



## ***ALO Law Office- IDT Tax | Arbitration | Litigation***

**Date: 04.07.2025**

### **CESTAT Chennai Rules Production Norms Can't Justify Excise Demand Without Proof**

The Customs, Excise and Service Tax Appellate Tribunal (CESTAT), Chennai has delivered a major relief to M/s Adsorbent Carbons Pvt. Ltd., Tuticorin, by dismissing the Revenue's appeal and allowing the assessee's cross appeals. The Tribunal found no basis for the allegations of clandestine removal of Granulated Activated Carbon (GAC) and held that duty demands based on unverified production norms were unsustainable.

#### **Case Background**

- The appellant manufactures Granulated Activated Carbon from coconut shells.
- The case arose from a series of show cause notices (SCNs) alleging that the assessee failed to maintain proper production records, particularly absorption capacity data, as required under Rule 10 of the Central Excise Rules, 2002.
- The department alleged clandestine removal, based on assumptions from norms laid down by the Coconut Development Board.
- Original demands of over ₹32 lakh in Central Excise Duty along with interest and penalty were confirmed in 2016.
- Later, fresh demands were raised for subsequent periods.

#### **High Court Intervention**

In 2021, the Madras High Court, in [2021 (377) ELT 68 (Mad.)], ruled that:

“Duty should be levied based on actual production/removal of goods, not notional norms suggested by the Coconut Development Board.”

Following this, the adjudicating authority reassessed the matter and found:

- Proper stock records were maintained
- Verified closing stock matched actual production
- No evidence of clandestine removal

Consequently, the Commissioner dropped all proceedings in January 2022, which led to the Revenue filing an appeal before CESTAT.

### **Tribunal’s Key Observations**

1. **Verification Report Accepted:** The Commissioner acted as per High Court directions by seeking a verification report from the jurisdictional officer, which found no irregularity.
2. **Absence of Evidence:** No contrary evidence was presented by the Revenue to prove duty evasion.
3. **Higher-than-Benchmark Yield:** The actual production yield was found to be 38.36%—higher than both:
  - The Coconut Board’s estimated benchmark (33.33%), and
  - The Deputy Commissioner’s field study (26.43–29.19%)
4. **No Allegation of Duty Non-Payment:** There was no claim that duty was unpaid on the recorded clearances.
5. **Finality of Earlier Tribunal Order:** Since both parties accepted the earlier Tribunal remand order, the scope of further dispute was limited to factual verification.

### **Final Outcome**

- Revenue's appeal dismissed (Appeal No. E/40286/2022)
- Assessee's cross appeals allowed (Appeal Nos. E/41027–41030/2016)
- Original demand and penalties set aside with consequential relief

### **Legal Significance**

This ruling reinforces key principles:

- Excise demands must be based on actual evidence, not notional yield assumptions.
- Assessee cannot be penalized for production efficiencies that exceed normative benchmarks.
- Proper maintenance of records and verifiable stock balances protect taxpayers from false allegations of evasion.

## Conclusion:

The CESTAT Chennai's verdict underscores the importance of factual verification in excise matters and offers a strong precedent against arbitrary demands based on theoretical yield assumptions. This judgment safeguards manufacturers from regulatory overreach and affirms the primacy of due process.

*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](mailto:intelconsul@gmail.com) or on his Mobile +91-9999005379.*

**Source: CESTAT Chennai**

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

REGIONAL BENCH - COURT No. III

**(1) Excise Appeal No.41027 of 2016**

(Arising out of Order-in-Original Nos.22-28/CE/COMMR/2016 dated 07.01.2016 passed by the Commissioner of Central Excise, Central Revenue Building, NGO - 'A' Colony, Tirunelveli 627 007)

**M/s.Adsorbent Carbons Private Limited .... Appellant**  
C-92, SIPCOT Industrial Estate,  
Tuticorin 628 008.

*VERSUS*

**The Commissioner of GST &  
Central Excise,**

Central Revenue Building,  
NGO 'A' Colony,  
Tirunelveli 627 007.

**... Respondent**

**WITH**

**(2) Excise Appeal No.41028 of 2016 (Absorbent Carbons Pvt. Ltd. Vs CGST & Central Excise, Tirunelveli)**

**(3) Excise Appeal No.41029 of 2016 (Absorbent Carbons Pvt. Ltd. Vs CGST & Central Excise, Tirunelveli)**

**(3) Excise Appeal No.41030 of 2016 (Absorbent Carbons Pvt. Ltd. Vs CGST & Central Excise, Tirunelveli)**

(Arising out of Order-in-Original Nos.22-28/CE/COMMR/2016 dated 07.01.2016 passed by the Commissioner of Central Excise, Central Revenue Building, NGO - 'A' Colony, Tirunelveli 627 007)

**(4) Excise Appeal No. 40286 of 2022 (Commissioner of Customs (Preventive), Trichy Commissionerate, Vs Absorbent Carbons Pvt. Ltd.) [with E/CO/40173/2022-by Assessee]**

(Arising out of Order-in-Original No.MDU-CEX-COM-01 to 13-2022 dated 21.01.2022 passed by Commissioner of CGST & Central Excise, Central Revenue Buildings, Bibikulam, Madurai 625 002.)

**APPEARANCE :**

Shri S. Muthuvenkatraman, Advocate for the Assessee  
Shri Anoop Singh, Authorized Representative for the Revenue

**CORAM :**

**HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)**  
**HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)**

**FINAL ORDER Nos.40693-40697/2025**

**DATE OF HEARING : 28.01.2025**  
**DATE OF DECISION :03.07.2025**

**Per: Shri P. Dinesha**

All the four appeals involve a common issue arising out of different impugned orders; hence with the consent of both sides, all these appeals were heard together and are being disposed of by this common order.

2. Brief facts are that the Appellant-Assessee procures Coconut Shells which are subjected to heating process to generate Granulated Activated Carbon (GAC, for short) which is sold. For this purpose, granulated carbonized coconut shell charcoal / granulated charcoal / coconut shell charcoal are procured indigenously from unorganized sector

and also imported duty-free. There is no dispute regarding the processes involved; the case of the Revenue is that since the quality of GAC was based on its absorption capacity, the assessee did not maintain month wise daily stock account based on the absorption capacity, wastages and other losses as required under Rule 10 of the Central Excise Rules, 2002 (CER) and this apart, even the invoices raised by the Assessee for DTA clearances as well as export did not have the details of absorption capacity of GAC cleared by them and therefore Central Excise duty was required to be demanded under Section 11A (1) of the Central Excise Act, 1944 along with interest and penalty under 25 of Central Excise Rules, 2002.

3. The above resulted in issuance of a bunch of Show Cause Notices covering various periods as the Revenue had entertained a doubt that the assessee did not maintain stock accounts/ register to find correlation between the input-output ratio i.e. actual raw materials consumed, GAC produced, wastages / loss generated in the production process etc. as to cover up and thereby evade payment of duty.

3.1 It appears that the Assessee filed its reply; however, not satisfied with the same, the Adjudicating Authority proceeded to confirm the duty as proposed in the SCNs wherein even the clandestine removal was alleged.

3.2 Aggrieved by the demands on the alleged clandestine removal, it appears that the Assessee preferred appeals before the Tribunal and vide Miscellaneous Order No.73/2011 dated 17.02.2011, the Tribunal directed the department to verify the authenticity of letter issued by the Deputy Director, Coconut Development Board, Kochi on 06.09.2006. In terms of the above directions, it appears that the Adjudicating Authority recalculated the demand of duty at a substantially reduced amount of Rs.32,31,597/- which was incidentally based also on a field study verification report dated 07.04.2011 by the Deputy Commissioner of Central Excise, Tuticorin. The above report appears to have been placed before the Tribunal vide a report dated 18.09.2012 by the Commissioner of Central Excise, Tirunelveli, consequent to which, the Tribunal vide its Final Order Nos.40632-40638/2013 dated 05.12.2013 set aside the impugned orders therein and remanded the matter back to the file of Commissioner of Central Excise, Tirunelveli to decide the issues afresh. It appears that based on the above

directions, the matter was readjudicated by the Commissioner and vide a common Orders-in-Original No.22-28/CE/COMMR/2016 dated 07.01.2016 confirmed a demand of Rs.32,31,597/- along with interest and equal penalty. It is against these OIOs that, Appeal Nos. **E/41027-41030/2016** have been filed by Assessee before the Tribunal.

4. When the matter stood thus, a bunch of SCNs/Statement of Demands (SODs) for later periods were issued on various dates as reflected in the Table-1 para-4 of the impugned Order-in-Original No.MDU-CEX-COM-01 to 13-2022 dated 21.01.2022. The Assessee appears to have approached the Hon'ble High Court once again by challenging the above SCNs/SODs and after hearing both sides, the Hon'ble High Court vide its decision reported as **2021 (377) ELT 68 (Mad.)**, while accepting the contentions of the petitioner in part, passed the following order :

**"9. Therefore, I am of the view that the order impugned in the writ petition which rests on formula given by the Coconut Development Board, cannot be sustained. In this view of the matter, the order impugned in the writ petition is set aside. The matter is remitted to the file of the first respondent. The first respondent shall verify the records and revisit the issue**

**and levy duty based on actual production / removal of the goods in question.”**

5. In terms of the above direction of the Hon'ble High Court the SCNs/SODs were taken up for adjudication since, apparently, the Department accepted the above direction of the Hon'ble High Court.

6. In the adjudication, the Commissioner appears to have obtained a verification report with reference to the month-wise actual production / clearance of the GAC for the periods involved from the Assistant Commissioner, Tuticorin, in response to which, the Asst. Commissioner submitted his report dated 18.01.2022 wherein it has been categorically held that the closing balance correctly matched with the closing balance of the daily stock account maintained as on 01.07.2017. It is also reported that there was no possibility of clandestine removal. Having left with no other choice, the Commissioner / Adjudicating Authority accepting the above verification report, held that no further duty was leviable on the assessee for the goods produced / removed during the periods involved.

7. Going a step further, the Adjudicating Authority examined the issue from a different angle purely as an

academic exercise and his analysis is summarized in the Table at para 7.10 of the impugned order. In terms of his analysis, the output ratio works out to 38.36% as against the maximum bench mark of 33.33% formulated by the Coconut Development Board. The output being higher at 38.36% of the inputs used is also more than the verification study conducted by the Deputy Commissioner, Tuticorin dtd. 07.04.2011 wherein, the yield was shown to be between 26.43% and 29.19%. He would thus conclude that the periodical notices were continued to be issued under a wrong impression of clandestine removal without payment of duty which was clearly without any evidence. In view of the above, the Ld. Commissioner deeming it appropriate, dropped the entire proceedings initiated against the Assessee and it is against this order of dropping of proceedings, the **Appeal No.E/40286/2022** has been filed by Revenue.

8. The case of the Revenue as contended by the Departmental Representative Shri Anoop Singh, Ld. Joint Commissioner are that –

- the Adjudicating Authority did not adhere to the direction of the Hon'ble High Court which required him

to examine the records, but the same was delegated to the Range Officer.

- The verification report submitted by the Range Officer did not mention anything about the examination of the records.
- In the said report nothing was shown to have been examined like production details / actual production etc.
- The Hon'ble High Court's direction has not been taken into consideration in full, since, upon the introduction of self-assessment, the department is only to examine the record of the Assessee and if revenue leakage is found, the same should be investigated and therefore, the burden was always on the Assessee to prove that they have assessed the goods correctly before removal and paid duty according to law.
- Without prejudice, the assessee had entered disorderly the production details of GAC; the Assessee had not furnished any material evidence to prove that they have not produced more than the said quantity of goods declared.
- The Adjudicating Authority had failed to observe that the Department had noticed the non-maintenance of

invoices etc. by the Assessee which prompted the Revenue to carry out investigation.

- The Adjudicating Authority has also taken certain extraneous reasons like production accounted for was more than 38% for the impugned demand periods which is also more than that certified by the Coconut Development Board.
- The Adjudicating Authority had also failed to consider the facts mentioned in the orders passed by its predecessor.

9. The Ld. Joint Commissioner would conclude that it was imperative for an Export Oriented Unit (EOU), like the Assessee to maintain records of production of excisable goods, waste, loss correctly; in the event of norms of SION being not available, then the norms fixed by the Committee shall be construed as appropriate norm. The Coconut Board's certificate could not be implemented as per the High Court's direction; however the Divisional Officer's examination which was undisputed by the Assessee was always available which should have been taken as the norm for this purpose. He would thus pray for setting aside the impugned Order-in-Original dt. 21.01.2022 and allow the Revenue's Appeal and dismiss the Assessee's Appeals.

10. *Per contra*, the Ld. Advocate Shri S. Muthuvenkatraman took us through the findings of Commissioner which according to him, is in accordance with law since the Adjudicating Authority has, following the directions of the Hon'ble High Court, called for the report and has correctly found that there was no clandestine removal and hence, no further duty was found to be leviable.

11. We have carefully considered the arguments advanced on behalf of Appellant-Revenue and we have also perused the relevant Grounds of Appeal urged before us. The Hon'ble High Court in the W.P.(MD) No.3378 of 2020 and W.M.P (MD) No.2841 of 2020 vide its order dt. 19.03.2021 as reported in **2021 (377) ELT 68 (Mad.)** has clearly directed the Commissioner to verify the records and levy duty based on actual production / removal of the goods in question i.e. GAC. We do not find any deviation to the above order when the Adjudicating Authority has called for the verification report, perhaps for administrative convenience. Moreover, Revenue for alleging that the Commissioner has not carried out the verification in person, has not pointed out any discrepancy in the verification report since the verification report is submitted by the Departmental officer who perhaps was having jurisdiction over the Assessee's

unit. This apart, from the independent analysis of the assessee's records, the Commissioner has observed the GAC accounted by the Assessee at 38.36% which is much more than the estimated benchmark of the Coconut Development Board which was also much more than the estimation of the Deputy Commissioner and on this analysis, surprisingly, the Revenue is silent. In any case, it is not the case of the Revenue that on the declared output ratio, the Assessee has not paid the Central Excise duty. Further, having alleged about impropriety, the Revenue has not bothered to place on record if anything amiss noticed from the Assessee's records which was not considered by the Adjudicating Authority.

12. In view of the above, we do not find any infirmity in the impugned Order-in-Original dt. 21.01.2022 and hence, we are of the view that the appeal filed by Revenue lacks merit. Resultant, **Appeal No.E/40286/2022** is dismissed. The cross objections filed by Assessee stand disposed.

13. We would like to observe here, that all these arguments are of no avail, primarily since both the parties accepted the order of Tribunal without filing any Appeal and consequently, what was left to the Department was to only re-visit the case from the perspective of Coconut Board's

report. So, for the same reasons, we allow Assessee's **Appeal Nos. E/41027-41030/2016** by setting aside impugned OIO dt. 07.01.2016 with consequential benefits, if any, as per law as there was clearly no scope to allege clandestine removal.

(Order pronounced in open court on 03.07.2025)

**(M. AJIT KUMAR)**  
Member (Technical)

**(P. DINESHA)**  
Member (Judicial)