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CESTAT Chennai Dismisses Revenue Appeal in Target Plus Scheme Dispute

The Customs, Excise & Service Tax Appellate Tribunal (CESTAT), Chennai Bench – Court No. III has dismissed the Revenue’s appeal against M/s. Bharat Industrial Enterprises Ltd. (BIEL). The tribunal upheld the importer’s claim for duty exemption under the Target Plus Scheme (TPS), marking a significant judgment on the scope of “actual user” and “broad nexus” in post-export incentive schemes.

Case Background

- **Respondent:** M/s. Bharat Industrial Enterprises Ltd. (BIEL), New Delhi
- **Appellant:** Commissioner of Customs (Airport), Chennai
- **Dispute:** Use of Target Plus Licences to import plastic granules (e.g., HDPE, LDPE, PP) through high seas sales, where the imported goods were allegedly not used in BIEL’s exported product (rice).
- **Revenue’s Claim:** Misuse of TPS benefits due to lack of actual use of imported plastic granules in the exported rice products; alleged violation of Para 3.7.6 of FTP 2004–09, Notification No. 32/2005-Cus., and Customs Circulars 21/2007 and 45/2007.

Key Legal Issues

1. Is actual usage of imported material in the exported product mandatory under the TPS?
2. Can plastic granules used in packing material for rice be considered to have a ‘broad nexus’ with the export product?

3. Whether job worker processing qualifies as ‘own use’ under the scheme?

Tribunal’s Analysis

- **No Export Obligation Under TPS:** The Tribunal reaffirmed that TPS is a post-export incentive scheme. Therefore, no future export obligation attaches to goods imported under TPS.
- **Broad Nexus Established:** Relying on judgments of the Delhi High Court (Indian Exporters Grievance Forum) and Bombay High Court (Essel Mining), the Tribunal emphasized that the “broad nexus” condition allows for input diversity within the product group.
- **Use of Job Workers Permitted:** The Bench agreed with the clarification from DGFT (dated 10.09.2007 and 25.09.2007) which permitted job work conversion, clarifying that imported inputs may be processed outside the importer’s premises, and that sale of resultant products is permissible.
- **No Evidence of Misuse or Suppression:** The department failed to submit any material evidence contradicting the importer's claim that the plastic granules were used in packaging the exported rice.
- **Critique on Revenue’s Appeal Filing:** The Tribunal also criticized the Revenue for filing a casually compiled appeal with unorganized, marked-up documents, and directed CBIC to issue instructions for proper documentation before the tribunal.

Final Verdict

“We do not find any lacunae in the Commissioner’s Order. There is no reason to interfere. The appeal by the Revenue is dismissed.”

Implications

This judgment is a clear reiteration that:

- Post-export incentive schemes like TPS are not conditional upon actual use of imports in further exports.
- Broad nexus interpretation gives flexibility to importers for strategic sourcing of inputs.
- Job work does not negate the ‘own use’ condition under TPS or similar schemes.
- Procedural rigor is expected from customs authorities while filing appeals before quasi-judicial bodies.

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 Chennai

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**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT NO. III

Customs Appeal No. 60 of 2009

(Arising out of Order-in-Original No.360/2008 dated 16.12.2008 passed by Commissioner of Customs (Airport), Integrated Cargo Complex, Meenambakkam, Chennai 600 027.)

**Commissioner of Customs,
(Airport)**

Integrated Cargo Complex,
Meenambakkam,
Chennai 600 027.

....Appellant

Versus

M/s.Bharat Industrial Enterprises

BP-109, Pitampura,
New Delhi-110 034.

... Respondent

APPEARANCE:

Ms. Anandalakshmi Ganeshram, Authorized Representative
for the Appellant

Shri S. Murugappan, Advocate for the Respondent

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)

FINAL ORDER No. 40587/2025

DATE OF HEARING: 09.12.2024

DATE OF DECISION: 06.06.2025

Per: Shri P. Dinesha

This appeal is filed by the Revenue, challenging the impugned Order-in-Original No. 360/2008 dated 16.12.2008 whereby, the Commissioner of Customs has extended the benefit of Notification No.32/2005-Cus. dated 08.04.2005 to the importer and thereby dropped all the proceedings contemplated *vide* Show Cause Notice. Before proceeding to consider the merits of the appeal, we find it more appropriate to refer to the appeal papers filed by the Revenue: in most of the pages we find lot of markings, underlining, highlighting, extra remarks written on the margins and the same has been filed in a very casual manner by the Revenue which we to take serious note of. The pages are found not to be properly/fully numbered and bound. The same reflects the very casual approach of the Appellant in filing the present appeal which we cannot accept. This is because the said markings/highlights, underlines, remarks on the margins, etc. are intended to lead or mislead the Bench, which is not expected from either of the parties before us. Our above observations are therefore to be sent to the CBIC to issue proper

instructions for filing proper Appeal papers/documents before the CESTAT.

2 Brief facts leading to this appeal, relating to the export by the assessee is concerned, the same has been found as in Statement of Facts, as under:

M/s. Bharat Industrial Enterprises Ltd. (in short **BIEL**) the Respondent herein, never imported plastic granules prior to importation of the same under Target Plus Scheme (in short **TPS**). M/s. BIEL are basically exporters of Rice. They had obtained Target Plus Licenses on the strength of their exports of rice. They have purchased various grades of plastic granules from the original importers on High Sea Sales basis and cleared from Customs by availing benefit of exemption from payment of Customs duty under Target Plus Scheme vide Notification No. 32/2005-Cus dated 08.04.2005 by submitting Transfer Release Advices issued by Custom House, Mumbai, against valid Target Plus Licenses issued by Director General of Foreign Trade which were registered in Mumbai Port. M/s. BIEL have executed bonds before the Customs authorities at the port of registration binding themselves to comply with the conditions of the

Notification No. 32/2005-Cus dated 08.04.2005 in respect of the goods covered by the said licences. Subsequent to their imports, Directorate of Revenue Intelligence, in pursuance of intelligence to the effect that certain exporters of agro, marine and ready-made garments were indulging in mis-use of Target Plus Scheme (TPS) by utilizing the licences obtained under the Target Plus Scheme for import of various grades of plastic granules like High Density Polyethylene (HDPE), Low Density Polyethylene (LDPE) Linear Low Density Polyethylene (LLDPE), Polypropylene, etc.

3. They have admitted that they had never imported plastic granules earlier and that they have never used the plastic granules/the resultant products in any of the products exported by them so far. Even the import consignments of M/s.BIEL made under TPS have all been procured from other importers on High Seas Sale/in-bond transfer basis and the same never reached the premises of M/s.BIEL where the export products were produced/processed. Further M/s. BIEL have continued to export the same products even after procurement of plastic granules under TPS and they have not utilized the

said imported goods as inputs for such exports. Thus, it appears that the goods imported have never been used by them in relation to their export product and do not constitute as input for the export products nor do they have a 'broad nexus' with the products exported. Thereby the imports made by utilizing TPLS appear to be in violation of the provisions of Para 3.7.6 of the Foreign Trade Policy 2004-2009, Para 3.2.5 (II) of the Handbook of Procedures, Notification No. 32/2005-Cus dated 08.04.2005 and Circular No. 21/2007-Customs dated 08.05.2007 and 45/2007-Cus dated 19.12.2007.

4.1 The Original Authority holds that nowhere the import policy or the relevant Customs Notification stipulates that the material imported should have actually been used in the manufacture of the product exported, no actual user conditions in the product exported can be introduced by the authorities without authority of law, para 3.2.5 (II) of Hand book of Procedure as on 08.04.2005 specifically states that goods allowed to be imported under this Scheme shall have a broad nexus with the products exported. For the purpose of import entitlements under this Scheme, 'broad nexus' would mean goods imported

with reference to any of the product groups of the exported goods within the overall value of the entitlement certificate. Thus what is clear from the import policy is that refers to the goods imported with reference to any of the product groups of the export goods; in other words, goods required for one product group cannot be imported when the product exported falls under another product group.

4.2 It is not the case of the department that the plastic granules are not required for manufacture of packing material for the same product group in which 'rice' falls. Thus, the items actually imported will fall within the definition of inputs for manufacture and packing of export products within the same "product group"; since export obligation has already been discharged on the basis of which the Target Plus certificate has been issued, there is no requirement for further exports by using the imported material. Hence what has to be seen is whether the imported materials have been used for further manufacture by licence holder. In the present case, the materials have been used by the licence holders. The only difference is that instead of processing them in their own premises they have availed the facility of "Job workers".

The Commissioner after detailed analysis, accepts the explanation and consequentially drops all the proposed demands against the importer. The present appeal therefore is filed by the Revenue being aggrieved by the above order of the Commissioner of Customs (Airport), Chennai.

5. We have heard Ms. Anandalakshmi Ganeshram, Ld. Assistant Commissioner for the Appellant-Commissioner and Shri S. Murugappan, Ld. Advocate for the Respondent, we have carefully considered the rival contentions in the context of the legal provisions/provisions under FTP. The only issue that arises for our consideration is whether the Commissioner is justified in allowing the respondents claim for the benefit under TPS?

6.1 We find that by clarification dated 10.09.2007, the DGFT has clarified as under:

"..... By implication, such conversion can be carried out in a jobbing unit. Upon conversion into a possible resultant product, actual user condition is fulfilled. As there is no export obligation attached to utilisation of TPS benefits,

beneficiary is permitted to sell the resultant products (made from converting the inputs imported under the scheme) in the market which could be either domestic market or international market as per beneficiary's choice. However, sale of resultant product to conversion unit shall not be permitted".

6.2 The above clarification was further clarified by the DGFT vide letter dated 25.09.2007, which is extracted in the impugned order, the same is reproduced here in below for further clarity:

"This observation on "sale of resultant product" to conversion units is not correct. In fact, the correct position is that sale of imported inputs to conversion units is not permitted. Nevertheless resultant products can be sold to conversion units, after payment of state and central duties, like excise duty, VAT, CST etc., as applicable to the resultant product. This is so as after conversion, the title of the goods belongs to the importer and the sale of the resultant products by the importer in open market is freely allowed. Therefore, sale of the resultant product is also permitted to the conversion unit, as the same would obviously take place after payment of applicable duties on the resultant product".

That apart it is also clear that under the TPS which is basically a port-export incentive, the actual user condition does not contemplate compulsory utilization of the inputs

imported in the manufacture of products to be exported in future.

7. Admittedly, TPS is basically a post-export incentive/reward scheme where, according to us, the scope of actual user is very limited; to put it in very simple words, there is no export obligation on the part of the importers.

8. At this juncture it is relevant to refer to our observations in the case of **Commissioner of Customs (Airport & Aircargo) vs. Sunstar Overseas Ltd.** (Final Order No.40524/2025 read with Corrigendum dated 27.05.2025) wherein following observations having made by the Bench

The Target Plus Scheme was formulated in Chapter 3 of the FTP for 2004-09; the Scheme came to be discontinued in 2006. Paragraph 3.7.1 of the same provides that the object of the scheme was to accelerate growth in exports by rewarding star export houses who have achieved a quantum growth in exports. Para 3.7.6 of the FTP permitted the utilization of the duty credit by effecting imports. The TPS is thus an additional incentive given to accelerate the growth of exports, FTP is referable to the provisions of Section 4 and 5 of the FTDR.

14.1 The Explanation to the Notification defines the term "goods" as follows :-

“goods” means any inputs, capital goods including spares, office equipment, professional equipment, office furniture and agricultural products listed in Chapters 1 to 24 of the First Schedule to said Customs Tariff Act as may be notified by DGFT from time to time, which are freely importable under the Foreign Trade Policy.

14.2 Further, the take away from the decisions of Hon’ble Delhi High Court in **Union of India Vs Indian Exporters Grievance Forum** (supra) and the Hon’ble Bombay High Court in **Essel Mining & Industries Ltd.** (supra) is as follows :

- (i) Para (3.7.6.) of the FTP, by itself, does not indicate that the imported goods should constitute inputs in the goods exported. It is not possible to read para (3.7.6.) restrictively. (Delhi HC)
- (ii) Given the objective of providing an incentive to exporters, para (3.7.6.) of the FTP can reasonably be interpreted to require an exporter to show that the goods imported should have broad nexus with reference to any product group of the exported groups within the overall value of the entitlement certificate. The word ‘nexus’ obviously refers to a larger group of similar goods and not the very exported goods itself. (Delhi HC)
- (iii) Reading paragraph (3.7.6.) of the FTP, it is evident that an eligible exporter is entitled to utilize duty

credit in the import of any inputs, provided (i) they are freely importable and (ii) they are imported by importers for their own use. Para (3.7.6.) does not stipulate that the goods which are imported must be inputs for the manufacture of the export product in relation to which the benefit of the TPS is claimed. What para (3.7.6.) requires is that the goods which are imported by the eligible exporter must be inputs and the inputs must be imported “for their own use”, meaning thereby the use of the importer himself. (Bombay HC).

- (iv) Para (3.7.6.) on its plain construction does not incorporate a requirement that the goods which are imported as inputs must find physical incorporation in the export products in relation to which the benefit of the TPS is claimed. In fact, even para (3.2.5.) of the Handbook of Procedures, which spells out the meaning of the broad nexus requirement, does not impose such a condition. (Bombay HC).

15. What emerges from the above rulings wherein para 3.7.6 of FTP in question has been interpreted to the effect that the policy provisions do not restrictively require the assessee to prove that the goods imported by them were usable in the very products which were exported by them for TPS certificates.

16. From a cumulative reading of both paras of FTP, the reference ‘product groups’ has been liberally interpreted by the constitutional courts in the case of in **Union of India Vs Indian Exporters Grievance Forum** - 2013 (290) ELT 481 (Del.) and in **Essel Mining & Industries Ltd. Vs Union of India** - 2011 (270) ELT 308 (Bom.). The same however,

would cover a situation, like the present case on hand, is to be considered. PP granules were imported which were converted into plastic bags/inner layers of bags that were claimed to have been used as a 'packing material' for Rice that was exported. So, 'a pound of flesh' could never be without 'a drop of blood' and hence, there is a possibility that the PP granules would belong to the genus, if not the species. Hence, we have to accept the reasoning given in the impugned order that the packing materials used for packing the export product were mentioned in the Shipping Bills for the year 2004-05, which were also furnished before the Adjudicating Authority. Based on an overall analysis, the Original Authority has come to the conclusion that the twin conditions have been fulfilled by the assessee and that there was no material on record suggesting the violation of those twin conditions. Even before us, the Revenue has not placed any supporting evidence in this regard, other than trying to build their case on mere arguments.

17. In view of the above, we do not find any lacunae in the impugned order and hence, we do not find any reasons to interfere with the same.

9. In view of the above order, since we do not find any actual difference, we do not see any reasons to interfere with the impugned order of the Commissioner of Customs and hence we dismiss the Revenue's appeal.

(Order pronounced in open court on 06.06.2025)

(M. AJIT KUMAR)
Member (Technical)

(P. DINESHA)
Member (Judicial)