quantity and in that respect also, the DC issued a SCN dt.27.11.2013 for effecting DTA sales beyond the permitted quantity. In response thereto, the appellants made various submissions including their request for debonding of unit. Finally, vide letter dt.03.09.2014, the DC had taken a lenient view and regularized the same and imposed penalty of Rs.10,000/- for effecting excess DTA sales without permission and was also advised to comply with the directions given in the letter according in-principle permission and come up with the NOC from the Customs and Central Excise department for final exit. Thereafter, apparently, the DC has finally issued the final exit order dt.21.03.2016, making the same effective retrospectively from 01.11.2014.

9. Therefore, the first issue that needs to be decided is whether the appellants were having a status of EOU till 01.11.2014 or were not considered as EOU after the grant of in-principle permission. In this regard, we find that CBEC has clarified the procedure for debonding of EOU/ EHTP/ STP units vide Circular No.8/2004-Cus dt.28.01.2004, wherein, it has been pointed out that EOU normally requests for debonding either on expiry of its LOP or if it finds it uneconomical to continue to operate under EOU scheme. It was clarified that EOU should not be denied permission merely because some show cause notice or confirmed dues is pending against them. Therefore, what we find that in this case there has been 'in-principle' approval for debonding but it was not issued any final exit order and only in the year 2016, a letter dt.21.03.2016 was issued for final exit from the EOU scheme making the same effective retrospectively from 01.11.2014. Therefore, we find that till 01.11.2014, they continued to be an EOU unit in terms of order passed by the DC, who is the competent authority to regulate the operations of EOU within his jurisdiction in terms of FTDR Act and Rules. It is also noted that whatever domestic clearances have taken place, has taken place in accordance with either original permission of DC or has been subsequently regularized by the DC in case where excess clearances have taken place to DTA. It is also not in dispute that during the intervening period from 2010-11 to 2014-15, they were making three types of clearances viz. DTA, deemed export and physical export. It is also not in dispute that they had paid customs duty on the import of the goods including capital goods and consumables as well as Central Excise duty on domestic procurement after 19.12.2010 without availing any benefit available for 100% EOU. They paid about Rs.3,16,81,206/- on such procurements. They have also paid customs duty on clearance of finished goods from their unit to DTA during 01.11.2009 to 31.03.2015 amounting to Rs.7,78,36,207/-.

10. We find that in terms of impugned notifications and Bond, insofar as imported goods are concerned, there is a provision to pay on demand certain duty under certain specific circumstances. For example, the duty is demandable in case of capital goods, if such goods are not proved to the satisfaction of the officer to have been installed or otherwise used within the unit within the period of validity of LOP. Similarly, even in the case of other goods, subject to the satisfaction that the said goods were not used in

relation to production or package of goods for export out of India or cleared for home consumption within the period of validity of LOP. We find that this is not the case in the present appeal nor there is any allegation to such effect that such goods have not been used for manufacture of goods either cleared into DTA or exported/deemed to be exported. No allegation of clandestine removal has been made in respect of duty from procurement of capital goods or raw material/consumables. There is also a provision that in the case of failure to achieve positive NFE, the duty amount proportionate to the duty leviable on the said goods but for the exemption contained in the Notification No.52/2003-Cus will be demandable, however, the duty so payable will be in the same proportion as the unachieved portion of NFE. Admittedly, this has not been done while computing the demand. We also find that it also provides for computation of duty in respect of capital goods at the time of debonding by calculating the depreciation in the prescribed manner and the duty has to be paid on the depreciation value both in the case where unit has part fulfilled NFE criteria or where they have failed to achieve positive NFE. Similar provisions are also there under Notification No.22/2003-CE. Thus, duty demanded on capital goods also need to be reworked out in the manner as provided in the notifications itself.

11. We have also perused one letter dt.01.03.2013 issued by the DC with copy to the Superintendent of Customs and Central Excise, Range II, Guntur, wherein the in-principle permission to exit from EOU scheme up to 12.08.2013 was indicated and was also directed that NFE obligation will still be binding on the appellant till they get final exit from EOU scheme and would be treated as EOU until final order from the office. We have also perused the letter dt.21.03.2016 concerning cancellation of LOP by the DC, which was deemed to have been cancelled, as also, final exit from EOU scheme w.e.f. 01.11.2014 (FN). Therefore, they were having a valid status as EOU till 01.11.2014 when the final exit order was issued and the LOP was cancelled by the competent authority.

12. Therefore, as far as first issue is concerned, it is obvious that the unit will be considered to have been debonded only on 01.11.2014 in terms of retrospective permission for final exit and the duty has to be computed based on various parameters like export, deemed export, permissible DTA sales, etc., as also the depreciated value of capital goods in terms of para

4(a) of Notification No.52/2003-Cus and para 8(i) of Notification No.22/2003-CE and condition 3(d) of Notification No.52/2003-Cus and Condition 4(b) of Notification No.22/2003-CE. Apparently, this has not been done by the adjudicating authority and therefore, the total duty demanded needs to be recalculated on the basis of statutory provisions under the impugned notifications as well as factual details furnished by the appellant concerning various clearances. We also take note that as per the appellant, there has been substantial export during the period from 2011-12 up to March, 2015, apart from DTA clearances and thus, foreign exchange has been earned to certain extent even if no positive NFE has been achieved during the period till 01.11.2014.

13. Insofar as other argument that they have already paid excess duty in respect of imported material, as well as indigenously procured material, we find that in the case of Nikhil Industries Pvt Ltd (supra), it was held that while discharging the customs duty liability on the imported raw material, the duty paid by them while removing finished goods made out of imported raw material has to be adjusted against customs duty liability, since duty is now upheld in respect of entire materials imported by them. Apparently, the appellants have paid duty of Rs.7,78,36,207/- as customs duty on DTA clearances from 01.11.2009 till 31.03.2015. We also find force in the reliance placed by the appellant in the case of decision of the Coordinate Bench in the case of Moonlight Exim P Ltd Vs CCE, Jaipur [2017 (357) ELT 661 (Tri-Del)], wherein, inter alia, it was held that even when positive NFE was not achieved in violation of EXIM policy and notification, the appellants were considered entitled to proportionate benefit of exports made against which foreign exchange earnings were realized and therefore, the matter was remanded back to the original adjudicating authority for reworking the duty demanded.

14. Insofar as the confiscation under section 111(o) of Customs Act and Rule 25 of Central Excise Rules is concerned, we find that there is no allegation that any imported goods or indigenous goods were not brought to EOU or diverted and the appellants have kept competent authority informed about their inability to meet desired export. Whatever breach was noticed in terms of FTDR Act, 1992, were regulated by the competent authority subject to certain penalties. We find their reliance on the case of Moonlight EXIM P

Ltd (supra) is relevant. Similarly, penalty has been imposed under section 112 on them without specifying any specific clause so as to appreciate as to whether they were liable to penalty.

15. In view of the above, we find that the matter needs to be remanded back to the adjudicating authority, who shall now compute the duty demand for raw materials/ consumables in accordance with provisions under Notification No.52/2003-Cus dt.31.03.2003 and Notification No.22/2003-CE dt.31.03.2003 and as discussed, in foregoing paras. The duty demand in respect of capital goods will also have to be recomputed after allowing depreciation as provided in the notifications, supra.

16. Insofar as adjustment of duty already paid by them, even during the period when they were otherwise having the status of EOU, the same also needs to be examined by the adjudicating authority in the light of the judgment in the case of Nikhil Industries Pvt Ltd (supra) and Moonlight EXIM P Ltd (supra) and the duty liability to that extent recomputed, would have to be adjusted against payment of Customs duty while effecting domestic clearances of raw materials, as such, or finished goods made out of such raw materials.

17. Moreover, as we do not find any merit in upholding the confiscation of imported and indigenously procured capital goods and raw materials, since it was admittedly used for manufacture of export goods as well as permitted domestic clearances and hence, the consequent imposition of Redemption Fine and the penalty will also not sustain. The matter is accordingly remanded back to the Original Authority only to recompute the demand of customs duty and Central Excise duty along with interest, if any, in the manner as observed in the foregoing paras. Confiscation/Redemption fine and penalty are set aside.

18. Appeal No. C/21317/2015 is partly allowed by way of remand.

In Appeal No. C/21316/2015:

19. Since the original matter i.e., Appeal No. C/21317/2015, has been remanded back to the adjudicating authority for redetermination of duty liability only and penalty and confiscation has been set aside, we do not find any justification in upholding the penalty on Shri Tulasi Yogish Chandra

under section 112 of Customs Act in the given factual matrix as well as in view of setting aside of the confiscation of goods and penalty in respect of the company (Appellant).

20. Appeal No. C/21316/2015 is allowed.

(Pronounced in the Open Court on 18.12.2025)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

Veda