IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH - COURT NO.2

Customs Appeal No.75037 of 2023
[Virtual Mode of Hearing]

(Arising out of Order-in-Appeal No.KOL/CUS/PREV/CCP/KS/438-441/2022 dated 31.10.2022 passed by Commissioner of Customs (Appeals), Kolkata.)

M/s. Agro Tech Foods Ltd.
(31, Saraojini Devi Road, Secunderabad, Telangana-500003.)

...Appellant

VERSUS

Commissioner of Customs (Preventive), Kolkata

.....Respondent

(51/1, Strand Road, Custom House, Kolkata-700001.)

WITH

(i) Customs Appeal No.75038 of 2023 (M/s. Agro Tech Foods Ltd. vs. Commissioner of Customs (Preventive), Kolkata); (ii) Customs Appeal No.75039 of 2023 (M/s. Agro Tech Foods Ltd. vs. Commissioner of Customs (Preventive), Kolkata); (iii) Customs Appeal No.75040 of 2023 (M/s. Agro Tech Foods Ltd. vs. Commissioner of Customs (Preventive), Kolkata);

(Arising out of Order-in-Appeal No.KOL/CUS/PREV/CCP/KS/438-441/2022 dated 31.10.2022 passed by Commissioner of Customs (Appeals), Kolkata.)

APPEARANCE

Shri Rajat Dosi, Advocate for the Appellant (s)
Shri A.K.Choudhary, Authorized Representative for the Revenue

CORAM: HON'BLE SHRI R. MURALIDHAR, MEMBER(JUDICIAL)
HON'BLE SHRI RAJEEV TANDON, MEMBER(TECHNICAL)

FINAL ORDER NO. 75402-75405/2026

DATE OF HEARING : 12.03.2026
DATE OF DECISION : 19.03.2026

Per : RAJEEV TANDON :

The appellant has filed the impugned four appeals against the common Order-in-Appeal No.KOL/CUS/PREV/CCP/KS/438-441/2022 dated 31.10.2022 disposing of import assessment matter in respect of Bills of Entry Nos. 8698827 dated 04.09.2020, 9422006 dated 03.11.2020, 9929793 dated 12.12.2020, and 2767111 dated 15.02.2021.

2. The appellant is a manufacturer and trader of edible oils, food ingredients and other food items. The instant appeals concern four Bills of Entries whereby the appellant importer, imported instant ACT II Popcorn (CTH 20081990) from Bangladesh from one of its subsidiary companies. The subject imports were allowed provisional clearance as the aspect of related party transaction was required to be investigated into by the SIIB - Special Intelligence & Investigative Branch of the Customs House.

3. It is the case of the appellant that inadvertently they did not avail of the benefit contained in Notification No.99/2011-CUS dated 09.11.2011 prescribed for south Asian countries commonly known as SAFTA exemption.

4. The Ld.Counsel has *inter alia* submitted that in respect of an earlier import, the Ld.Commissioner vide Order-in-Appeal No.KOL/CUS/CCP/AKR/235/2021 dated 03.03.2021 in identical circumstances had remanded the matter to the lower authority with the direction for examining the claim of the appellant for SAFTA benefit at the time of finalization of the Bill of Entry by the concerned authority.

5. The Ld.Counsel for the appellant contends that they had however enclosed along with the shipping documents the Country of Origin Certificates issued by the appropriate authority in Bangladesh in respect of the subject imports. The Bills were self-assessed, however, they failed to claim the said SAFTA exemption.

6. Against the impugned assessment order, the appellant, despite the assessments being provisional in nature (and reportedly not having been finalized till the time of hearing of this appeal) filed an appeal before the Ld.Commissioner challenging the aforesaid assessment undertaken and claiming the benefit of the said SAFTA exemption Notification admissible to them. They state that they did so, as to overcome the challenge of the assessment "not having been challenged."

7. From the Commissioner(Appeals)'s order, it is noted that the appeal filed by the appellant has been rejected primarily on the following two counts :

i. Benefit of the said exemption notification cannot be availed at the appellate stage and should have been availed at the time of clearance, since the department cannot examine the already cleared goods;

ii. The impugned BoEs were assessed provisionally and in the absence of final determination of the duty liability or final assessment, these appeals are pre-mature and therefore cannot be entertained.

Aggrieved therewith, the instant appeals.

8. We have heard the ld.AR for the Revenue who supports the impugned order.

9. It is settled law that exemption Notification benefit if admissible to the appellant can be claimed at any point in time, even post-assessment, subject to following of the usual course as stipulated in law and as long as exemption falls within the broad framework of its eligibility. Moreover, there is no estoppel in law that if the appellant/importer had carried out self-assessment without the claim for exemption, they were debarred for all times to come from claiming the said benefit as admissible. We therefore are not in agreement with the first contention of the Ld.Commissioner(Appeals) that exemption Notification cannot be availed at the appellate stage and should have been availed at the time of clearance. The Ld.Commissioner(Appeals) has added a rider to his aforesaid reasoning for denial of exemption benefit, stating that the goods were already granted out of charge and it was not possible for the authorities to examine the said goods at this juncture. Be as it may, it is on record that the appellant had at the time of initial assessment itself furnished before the authorities, the SAFTA Certificate issued by the prescribed authority which is available on record and the imported goods were given "out of charge", following the due process in law, which certainly includes the process of examination, in a form and manner as prescribed. Also, it is commonplace provision that the re-assessment of the goods is legally permissible in law provided appropriate evidence in support thereof, was available at the time of initial documentation undertaken.

10. We further note that the subject imports were cleared provisionally and the finalization of the impugned imports is still pending at the Customs House. A provisional assessment per se for any reason, is provisional for all purposes. Its scope in the given circumstances cannot be restricted to merely the valuation aspect. We therefore find no merit and substance in the argument of the Ld. Commissioner (Appeals) to deny the appellant the opportunity for consideration of the SAFTA exemption and re-assessment of the subject goods at the time of their finalization, on the ground that the goods were already granted out of charge by the customs.

11. The second argument of the Ld.Commissioner(Appeals) stated in his order regarding the appeal being pre-mature as finalization of the subject imports was still pending is however appropriate. Nonetheless, finding merit in the primary plea of the appellant, seeking assessment of the goods in accordance with the benefit as entailed in Notification No.99/2011-CUS dated 09.11.2011, we are of the view that the same is required to be considered favourably. It is obligatory on the authorities to ensure that appropriate legal benefit as admissible in law is granted even if the importer fails to claim the benefit of a particular Notification. The hon'ble apex court in the case of **Share Medical Care v. Union of India [2007 (209) E.L.T. 321 (S.C.)]** had categorically held that even if the appellant had not claimed benefit under a particular Notification at initial stage, *"he is not debarred, prohibited, stopped from claiming such benefit at a later stage."* It is therefore categoric that an exemption Notification benefit can be claimed and

allowed subsequently if eligible. This Tribunal in the case of **CIPLA Ltd. v. Commissioner of Customs, Chennai [2007 (218) E.L.T. 547 (Tri.-Chennai)]** has held that benefit of an exemption Notification not claimed at the time of import can however not be denied as it can be claimed at the appellate stage as well. There are a slew of case laws to this proposition of law - for instance **Zenith Computers Ltd. v. Commissioner of Customs, Goa [2017 (358) E.L.T. 1125 (Tri.-Mumbai)]**.

12. From the foregoing settled legal position, it is clear that the Ld.Commissioner(Appeals)'s argument, holding against the grant of exemption Notification benefit, at a belated stage to the importer is not correct and therefore cannot hold the fort. As long as the appellant is able to squarely meet the conditions prescribed in the Notification, granting benefit thereof cannot be denied to the appellant importer.

13. Since the assessments are provisional at this juncture and their finalization is still pending, we however are not going into the other related aspect of challenge to a provisional assessment order by way of appeal, which formed the basis of the second argument taken by the Ld.Commissioner(Appeals). It is quite clear that the same has been filed by the appellant by way of *ex abundanti* cautella.

14. Under the circumstances, the most appropriate course in the matter is to remand the case to the original authority directing them to examine the admissibility of the SAFTA Notification 99/11-CUS dated 09.11.2011, to the instant case and if admissible to not to deny the

same while carrying out the exercise of finalization of the impugned Bills of Entry.

15. The appeal is disposed of by way of remand with the aforesaid directions.

(Order pronounced in the open court on March 19, 2026.)

Sd/
(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/
(RAJEEV TANDON)
MEMBER (TECHNICAL)

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