

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH,
COURT NO. I

CUSTOMS APPEAL NO. 50208 OF 2020

[Arising out of the Order-in-Appeal No. CCA/CUS/D-II/EXP/ICD/TKD/778-779/2019 dated 19/11/2019 passed by The Commissioner of Customs (Appeals), New Customs House, New Delhi-110037.]

M/s Lasco Chemie Pvt. Ltd.Appellant
10489, Sadar Thana Road,
Motia Khan,
New Delhi - 110 055.

Versus

Commissioner of Customs (Export),Respondent
ICD, Tughlakabad,
New Delhi - 110 020

**AND
CUSTOMS APPEAL NO. 50207 OF 2020**

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Shri Amit Kumar Jain, Director,Appellant
M/s Lasco Chemie Pvt. Ltd.
10489, Sadar Thana Road,
Motia Khan,
New Delhi - 110 055.

Versus

Commissioner of Customs (Export),Respondent
ICD, Tughlakabad,
New Delhi - 110 020

APPEARANCE:

Shri Alok Aggarwal and Shri Prachit Mahajan, Advocates for the appellant.

Shri Rakesh Kumar and Shri Girijesh Kumar, Authorized Representative for the Department

CORAM:

**HON'BLE JUSTICE MR. DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)**

FINAL ORDER NO. 51556-51557/2025

DATE OF HEARING : 30.06.2025
DATE OF DECISION: 13.10.2025

P.V. SUBBA RAO

M/s Lasco Chemie Pvt. Ltd.¹ and its Director Shri Amit Kumar Jain² filed these two appeals to assail the order-in-appeal dated 19.11.2019 wherein the Commissioner (Appeals) rejected the appellant's appeals and upheld the order-in-original dated 31.08.2017 passed by the Joint Commissioner.

2. The Joint Commissioner had, in his order, decided the proposals made in the show cause notice³ dated 29.01.2015 issued to the importer and Shri Jain.

3. The facts which resulted in issue of the impugned order are that the importer had filed five Bills of Entry in 2014 in which it paid duty using Duty Free Import Authorization⁴ licences. Receiving specific intelligence that the importer had fraudulently imported epoxy resin under the DFIA licenses issued to certain Kanpur based leather exporters, the Directorate General of Revenue Intelligence⁵ initiated investigation. It found that the DFIA licenses were issued to leather exporters in lieu of export of 'Finished Leather from Hide of Buffalo/Cow'. After fulfilling the export obligation, the

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1. importer
 2. its Director - Jain
 3. SCN
 4. DFIA
 5. DRI

exporters sold the licenses to the importer herein who used them to import epoxy resin. DRI came to the conclusion that the DFIA licenses permitted import of impregnating resin and that the importer had mis-declared epoxy resin as impregnating resin to fraudulently claim exemption under the DFIA licenses. It was, therefore, proposed in the SCN to demand differential duty under section 28 (1) of the Customs Act, 1962⁶. Penalties were proposed on the importer under section 114A and 114AA of the Act and penalty was proposed under section 112 on Shri Jain. It was also proposed to hold the imported goods valued at Rs. 1,28,77,505/- liable to confiscation under section 111 (o) and 111 (m) of the Act.

4. The Joint Commissioner confirmed the proposals in the show cause notice and this order was upheld by the impugned order. The operative part of the order of the Joint Commissioner is as follows :-

- (i) I hold that the goods referred to in Table A of the show cause notice having assessable value of Rs. 1,28,77,505/- are liable for confiscation under the provisions of section 111 (o) and section 111 (m) of the Customs Act, 1962. As the goods are not available for confiscation, I do not impose any redemption fine under the provisions of section 125 of the Customs Act, 1962 as discussed above.
- (ii) I confirm the demand of Rs. 33,29,154/- (Rupees Thirty Three lakhs, Twenty Nine Thousand, One Hundred and Fifty Four only) in terms of payment of customs duties because of wrong availment of the exemption under Notification No. 98/2009-Customs dated 11.09.2009. I

6. the Act

appropriate the amount of Rs. 33,29,153/- (Rupees Thirty Three Lakh, Twenty Nine Thousand, One Hundred and Fifty Three only) deposited voluntary as detailed in the show cause notice against the demand of Customs duties confirmed.

- (iii) I also confirm demand of applicable interest under the provisions of section 28AA of the Customs Act, 1962 on the duty confirmed under S. No. (2) above, from the first day of the month succeeding the month in which the duty ought to have been paid upto the date of payment of such duty.
- (iv) I impose penalty of Rs. 33,29,154/- (Rupees Thirty Three Lakh, Twenty Nine Thousand, One Hundred Fifty Four only) on M/s Lasco Chemie Pvt. Ltd., being equal to the duty determined at Sl. No. 2 above under the provisions of section 114 of the Customs Act, 1962. However, if duty as determined at Sl. No. 2 above and the interest payable thereon as determined at Sl. No. 3 above, is paid within thirty days from the date of the communication of this order, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the duty so determined at Sl. No. 2 above subject to the condition that the amount of penalty so determined is also paid within the said period of thirty days.
- (v) I hold that M/s Lasco Chemie Pvt. Ltd. is liable for penalty under section 112 of the Customs Act, 1962, however I do not impose penalty on M/s Lasco Chemie Pvt. Ltd. under section 112 of the Customs Act, 1962 in terms of fifth proviso to section 114A of the customs Act, 1962.
- (vi) I impose penalty of Rs. 12,00,000/- (Rupees Twelve Lakh only) on M/s Lasco Chemie Pvt. Ltd. under section 114AA of the Customs Act, 1962.
- (vii) I impose penalty of Rs. 1,50,000/- (Rupees One Lakh Fifty Thousand only) on Shri Amit Jain under section 112 of the Customs Act, 1962. Since penalty under section 112 is being imposed, I do not impose any penalty under section 117 of the Customs Act, 1962”.

5. Aggrieved, appellant filed this appeal with the prayer to set aside the impugned order upholding the order of the Joint Commissioner.

Submissions of the appellant

6. Learned counsel for the appellant made the following submissions :-

- (i) The importer had filed five Bills of Entry in January 2014 under freely transferred DFIA licenses procured from leather exporters and cleared goods ;
- (ii) The SCN dated 29.01.2015 was issued alleging that the goods imported by the appellant were not covered under the DFIA licenses on the ground that what was imported was epoxy resin which is not an impregnating resin and that it finds limited use in film forming systems in leather finishing as stated by the Central Leather Research Institute⁷, Chennai ;
- (iii) Epoxy Resin (Impregnating Resin) imported by the appellant was specifically classifiable under Customs Tariff Heading⁸ 3907 and hence was allowed to be imported under the disputed DFIA licenses.
- (iv) In the Epoxy Resin imported by another importer, the Central Revenue Control Laboratories⁹ issued test

7. CLRI
8. CTH
9. CRCL

report No. 164/11-12 dated 11.06.2011 after testing the sample and stated that the Epoxy Resin finds mention in Impregnating Resin.

- (v) The opinion of CLRI, Chennai is unsustainable since it had not examined or tested the samples of the imported goods.
- (vi) It has been alleged in the SCN that the exporters who obtained the DFIA licenses gave statements that they had not used Epoxy Resin in manufacture of finished leather which they exported. These statements were made under section 108 of the Act and since they were not put to the procedure under section 135B of the Act and admitted as evidence, they were not relevant to proving anything in this case.
- (vii) As per Notification No. 31 (RE)-2013/2009-2014 dated 01.08.2013 only inputs used in the manufacture of the exported products can be imported under the DFIA licenses.
- (viii) The department cannot rely on the Notification dated 01.08.2013 because all the licenses used in the disputed Bills of Entry were issued prior to this date and there is no retrospective application of the notification.
- (ix) The SCN also states that as per condition VI of the DFIA licenses, "Synthetic Resin in any broad heading of chemicals will not be allowed".

- (x) The appellant had correctly imported Epoxy Resin which is a type of impregnating resin used in the leather industry using the DFIA licenses and within the quantities indicated in the licenses.
- (xi) All the Bills of Entry were assessed, examined and were allowed clearance for home consumption after debiting the DFIA licenses by the customs officers.
- (xii) An amount of Rs. 33,29,153/- was deposited by the appellant during investigation which needs to be refunded to the appellant.
- (xiii) The impugned order may be set aside and the appeals of the importer and Shri Jain may be allowed with consequential relief to the appellant.

Submissions made by the Revenue :

7. Learned authorized representative for the Revenue made the following submissions :-

- (i) It has been clearly established that the appellant imported of Epoxy Resin under the DFIA licenses in direct violation of the licence issued.
- (ii) The classification of the Epoxy Resin as Impregnating Resin has not been disputed by the appellant.
- (iii) The importer's claim that the Epoxy Resin was used in leather processing and hence DFIA licenses were issued is not correct. The report of the CLRI and the statements of the leather exporters confirmed that

the Epoxy Resin was not used in leather finishing. Thus, the import was not only unauthorized but unrelated to the export product.

- (iv) The importer fraudulently misused DFIA licenses by importing high value Epoxy Resin in the guise of low value impregnating resin.
- (v) The report of the CLRI is a binding technical report by a Government authorized body and it cannot be brushed aside.
- (vi) The appellant is consequently liable to pay the differential customs duty. The imported goods were liable for confiscation under section 111 (m) mis-declaration and 111 (o) of the Act.
- (vii) Consequently, the penalty imposed on the importer and Shri Jain also needs to be sustained.

Findings :

8. We have considered the submissions advanced by both sides and perused the records.

9. The key issue to be decided is whether the appellant was entitled to the exemption from duty under notification no. 98/2009-Cus dated 11.9.2009 on the resin imported by it using several DFIA licences which it had purchased from exporters of leather.

10. The undisputed legal position is that if the resin imported by the appellant was covered by the DFIA licences, it would be entitled to the benefit of the notification no. 98/2009 and not otherwise.

11. The undisputed facts are also that the DFIA licences in question allowed duty free import of impregnating resins and that the appellant had imported goods which it had declared as 'epoxy resin (impregnating resin)' in the Bills of Entry.

12. The case of the Revenue is that the Epoxy Resins cannot be impregnating resins and therefore, the imported goods were not covered by DFIA licences. The case of the appellant is that Epoxy Resins can be impregnating resins and the resins which it had imported were indeed such resins and therefore, they were squarely covered by the DFIA licences.

13. The details of the DFIA licences and the Bills of Entry under which the resin was imported using them are as follows:

Sl. No.	BE No. & Date	DFIA license Nos.	Details of the DFIA license holder	Description of the Item imported as per BE	Description of item as per License	Inputs used by the exporters	Remarks
1.	4854558 dated 10.03.14	0610031942 dated 10.05.13	M/s Iqwal Leathers Ltd., Kanpur	Epoxy Resin (Impregnating Resin) - 39073010	Impregnating Resin - CTH - 29262000	As mentioned in Statement (RUD-2) by Shri Nihal Bin Iqwal, M/s Iqwal Leathers Ltd., have used acrylic water based impregnating	CTH and description of import not tallying with the input mentioned in the license and the input actually

						resin mentioned as item 28 in the said license falling under ITCHS - 29262000	used by the exporter/ DFIA license holder.
		0610026934 dated 08.05.12	M/s Model EXIM, Kanpur		Impregnating Resin - CTH - 39070000	M/s Model Exim vide letter dated 19.12.2014 (RUD - 9) has submitted BE No. 2467767 dated 19.06.2013 for import of impregnating resin used by them and at Serial No. 1 - 38099390 - Impregnating Agent - Lambinder CTR is mentioned.	Description of import not tallying with the input mentioned in the license and the input actually used by the exporter/ DFIA license holder.
2.	4905521 dated 14.03.14	0610028915 dt. 12.09.12	M/s Model Tanners (India) Pvt. Ltd., Kanpur	Epoxy Resin (Impregnating Resin) - 39073010	Impregnating Resin - CTH - 39070000	M/s Model Tanners (I) Pvt. Ltd., Kanpur in their letter dated 10.01.2015 (RUD - 12) submitted BE No. 00583 dated 06.12.2012 for import of impregnating resin used by them and at Serial No. 1 - 38099390 - Impregnating Agent is mentioned	Description of import not tallying with the input mentioned in the license and the input actually used by the exporter/ DFIA license holder.
		0610028915 dt. 12.09.12	Do		Impregnating Resin - CTH - 39070000	M/s Model Tanners (I) Pvt. Ltd., Kanpur in their letter dated 10.01.2015 (RUD - 12) submitted BE No. 00583 dated 06.12.2012 for import of impregnating resin used by them and at Serial No. 1 - 38099390 - Impregnating Agent is mentioned.	Description of import not tallying with the input mentioned in the license and the input actually used by the exporter/ DFIA license holder.

		0610031942 dt. 10.05.13	M/s Iqwal Leathers Ltd., Kanpur		Impregnating Resin - CTH - 29262000	As mentioned in Statement (RUD - 2) by Shri Nihal Bin Iqwal, M/s Iqwal Leathers Ltd., have used acrylic water based Impregnating resin mentioned as item 28 in the said license falling under ITCHS - 29262000	CTH and description of import not tallying with the input mentioned in the license and the input actually used by the exporter/ DFIA license holder.
		0610026934 dt. 08.05.12	M/s Model EXIM, Kanpur	Solid Epoxy Resin Razeen	Impregnating Resin - CTH - 39070000	M/s Model Exim vide letter dated 19.12.2014 (RUD - 9) has submitted BE No. 2467767 dated 19.06.2013 for import of impregnating resin used by them and at Serial No. 1 - 39099390 - Impregnating Agent - Lambinder CTR is mentioned	Description of import not tallying with the input mentioned in the license and the input actually used by the exporter/ DFIA license holder.
3.	4510187 dated 30.01.14	0610031556 dt. 08.04.13	M/s Enayat Overseas, Kanpur	(Impregnating Resin) (GRA 26 DE-SR- 5004) - 39073010	Impregnating Resin - CTH - 39070000	Shri Mohd. Rafiullah, Partner in M/s Enayat Overseas, Kanpur in statement dated 25.09.2014 (RUD - 5) stated that they have used various brands of PU resin/ binders available in the market for use in leather industry with brand names such as 'UNICHEM' and 'EXCEL'	Descriptoin of import not tallying with the input mentioned in the license and the input actually used by the exporter/ DFIA license holder.
4.	4510185 dated 30.01.14	0610031556 dt. 08.04.13	M/s Anayat Overseas, Kanpur	Solid Epoxy Resin Razeen (Impregnating Resin) (GRA 26 DE - SR - 5004) - 39073010	Impregnating Resin - CTH - 39070000	Shri Mohd. Rafiullah, Partner in M/s Enayat Overseas, Kanpur in statement dated 25.09.2014	Description of import not tallying with the input mentioned in the license and

						(RUD - 5) stated that they have used various brands of PU resin/ binders available in the market for use in leather industry with brand names such as 'UNICHEM' and 'EXCEL'	the input actually used by the exporter/ DFIA license holder.
5.	4763013 dated 27.02.14	0610024457 dated 08.11.11	M/s Model Tanners (India) Pvt. Ltd., Kanpur	Epoxy Resin (Impregnating Resin) - 39073010	Impregnating Resin - CTH - 39070000	M/s Model Tanners (I) Pvt. Ltd., Kanpur in their letter dated 10.01.2015 (RUD - 12) submitted BE No. 00533 dated 06.12.2012 for import of impregnating resin used by them and at Serial No. 1 - 38099390 - Impregnating Agent is mentioned.	Description of import not tallying with the input mentioned in the license and the input actually used by the exporter/ DFIA license holder.

14. The case of the Revenue is based on 20 Relied Upon Documents listed in Annexure -A to the SCN. This includes 8 statements of various persons recorded under section 108 of the Act, one panchnama, two letters from the importer and Shri Jain, letters from various exporters who had exported the leather, obtained the DFIA licences and sold them to the appellant importer and a letter dated 5.11.2014 from the Central Leather Research Institute, Chennai.

15. In the letter of CLRI signed by Chief Scientist and Head of Tannery Division, Dr. C. Muralidharan, written to the Senior

Intelligence Officer, DRI in response to his enquiry is as follows:

"Soft acrylic and polyurethane resins are normally used as impregnating resin in Leather Finishing/Processing.

Epoxy resin is not an impregnating resin. Due to its cross linking property, it is mostly used as adhesives/cross linking agents and finds limited usage in film forming systems in Leather Finishing."

16. In the SCN, the Additional Director DRI had:

- i) relied on the above expert opinion of the CLRI to assert that Epoxy resin is not an impregnating resin;
- ii) relied on statements of various exporters recorded under section 108 to conclude that they had not used epoxy resin in manufacture of the exported leather;
- iii) relied on the fact that epoxy resin was not mentioned in the DFIA licences and only 'impregnating resin' was mentioned in them;
- iv) relied on the Handbook of procedures (Vol.I) published by the Directorate General of Foreign Trade to assert that the description of the inputs used and those which can be imported must match;

- v) relied on the condition in the DFIA licences which mentions " Synthetic Resins and Hydroxy Cellulose in any broad heading of chemicals may not be allowed" to assert that only such resins which were used could be allowed to be imported;
- vi) asserted that the average price of impregnating agents was US\$ 1.5 per kg during 2013-14 while the average price of epoxy resin during the same year was US \$ 2.5 per kg to conclude that since epoxy resin was of higher value, and it is therefore, not used in leather industry; and
- vii) concluded that the appellant importer had mis-declared epoxy resin as impregnating resin.

17. The appellant resisted the proposals in the SCN. The Joint Commissioner reproduced the reply of the appellant verbatim in paragraph 11 of his order and confirmed the proposals in the SCN. He concluded that the appellant was not entitled to the benefit of the DFIA licences for the following reasons:

- i) The Wikipedia lists epoxy resin, synthetic casting resin, acetal resin, Ion exchange Resins, Solvent Impregnating resins (SIR) and unsaturated polyester resins as different types of synthetic resins and therefore, epoxy resin is not impregnating resin;

- ii) As per the Handbook of Procedure and the Foreign Trade Policy, while issuing DFIA, the relevant type of synthetic resin is to be specifically mentioned and since epoxy resin is not mentioned and only impregnating resin is mentioned, epoxy resin cannot be imported;
- iii) The appellant had not contested that epoxy resin is a synthetic resin;
- iv) CLRI also clarified that epoxy resin is not an impregnating resin;

18. The Commissioner (Appeals) upheld the above findings of the Joint Commissioner.

19. Of the various relied upon documents, the statements of various exporters recorded under section 108 of the Act would have been relevant as per section 135B of the Act to prove the truth of their contents had the adjudicating authority admitted them as evidence after examining the persons who made the statements as witnesses. Since this has not been done, the statements are not relevant to prove the department's case.

20. Heavy reliance placed by both the Joint Commissioner and the Commissioner (Appeals) on Wikipedia is highly misplaced. Wikipedia is an open source information available online and anyone can write about the topic and anyone else

can edit it. Thereafter, somebody else can further edit it. It is not the opinion of any one expert but is only crowd sourced information. What is on Wikipedia today about say, epoxy resins today may not be what will be on it tomorrow because someone else may edit and alter the information. Such information cannot form the basis of any adjudication or fastening liability on any assessee.

21. The expert opinion of Dr. Muralidhar of CLRI is categorical that epoxy resins cannot be impregnating resins.

22. On the other hand, the appellant produced before us a copy of the test memo, test report and note sheet (placed at pages 220-222 of the appeal) in respect of another consignment of another importer M/s. Hazel Mercantile Limited in respect of Bill of Entry No. 369476 dated 3.6.2011. The New Custom House, Mumbai had sent a sample of the imported good described as 'Epoxy Resin Epiran 6' under the cover of a Test Memo dated 9.6.2011 to the Central Revenue Control Laboratory (CRCL) with two queries (1) "Nature and Composition" and (2) Whether impregnation resin". The test report dated 24.6.2011 states

Test Result

Nature: Colourless viscous liquid

Composition: Epoxy resin

Technical opinion: It finds use as impregnation resin

23. Thereafter, the Superintendent of Customs put up a note stating "M/s. Hazel Mercantile Limited sought clearance of goods declared as "Epoxy Resin' under DFIA Scheme under SION as 'impregnating resin'. Since it was not clear whether epoxy resin can be used as impregnation resin, RSS (must be representative samples) was forwarded to DYCC (must be Deputy Chief Chemist of CRCL). DYCC vide Test report No. Lab No. 1245-VIIII dated 11.6.11 confirmed that it finds mention in impregnation resin.

In view of DYCC above test report, if approved, we may assess the BE. Submitted please.

Signed by the Superintendent and the Deputy Commissioner.

24. What is clear from the above is that in at least one case, Epoxy Resin imported by an importer was tested and certified by CRCL that it was an impregnation resin and the goods were cleared by the Customs under DFIA as 'impregnation resin'.

25. It must be pointed out that the samples of the goods imported by the appellant in this case were not drawn and sent for testing to either the CLRI or by the CRCL. Had the DRI, while investigating, sent samples to some expert (CLRI or CRCL), we could have had a definite expert opinion as to whether the imported goods was impregnating resin or otherwise.

26. It is not within our field of expertise to decide if the CLRI's opinion was correct or that of CRCL. We, therefore, do not find sufficient evidence to say with certainty that the epoxy resin imported by the appellant importer was not impregnating resin or not and hence whether it was covered by DFIA or not. Samples were not sent for testing either to CLRI nor CRCL during investigation.

27. In the absence of any evidence, we must hold that the allegation in the SCN and the finding in the order of the Joint Commissioner upheld in the impugned order of Commissioner (Appeals) that the Epoxy Resin imported by the appellant was not impregnating resin cannot be sustained.

28. Consequently, the demand of duty denying the benefit of DFIA licences and imposition of penalties also cannot be sustained.

29. The impugned order dated 19.11.2012 is set aside and both appeals are allowed with consequential relief to the appellants.

(Order pronounced in open court on 13/10/2025.)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)