

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

PRINCIPAL BENCH, COURT NO. I

**CUSTOMS APPEAL NO. 51089 OF 2020**

[Arising out of the Order-in-Original No. 19/2019 dated 23/12/2019 passed by The Commissioner of Customs (Preventive), Jodhpur, Jaipur.]

**M/s Ajanta Soya Limited**

SP-916, Phase – III, Industrial Area,  
Bhiwadi – 301 019, Dist. Alwar, Rajasthan  
Through its Senior Manager  
Mr. Tajinder Singh Bhatia

**.....Appellant**

**Versus**

**Commissioner of Customs,  
(Preventive), Jodhpur,**

NCR Building, Statue Circle, C-Scheme,  
Jaipur – 302 005.

**....Respondent**

**APPEARANCE:**

Shri Shubhankar Jha, Advocate for the appellant.  
Shri Ranjan Prakash, Commissioner and Shri Rajesh Singh,  
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. 51693/2025**

**DATE OF HEARING : 09.07.2025**

**DATE OF DECISION: 07.11.2025**

**P.V. SUBBA RAO**

**M/s Ajanta Soya Ltd., Alwar<sup>1</sup>** filed this appeal to assail the order-in-original dated 23.12.2019<sup>2</sup> passed by the Commissioner of Customs (Preventive), Jodhpur whereby he confirmed demand of Rs. 1,05,18,265/- as customs duty on the imported Crude Palm Oil under section 28 (8) of the Customs Act, 1962<sup>3</sup> read with rule 7 and rule 8 of the Customs

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- 1. Appellant**
  - 2. impugned order**
  - 3. the Act**

(Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2016<sup>4</sup> and also by enforcing the continuity bond for Rs. 40 crores given by the appellant. He also confirmed the demand of interest under section 28AA. He also imposed penalty of Rs. 1,05,18,265/- under section 114A of the Act and penalty of Rs. 5,00,000/- under section 114AA of the Act and Rs. 25,000/- under section 117 of the Act on the appellant.

2. The facts which led to the issue of the impugned order are that the appellant is a manufacturer of Refined Oil, Vanaspati and Bakery Shortening. To manufacture these, the appellant had, during the relevant period (May 2017), imported Crude Palm Oil. Crude Palm Oil was leviable to Basic Customs Duty<sup>5</sup> @ 85%. However, the Notification No. 12/2012- CUS (Sl. No. 51) dated 17.03.2012 exempted the duty in excess of 7.5% subject to the condition that the Crude Palm Oil is used for manufacture of Refined Oil, Refined Palmolien, Vanaspati, Bakery Shortening etc. This exemption was subject to the condition that the importer follows the procedure under the 2016 Rules which include execution of a continuity bond.

3. On 14.05.2017, there was a fire accident in the appellant's factory which was controlled by the Fire Department only by 16.05.2017. On 16.05.2017, the appellant

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**4. 2016 Rules**

**5. BCD**

intimated the jurisdictional Central Excise authorities regarding the fire. On 16.05.2017, the appellant conducted a joint verification along with the surveyor of the insurance company and it was found that 214.069 M.T. of Crude Palm Oil was destroyed in the fire. Later, the appellant made some corrections in the stock register and enhanced the shortage to 282.919 M.T. including 23.035 M.T. of Crude Palm Oil (partially processed) and 23.035 M.T. of Crude Palm Oil (Hydrogenated). According to the appellant, the reason for the difference between the two figures is the wrong entry made in the Tally software of 64.050 M.T. of Refined Palm Oil under the head "Refined Palm Oil" instead of "Refined Palm Oil purchased". The appellant also informed the surveyor about this difference in August 2017.

4. The insurance surveyor, in his final report, did not agree with the correction made by the appellant and stated that it was an afterthought and held that the total loss of Palm Oil was **230.77 M.T.** including Crude Palm Oil (partially processed) (107.73 M.T.) and Crude Palm Oil (Hydrogenated) (123.04 M.T.)

5. The dispute, in question, is regarding the differential duty to be paid on the Crude Palm Oil imported by the appellant for the purpose of manufacturing final products as per the 2016 Rules but which was not actually used because of the fire accident.

6. The officers of the Customs (Preventive), Jodhpur also investigated the matter and issued a show cause notice alleging that the appellant had maintained duplicate records to hide actual facts. The Report of the surveyor was taken as the basis of the quantity of the Crude Palm Oil lost in fire and, accordingly, the customs duty was demanded.

7. The appellant's submissions that the Crude Palm Oil must be treated as having been lost in the process of manufacture was not accepted as no processing was done in the feed tank of deodorizer as it was just a holding tank in which no change occurred. It was also alleged that the importer did not inform the department about the fire accident in time.

8. On 29.10.2019, the appellant filed a reply denying the allegations in the show cause notice and resisting the proposals in the show cause notice. Personal hearing was held on 25.11.2019 in which the appellant's counsel appeared. Thereafter, the impugned order was passed on 23.12.2019. Aggrieved, the appellant filed this appeal before us.

9. We have heard learned counsel for the appellant and learned authorized representative for the Revenue and perused the records.

**Submissions of the appellant :-**

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

- (i) Within two days of the fire, the joint survey was conducted by the insurance surveyor and a loss of 214.069 M.T. of Crude Palm Oil was reported. The department was informed on 16.05.2017 ;
- (ii) Later, realizing that there was a human error in entering the figures, the loss was enhanced 282.921 M.T. ;
- (iii) In his final report the surveyor assessed the actual loss to be 230.77 M.T. ;
- (iv) In the impugned order it is held that the appellant had manipulated the records and duty has been demanded on the entire quantity of 282.921 M.T. treating the difference between this figure and the final loss recorded in the surveyor's report of 230.77 M.T. as clandestine removal ( $282.92 - 230.77 = 52.75$  M.T.) of Crude Palmolive Oil ;
- (v) The appellant's annual consumption of Crude Palm Oil has been around 1,00,000 M.T. on which it has been claiming customs duty exemption around Rs. 400 crores. The allegation that the appellant had clandestinely removed 52.15 M.T. against such huge quantity is nothing but far-fetched imagination of the officer ;
- (vi) The duty element on this differential amount comes to Rs. 19 lakhs only ;
- (vii) The appellant had an unblemished history in the Customs and Excise Department and one human error cannot be said to be a willful act.
- (viii) The appeal may be allowed and the impugned order may be set aside.

**Submissions of the Department :-**

11. Learned authorized representative for Revenue vehemently reiterated the impugned order and submitted as follows :-

- (i) Exemption Notification No. 12/2012-CUS dated 17.03.2012 clearly stipulates that the exemption was available subject to the condition of manufacture of

specified final products and this condition must be strictly enforced as held by the Supreme Court in **Indian Aluminium Company versus Thane Municipal Corporation<sup>6</sup>** and **Eagle Flask Industries Ltd. versus Commissioner<sup>7</sup>**

- (ii) From the statement of Shri Rakesh Sharma, Manager (Production) and the surveyor's report, it is evident that no separate registers were maintained for : (a) Crude Palm Oil (b) partially processed Crude Palm Oil and (c) Hydrogenated Oil : even in the balance sheet for Financial Year 2017-2018 in Note XII no separate quantities lost were shown.
- (iii) Shri Rakesh Sharma also admitted that the tank of Deodorized was only holding tank and no change occurred in the raw material in the feed tank.
- (iv) As per rule 6 (2) of the 2016 Rules, the manufacturer has to maintain an account clearly indicating the quantity and value of the goods imported and the imported goods consumed, in accordance with the products of the exemption notification. On page 58 of the surveyor's report it is mentioned that the importer had not provided the issue register and also failed to provide vessel-wise details in respect of the claim of stock filed by them.
- (v) The contention of the importer that only processed goods were lost in fire is un-trustworthy. In fact Shri Rakesh Sharma, had in his statement, mentioned that raw material was destroyed in the fire accident.
- (vi) The appellant informed the department about loss of 282.92 M.T. of Crude Palm Oil on joint stock verification held on 16.05.2017 only 214.07 M.T. of imported Crude Palm Oil was found to have been lost. Shri Rakesh Sharma explained that the difference of 68.85 M.T. was due to the difference in the opening balance of the Crude Palm Oil and that they had come to know about the mistake in June 2017 reconciling the accounts and rectified it. However, the surveyor, in his report dated 13.09.2018, rejected this contention of the appellant and assessed the final loss that 230.77 M.T.
- (vii) In view of the above the impugned order may be upheld and the appeal may be dismissed.

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6. 1991 (55) E.L.T. 454 (S.C.)

7. 2004 (171) E.L.T. 296 (S.C.)

**Findings :-**

12. We have considered the submissions advanced by the learned counsel for the appellant and learned authorized representative for Revenue and perused the records.

13. The undisputed facts are the appellant had imported Crude Palm Oil for use in manufacture of specified goods and availed the benefit of exemption Notification No. 12/2012-CUS dated 17.03.2012. This exemption was available subject to the condition that the Palm Oil is used to manufacture specified goods after following the 2016 Rules.

14. Due to fire accident, the oil which was cleared claiming the benefit of the exemption was lost. When the fire accident took place, the appellant had reported to the police, to the fire department and to the insurance company. The insurance company sent a surveyor who gave a detailed report running into 146 pages and ascertained the total loss of Crude Palm Oil as 230.77 M.T. The appellant had informed the department claiming loss of 282.92 M.T. while on joint physical stock verification only 214.07 M.T. was found to have been lost. The appellant explained the additional claim loss of 68.850 M.T. as being on account of the difference in opening balance of the Crude Palm Oil and that they had rectified the error.

15. Thus there are three figures of loss : 282.92 M.T. as claimed by the appellant, 214.07 M.T. as found during the initial stock verification and 230.77 M.T. as the loss finally

assessed by the surveyor of the insurance company in his report. We are inclined to accept the report of the surveyor as it is exhaustive and was prepared after detailed examination.

16. Therefore, 230.77 M.T. of Crude Palm Oil was lost in the fire accident. The contention of the appellant is that once this Crude Palm Oil is filled in their tanks, it must be treated as if it has already been used to manufacture final products. Learned counsel for the appellant relied on several decisions in support. In particular he relied emphasis on the judgment of the High Court of Karnataka in **Commissioner of Customs, Bangalore** versus **Sami Labs Ltd.**<sup>8</sup> to assert that even the goods were lost or destroyed by natural causes or unavoidable accident during transport, they should be deemed to have been used for the purpose.

17. We have gone through the judgment of the Karnataka High Court in **Sami Labs** and the relevant paragraphs are reproduced below :-

"5. Explanation to Rule 6 of the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001, reads as follows:-

"For the removal of doubts, it is hereby clarified that subject of goods shall be deemed not to have been used for the intended purpose even if any of the quantity of the subject goods is lost or destroyed by natural causes or by unavoidable accidents during transport from the place of procurement to the manufacturer's premises or from the

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**8. 2012 (278) E.L.T. 601 (Kar.)**

manufacturer's premises to the place of procurement or during handling or storage in the manufacture's premises."

The Tribunal came to the conclusion that in view of the facts and circumstances involved, duty cannot be demanded on the goods which have been destroyed due to unavoidable accident/natural causes on the ground that they have not been used for the intended purpose. It was further held that the raw materials/capital goods which are in the premises of production would not be hit by the Explanation to Rule 6 of the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001.

6. We are in complete agreement with the view expressed by the Tribunal Explanation to Rule 6 of the Rules is amply clear. In the instant case, there is no dispute that the goods have been destroyed by accidental fire. The view of the Commissioner (Appeals) was that the expression "handling" used in the Explanation means usage of goods and extends up to the point when further process on the goods stop. Therefore, according to him, the goods would be covered by the expression "during handling" and they would be hit by the Explanation. The view of the Commissioner (Appeals) that even the "work-in-progress" material would be covered by the Explanation to Rule 6 is incorrect.

7. The Tribunal has rightly passed the order which does not call for interference. The Explanation to Rule 6 is clearly not attracted in the present case. There is no error committed by the Tribunal, that warrants any interference, it is well reasoned order.

8. Hence we are of the considered view that there is no error committed by the Tribunal that calls for any interference. Accordingly the substantial questions of law are answered in favour of the assessee and against the revenue. The Appeal is accordingly dismissed".

18. What is evident from the above is that in view of the specific Explanation in the Central Excise (Removal of Goods at Concessional a Rate of Duty for Manufacture of Excisable Goods) Rules 2001, the Karnataka High Court held that the goods lost or destroyed must be treated as having been used. The dispute in this case is relating to the exemption from the input duty under the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2016. We do not find any Explanation similar to the Explanation in the Central Excise Rules, which were the subject matter of dispute before the Karnataka High Court. Therefore, this judgment cannot come to aid of the appellant in this case.

19. The other judgments and orders relied on by the learned counsel pertain to the Central Excise.

20. In view of the above, we find that the appellant was liable to pay customs duty on the 230.77 M.T. of Crude Palm Oil which was imported by it but which was not used in the manufacture of final products specified in the Notification No. 12/2012-CUS in view of the fire accident.

21. As regarding the rest of the quantity of Crude Palm Oil, evidently it was not used for manufacture of the specified goods. At least, there is no evidence that the Crude Palm Oil was used for manufacture of specified goods. Therefore the condition to avail the benefit of the exemption Notification No. 12/2012-CUS was not fulfilled.

22. As for the cause of not using this quantity, the case of the department is that this quantity of Crude Palm Oil was clandestinely removed. There is no evidence of such clandestine removal. The appellant's case is that the shortage was on account of accounting error. We do not find sufficient evidence to support the contention of the appellant that there was an accounting error and how it had occurred. Even the insurance surveyor did not accept this contention of shortage.

23. In view of the above, we find that the appellant was liable to pay the customs duty on entire quantity of the Crude Palm Oil which was either lost in the fire accident or was found short along with interest. We, therefore, find that the customs duty amounting to Rs. 1,05,18,265/- confirmed in the impugned order along with interest under section 28AA needs to be upheld.

24. As far as the penalty is concerned, we find section 114A of the Customs Act provides for imposition of penalty equal to the amount of customs duty if the non-payment or short payment of duty is by reason of collusion, willful misstatement or suppression of facts. In this case, the vast majority of the disputed quantity was lost in fire accident. There is no evidence that the appellant had caused the fire accident or that it gained anything by destroying the Crude Palm Oil in fire. Therefore, we find the penalty under section 114A cannot be sustained and needs to be set aside.

25. Penalty under section 114AA of the Customs Act can be imposed only in case of mis-declaration in the books of entry which is also not the case in this. This is a simple case of goods being imported for a purpose claiming the benefit of the exemption and the goods not being used for the purpose either because of fire accident or because of shortage or for some other reason. Therefore, penalty under section 114AA of the Customs Act also cannot be sustained.

26. Penalty under section 117 of the Customs Act can be imposed for contraventions not specifically mentioned. We do not find sufficient justification for imposition of penalty under section 117 of the Customs Act also in this case.

27. In view of the above, the appeal is partly allowed upholding the confirmation of demand of customs duty with interest and setting aside all the penalties.

(Order pronounced in open court on 07/11/2025.)

**(JUSTICE DILIP GUPTA)**  
**PRESIDENT**

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

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