CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL HYDERABAD

Division Bench – Court No. – I

Customs Appeal No. 30168 of 2020

(Arising out of Order-in-Original No.VJD-CUSTM-PRV-APP-040 to 052-19-20 dt.27.12.2019 passed by Commissioner of Central Tax & Customs (Appeals), Guntur)

M/s Emami Agrotech Ltd
Sy No.501-510, Near Zero Point, Krishnapatnam Port,
Muthukar (M), SPSR Nellore Dist., AP – 524 323

……Appellant

VERSUS

Commissioner of Customs (Preventive), Vijayawada
D.No.55-17-3, C-14, 2nd Floor, Road No.2,
Industrial Estate, Autonagar, Vijayawada, AP – 520 007

……Respondent

WITH

Customs Appeal No. 30169 of 2020

(Arising out of Order-in-Original No.VJD-CUSTM-PRV-APP-040 to 052-19-20 dt.27.12.2019 passed by Commissioner of Central Tax & Customs (Appeals), Guntur)

M/s Emami Agrotech Ltd
Sy No.501-510, Near Zero Point, Krishnapatnam Port,
Muthukar (M), SPSR Nellore Dist., AP – 524 323

……Appellant

VERSUS

Commissioner of Customs (Preventive), Vijayawada
D.No.55-17-3, C-14, 2nd Floor, Road No.2,
Industrial Estate, Autonagar, Vijayawada, AP – 520 007

……Respondent

WITH

Customs Appeal No. 30170 of 2020

(Arising out of Order-in-Original No.VJD-CUSTM-PRV-APP-040 to 052-19-20 dt.27.12.2019 passed by Commissioner of Central Tax & Customs (Appeals), Guntur)

M/s Emami Agrotech Ltd
Sy No.501-510, Near Zero Point, Krishnapatnam Port,
Muthukar (M), SPSR Nellore Dist., AP – 524 323

……Appellant

VERSUS

Commissioner of Customs (Preventive), Vijayawada
D.No.55-17-3, C-14, 2nd Floor, Road No.2,
Industrial Estate, Autonagar, Vijayawada, AP – 520 007

……Respondent

WITH
Customs Appeal No. 30171 of 2020
(Arising out of Order-in-Original No.VJD-CUSTM-PRV-APP-040 to 052-19-20 dt.27.12.2019 passed by Commissioner of Central Tax & Customs (Appeals), Guntur)

M/s Emami Agrotech Ltd
Sy No.501-510, Near Zero Point, Krishnapatnam Port, Muthukar (M), SPSR Nellore Dist., AP – 524 323 ......**Appellant**

VERSUS

Commissioner of Customs (Preventive), Vijayawada
D.No.55-17-3, C-14, 2nd Floor, Road No.2, Industrial Estate, Autonagar, Vijayawada, AP – 520 007 ……**Respondent**

WITH
Customs Appeal No. 30172 of 2020
(Arising out of Order-in-Original No.VJD-CUSTM-PRV-APP-040 to 052-19-20 dt.27.12.2019 passed by Commissioner of Central Tax & Customs (Appeals), Guntur)

M/s Emami Agrotech Ltd
Sy No.501-510, Near Zero Point, Krishnapatnam Port, Muthukar (M), SPSR Nellore Dist., AP – 524 323 ......**Appellant**

VERSUS

Commissioner of Customs (Preventive), Vijayawada
D.No.55-17-3, C-14, 2nd Floor, Road No.2, Industrial Estate, Autonagar, Vijayawada, AP – 520 007 ……**Respondent**

WITH
Customs Appeal No. 30176 of 2020
(Arising out of Order-in-Original No.VJD-CUSTM-PRV-APP-040 to 052-19-20 dt.27.12.2019 passed by Commissioner of Central Tax & Customs (Appeals), Guntur)

M/s Emami Agrotech Ltd
Sy No.501-510, Near Zero Point, Krishnapatnam Port, Muthukar (M), SPSR Nellore Dist., AP – 524 323 ......**Appellant**

VERSUS

Commissioner of Customs (Preventive), Vijayawada
D.No.55-17-3, C-14, 2nd Floor, Road No.2, Industrial Estate, Autonagar, Vijayawada, AP – 520 007 ……**Respondent**

WITH
Customs Appeal No. 30177 of 2020
(Arising out of Order-in-Original No.VJD-CUSTM-PRV-APP-040 to 052-19-20 dt.27.12.2019 passed by Commissioner of Central Tax & Customs (Appeals), Guntur)

M/s Emami Agrotech Ltd
Sy No.501-510, Near Zero Point, Krishnapatnam Port, Muthukar (M), SPSR Nellore Dist., AP – 524 323 ......**Appellant**

VERSUS

Commissioner of Customs (Preventive), Vijayawada
D.No.55-17-3, C-14, 2nd Floor, Road No.2, Industrial Estate, Autonagar, Vijayawada, AP – 520 007 ……**Respondent**

WITH
Customs Appeal No. 30178 of 2020
(Arising out of Order-in-Original No.VJD-CUSTM-PRV-APP-040 to 052-19-20 dt.27.12.2019 passed by Commissioner of Central Tax & Customs (Appeals), Guntur)

M/s Emami Agrotech Ltd
Sy No.501-510, Near Zero Point, Krishnapatnam Port, Muthukar (M), SPSR Nellore Dist., AP – 524 323 ......**Appellant**

VERSUS

Commissioner of Customs (Preventive), Vijayawada
D.No.55-17-3, C-14, 2nd Floor, Road No.2, Industrial Estate, Autonagar, Vijayawada, AP – 520 007 ......**Respondent**

WITH
Customs Appeal No. 30179 of 2020
(Arising out of Order-in-Original No.VJD-CUSTM-PRV-APP-040 to 052-19-20 dt.27.12.2019 passed by Commissioner of Central Tax & Customs (Appeals), Guntur)

M/s Emami Agrotech Ltd
Sy No.501-510, Near Zero Point, Krishnapatnam Port, Muthukar (M), SPSR Nellore Dist., AP – 524 323 ......**Appellant**

VERSUS

Commissioner of Customs (Preventive), Vijayawada
D.No.55-17-3, C-14, 2nd Floor, Road No.2, Industrial Estate, Autonagar, Vijayawada, AP – 520 007 ......**Respondent**

WITH
Customs Appeal No. 30180 of 2020
(Arising out of Order-in-Original No.VJD-CUSTM-PRV-APP-040 to 052-19-20 dt.27.12.2019 passed by Commissioner of Central Tax & Customs (Appeals), Guntur)

M/s Emami Agrotech Ltd
Sy No.501-510, Near Zero Point, Krishnapatnam Port, Muthukar (M), SPSR Nellore Dist., AP – 524 323 ......**Appellant**

VERSUS

Commissioner of Customs (Preventive), Vijayawada
D.No.55-17-3, C-14, 2nd Floor, Road No.2, Industrial Estate, Autonagar, Vijayawada, AP – 520 007 ......**Respondent**

WITH
Customs Appeal No. 30181 of 2020
(Arising out of Order-in-Original No.VJD-CUSTM-PRV-APP-040 to 052-19-20 dt.27.12.2019 passed by Commissioner of Central Tax & Customs (Appeals), Guntur)

M/s Emami Agrotech Ltd
Sy No.501-510, Near Zero Point, Krishnapatnam Port, Muthukar (M), SPSR Nellore Dist., AP – 524 323 ......**Appellant**

VERSUS

Commissioner of Customs (Preventive), Vijayawada
D.No.55-17-3, C-14, 2nd Floor, Road No.2, Industrial Estate, Autonagar, Vijayawada, AP – 520 007 ......**Respondent**

WITH
Customs Appeal No. 30182 of 2020
(Arising out of Order-in-Original No.VJD-CUSTM-PRV-APP-040 to 052-19-20 dt.27.12.2019 passed by Commissioner of Central Tax & Customs (Appeals), Guntur)

M/s Emami Agrotech Ltd
Sy No.501-510, Near Zero Point, Krishnapatnam Port, Muthukar (M), SPSR Nellore Dist., AP – 524 323 **......Appellant**

VERSUS

Commissioner of Customs (Preventive), Vijayawada
D.No.55-17-3, C-14, 2nd Floor, Road No.2, Industrial Estate, Autonagar, Vijayawada, AP – 520 007 **……Respondent**

AND
Customs Appeal No. 30183 of 2020
(Arising out of Order-in-Original No.VJD-CUSTM-PRV-APP-040 to 052-19-20 dt.27.12.2019 passed by Commissioner of Central Tax & Customs (Appeals), Guntur)

M/s Emami Agrotech Ltd
Sy No.501-510, Near Zero Point, Krishnapatnam Port, Muthukar (M), SPSR Nellore Dist., AP – 524 323 **......Appellant**

VERSUS

Commissioner of Customs (Preventive), Vijayawada
D.No.55-17-3, C-14, 2nd Floor, Road No.2, Industrial Estate, Autonagar, Vijayawada, AP – 520 007 **……Respondent**

Appearance
Shri Arvind Baheti, Advocate for the Appellant.
Shri A. Rangadham, AR for the Respondent.

Coram: HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)
HON'BLE MR. ANGAD PRASAD, MEMBER (JUDICIAL)

FINAL ORDER No. A/30451-30463/2026

Date of Hearing: 28.04.2026
Date of Decision: 13.08.2026

[Order per: ANGAD PRASAD]

These 13 Appeals have been filed by M/s Emami Agrotech Ltd., (hereinafter referred to as the Appellant) against the common Order-in-Appeal No. VJD-CUSTM-PRV-APP-040 to 052-19-20 dt.27.12.2019 (impugned order) passed by the Commissioner of Central Tax & Customs (Appeals). Since all the appeals arise out of a common order and involve an identical question of law and facts, they are being disposed of by this common order.

2. The brief facts of the case are that the appellant is engaged in the business of refining and selling edible oils. For the purpose of its

manufacturing activities, they import crude edible oil from various countries and undertake refining thereof at its manufacturing facility situated at Krishnapatnam port.

3. During the period from July, 2019 to September, 2019, the appellant imported 13 consignments of synthesis menthol and filed 13 bills of entry through the electronic data interchange system. The appellant claimed exemption from Basic Customs Duty (BCD) under Notification Nos. 24/2015-CUS & 25/2015-CUS, both dt.08.04.2015, issued in relation to Merchandise Exports from India Scheme (MEIS) and Service Exports from India Scheme (SEIS). Under the aforesaid notifications, the BCD otherwise leviable on the imported goods was permitted to be discharged by debit in the MEIS/SEIS duty-credit scrips. While processing the bills of entry, the proper officer debited the amount corresponding to the BCD in the relevant duty-credit scrips. In addition thereto, Social Welfare Surcharge (SWS) @10% of BCD so debited was also recovered from the appellant. The appellant disputed the levy of SWS on the ground that, by virtue of exemption granted under the aforesaid notifications, no BCD was actually levied and collected in cash. According to the appellant, when the BCD forming the base for computation of SWS was exempted, the SWS calculated as a percentage of such duty would also be nil. The appellant, therefore, challenged the assessments of the respective bills of entry before the learned Commissioner (Appeals) and sought refund or restoration of the SWS debited from its duty-credit scrips. The total amount involved in these appeals is stated to be Rs.10,67,11,470/-.

4. Learned Commissioner (Appeals), by the impugned order, rejected the appeals holding, inter alia, that debit of BCD in the MEIS/SEIS scrips constituted an alternative method of discharge of the duty liability and could not be equated with an unconditional exemption duty. It was further observed that since the duty was discharged through the scrips, SWS remained payable on the amount of BCD so debited.

5. Aggrieved by the aforesaid findings, the appellant is before this Tribunal.

6. Learned Counsel for the appellant has submitted that the issue is no longer res integra and has already been decided in favour of the appellant in

several decisions, including decisions rendered in the appellant's own cases. It has been submitted that SWS is levied under section 110 of the Finance Act, 2018, as a percentage of the aggregate duties of customs levied and collected under section 12 of the Customs Act, 1962. Therefore, unless BCD is both levied and collected, the machinery provisions for computation of SWS cannot operate.

7. Learned Counsel has further submitted that the Notification Nos. 24/2015-CUS & 25/2015-CUS were issued in exercise of the powers conferred by section 25 of the Customs Act, 1962 and especially exempting specified imported goods for the whole of BCD, subject to fulfilment of the prescribed conditions. The mere debit of the duty amount in the duty-credit scrips is a mechanism prescribed under the exemption scheme and cannot be treated as an actual collection of BCD. Reliance has been placed on the judgment of Hon'ble Supreme Court in the case of Somaiya Organics Ltd Vs State of Uttar Pradesh [2001 (130) ELT 3 (SC)], wherein the expression 'collection' in taxing statute was understood to mean the physical realization of tax. He has further relied on Circular No. 03/2022-CUS dt.01.02.2022 issued by the CBIC. Para 4 of the circular clarifies that the SWS payable would be nil, where the aggregate of the customs duties forming the base for computation of surcharge is zero, even though SWS itself has not been separately exempted.

8. It has been contended that the circular is clarificatory and beneficial in nature and is, therefore, applicable to past transactions also. Reliance in this regard has been placed on the case of Suchitra Components Ltd Vs CCE, Guntur [2007 (208) ELT 321 (SC)], wherein it was held that a beneficial circular is to be applied retrospectively, whereas, an oppressive circular operates prospectively. The principle in the case of Suchitra Components Ltd Vs CCE, Guntur, supra, is also recorded in the Hon'ble Supreme Court's later discussion of beneficial circulars. Learned Counsel has also placed reliance on the following decisions:

a) Dalmia Cement (Bharat) Ltd Vs UOI [2024 (11) TMI 1055 – Orissa HC]
b) Emami Agrotech Ltd Vs UOI [2022 (9) TMI 1588 – Bombay HC]
c) Emami Agrotech Ltd Vs CC, Vijayawada & CC, Visakhapatnam [2024 (3) TMI 86 – CESTAT Hyderabad]

d) Dalmia Cement (Bharat) Ltd Vs CC (Prev.), Vijayawada [2024 () TMI 632 – CESTAT Hyderabad]
e) Emami Agrotech Ltd Vs CC (Port), Kolkata [2025 (3) TMI 788 – CESTAT Kolkata
f) Emami Agrotech Ltd Vs CC (Port), Kolkata [Final Order – 77304-77500/2024 dt.14.11.2024 – CESTAT Kolkata]
g) Emami Agrotech Ltd Vs CC (Port), Kolkata [Final Order – 76834-76915/2024 dt.05.09.2024 – CESTAT Kolkata]
h) Emami Agrotech Ltd Vs CC (Port), Kolkata [2023 (10) TMI 1223 – CESTAT Kolkata

9. It has been further submitted that this Tribunal, in the appellant's own case, has already held that SWS is not payable where the underlying BCD is exempted under the MEIS/SEIS notifications. It has been stated that the Revenue's appeal against the said decision has also been dismissed by the Hon'ble jurisdictional High Court. Learned Counsel has also submitted that the reliance placed by the Commissioner (Appeals) upon Tanfac Industries Ltd Vs Asst. Commissioner, Cuddalore [2009 (240) ELT 341 (Mad)] is misplaced as that case concerned clearance of warehoused goods beyond the permissible period and the liability arising in that factual context. It did not decide the specific issue of levy of SWS where the underlying BCD was exempted.

10. It has also been submitted that reliance placed by the Commissioner (Appeals) on the case of Ratnamani Metals & Tubes Ltd Vs UOI [2016 (339) ELT 509 (Guj)] is equally inapposite, since the controversy therein concerned Education Cess and Secondary & Higher Education Cess under a different statutory and exemption framework. According to the appellant, the said decision did not examine the requirement of actual levy and collection of underlying duty for the purpose of imposing SWS. Learned Counsel, accordingly, prayed that the impugned order be set aside and the appeals be allowed with consequential refund or re-credit of the SWS, along with applicable interest.

11. Learned AR has supported the impugned order and has submitted that imported goods were not cleared without discharge of BCD. The duty was quantified and discharged by debit in the MEIS/SEIS scrips. The mode of payment does not alter the character of the amount as BCD.

12. According to the Revenue, the duty credit scrip merely provides an alternative instrument for payment of customs duty. Since the BCD was assessed and debited from the scrips, it constituted the appropriate base for computation of SWS.

13. Learned AR has further submitted that the exemption notifications have to be construed strictly. Since the Notification Nos. 24/2015-CUS & 25/2015-CUS do not specifically exempt SWS, such exemption cannot be inferred or extended by limitation. Reliance has been placed on CC (Import), Mumbai Vs Dilip Kumar & Company [2018 (361) ELT 577 (SC)] for the proposition that an exemption notification must be interpreted strictly and that any ambiguity in the exemption provision must ordinarily operate in favour of the Revenue. The Revenue has also relied upon Tanfac Industries Ltd Vs Asst. Commissioner, Cuddalore, supra, and Ratnamani Metals & Tubes Ltd Vs UOI, supra, to contend that discharge of duty through duty-credit scrip constitutes payment of duty and that the availability of credit or drawback indicates that the exemption under the relevant scheme is not an absolute exemption. Learned AR, therefore, has prayed that the appeals be dismissed.

14. We have heard both sides and carefully perused the records, impugned order, the relevant statutory provisions and the decision cited before us.

15. The narrow issue that arises for consideration is, as under:

- Whether SWS is leviable on imported goods where the BCD is exempted under Notification Nos. 24/2015-CUS & 25/2015-CUS, and the amount corresponding to such BCD is debited in the MEIS/SEIS duty-credit scrips.

16. SWS is imposed under section 110 of the Finance Act, 2018. In substance, the provision levies surcharge on the aggregate of the duties, taxes and cesses, which are levied and collected by the Central Government under section 12 of the Customs Act, 1962 and on the value of the imported goods, as the case may be, at the prescribed rate. SWS is not an independent duty having a separate assessable base unrelated to the customs duties on the imported goods. Its quantum is determined as a percentage of the aggregate customs duties forming its statutory base.

Consequently, where the aggregate amount of the underlying customs duty is nil, the mathematical and the statutory base for computation of SWS would also be nil.

17. Notification Nos. 24/2015-CUS & 25/2015-CUS were issued under section 25(1) of the Customs Act, 1962. Subject to fulfilment of the conditions stipulated therein, the notifications exempt the specific goods from the whole of the duty of customs leviable thereon under the relevant tariff provisions. The fact that the amount corresponding to BCD is debited in a duty-credit scrip does not, by itself, displace the exemption granted under the notifications. Such debit is part of mechanism governing utilization and collection of BCD in cash.

18. The distinction between the assessment or notional quantification of duty and its actual collection assumes significance because the charging provision relating to SWS, especially refers to duties, which are ‘levied and collected’. The expression ‘collected’, in its ordinary fiscal sense, contemplates actual realization of the tax or duty by the exchequer. The Hon’ble Supreme Court in Somaiya Organics Ltd Vs State of Uttar Pradesh, supra, explained the expression ‘collection’ in the context of taxation as involving physical realization of the tax. Applying that principle, a debit entry in a duty-credit scrip, made in pursuance of an exemption scheme, cannot automatically be treated as physical realization of BCD by the Government. The matter also stands clarified by CBIC Circular No. 03/2022-CUS dt.01.02.2022. Para 4 of the circular makes it clear that the amount of SWS payable would be nil where the aggregate of the customs duties forming the basis for computation of SWS is zero, even though SWS has not been separately exempted. The circular does not create a new exemption. It explains the manner in which the existing statutory provision is to be applied where the underlying duties constituting the computational base are nil. Being clarificatory and beneficial in nature, it is applicable to pending disputes concerning earlier periods. The principle laid down in Suchitra Components Ltd Vs CCE, Guntur, supra, supports such application. We are unable to accept the Revenue’s contention that, because SWS has not been specifically mentioned in the exemption notifications, it must necessarily be recovered. The appellant is not seeking an independent exemption from SWS. Its case is that the statutory base on which such surcharge is to be

computed is nil. The distinction must be maintained between an exemption from surcharge itself and the absence of a positive computational base for its levy. The judgment of Hon'ble Supreme Court in the case of CC (Import), Mumbai Vs Dilip Kumar & Company, supra, does not advance the case of the Revenue. The notifications in the present case clearly grant exemption from the whole of BCD, subject to compliance with their conditions. No ambiguity in the scope of the exemption has been demonstrated. The question before us concerns the statutory consequence of such exemption upon the computation of SWS and not the enlargement of the scope of the exemption notifications through a liberal interpretation. More importantly, the controversy has already been considered by this Tribunal in the appellant's own case in Emami Agrotech Ltd Vs CC, Vijayawada & CC, Visakhapatnam, supra, wherein the Tribunal held that while there is no actual collection of BCD by reason of exemption, SWS computed as a percentage thereof is not payable. The subsequent order of this Tribunal in Dalmia Cement (Bharat) Ltd Vs CC (Prev.), Vijayawada, supra, followed the decision in the appellant's own case and held that SWS is not payable where the goods are cleared by utilizing MEIS scrips under the relevant exemption notification. The impugned order was set aside and the consequential re-credit or refund of the SWS, with interest in accordance with law, was directed. Similar relief has also been granted to the appellant by the Kolkata Bench of this Tribunal. In its order dt.14.11.2024, the Tribunal directed refund of SWS debited in the MEIS/SEIS licenses or paid in cash, together with applicable interest. Judicial discipline requires us to follow the decisions rendered in the appellant's own case, particularly when no contrary judgment of a higher judicial forum directly governing the same statutory provisions and exemption notifications has been brought to our notice.

19. We now deal with the decision relied upon in the impugned order. In Tanfac Industries Ltd Vs Asst. Commissioner, Cuddalore, supra, the Hon'ble Madras High Court was concerned with warehoused goods and the liability arising upon clearance after expiry of the permitted warehousing period. The issue of computation of SWS where the underlying BCD was exempted under the MEIS/SEIS scheme did not arise for consideration. The said judgment is, therefore, distinguishable on facts as well as on the statutory issue involved.

20. The decision in Ratnamani Metals & Tubes Ltd Vs UOI, supra, was rendered in the context of Education Cess and Secondary & Higher Education Cess and the peculiar provisions of the exemption scheme involved therein. It did not examine the precise language of section 110 of the Finance Act, 2018 or the effect of CBIC Circular No. 03/2022-CUS. Reliance placed on the said decision for sustaining SWS in the present cases is, therefore, misplaced.

21. The reasoning of the Commissioner (Appeals) that the availability of Cenvat credit or drawback proves that there was no absolute exemption, also does not determine the issue before us. Eligibility for credit or drawback depends upon the language of the relevant credit, drawback and export incentive provisions. It cannot substitute the statutory conditions for levy and computation of SWS. The levy must be tested with reference to its own charging and computation provisions. Where the BCD, which constitutes the base for SWS, is exempted and is not actually collected, the surcharge computed as a percentage of such duty necessarily works out to nil. We, therefore, hold that the debit of the amount corresponding to BCD in the MEIS/SEIS duty-credit scrips cannot be treated as actual collection of BCD for the purpose of levying SWS. The appellant was not liable to pay SWS on the imports covered by the disputed bills of entry. Consequently, the findings recorded by the learned Commissioner (Appeals) cannot be sustained. The impugned order is contrary to the statutory scheme, clarifications issued by the Board and the binding judicial precedents rendered on the same issue, including the decisions in the appellant's own cases.

22. In view of the foregoing discussion, the impugned order dt.27.12.2019 is set aside. All the 13 appeals filed by the appellant are allowed with consequential relief, in accordance with law.

(Pronounced in the Open Court on 13.08.2026)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

Veda