ALO Law Office- IDT Tax I Arbitration I Litigation

Date: 12.06.2025

CESTAT Ahmedabad Quashes Duty Demand on MEIS/SEIS Scrip Imports

The Customs, Excise and Service Tax Appellate Tribunal (CESTAT), Ahmedabad, the appeals filed by Louis Dreyfus Company India Pvt. Ltd. and Narendra Forwarders Pvt. Ltd. have been allowed, offering significant clarity on the non-applicability of Education Cess (EC), Secondary and Higher Education Cess (SHEC), and Social Welfare Surcharge (SWS) where the Basic Customs Duty (BCD) is Nil under the MEIS/SEIS scrip-based imports.

This ruling reiterates the principle that when customs duty is exempted, any surcharge or cess linked as a percentage to that duty also becomes zero. The case carries serious implications for importers using duty credit scrips under the Foreign Trade Policy (FTP), who had been facing retrospective demands from Customs authorities.

Case Background

- **Appellant**: Louis Dreyfus Company India Pvt. Ltd.
- **Co-Appellant**: Narendra Forwarders Pvt. Ltd.
- **Respondent**: Commissioner of Customs, Kandla
- **Issue**: Whether EC, SHEC, and SWS can be validly debited from MEIS/SEIS scrips when BCD was Nil.

The Customs authorities demanded recovery of duties on the grounds that the debit of EC/SHEC/SWS from duty credit scrips was impermissible, and should have been paid in cash. It also invoked the extended

limitation period under Section 28(4) and imposed penalties under Sections 114A and 114AA of the Customs Act, 1962.

CESTAT's Key Observations & Findings

❖ Nil BCD Means Nil Cess

- The Tribunal reaffirmed that when the BCD is zero due to valid exemption notifications, any surcharge or cess calculated as a percentage of that BCD must also be zero.
- This principle is in line with the Bombay High Court's ruling in *La Tim Metal & Industries v. Union of India* and the Madras High Court ruling in *KTV Health Food Pvt. Ltd.*.

❖ Scrip Debit Is Valid Payment

- The Tribunal held that the debit of EC, SHEC, and SWS through duty scrips was accepted by the Customs EDI system, and hence, cannot be construed as suppression or misstatement.
- Importers cannot be penalized for using the system as designed, especially when the system permits debit of all applicable duties.

❖ Extended Period of Limitation Not Invokable

- Since the duty was assessed by the proper officer under Section 47 and no suppression or misdeclaration was established, the invocation of the extended limitation period under Section 28(4) was found unsustainable.

❖ Penalty on Customs Broker (Narendra Forwarders) Set Aside

- The Tribunal noted that no specific breach of Regulation 10 of the CBLR, 2018 was cited.
- Customs Brokers are not expected to advise clients on assessment unless specifically asked.
- Hence, penalty under Section 117 imposed on Narendra Forwarders was set aside.

Relevant Legal Precedents Referred

1. La Tim Metal and Industries Ltd. v. Union of India – 2022 (11) TMI 1099 (Bombay HC)
2. KTV Health Food Pvt. Ltd. v. Commissioner of Customs – 2022 (381) ELT 66 (Madras HC)
3. CJ Shah & Co. v. Commissioner of Customs, Mumbai – CESTAT Final Order A/85315-85316/2023
4. Tata Motors Ltd. v. Commissioner of Customs (Import), Raigad – 2023 (9) TMI 463
5. Virgo Suitings Pvt. Ltd. v. Commissioner of Customs, Mumbai-II – 2022 (12) TMI 228
6. Surya Roshni Ltd. v. Commissioner of Customs, Ahmedabad – 2022 (5) TMI 1108

Key Takeaways for Trade & Legal Fraternity

- Cess/Surcharge linked to exempted BCD cannot be levied separately.
- Use of duty scrips for such debits is legitimate, and not an indication of fraud.
- Extended period and penalty provisions cannot be applied without clear evidence of wilful evasion or misstatement.
- The decision safeguards importers against arbitrary retrospective recoveries by customs.

Conclusion: A Boost for Policy Certainty and Trade Ease

The CESTAT's ruling in favor of Louis Dreyfus and Narendra Forwarders serves as a judicial reaffirmation of statutory clarity and policy certainty in India's customs framework. The decision not only upholds lawful interpretation of FTP provisions but also protects honest importers and intermediaries from undue penalties and harassment.

This case reinforces the importance of consistency between trade facilitation systems (like EDI) and legal interpretations, emphasizing the need for a harmonized approach in policy implementation.

This Article has been written by Shri Ravi Shekhar Jha, Advocate Delhi High Court based on his interpretation of the law. He can be reached at his email id intelconsul@gmail.com or on his Mobile +91-9999005379.

Source: CESTAT Ahmedabad

Disclaimer

Write to us at office@aadrikaalaw.com

Tel: +91-11-4999 2707 I +91-9999005379

www.aadrikaalaw.com

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT AHMEDABAD

REGIONAL BENCH – COURT NO. 01

CUSTOM Appeal No. 10625 of 2023

[Arising Out Of KND-CUSTM-000-COM-01-2023-24 Dated-30.05.2023 Passed By Commissioner of CUSTOMS, Central Excise & Service Tax Appeals]

LOUIS DREYFUS COMPANY INDIA PVT LTD **.....Appellant**
8th Floor Tower A Building No.5
DLF Cyber City Phase-III
Gurugram, Haryana-122002

VERSUS

Commissioner of CUSTOMS-Kandla Customs **.....Respondent**
Office of The Commissioner of Customs,
Near Balaji Temple, Kandla
Kuchchh, Gujarat-3700210

WITH

CUSTOM Appeal No. 10624 of 2023

[Arising Out Of KND-CUSTM-000-COM-01-2023-24 Dated-30.05.2023 Passed By Commissioner of CUSTOMS, Central Excise & Service Tax Appeals]

NARENDRA FORWARDERS P LTD **.....Appellant**
Ground Floor Geochem House
Plot 125 Sector 8 Opposite
Hotel Sarovar Portico
Gandhidham, Kachchh, Gujarat-370201

VERSUS

Commissioner of CUSTOMS-Kandla Customs **.....Respondent**
Office of The Commissioner of Customs,
Near Balaji Temple, Kandla
Kuchchh, Gujarat-3700210

APPEARANCE:
Shri. T Viswanathan, Shri. Manish Jain, Shri. Ambreesh Pandya, Shri. Rahul Gajera, Ms. Shamita Patel, Ms. Shruti Khanna Advocates for the Appellant

Shri. Rajesh Nathan, Assistant Commissioner (AR) for the Respondent

CORAM: HON'BLE MEMBER (TECHNICAL), MR. RAJU
HON'BLE MEMBER (JUDICIAL), MR. SOMESH ARORA

FINAL ORDER NO. A / 10339-10340 /2024

DATE OF HEARING:31.01.2024

DATE OF DECISION: 07.02.2024

SOMESH ARORA

Appellants have filed the present appeal against a common Order-in-Original KND-CUSTM-000-COM-01-2023-24 dated 30.05.2023 (read with Corrigendum dated 13.07.2023) passed by the Ld. Commissioner of Customs, Kandla, being a common adjudicating authority appointed for a number of show cause notices issued from various customs houses. The appellants had imported goods against duty free scrips issued under the MEIS (Merchandise Exports from India Scheme) and SEIS (Service Exports from India Scheme). On importation, the appellants have paid the customs duties, consisting of BCD, Education Cess (EC), Secondary and Higher Education Cess (SHEC) and Social Welfare Surcharge (SWS) by debiting them in the duty scrip tendered at the time of import. The import of goods against MEIS and SEIS are governed by Notification No.24/2015-Cus, dated 08.04.15 and Notification No. 25/2015 - Cus dated 08.04.2015 respectively.

2. The contention of the department is barring the basic customs duty, other duties namely EC, SHEC and SWS ought not to have been debited in the duty credit scrips According to the department, these duties ought to have been paid in cash. It is the case of the department to invoke the extended period, that the appellants have deliberately debited these duties from the duty free scrips with an ulterior motive to evade the payment of duties. The appellants have also not informed the department above the debits made in the scrips, of these duties. In respect of duty demand pertaining to EC and SHEC, in appellants' own case involving identical factual matrix, Hon'ble CESTAT, Mumbai, vide Final Order No. 87149/2023 dated 16.11.2023 observed that any cess collectible as percentage of duty liability could not be computed in the absence of duty liability. The Hon'ble CESTAT, Mumbai placed reliance upon the judgment of Hon'ble High Court of Bombay in the case of La Tim Metal and Industries Vs. Union of India - 2022 (11) TMI 1099. Relevant portion of the above Order is reproduced herein below:

> *"In terms of the decision of Hon'ble High Court of Bombay in re LA Tim Metal & Industries Limited, it would appear that the proposal for recovery itself was flawed inasmuch as any cess collectible as percentage of duty liability, and which is exempted thereof under any notification, could not be computed in the absence of any duty liability. It is also on record that circular no. 3/2022 dated 1st February 2022 of Central Broad of Indirect Taxes & Customs (CBIC) relates to 'social welfare surcharge' and it is quite likely that lack of specific reference to this surcharge precluded acceptance of the submission in the impugned order."*

2.1 It is further submitted that in respect of demand of EC and SHEC in identical facts and circumstances, in a recent judgment in the case of CJ Shah & Co. vs. Commissioner of Customs, Mumbai, vide, Final Order No. A/85315-85316/2023, Hon'ble CESTAT, Mumbai set aside the demand of EC/SHEC. In this decision, reliance was placed upon the judgment of Hon'ble Madras High Court in the case of KTV Health Food Pvt. Ltd. vs. Commissioner of Customs, Tiruchirapalli, 2022 (381) ELT 66 (Mad.). The High Court, after considering Circular No. 02/2020-Customs dated 10.01.2020 has observed that past cases should not be disturbed and payments through debit in duty credit scrips should be accepted as it would equally amount to payment of duties.

2.2 There is also the decision of Bombay High Court in La Tim Metal and Industries (Supra) which has relied upon Central Board of Indirect Taxes and Customs (CBIC) Circular No. 3/2022-Cus. dated 01.02.22 at para 4 which has clarified that the amount of SWS payable would be 'Nil' in cases where the aggregate of customs duties is zero, even though SWS has not been exempted. Relevant portion of the judgment is reproduced below:

> "2. Petitioner is a trader engaged in trading of colour coated coils and profile sheets. Petitioner filed Bill of Entry No.6532249 dated 18th January 2020 and Bill of Entry No. 2485287 dated 17th September 2022. Petitioner thereafter also filed 12 other Bills of Entry referred to in paragraph no.9 of the petition. It is petitioner's case that in each of the Bill of Entry, petitioner claimed and was allowed exemption under Notification No. 24/2015-Customs dated 08.04.2015. The proper officer assessed zero/nil Basic Customs Duty (BCD) and Additional

Customs Duty (ACD). The proper officer, however, notionally assessed SWS, i.e., Social Welfare Surcharge and collected amount in cash from petitioner."

....

"6. Mr. Mishra also relied upon the Circular dated 10th January 2020. Mr. Shah submitted and rightly says after those judgments and the circular relied upon by Mr. Mishra the Department of Revenue (Tax Research Unit), Ministry of Finance, Government of India had issued Circular dated 1st February 2022 where it has clarified that where the SWS applied is at percentage of the aggregate of customs duty payable on import of goods and not on the value of imported goods, the SWS shall be computed on the percentage of value equal to Nil (as aggregate amount of customs duty payable is zero). For ease of reference, the Circular dated 1st February 2022 is scanned and reproduced herein below :-

....

....

7. Mr. Mishra also submitted that petitioner's claim about assessment and recovery of amounts in the guise of Social Welfare Surcharge on the goods cleared without payment of BCD is factually incorrect as BCD was chargeable at 7.5% on the goods imported and the same was paid/debited by using the Merchandise Export from India Scheme (MEIS) Scrips issued under Notification No.24/2015-Customs dated 08.04.2015. In response Mr. Shah relied upon General Exemption No.162 by which the Central Government, exercising its powers under Section 25 of the Customs Act, has exempted goods when imported into India against duty credit scrip from the whole of the customs duty leviable thereon and the whole of the additional duty leviable thereon under the Customs Tariff Act. The fact that the goods imported under the concerned Bill of Entry has been cleared with Nil BCD is not disputed.

8. Therefore, in our view if the SWS is payable at 10% on BCD but where the BCD is Nil, SWS shall also be computed Nil."

...(Emphasis Supplied)

3. In the present case, as is evident from the bill of entry the amount of BCD levied and collected 'ZERO' by virtue of the exemption governing the duty free scrips. Since the BCD levied and collected is ZERO, the other duties viz., EC, SHEC and SWS levied and collected as a per centage of the BCD, should have also been ZERO or 'Nil'.

4. In fact, in the present case, the appellants have debited the other duties in the scrips, when it is not required to do so. Hence, the appellants

are entitled to refund of the amount debited in the scrips. It is prayed that the Hon'ble Tribunal may direct the department to refund the same, as has been held by the Hon'ble Tribunal in the case of Virgo Suitings Pvt. Ltd. vs. Commissioner of Customs, Mumbai-II, 2022 (12) TMI 228-CESTAT Mumbai and Surya Roshni Ltd. Vs. Commissioner of Customs, Ahmedabad, 2022 (5) TMI 1108-CESTAT Ahmedabad.

5. Reliance is also placed on the decision of the Hon'ble CESTAT Mumbai in the case of Tata Motors Ltd. vs. Commissioner of Customs (Import), Raigad, 2023 (9) TMI 463-CESTAT Mumbai para 11.2, wherein it was observed that when the BCD is wholly exempt vide MEIS Notification, the calculation of SWS @ 10% of the BCD would also be 'ZERO' only.

5.1 The Impugned Order at para 19 wrongly confirms the demand by invocation of extended period of limitation under Section 28 (4) of Customs Act, 1962 ("Act"). Under Section 47 of the Act, out of charge for these bills of entry were granted after the proper officer was satisfied that import duties have been paid by the importer. Passing of an order under Section 47 is not an empty formality. That being said, there is no case for invocation of extended period in the present case. The entire duty demand in all the SCNs have been confirmed by invocation of extended period. No part of the duty demand falls within the normal period of limitation.

5.2 The Impugned Order at Para 22 confirms the imposition of penalty under Section 114 A of the Act observing that the cesses were paid by debiting the MEIS scrips were recoverable under Section 28 (4) of the Act. The appellants submit that when the EDI system itself permitted the appellants to pay the cess using the scrip. there could not have been suppression of facts etc. Therefore, penalty under Section 114A of the Act is not sustainable, especially when the duty demand is otherwise time barred.

5.3 The Impugned Order at para 23 confirms imposition of penalty under Section 114AA of the Act with the observation that the appellants have

indulged in wilful mis- statement and suppression and the whole case would not have come to light if audit was not conducted. The appellants paid the Cesses by debiting MEIS/SEIS Scrips since the EDI system automatically grants exemption from all duties and debits the amount equal to all the duties payable. Further none of the situations mentioned in Section 114AA exists in the present case.

6. The scrips were valid for import and had adequate credit left to cover the imports. Hence, Section 114AA is not at all invokable. Section 114AA was introduced by the Taxation Laws (Amendment) Act, 2006 with effect from 13.07.2006. Further, as per the 27th Report of the Standing Committee of Finance (2005-06) on whose recommendation this Section was introduced, applies to fraudulent export transactions only as has also been held in the case of Interglobe Aviation Ltd. vs. Principal Commissioner of Customs, Bangalore, 2022 (379) ELT 235 (Tri-Bang.)

7. Learned AR on the other hand relies upon the Order-in-Original seeking to justify various demands on the ground that payment through MEIS (Merchandise Exports from India Scheme) scrips and SEIS (Service Exports from India Scheme) scrips was not allowed the same was required to be paid in cash in respect of Education Cess(EC) and Secondary and Higher Education Cess (SHES) etc. He relies upon the decision in the matter of 2020 (1) TMI 2012 – MADRA HIGH COURT in the case of GEMINI EDIBLES AND FATA INDIA PVT. LTD VS. UNION OF INDIA. He also reiterates various findings of the lower authority and that stated decision of UNICORN INDUSTRIES was duly considered by the Commissioner while upholding demand, interest and penalty.

8. Considered, we find that the appellants before us have submitted a legal ground of non sustainability of cess, when basic customs duty itself was Nil and the impugned cess were required to be discharged as a percentage of aggregate of customs duty. We find that the decision of

UNICORN INDUSTRIES dealt with the learned adjudicating authority stand referred to a Larger Bench of the Apex Court by virtue of matter reported in 2022 (1) TMI 615-SUPEREME COURT . The period involved in this case is from June-2017 to January-2018. We find that the decision of UNICORN INDUSTRIES Vs. UNION OF INDIA as reported in 2019 (370) ELT 3 (S.C) was clearly distinguishable as in that case the duty as an NCCD was being levied as a separate ad valorem duty under different legislation and was not required to be worked out on the basis of a 'Nil' Excise Duty which in that case was specifically exempted for Area Based Exemption Notification. However, in the instant case as has been upheld in the matter in their own case as reported in 2023 (11) TMI 972-CESTAT MUMBAI which followed decision of La Tim Metal and Industries Vs. Union of India and others as reported in 2022 (11) TMI 1099- BOMBAY HIGH COURT, it has been held that when cess as in this case was collected as percentage of duty liability and which is exempted under any notification the cess could not be computed in the face of Zero duty liability. We are reproducing below para 7 and 8 of the decision:

> *"7. It would appear that demand had been raised for discharge of 'education cess' and 'secondary & higher education cess' that had been debited against scrip issued under the Merchandise Exports from India Scheme (MEIS) in the Foreign Trade Policy (FTP). It would also appear that the objection was primarily to debiting of the scrip for discharge of cess in the absence of specific provision in the policy for such payment or in the relevant notification. It would also appear that the impugned order have not taken note of the decisions of the Hon'ble Bombay High Court in re LA Tim Metal & Industries Limited.*
>
> *8. In terms of the decision of Hon'ble High Court of Bombay in re LA Tim Metal & Industries Limited, it would appear that the proposal for recovery itself was flawed inasmuch as any cess collectible as percentage of duty liability, and which is exempted thereof under any notification, could not be computed in the absence of any duty liability. It is also on record that circular no. 3/2022 dated 1st February 2022 of Central Broad of Indirect Taxes & Customs (CBIC) relates to 'social welfare surcharge' and it is quite*

likely that lack of specific reference to this surcharge precluded acceptance of the submission in the impugned order. The Hon'ble High Court of Madras in KTV Health Food P Ltd v. Commissioner of Customs (Preventive), Tiruchirappalli [2021 (10) TMI 119 - MADRAS HIGH COURT] had held that

"25. When that being the statutory declaration made by the Act of Parliament ie., The Finance Act, 2004 and 2007, we cannot have any different view to state that there were different components. What is the duty to be imposed on the imported goods first be calculated and accordingly, 2% of education Cess and 1% of secondary and higher education cess shall be levied and imposed. Hence, when the importer pay-the duty, he shall also pay the cess which become part and parcel of the duty of customs. That is the reason why the total amount of ₹ 22,88,86,212/- were paid by the petitioner as duty of customs as well as education cess through the scrips of MEIS. Having accepted the same, though subsequently, in view of the notifications, if the Customs Department come forward to take a stand that the mode of payment of the education cess even though being part of the customs duty, shall not be on the same line by using the scrip, such kind of payment can be insisted upon, provided only in future cases and not in the cases where it has already been paid and where the goods have been cleared. This was exactly been made in execution by Circular No: 2/2020 dated 10.01.2020

26. When such a circular was issued by the Customs Department and the same having been implemented in respect of vanous people like the petitioner, the benefit of the said circular cannot be denied to the petitioner on the alleged reason that, the education cess or the higher and secondary education cess being a different component cannot be treated as customs duty or additional customs duty and therefore, the benefit conferred under Clause 11 of the said circular cannot be made available to the petitioner. The said view taken by the respondent / Customs Department, in the considered opinion of this Court, in view of the aforestated legal position, is untenable and unacceptable."

8.1 We thus, find that the basis of collection of levy of N.C.C.D and cess are different, with former being ad-valorem and latter being on aggregate of customs duty.

8.2 In view of foregoing, we hold a view that when aggregate of customs duty is 'Nil', Cess etc based on such aggregated duty will also be 'Nil' and could not have been collected. However, on the preposition whether such Cess could not have been debited from scrips and was require to be discharged by paying in cash. We agree with the decision of GEMINI EDIBLES AND FATA INDIA PVT. LTD VS. UNION OF INDIA, as reported in 2020 (1) TMI 2012 – MADRA HIGH COURT, which disallowed such debiting to be done. Same appears justified, as various export schemes are

contested under W.T.O laws, if subsidies enter in exports even under the garb of saving interest factor. Therefore specific provision to allow such dispensation is warranted. We also find that Learned Adjudicating Authority wrongly applied decision of Unicorn Ltd. (cited supra) and therefore did not examine the proposition of 'Nil' total customs duty will mean 'Nil' cess in relation to relevant notification as taken, as a ground by the appellant. We have agreed with the proposition that the Cess based on 'Nil' total duty has to be 'Nil' if machinery provision are clothed in such language and do not make levy an independent ad velorem duty. But same needs to be examined in detail to the specifics of the case including for C.V.D/ I.G.S.T component, if any during impugned period and language of the statutory provision relied upon by the appellant. Same therefore is remanded back. Learned Commissioner will need to thoroughly consider on remand the aspect of cess coming into play only if aggregate of customs duty is not 'Nil' as is the requirement of statutory provision. Other question relating to limitation and penalty shall be decided accordingly, considering quantum, legality of issues and malicious intention objectively.

9. Appeal of LOUIS DREYFUS COMPANY INDIA PVT LTD allowed by remand.

10. However, as far as penalty under Section 117 on appellant M/s. NARENDRA FORWARDERS P LTD is concerned. It is noted that breach of sub-regulation of Regulation 10 has not been mentioned, further CHA is not required to advise on assessment aspects to its clients unless solicited. Again there is nothing on record to show that he has been subjected to action under C.B.L.R, 2018. Looking at all facts and legalities of the matter and also that we find that when specific penalty under C.B.L.R for violation

of any Regulation exists, same cannot be relegated to residual provisions of penalty under Section 117 of the Customs Act, 1962. Same is therefore set aside and appeal of NARENDRA FORWARDERS P LTD is allowed.

(Pronounced in the open Court on 07.02.2024)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)

Prachi