IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.1

1 to 10. Customs Appeal No.75421 to 75430 of 2020

(Arising out of the following Orders-in-Appeal Nos:

Order-in-Appeal No.Kol/Cus(Port)/AKR/392-395/2020 dated 10.07.2020 passed by Commissioner of Customs (Appeals), Kolkata

Order-in-Appeal No.Kol/Cus(Port)/AKR/396-399/2020 dated 10.07.2020 passed by Commissioner of Customs (Appeals), Kolkata

Order-in-Appeal No.Kol/Cus(Port)/AKR/413-414/2020 dated 13.07.2020 passed by Commissioner of Customs (Appeals), Kolkata

WITH

11 to 12. Customs Appeal No.75467 to 75468 of 2020

Arising out of Order-in-Appeal No.Kol/Cus(Port)/AKR/401-402/2020 dated 13.07.2020 passed by Commissioner of Customs (Appeals), Kolkata

AND

13 to 16. Customs Appeal No.75472 to 75475 of 2020

Arising out of Order-in-Appeal No.Kol/Cus(Port)/AKR/403-406/2020 dated 13.07.2020 passed by Commissioner of Customs (Appeals), Kolkata

17. Customs Appeal No.75476 of 2020

Arising out of Order-in-Appeal No.Kol/Cus(Port)/AKR/407/2020 dated 13.07.2020 passed by Commissioner of Customs (Appeals), Kolkata

18. Customs Appeal No.75493 of 2020

Arising out of Order-in-Appeal No.Kol/Cus(Port)/AKR/400/2020 dated 13.07.2020 passed by Commissioner of Customs (Appeals), Kolkata

19 to 22. Customs Appeal No.75541 to 75544 of 2020

Arising out of Order-in-Appeal No.Kol/Cus(Port)/AKR/409-412/2020 dated 13.07.2020 passed by Commissioner of Customs (Appeals), Kolkata

23-24. Customs Appeal No.75558-75559 of 2020

Arising out of Order-in-Appeal No.Kol/Cus(Port)/AKR/513-514/2020 dated 14.08.2020 passed by Commissioner of Customs (Appeals), Kolkata

1-10. Customs Appeal Nos.75421 to 75430 of 2020
11,12. Customs Appeal Nos.75467,75468 of 2020
13-17. Customs Appeal Nos.75472 to 75476 of 2020
18. Customs Appeal No.75493 of 2020
19 to 22. Customs Appeal Nos.75541 to 75544 of 2020
23,24. Customs Appeal Nos.75558,75559 of 2020
25. Customs Appeal No.75562 of 2020

25. Customs Appeal No.75562 of 2020

Arising out of Order-in-Appeal No.Kol/Cus(Port)/AKR/515/2020 dated 14.08.2020 passed by Commissioner of Customs (Appeals), Kolkata

M/s Emami Limited
(JL No.149,HPL Link Road, Debhog,Bhabanipur,Haldia,Dist.-Purba Medinipur,West Bengal)

Appellant

VERSUS

Commissioner of Customs (Port), Kolkata
(15/1, Strand Road, Kolkata-700001)

Respondent

APPERANCE :

Shri Jay Bohra, Advocate for the Appellant
Shri Subrata Debnath, Authorised Representative for the Respondent

CORAM:
HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR.K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.75983-76007/2026

DATE OF HEARING : 03 AUGUST 2026
DATE OF DECISION : 03 AUGUST 2026

Per Ashok Jindal :

As all the appeals are having a common issue, therefore, all are disposed of by a common order.

2. The facts of the case are that the appellant, M/s. Emami Limited is a public limited company inter-alia engaged in the business of manufacturing and selling ayurvedic medicines and cosmetics. For the said purpose, the appellant imported certain input goods.

2.1 During the period July 2019 to December 2019, the appellant filed twenty-five Bills of Entry, on the EDI Portal for the import of twenty-five consignments of Synthesis Menthol by availing the benefit of Exemption Notification No.24/2015–Cus. and Notification No.25/2015–Cus., both dated 08.04.2015 issued under the MEIS and SEIS schemes, which are export oriented promotion schemes. The Appellant’s claim for exemption from BCD under these notifications was allowed while processing these BOE’s and the BCD foregone was duly debited to the MEIS/SEIS license as required under these notifications. However, in addition to BCD, the EDI portal also auto debited the levy of SWS computed at the rate of 10% with reference to BCD foregone. The debit of SWS to the scrip was made by the Appellant under protest duly intimating the authorities. The Appellant was of the view that since BCD stood specifically exempted under these notifications, no liability for SWS could have been determined with reference to notional BCD.

2.2 Consequently, the appellant challenged the assessments of all the twenty-five BOEs by filing appeals before the Ld. Appellate Authority seeking refund of SWS debited to the scrips on multifarious grounds. These appeals were rejected inter-alia relying on the decision of Supreme Court in the case of *M/s. Unicorn Industries Vs. UOI [2019 (12) TMI 286 - Supreme Court]* and the decision of Hon’ble Madras High Court in the case of *Gemini Edibles and Fats Pvt. Ltd Vs. Union of India [2020 -TIOL- HC-MAD-CUS].*

2.3 Being aggrieved by the impugned orders, the appellants are before us.

3. The ld. Counsel for the appellant, submits that the issue involved in these matters is no more *res-integra* and is decided in favour of the appellant in their own case vide Final Order No.77304-77500/2024 dated 14.11.2024. Therefore, the impugned orders are to be set aside..

4. On the other hand, the ld.A.R. for the Revenue, supported the impugned order.

5. Heard both the parties and considered the submissions.

6. We find that the sole issue is to be decided in these cases, whether the appellant is liable to pay Social Welfare Surcharge (SWS) in case Basic Customs Duty is exempted in terms of Notification No.24/2015-Cus & 25/2015-Cus both dated 08.04.2015 or not ?

7. We find that the said issue has already been decided by this Tribunal in their own case vide Final Order No.77304-77500/2024 dated 14.11.2024, wherein this Tribunal has held as under :

> "*8. As the issue has already been settled that since in terms of the Circular No.3/2022-Cus dated 01.02.2022, wherein it has been clarified that the amount of Social Welfare Surcharge (SWS) payable would be "Nil" in cases where the aggregate of Customs duties (which form the base for computation of SWS) is zero even though SWS is exempted as SWS payable is zero. Therefore, we hold that the appellant is not liable to pay SWS as debited to the MEIS/SEIS or paid in cash.*

9. Accordingly, the same is required to be refunded to the appellant as held by the Hon'ble Bombay High Court in the appellant's own case reported in 2022 (9) TMI 1588, wherein it has been held as under :

"5. Moreover, any amount deducted shall be refunded to petitioner within 8 weeks of receiving an application from petitioner for refund. Mr.Sridharan states that necessary application for refund to justify the quantum of refund will also be filed. Refund shall be issued together with interest thereon in accordance with law."

10. Further, we find that similar views have been taken by this Tribunal in the case of Dalmia Cement (Bharat) Limited Vs. Commissioner of Customs (Preventive), Vijaywada reported in 2024 (5) TMI 632-CESTAT Hyderabad, wherein it has been held as under :

"8. The Mumbai Bench in the case of Reliance Industries Ltd we has gone through the Circular No.3/2022 dated 01.03.2022 where the Board has clarified as under :

> *2. The matter has been examined. Social Welfare Surcharge (SWS) is levied and collected, as a duty of customs, vide Section 110 of the Finance Act, 2018 (13 of 2018) and is calculated at the rate of 10 per cent on the aggregate of duties, taxes and cesses which are levied and collected by the Central Government as a duty of customs on goods imported into India.*
>
> *3. <u>In this regard, it may be noted that at present SWS at the rate of 10% of the aggregate of customs duties payable on import of goods and not on the value of imported goods. If aggregate customs duty payable is zero on account of an exemeption, the SWS shall be computed as 10% of the</u>*

> *value equal to "Nil" (as aggregate amount of customs duties payable is zero). Law does not require computation of SWS on a notional customs duty calculated.*
>
> *4. Thus, it is clarified that the amount of Social Welfare Surcharge payable would be "Nil" in cases where the aggregate of customs duties (which form the base for computation of SWS) is zero even though SWS has not been exempted at tariff rate where applicable aggregate of duties of customs is zero.*

9. After this, the Bench has relied on the case law of La Tim Metal & Industries Ltd. The Bench has followed the decision of Hon'ble High Court in the La Tim Metal Industries Ltd., wherein the High Court has held as under :

> *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.

9. Respondents are directed to refund Rs.22,56,760/- that Petitioner has paid towards Notional Social Welfare Surcharge within 8 weeks from the date of receipt of a copy of this order.

10. Petition accordingly stands disposed."

Wherein this Tribunal granted refund in cash along with interest."

8. In view of the above, we hold that the appellants are not liable to pay Social Welfare Surcharge (SWS) when Basic Customs Duty is exempted in terms of Notification No.24/2015-Cus & 25/2015-Cus both dated 08.04.2015 issued under the MEIS and SEIS Scheme.

9. Accordingly, the impugned orders are set aside and the appeals are allowed with consequential relief as claimed by the appellant.

(Operative part of the order was pronounced in the open court)

(Ashok Jindal)
Member (Judicial)

(K.Anpazhakan)
Member (Technical)

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