

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**NEW DELHI****PRINCIPAL BENCH – COURT NO. III****CUSTOMS APPEAL NO. 55845 of 2023**

[Arising out of Order-in-Appeal No.IND-EXCUS-000-APP-118-2023-24 dated 27.07.2023 passed by the Commissioner(Appeals) Customs, CGST & Central Excise, Indore(M.P)]

M/s Vardhman Textiles Ltd.**...Appellant**

Vardhman Yarns, Plot No.A1-A6,
Industrial Area, Raisen, M.P.-462 046

Versus

Commissioner of Customs**...Respondent**

Manik Bagh Palace,
Indore (M.P.)-452 014

APPEARANCE:

Shri Rupender Singhmar, Advocate for the appellant.
Shri Rajesh Singh, Authorised Representative for the Respondent.

CORAM:

HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

FINAL ORDER NO.50406 /2026

DATE OF HEARING:24.02.2026
DATE OF DECISION:27.03.2026

BINU TAMTA:

1. M/s Vardhman Textiles Ltd.¹ has assailed the Order-in-Appeal², whereby the request of the appellant for reassessment and substitution/cancellation of five Bills of Entry³ and grant of exemption under Notification No.21/2022 – CUS dated April 13, 2022 was rejected.

2. Briefly stated, the appellant filed five self-assessed B/E Nos.8143986 dated 5.04.2022, No.8188854 dated 8.04.2022,

¹ Appellant

² No.IND-EXCUS-000-APP-118-2023-24 dated July 27, 2023,

³ B/E

No.8208393 dated 9.04.2022, No.8255705 dated 13.04.2022 and No.8259138 dated 13.04.2022 for clearance of imported goods namely, "Raw Cotton", classified under Chapter Heading No.5201 0020 claiming exemption from payment of basic customs duty vide exemption Notification No.18/2015 dated April 1, 2015, against valid advance authorisation licenses. On the same day, i.e., April 13, 2022, the last of the impugned B/Es were filed and assessed a new exemption Notification No.21/2022-CUS was issued, exempting BCD and Additional Duty of Customs on the import of cotton with effect from April 14, 2022. In view thereof the appellant submitted letter dated April 18, 2022 to the Customs requesting for reassessment of the 2 B/Es (8143986 and 8188854) and cancellation of the other three B/Es (8208393, 8255705 and 8259138). The Deputy Commissioner, ICD, Mandideep rejected the request vide order dated April 19, 2022. Subsequently, the appellant made another request to the Customs vide letter dated April 22, 2022 to substitute the five B/Es originally filed for home consumption into B/Es for warehousing, however, the Deputy Commissioner rejected the same. The appeal filed by the appellant challenging the orders dated 19 April April, 2022 and April 25, 2022 has been rejected by the Commissioner (Appeals) by the impugned order and hence the present appeal has been filed before this Tribunal.

3. Heard Shri Rupender Singhmar, Advocate for the appellant and Shri Rajesh Singh, Authorised Representative for the respondent and perused the case records.

4. The learned Commissioner has noted that the only issue to be decided in the appeal is whether the appellant is eligible to avail

exemption benefit provided by Notification No.21/2022 dated April 13, 2022.

5. The submission of the learned Counsel is that unless an out-of-charge order under Section 47 is issued, the goods remain imported goods and are subject to the prevailing rate of duty. As the out-of-charge orders were issued after 22.04.2022, i.e. after the notification came into effect on 14.04.2022, the notification no.21/2022, which provided 'nil' rate of duty was applicable. The learned Counsel emphasised that the taxable event is when goods cross the Customs barrier and, therefore the relevant date is the date of clearance relying on the decision of the Apex Court in **Garden Silk Mills versus Union of India**⁴ and **Kiran Spinning Mills versus CCE**⁵. Since the goods in question were pending clearance when the exemption notification came into effect, the benefit thereof cannot be denied. The learned Counsel relied on the settled principle that the assessee has the option to choose more beneficial exemption.

6. The learned Authorised Representative for the Revenue has reiterated the findings of the Authorities below. He contended that relevant date for determination of duty as per Section 15(1)(a) of the Act is the date of filing of the B/E and since the exemption notification no.21/2022 became effective from April 14, 2022, it was not in existence at the time when B/Es were filed and the benefit thereof cannot be extended to the appellant.

⁴1999 (113) ELT 358 (SC)

⁵1999(113) ELT 753 (SC)

7. The undisputed facts are that five B/Es were filed and assessed on the same dates and the assessment orders were issued to the appellant on the same day. On April 13, 2022, the date on which last bill of entry was filed and assessed, the exemption notification No.21/2022 was issued, which exempted BCD and AIDC on import of "Cotton" w.e.f. April 14, 2022. To avail the benefit of the exemption notification, the appellant had requested the Custom Authorities for reassessment of two B/Es and cancellation of the remaining three B/Es and further for substitution of the B/Es filed for home consumption into B/Es for warehousing. The appellant had filed the B/Es within the statutory time limit prescribed as per Notification No.34/2021-Cus (NT) on 5.4.2022, 8.4.2022, 9.4.2022 and two B/Es on 13.4.2022 which is after the date of "entry inwards of vessels". There is no error in the understanding of the Department that the relevant date for determining the rate of duty should be the date of filing of the B/Es as per Section 15(1)(a) and since the notification no. 21/2022 was not in existence at that time, no benefit can be availed by the appellant thereunder.

8. To consider the other submission of the learned Counsel in terms of Section 46(5) of the Act for substitution of B/Es from home consumption to warehousing, the provisions of Section 46(5) are quoted below:-

"Section 46(5) If the proper officer is satisfied that the interests of revenue are not prejudicially affected and that there was no fraudulent intention, he may permit substitution of a bill of entry for home consumption for a bill of entry for warehousing or *vice versa*."

9. Clause (5) of Section 46 starts with the satisfaction of the proper officer with respect to the interest of revenue not being prejudicially affected while permitting substitution of a B/E. Therefore, the primary

concern of the proper officer is to protect the interest of the Revenue from being prejudicially affected by permitting the substitution of the B/E. Keeping that in view, the Authorities below rightly appreciated that the sole intention of the appellant in seeking substitution from home consumption to warehouse was to avail the benefit of the Notification no.21/2022 dated April 13, 2022, (w.e.f. April 14, 2022) which was non-existing at the time of filing the B/Es. This was definitely a cause of concern for the Revenue for rejecting the substitution. Secondly, we find that under Clause (5) of Section 46, the proper officer has been given a discretion to permit substitution of a B/E for home consumption for a B/E for warehousing or vice versa as the words used are, "he may permit". The word "may" is significant of the fact that proper officer is not bound to permit substitution and only on being satisfied is required to take a decision. It is also not a case that the discretion has been used, arbitrary or unfairly. Hence, there is no reason to interfere with the findings arrived at.

10. The plea taken by the appellant that they have an option to choose the exemption notification which is more beneficial to them is not sustainable in the facts of the present case, where the later notification was not in existence when the B/Es were filed and, therefore, there is no question of choosing the exemption notifications. The option is exercisable only with reference to the notifications, which are in existence on that date. The reliance placed by the appellant on the decision of the Apex Court in **Bharat Surfactant (P) Ltd versus Union of India**⁶ and the decision of the Tribunal in the case of **Sha Poosaji Mangilal versus Collector of Customs, Madras**⁷ holding that the rate of duty prevailing on the date of presentation of B/E is applicable,

⁶ 1989(43)ELT 189(SC)

⁷ 1991(51)ELT 76(Tri.)

but if entry inwards of ship takes place after presentation of B/E, then the rate of duty prevailing on date of entry inwards of ship is applicable. The said decisions are distinguishable for the reason that all the B/Es were filed as per the statutory time limit and were not filed as advance B/Es, which is evident from the details filled by the appellant under Section A(7) of Part-I of the B/E as "N". In fact as noted in the impugned order, all the B/Es have been filed after the date of "entry inwards of the vessels" as can be seen from the details provided under Section D(7) of Part-I of B/E. The relevant part of the B/E is set out below:-

REVISED COPY

INDIAN CUSTOMS		Port Code	BE No	BE Date	BE Type
PORT : ICD MADIDEEP 34-A1 NIA DIST: RAISEN MP 462046 BILL OF ENTRY FOR HOME CONSUMPTION		INMDD6	8143986	05/04/2022	H
		IEC/Br	1288034113/47	FIRST COPY	
		GSTIN/TYPE	23AABCIM4692EZM/G		
		CB CODE	AACCI2614PCH001		
		TYPE	INV	ITEM	CONT
		Nos	1	1	1
		PKG	107	G.WT (KGS)	23700
					BE0050420221250

PART - I - BILL OF ENTRY SUMMARY

A. STATUS		1.BE STATUS	2.MODE	3.DEF BE	4.KACHA	5.SEC 48	6.REIMP	7.ADV BE (Y/N/P)	8.ASSESS	9.EXAM	10.HSS	11.FIRST CHECK	12.PROV/FINAL
		FIRST COPY	Land	D	N	N	N	N	N	N	N	N	F
B. DECLARANT		13.COUNTRY OF ORIGIN		CAMEROON				14.COUNTRY OF CONSIGNMENT		CAMEROON			
C. SUMMARY		15.PORT OF LOADING		Douala				16.PORT OF SHIPMENT		Douala			
D. MANIFEST DETAILS		1.IMPORTER NAME & ADDRESS VARDHMAN TEXTILES LIMITED VARDHMAN YARNS PLOT NO A1-A6 INDUSTRIAL AREA PHA RAISEN MADHYA PRADESH 462046											
E. BOND DETAILS		2.CB NAME IMPEX CLEARING SERVICES PVT. LTD.											
F. PAYMENT DETAILS		3.AEO											
		4.UCR											
		AD CODE	0510035										
		1.BCD	2.ACD	3.SWS	4.NCCD	5.ADD	6.CVD	7.IGST	8.G.CESS	18.TOT.ASS VAL			
		0	0	0	0	0	0	252564	0	4787935			
		9.SG	10.SAED	11.GSIA	12.TTA	13.HEALTH	14.TOTAL DUTY	15.INT	16.PNLTY	17.FINE	19.TOT.AMOUNT		
							252564	0	0	0	252564		
		1.IGM NO	2.IGM DATE	3.INW DATE	4.GIGMNO	5.GIGMDT	6.MAWB NO	7.DATE	8.HAWB NO	9.DATE	10.PKG	11.GW	
		3580739	03/04/2022	03/04/2022	2307944	01-APR-22	216428658	15/02/2022			107	23700	
		1.BOND NO	2.PORT	3.BOND CD	4.DEBT AMT	5.BG AMT	1.SR NO	2.CHALLAN NO	3.PAID ON	4.AMOUNT(Rs.)			
		2001860860	INLDH6	NB	263336	0	1	2038778122		252564			

11. Lastly, we may consider the reliance placed by the learned Counsel on the proviso to Section 15 of the Act, which reads as:—

“15. Date for determination of rate of duty and tariff valuation of imported goods.

(1)

[Provided] that if a B/E has been presented before the date of entry inwards of the vessel or the arrival of the aircraft [or the vehicle] by which the goods are imported, the B/E shall

be deemed to have been presented on the date of such entry inwards or the arrival, as the case may be.]”

12. From the discussion above, the correct status is that the B/Es were filed after the date of “entry inwards of the vessels” and not as advance B/Es. We may refer to one of the instances, where B/E No.8143986 was dated 05.04.2022 and the date of inward vessel was 15.02.2022. Thus proviso to Section 15, which lays down that in case B/E has been presented before the date of entry inwards of the vessels, B/E shall be deemed to have been presented on the date of such entry inwards or the arrival, as the case may be, would not apply in the facts of the present case, which are otherwise.

13. Having considered the submissions and the provisions of law, we are of the considered view that the appellant is not entitled to avail the benefit of the Notification No.21/2022, as the same was non-existent on the date of filing of the B/Es. There is no reason to interfere with the impugned order and the same is hereby affirmed. The appeal is, accordingly dismissed.

[Order pronounced on 27th March, 2026]

(BINU TAMTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R.PRIYA)
MEMBER(TECHNICAL)