CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL CHENNAI

REGIONAL BENCH – COURT No. I

Customs Appeal No. 42658 of 2017

(Arising out of Order-in-Appeal No. 52/2017-CE dated 31.10.2017 passed by the Commissioner of GST and Central Excise (Appeals), No. 1, Foulke's Compound, Anai Road, Salem – 636 001)

With

Excise Appeal No. 42659 of 2017

(Arising out of Order-in-Appeal No. 43/2017-SLM-CE dated 27.09.2017 passed by the Commissioner of GST and Central Excise (Appeals), No. 1, Foulke's Compound, Anai Road, Salem – 636 001)

With

Excise Appeal No. 40308 of 2018

(Arising out of Order-in-Appeal No. 52/2017-CE dated 31.10.2017 passed by the Commissioner of GST and Central Excise (Appeals-I), No. 1, Foulke's Compound, Anai Road, Salem – 636 001)

And

Customs Appeal No. 40333 of 2018

(Arising out of Order-in-Appeal No. 43/2017-SLM-CE dated 27.09.2017 passed by the Commissioner of GST and Central Excise (Appeals), No. 1, Foulke's Compound, Anai Road, Salem – 636 001)

M/s. Mylan Laboratories Limited **...Appellant**
Hosur Steriles Facility (100% EOU),
Plot No. 13A, 14 & CP2,
SIPCOT Phase II, Krishnagiri Road,
Hosur – 635 109.

Versus

Commissioner of GST and Central Excise **...Respondent**
Salem Commissionerate,
No. 1, Foulke's Compound,
Anai Road,
Salem – 636 001.

APPEARANCE:

For the Appellant : Mr. Gokul Natt, Chartered Accountant
For the Respondent : Ms. G. Krupa, Authorised Representative

CORAM:
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)

FINAL ORDER Nos. 40867-40870 / 2026

DATE OF HEARING : 27.03.2026
DATE OF DECISION : 13.07.2026

Per Mr. VASA SESHAGIRI RAO

This appeal arises out of two Orders-in-Appeal bearing No. 43/2017 SLM-CEX dated 27.09.2017 and No. 52/2017 (CXA-I) dated 27.09.2017 passed by the Commissioner (Appeals), Salem, whereby demands of Customs duty and Central Excise duty were confirmed against M/s. Mylan Laboratories Limited, Hosur, hereinafter referred to as "the appellant". The appellant is a 100% Export Oriented Unit engaged in manufacture of pharmaceutical products and operates under a valid Letter of Permission issued by the Development Commissioner under the Foreign Trade Policy. The appellant procured raw materials duty-free under Notification No. 52/2003-Cus and Notification No. 22/2003-CE. During the relevant period, certain raw materials which had become obsolete or unusable were destroyed within the factory after due intimation to the department. Proceedings were initiated on the premise that prior to the amendments made in 2015, the notifications did not permit destruction without payment of duty and that the Foreign Trade Policy could not override statutory provisions, resulting in confirmation of demands of BCD, CVD, SAD and Excise duty along with interest and penalties. The present proceedings arise from four appeals which are clubbed for hearing on account of commonality of the issue involved.

2. Aggrieved with the confirmation of the demands, the Appellant is before this Tribunal in respect of the following cases as tabulated below: -

Sl. No.	Appeal No.	OIA No. & Date	Nature (Customs / C.Ex)	Duty Demand	Interest	Penalty
1	C/42658/2017 -DB	43/2017 SLM-CEX dt. 27.09.2017(Period – 03/2014-11/2014)	Customs	₹ 6,63,018/-+ ₹ 5,58,524/-	As Applicable	₹ 12,21,542/-
2	E/42659/2017 -DB	43/2017 SLM-CEX dt. 27.09.2017(Period – 03/2014-11/2014)	Central Excise	₹ 1,42,069/-+ ₹ 26,668/-	Applicable	₹5,000/-
3	C/40333/2018 -DB	52/2017 (SLM-CEX) dt. 31.10.2017(Period - 12/2014-11/2015)	Customs	₹ 96,388/-	Applicable	₹ NIL
4	E/40308/2018 -DB	52/2017 (SLM-CEX) dt. 31.10.2017(Period - 12/2014-11/2015)	Central Excise	₹ 88,583	Applicable	₹ 5,000/-

3. The Ld. Chartered Accountant Shri Gokul Natt, appeared on behalf of the Appellant and advanced arguments in support of the appeal. The Ld. Authorized Representative Ms. G. Krupa appeared for the Revenue and supported the findings in the Impugned Order.

4. The Ld. Consultant has contended that Para 6.15 of the Foreign Trade Policy expressly permits destruction of raw materials within the unit after due intimation, and that

the exemption notifications must be interpreted in harmony with the policy framework. For ready reference,

> *"6.15*
>
> *(a) In case an EOU / EHTP/STP/BTP unit is unable to utilize goods and services, imported or procured from DTA, it may be*
>
> > *(i) transferred to another EOU / EHTP / STP / BTP/SEZ unit; or*
> >
> > *(ii) disposed off in DTA with approval of Customs authorities on payment of applicable duties and submission of import authorization; or*
> >
> > *(iii) exported. Such transfer from EOU / EHTP / STP/BTP unit to another such unit would be treated as import for receiving unit.*
>
> *(b) Capital goods and spares that have become obsolete / surplus, may either be exported, transferred to another EOU / EHTP/STP/BTP/SEZ unit or disposed off in DTA on payment of applicable duties. Benefit of depreciation, as applicable, will be available in case of disposal in DTA only when the unit has achieved positive NFE taking into consideration the depreciation allowed. No duty shall be payable in case capital goods, raw material, consumables, spares, goods manufactured, processed or packaged, and scrap / waste / remnants / rejects are destroyed within unit after intimation to Customs authorities or destroyed outside unit with permission of Customs authorities. Destruction as stated above shall not apply to gold, silver, platinum, diamond, precious and semi precious stones.*

It is submitted that the amendments made in 2015 permitting destruction are clarificatory in nature and apply retrospectively. The appellant has relied upon several judicial precedents to contend that beneficial schemes such as the EOU scheme must be interpreted liberally and that procedural or interpretational ambiguities should not defeat substantive benefits. Reliance has also been placed on the decision in Sandoz Pvt. Ltd. to contend that while duty liability must be determined under statutory provisions, the scheme must be read holistically and not in isolation. It is further submitted that the appellant had intimated the Department prior to destruction and acted *bona fide*.

5. *Per contra*, the Ld. Authorized Representative has submitted that exemption must strictly flow from statutory notifications and that the Foreign Trade Policy cannot override the provisions of the Customs Act and Central Excise Act. It is contended that prior to 2015, the notifications did not permit destruction without payment of duty and that the amendments are clearly prospective. Reliance has been placed on Sandoz Pvt. Ltd. to argue that FTP provisions cannot extinguish duty liability in the absence of corresponding the notifications support.

6. We have carefully heard the submissions advanced by both sides, examined the appeal records in detail, considered the statutory provisions, relevant Notifications, Foreign Trade Policy and the case laws cited.

7. Upon consideration, the following questions arise for determination: -

i. Whether duty is payable on raw materials procured duty-free by the appellant and subsequently destroyed within the factory under intimation to Department Officials?

ii. Whether the amendments made in 2015 permitting destruction of inputs are clarificatory and could be treated as retrospective or only prospective in nature?

iii. Whether the demand of duty, interest and penalties are sustainable in law?

8. We now proceed to examine the issues seriatim.

Issue No. (i) Duty liability on destruction of duty-free procured raw materials under intimation.

9.1 The first question relates to the liability of the appellant, a 100% Export Oriented Unit operating under provisions of DGFT and also under Customs and Central Excise Acts to pay duty on raw materials procured duty-free under Notification No. 52/2003-Cus dated 31.03.2003 and Notification No. 22/2003-CE dated 31.03.2003, which were subsequently destroyed within the factory under due intimation to the department. It is not in dispute that the appellant had destroyed the materials after prior intimation to the jurisdictional authorities and that such destruction was necessitated on account of obsolescence and non-usability in manufacture. The controversy is therefore limited to whether such destruction, in the absence of an explicit provision in the notifications prior to amendment, whether attracts duty liability.

9.2 The appellant has relied upon Para 6.15 of the Foreign Trade Policy, which permits destruction of raw materials within the unit. The Revenue has contended that such permission under FTP cannot override the notifications. We however note that it is well settled that the EOU scheme is a composite scheme, wherein the Foreign Trade Policy provides the substantive framework and the notifications issued under the Customs and Central Excise laws provide the mechanism for implementation. Therefore, the provisions of FTP and the notifications must be read harmoniously.

9.3 In support of this, reliance has been placed by the Appellant on the judgment of the Hon'ble Supreme Court in *Government of India vs. Indian Tobacco Association [2005 (187) E.L.T. 162 (S.C.)],* wherein it was held that beneficial notifications must be interpreted with reference to the object sought to be achieved and that even amendments can be treated as retrospective if they are intended to cure defects or align implementation with policy. The ratio of this decision clearly supports the appellant's contention that the notification must be read in the light of the FTP provisions and not in isolation.

9.3.1 Further, reliance has been placed on *Mehler Engineered Products India Pvt. Ltd. vs. Union of India [2018 (364) E.L.T. 27 (Mad.)],* wherein the Hon'ble Madras High Court held that substitution of entries in a notification must be read as having retrospective effect where it seeks to correct or align classification or scope. This judgment reinforces the appellant's argument that the subsequent amendments permitting destruction only clarify the existing position.

9.3.2 The appellant has also relied upon the Tribunal's decision in *Sandoz Pvt. Ltd. vs. Commissioner of Central Excise, Belapur [2025 (TMI) 1283 – CESTAT Mumbai],* (this decision is distinct from the earlier decision of the Tribunal in 2012 relied upon by the Revenue) wherein it was held that in the case of EOUs, goods imported duty-free remain under customs control and cannot be treated as cleared for home consumption unless duty is discharged. However, importantly, the Tribunal also observed that the scheme governing EOUs must be understood in the context of customs control and operational realities. The appellant has relied upon this decision to contend that destruction of goods under supervision or intimation is part of such operational control and does not amount to diversion/clearance.

9.3.3 Similarly, in *Tyco Electronics Corporation India Pvt. Ltd. vs. Commissioner [2024 (14) Centax 29 (Tri. - Bang.)],* it was held that destruction of obsolete materials imported duty-free by EOUs is permissible without insisting on duty, particularly when such destruction is in accordance with FTP provisions. This decision further strengthens the appellant's case.

9.3.4 In *Saint Gobain Crystals & Detectors (I) Ltd. vs. Commissioner [2018 (364) E.L.T. 1055 (Tri.-Bang.)],* the Tribunal remanded the matter recognizing that destruction of obsolete materials within EOUs must be examined in the light of FTP provisions and cannot be outrightly denied. This decision indicates judicial recognition of destruction as part of legitimate EOU operations.

9.3.5 Thus, the settled judicial position relied upon by the appellant, particularly Indian Tobacco Association, Mehler, Tyco Electronics, and other decisions clearly support the proposition that destruction of obsolete materials under FTP framework does not attract duty.

9.4 *Per contra*, the Revenue has relied on *Sandoz Pvt. Ltd. vs. Commissioner of Central Excise [2012 (278)*

E.L.T. 259 (Tri.-Mumbai)] to contend that the Foreign Trade Policy cannot, by itself, extinguish duty liability in the absence of a corresponding provision under the Customs Act or notifications, and that in cases of deterioration, Section 22 relating to abatement would apply. While this proposition is accepted, the decision is clearly distinguishable. In Sandoz, the goods were re-imported and treated as "imported goods" under Section 20, and the issue arose in the context of Sections 22 and 23, with the Tribunal noting that Notification No. 52/2003-Cus did not permit destruction without payment of duty. In the present case, however, the goods are inputs procured and used within a 100% EOU and their destruction arises under the operational framework of the Foreign Trade Policy. Further, the appellant has complied with all procedural requirements and there is no allegation of misuse. Accordingly, the ratio of Sandoz is confined to its facts and does not apply to the present case.

9.4.1 The Revenue has also relied upon *Principal Commissioner vs. Teva API India Pvt. Ltd. [2019 (367) E.L.T. 618 (M.P.)]*, affirmed by the Hon'ble Supreme Court *[2020 (371) E.L.T. A252 (S.C.)],* to contend that destruction of goods without proper permission disentitles exemption under Notification No. 52/2003-Cus and Notification No. 22/2003-CE. A perusal of the judgment shows that denial of exemption was based on clear violation of notification conditions, particularly absence of proper permission and non-fulfilment of procedural requirements. The decision is distinguishable on facts, as in the present case the appellant had intimated the department prior to destruction and acted in accordance with the Foreign Trade Policy and the Letter of Permission, with no breach of conditions. Accordingly, the ratio of Teva API is confined to cases of non-compliance, whereas the present case involves interpretation of exemption in a situation of admitted compliance.

9.4.2 Similarly, reliance on *Bell Match Company vs. Commissioner of Customs [2019 (367) E.L.T. 427 (Mad.)]* is distinguishable. In that case, exemption was denied due to failure to comply with mandatory conditions of the notification and Letter of Permission, particularly regarding installation and use within the prescribed period. In the present case, however, there is no such violation, and the issue is limited to whether destruction of unusable inputs, otherwise permissible under the FTP, attracts duty in the absence of an explicit provision. Accordingly, the ratio of Bell Match Company does not apply.

9.4.3 Thus, the decisions relied upon by the Revenue, namely Sandoz Pvt. Ltd., Teva API India Pvt. Ltd. and Bell

Match Company, are distinguishable on facts and do not detract from the consistent judicial position relied upon by the appellant that in the absence of diversion or misuse, and where destruction is part of the operational framework of the EOU scheme, duty liability cannot be artificially fastened. On the contrary, the said decisions reinforce the principle that the outcome depends upon the factual matrix and compliance with the scheme, which in the present case stands satisfied.

9.5 We find that the EOU scheme is a composite statutory scheme wherein the Foreign Trade Policy lays down the substantive framework and the exemption notifications issued under the Customs Act and Central Excise Act provide the mechanism for implementation. Notification No. 52/2003-Cus and Notification No. 22/2003-CE grant exemption to goods imported or procured by EOUs subject to conditions relating to their use in manufacture of export goods. The notifications must therefore be interpreted in the context of the policy they are intended to operationalize. To interpret the notifications in isolation from the FTP would lead to fragmentation of the scheme and defeat its object. The destruction of unusable inputs is a recognized commercial reality and is expressly permitted under Para 6.15 of the FTP. In the absence of any allegation of diversion or misuse, to insist on payment of duty would result in an artificial liability not contemplated by the scheme. Accordingly, following the consistent line of decisions relied upon by the appellant and distinguishing the limited ratio of Sandoz, it is held that the destruction of raw materials within the factory under intimation does not attract duty liability. Accordingly, it is held that destruction of raw materials within the factory under due intimation does not attract duty liability.

9.6 Before concluding, it is necessary to examine the scope of Notification No. 52/2003-Cus dated 31.03.2003 and Notification No. 22/2003-CE dated 31.03.2003 as they stood prior to and after amendment. Prior to amendment, the notifications did not contain any explicit provision permitting destruction of goods without payment of duty. However, vide Notification No. 30/2015-CE and Notification No. 34/2015-Cus dated 25.05.2015, an express provision was inserted to the effect that "any capital goods, raw material, consumables, spares or goods manufactured, processed or packaged, and scrap or waste or remnants or rejects are destroyed within the unit after intimation to Customs authorities…", thereby permitting destruction subject to procedural compliance. A comparative reading shows that while the pre-amended notifications were silent, the amended provisions expressly recognize destruction as a permissible mode of disposal. This amendment does not introduce a new condition but merely aligns the notifications with Para 6.15 of the Foreign Trade Policy, which already permitted such destruction. Therefore, the absence of an explicit provision in the pre-amended notifications cannot be construed as a prohibition, and the amendment is clarificatory in nature, removing ambiguity rather than creating a new right.

9.7 The above conclusion is further reinforced by the interplay between the Foreign Trade Policy, the Development Commissioner's permissions and the exemption notifications, which together form a unified statutory scheme governing Export Oriented Units. While exemption notifications are to be strictly construed, it is equally well settled that once their conditions are satisfied, the benefit cannot be denied by adopting a narrow or artificial interpretation. The Foreign Trade Policy, issued under statutory authority, governs procurement, utilization and disposal of inputs, and the Letter of Permission issued by the Development Commissioner defines the operational scope of the unit. In the present case, the appellant has acted in accordance with these permissions and has not violated any condition of the scheme. The judicial precedents relied upon by the appellant consistently support the principle that policy provisions and exemption notifications must be read harmoniously to give effect to the scheme. The decision in Sandoz Pvt. Ltd. does not militate against this principle, as it only clarifies that the FTP alone cannot grant exemption but does not preclude interpretation of notifications in the light of the policy. Accordingly, the contention of the Revenue that the notifications must be read in isolation is not acceptable, and it is held that the provisions of the Foreign Trade Policy, the Development Commissioner's permissions and the exemption notifications must be read harmoniously, entitling the appellant to the benefit thereof.

9.8 Further, it is noticed that involving identical facts, the Tribunal Bangalore held the issue in favour of the appellant in the case of *TE-Connectivity India Pvt. Ltd. Vs. Commissioner of Central Excise and Service Tax, Large Taxpayer Unit, Bangalore [2024 (18) CENTAX 46 (Tri. Bang.)]* which reads as follows: -

> *"16. We find that the appellants have imported goods and also procured goods from DTA in terms of exemption Notification No. 52/2003-Cus dated 21.03.2003 and Notification No.22/2003-CE dated 31.03.2003, respectively. It is their submission that due to rapid technological advancements few of the materials imported by them have become obsolete, remained unutilized and could not be used in the manufacture of the final product and hence necessarily have to be scraped being obsolete and unfit for manufacture of export goods.*
>
> *17. We find that the relevant extract of the Notification No. 52/2003 dated 31.03.2003 reads as under:-*

> *"(8) Subject to the satisfaction of the said officer, duty shall not be leviable in respect of–*
>
> *(i) the capital goods, if such capital goods are destroyed within the unit or outside the unit, when it is not possible or permissible to destroy the same within the unit, in the presence of Customs or Central Excise Officer;*
>
> *(ii) the scrap or waste material or remnants arising in the course of production, manufacture, processing or packaging, if such scrap or waste material or remnants are destroyed within the unit or destroyed outside the unit when it is not possible to destroy the same within the unit:"*

18. The notification was amended and raw materials were also allowed to be destroyed under intimation to customs. The relevant extract of the Notification No. 52/2003 after amendment by Notification 34/2015 dated 24.05.2015 reads as under:-

> *"(8) Subject to the satisfaction of the said officer, duty shall not be leviable in respect of capital goods, raw material, consumables, spares, goods manufactured, processed or packaged, and scrap or waste or remnants or rejects are destroyed within the unit after intimation to Customs authorities or destroyed outside the unit with permission of Customs authorities:*
>
> *Provided that this condition shall not apply in case of unit engaged in manufacture and export of gold, silver, platinum, diamond, precious and semi-precious stones."*

19. The period of dispute in the present 8(eight) appeals is prior to the substitution of condition (8) of Notification 52/2003 dated 31.03.2003. The appellant contends that the intent of the amendment was to address this particular situation, which was already provided in the Foreign Trade Policy (FTP) at Para 6.15(b) and was not provided in the Customs Notification No.52/2003 dated 31.03.2003. We find that on a harmonious reading of the provisions of Para 6.15(b) of FTP and the Customs Notification No. 52/2003 prior to the substitution of condition (8) of the notification, it would tacitly imply that destruction of the obsolete raw materials may be allowed after intimation to customs authority, if destroyed within the unit, and with permission of the customs authority for destruction outside the unit. We also find that such permission for destruction was given in the past by the Department.

20. We also note that technological innovation and advancements would result in obsolesce of the earlier technology whereby the inputs, capital goods etc., used earlier for the production of final product would become obsolete and not fit for further use. Hence, the provision for destruction of the same has to be provided in the Policy/Notification. We find that the *provision for destruction of capital goods, raw materials etc., was provided under the Foreign Trade Policy (FTP) in para 6.15(b), however, the provision for destroying the raw materials was not provided in the Notification No. 52/2003 dated 31.03.20003 and the provision has been bought in by the amending Notification No. 34/2015 dated 25.05.2015.*

21. We also find that while considering the similar issue of the appellant, this Tribunal has allowed the appeals filed by the appellant.

22. In view of the above discussion and in the facts and circumstances, we find that there is no plausible reason to interfere with the ratio of precedent decisions of this Tribunal mentioned at Para 8 supra, hence the 8(eight) appeals are allowed with consequential relief, if any, in accordance with the law."

Issue No. (ii) whether the amendments made in 2015 permitting destruction of inputs are clarificatory and retrospective or prospective in nature

10.1 The second question relates to whether the amendments introduced vide Notification No. 30/2015-CE and Notification No. 34/2015-Cus are clarificatory and retrospective or not. The appellant has relied upon Indian Tobacco Association and Mehler Engineered Products (Supra) to contend that amendments intended to align implementation with policy must be treated as retrospective.

10.2 A perusal of the amended provisions shows that destruction of goods within the unit under intimation was expressly incorporated. It is significant that Para 6.15 of FTP already permitted such destruction even prior to amendment. Therefore, the amendment merely brings the notification in line with the policy.

Applying the ratio of Indian Tobacco Association (*Supra*), where the Hon'ble Supreme Court held that amendments introduced to cure defects and align implementation are retrospective, and Mehler, where substitution was held retrospective, it is evident that the amendments are clarificatory. The Revenue has not demonstrated that any new right has been created or that any new condition has been imposed in the amendments.

10.3 Accordingly, the amendments introduced vide Notification No. 30/2015-CE and Notification No. 34/2015-Cus are held to be clarificatory and retrospective in nature.

11.1 Findings on Question (iii) The final question relates to the sustainability of the demand of duty, interest and penalties. In view of the findings recorded on the earlier questions, the demand of duty itself is not sustainable, as the destruction of raw materials does not attract duty liability and the amendments permitting such destruction are held to be clarificatory in nature. Consequently, the demand of interest also fails.

11.2 As regards penalties, the appellant has relied upon judicial precedents which lay down that penalties cannot be imposed in cases involving bona fide interpretation of law and absence of *mens rea*. The record clearly shows that the appellant had acted in a transparent manner, had intimated the department prior to destruction and had followed the policy framework. There is no evidence of suppression, wilful misstatement or intent to evade duty. The Revenue has not produced any material to rebut this position. Accordingly, applying the settled principles relied upon by the appellant, it is held that the penalties imposed are not sustainable.

12. In view of our findings recorded hereinabove, it is held that the appellant is not liable to pay Customs or Central Excise duties on duty-free inputs destroyed within the factory under intimation, as such destruction is in accordance with the Foreign Trade Policy and the EOU scheme. The amendments introduced in 2015 permitting such destruction are clarificatory and retrospective in nature. The Foreign Trade Policy, Development Commissioner's permissions and the exemption notifications are required to be read harmoniously, and the benefit of exemption cannot be denied by interpreting the notifications in isolation.

Consequently, the demands of duty, interest and penalties are not sustainable in law.

13. Accordingly, the impugned Orders-in-Appeal are set aside in their entirety, and all the appeals filed by the appellant are allowed with consequential relief, if any, in accordance with the law.

(Order pronounced in open court on 13.07.2026)

Sd/-
(AJAYAN T.V.)
MEMBER (JUDICIAL)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

MK