

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA**

REGIONAL BENCH - COURT NO.2

Customs Appeal No.75799 of 2023

(Arising out of Order-in-Appeal No.KOL/CUS(Port)/KS/656/2023 dated 28.08.2023 passed by Commissioner of Customs (Appeals), Kolkata.)

M/s. Emami Paper Mills Limited

(Regd. Office: Emami Tower, 687, Anandapur, 1st Floor, Kolkata-700107.)

...Appellant

VERSUS

Commissioner of Customs (Port), Kolkata

(15/1, Strand Road, Custom House, Kolkata-700001.)

.....Respondent

APPEARANCE

Shri Rahul Dhanuka, Advocate for the Appellant (s)

Shri Tariq Suleman, Authorized Representative for the Revenue

CORAM:

HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)

HON'BLE SHRI RAJEEV TANDON, MEMBER (TECHNICAL)

FINAL ORDER NO. 75687/2024

DATE OF HEARING : 20.02.2024

DATE OF PRONOUNCEMENT : 17/04/2024

Per : RAJEEV TANDON

The appellants have filed the present appeal being aggrieved by the Order-in-Appeal No. KOL/CUS(Port)/KS/656/2023 dated 28.08.2023 passed by Ld. Commissioner of Customs (Appeals), Kolkata. The Ld. Commissioner (Appeals) vide the impugned order has held that the examination of the imported goods (declared as waste paper) have established that the said consignments of waste paper

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were mixed with hazardous wastes that are prohibited for import and has therefore upheld the Ld. Adjudicating Authority's order whereby the appellants have been held liable to consequences in law for import/attempted imports of goods that are prohibited. In the adjudication and appellate proceedings, as the imported goods were found to be contrary to the self-declaration tendered by the appellant for purpose of assessment and were found mixed with hazardous wastes, the goods have been held liable to confiscation and therefore confiscated. The Ld. Adjudicating Authority in proceedings initiated vide Order-in-Original No. KOL/CUS/JC/PORT/GR-II/36/2023 dated 22.03.2023 had therefore ordered confiscation of 1587.477 MTs of goods declared to be 'Waste Paper - News Gr-I (Manufacturing of Newsprint), Waste Paper-Special News D-Ink Quality (Manufacturing of Newsprint), Waste Paper-ONP 6 (Manufacturing of Paper & Paperboard), Waste Paper-News (Manufacturing of Newsprint)" valued at Rs.3,74,89,068.00 (Rupees Three Crore Seventy Four Lakh Eighty Nine thousand and Sixty Eight only). The adjudicating authority besides confiscating the said goods also imposed a penalty of Rs.37.00 lakh under section 112(a)(i) and 112(b)(i) of the Customs Act on the appellant besides imposing a penalty of like amount under section 114AA on the appellant. He had further ordered re-export of the said confiscated goods to the overseas supplier at importer's cost in terms of Rule 15(2) of the Hazardous & Other Wastes (Management & Transboundary Movement) Rules, 2016 (HOWR, 2016) upon payment of redemption fine of Rs.37.00 lakh in lieu of confiscation under section 125 of the Customs Act, 1962.

2. To recapitulate the facts it would be pertinent to state that the importer/appellant, claiming to be an actual user and regular importer of waste paper, for their factory located at Balasore (Orissa), re-cycles the imported waste paper at its factory for manufacture of paper-board, newsprint, writing/printing papers and multi-layered coated boards. On 27.12.2021, the Directorate of Revenue Intelligence, Kolkata Zonal Unit (KZU), issued an alert requesting the department to carry out examination of all consignments of paper-waste imported at

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Kolkata to prevent dumping of Municipal Solid Wastes, Post-Consumer Domestic Waste, Bio-medical Waste or any other type of contaminants imported in the guise of waste paper, as contamination in 'waste paper' with 'municipal waste/hospital waste' is prohibited for import in terms of *Schedule-VI of HOWR, 2016 read with OM No.13-1/2004-HSMD dated 11.05.2010.*

3. The importer vide 11 Bills of Entry Nos.6935670 dated 13.01.2022, 6969754, 6969694, 6969763, 6969760, 6981828 all dated 06.01.2022, 7062354 dated 13.01.2022, 7076637 & 7084986 both dated 14.01.2022, 7415129 & 7415130 both dated 09.02.2022 contained imported waste paper in 65 containers. Accordingly, the said goods were subjected to 100% examination by the department in the presence of the representative, of the importer- the CHA. While it is not disputed that at the time of examination, shipper's seal in all the 11 consignments were found to be intact and no discrepancy was observed during examination as regards the quantity of bales and the weight of the goods, however, a detailed examination of the goods inside 8 containers of waste paper of ONP-8 (Manufacturing of newsprint) and 2 containers of waste paper and Special news De-Ink quality imported under 4 Bills of Entry (No.6969754, 6969763, 6981828, 6969760 all dated 06.01.2022) were found to be contaminated with municipal and hospital wastes like foods packets , drink canes (sic.), toothpaste tube and bio-medical waste like three ply masks, tablet and drug boxes etc. Further, upon examination of one container of waste paper-coated/uncoated ground wood shavings imported vide Bill of Entry No.6969694 dated 06.01.2022, the goods were found as declared. Likewise, goods contained in remaining containers viz. the entire consignment were subjected to 100% examination and various kinds of contaminants of prohibited nature noticed. Individual Bills of Entry wise examination report as summarized by the appellant in their appeal papers is reproduced hereunder:-

BOE NO	GOODS	EXAMINATION REPORT
6969754	Waste paper ONP8	8 containers of waste paper ONP8 and 2
6969763		

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6981828	(Manufacturing of newsprint)	containers – Special News De-Ink quality were found to be contaminated with the
6969760	Waste paper-Special News De-Ink quality (manufacturing of Newsprint)	municipal and household wastes (food packets, drink canes, toothpaste tube etc.) and biomedical waste (three ply mask, tablets and drug boxes, etc.)
6969694	Waste paper-coated/uncoated ground wood shavings	Goods found as per declaration
7062354	Waste paper ONP6 (Manufacturer making of paper & paper board)	Goods found to be contaminated with the municipal and post-consumer domestic wastes like compressed beverage cans, food packets, plastic bottles, plastic waste etc.
6935670	Waste Paper News grade 1 (Manufacturing of Newsprint)	Traces of municipal waste including plastic bags, plastic sheets and soft drinks cans were found in container.
7076637	Waste Paper News grade-1 (Manufacturing of Newsprint)	Traces of municipal waste including plastic bags, plastic sheets and soft drinks cans were found in container.
7084986	Waste Paper News grade-1 (Manufacturing of Newsprint)	Traces of municipal waste including plastic bags, plastic sheets and soft drinks cans were found in container.
7415129	Waste Paper News Grade 1 (Manufacturing of Newsprint)	Consignment had the presence of post-consumer domestic waste and biological waste like used plastic containers, plastic sheets, parts of tin containers, used face masks, used rubber hand gloves etc.
7415130	Waste Paper News grade 1 (Manufacturing of Newsprint)	Consignment had the presence of post-consumer domestic waste and biological waste like used plastic containers, plastic sheets, parts of tin containers, used face masks, used rubber hand gloves etc.

3.1. As the imported goods upon examination, were found to be offending in nature and violative of the provisions of the Customs Laws read with the prescriptions of HOWR, 2016 and imported in contravention of the Import Policy in terms of Para iv of OM 13/1/2004-HSMD dated 11.05.2010, issued by the Ministry of Environment and Forests & Climate Change, (MOEF & CC) the goods covered under Bills of Entry Nos.6935670 dated 03.01.2022, 6969754, 6969763, 6969694, 6969760, 6981828 all dated 06.01.2022, 7062354 dated 13.01.2022,

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7076637 & 7084986 both dated 14.01.2022, 7415129 & 7415130 both dated 09.02.2022 were seized in terms of section 110(1) of the Customs Act. While NOC was later given for release of the consignment covered vide Bill of Entry No.6969694 dated 06.01.2022.

4. The following chart gives a brief on the import shipment thereof covered under the 10(ten) Bills of Entry, that were seized by the department indicating pre-shipment inspection agency details.

Sl.	BE No. & Date	Description of Goods	Qty (MT)	Declared Unit Price	Supplier	Pre-shipment Inspection Agency	Total AV in Rs.
01.	6935670 Dated 03.01.2022	Waste Paper- News grade-1 (Manufacturing of Newsprint)	395.6	310 USD CIF	Berga Recycling Inc., Canada	M/s. NMCI Inspections & Survey Co. Pvt. Ltd., 2 nd Floor, Plot No. 59/C, Sector-29 Vashi, Navi Mumbai- 400705	94,61,367
02	6969754 Dated 06.01.2022	Waste Paper- ONP 8 (Manufacturing of Newsprint)	52.25	352 USD CIF	Prinnacle Fibres Inc, Canada	M/s. NMCI Inspections & Survey Co. Pvt. Ltd., 2 nd Floor, Plot No. 59/C, Sector-29 Vashi, Navi Mumbai- 400705	14,18,943
03	6969763 Dated 06.01.2022	Waste Paper- ONP 8 (Manufacturing of Newsprint)	98.39	352 USD CIF	Prinnacle Fibres Inc, Canada	M/s. NMCI Inspections & Survey Co. Pvt. Ltd., 2 nd Floor, Plot No. 59/C, Sector-29 Vashi, Navi Mumbai- 400705	26,71,958
04	6969760 Dated 06.01.2022	Waste Paper- Special News DE-Ink Quality (Manufacturing of Newsprint)	43.227	350 USD CIF	WM-Recycle America LLC, United States	M/s. Nectar Inspection Services LLC, P.O. Box: 90468, Dubai- United Arab Emirates	11,67,237
05	6981828 Dated 06.01.2022	Waste Paper- ONP 8 (Manufacturing of Newsprint)	51.48	352 USD CIF	Prinnacle Fibres Inc, Canada	M/s. NMCI Inspections & Survey Co. Pvt. Ltd., 2 nd Floor, Plot No. 59/C, Sector-29 Vashi, Navi Mumbai- 400705	13,98,032
06	7062354 Dated 13.01.2022	Waste Paper- ONP 6 (Manufacturing of Paper & Paperboard)	172.62	245 USD CIF	Visy Recycling, Level 11,2 Southbank Boulevard, Australia	M/s. Sandeep Garg & Co, 584, Sector-15, Part- I, Gurugram, Haryana- 122001	31,88,809
07	7076637 Dated 14.01.2022	Waste Pater- News grade-1 (Manufacturing of Newsprint)	377.17	310 USD CIF	Berga Recycling Inc., Canada	M/s. NMCI Inspections & Survey Co. Pvt. Ltd., 2 nd Floor, Plot No. 59/C, Sector-29 Vashi, Navi Mumbai- 400705	88,15,972

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08	7084986 Dated 14.01.2022	Waste Paper- News (Manufacturing of Newsprint)	51.15	315 USD CIF	Ricova Internation al Inc., Canada	M/s. SMV International Incorporation, M-93, 3 rd Floor, Saket, New Delhi- 110017	12,14,864
09	7415129 Dated 09.02.2022	Waste Pater- News grade-1 (Manufacturing of Newsprint)	96.55	315 USD CIF	Berge Recycling Inc., Canada	M/s. NMCI Inspections & Survey Co. Pvt. Ltd., 2 nd Floor, Plot No. 59/C, Sector-29 Vashi, Navi Mumbai- 400705	23,03,804
10	7415130 Dated 09.02.2022	Waste Pater- News grade-1 (Manufacturing of Newsprint)	249.04	310 USD CIF	Berge Recycling Inc., Canada	M/s. NMCI Inspections & Survey Co. Pvt. Ltd., 2 nd Floor, Plot No. 59/C, Sector-29 Vashi, Navi Mumbai- 400705	58,48,082
Total			1,587. 477				3,74,89,068

5. The appellant in his pleadings before the Bench has submitted that they had got the consignment of imported waste paper inspected by the pre-shipment agency duly recognized by the DGFT who certified that the said import consignments were as per internationally accepted parameters and that they did not contain any putrefied organic matter with approximate content of non-recyclable material being 0% or not more than 1% (in certain cases) and that the consignment did not contain municipal solid, domestic or medical wastes. A copy of one such pre-shipment Inspection Certificate and the Chemical Analysis Certificate is scanned herein below for sake of reference and records:

"EXHIBIT - C" Certificate 100



JOB FILE NO.: NMC/MTIUS/20-21/2025238
Inspection Certificate # NMC/MTIUS /C/20-21/2568

DATED: 06.12.2021
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PRE-SHIPMENT INSPECTION CERTIFICATE

We hereby certify the details as below:
That we have visually inspected the consignment and certify the following:

- a) The imported consignment is actually waste / scrap paper as per internationally acceptable parameters for such materials
- b) The consignment does not contain pure fraction organic matter
- c) Approximate Content of non-recyclable material is 1%.
- d) The consignment does not contain municipal solid waste, domestic waste or medical waste

Details of Importer as follows:
 (i) Name / Address: Emami Paper Mills Ltd., Balgopalpur, Rasulpur, Balasore-756020, Odisha, India
 (ii) Importer Exporter Code No: 0289007089
 (iii) GST No. 21AABCG1428Q1ZO
 (iv) B-Mail: chandan@emamipaper.com
 (v) Pan No. AABCG1428Q

Details of Exporter as follows:
 (i) Name / Address: Berga Recycling INC. 3055 Boul. Saint-Martin O Suite T500 Laval, QC H7T 0J3 Canada

Type of Waste: Wastepaper - NEWS GRADE 1 (HS Code 47071000)

Sr. No.	Containers No.	Containers Type	Description	Number of Bales	Qty in Kgs
1.	UETU 5828073	40'HC	Wastepaper - NEWS GRADE 1 (HS Code 47071000)	22	25,900.00
2.	BEAU 5351767	40'HC		20	25,100.00
3.	TGBU 6122090	40'HC		22	25,440.00
4.	GESI 6419339	40'HC		19	23,190.00
5.	FANU 1594412	40'HC		19	24,870.00
6.	FANU 1594412	40'HC		20	25,140.00
7.	TCLU 6227535	40'HC		22	25,430.00
8.	TEMU 7552394	40'HC		22	25,100.00
9.	HLXU 8639828	40'HC		20	25,110.00
10.	HLBU 1556513	40'HC		22	23,760.00

Quantity Shipped: 208 Bales
 Gross Wt: 249,040.000 Kgs

i) Country of Inspection: Montreal, Canada
 ii) Place of Inspection: Montreal, Canada
 iii) Port of Discharge: Kolkata, India
 iv) Date of Inspection: Nov 24, 2021

We hereby declare that the particulars and statements made in this certificate are true and correct and nothing has been concealed or held there from.

This Certificate issued by NMC Inspections & Survey Co. Pvt Ltd., an accredited agency approved by DGFT India, and can only be used for the sole purpose of certifying the conformity of the commodity being inspected for waste paper. Other aspects of the commodity, including but not limited to the name, type, specifications, quality, quantity and weight, etc., were not part of the inspection. Therefore, the Certificate cannot be used for any purpose other than said sole purpose, and the parties of the recycling material transactions shall not rely on this certificate as a proof of satisfaction of any contractual obligations by any parties.



Signature: _____
 Designation: Manager
 Address (Office): 236 Erinston Road, Paris, NJ 08859
 Name of PSIA as Per appendix 2G: NMC Inspections & Survey Co. Pvt Ltd,
 Address: 2 nd Floor, Plot No. 59/C, Sector 29, Vashi, Navi Mumbai-400705, India
 E-mail: nmc@nmcgroup.com

Disclaimer: This inspection has been conducted on the basis of our knowledge and belief at the time of the inspection without any prejudice. The certificate issued hereon is based on our findings at the time and place of the inspection only, and is not intended to release the relevant parties including but not limited to sellers, buyers, cargo owners, shipper's, consignees and subcontractors from their contractual obligations and responsibilities. Any demand for recovery of import duties or charges will be considered only if our gross weight is proven. All claims for and/or issues out of or based on the inspection or this certificate shall be brought before court in Mumbai, India. Under no circumstances our liability shall exceed a total sum equal to five times the amount of the fee paid for the inspection.



ISO 9001:2015 Certified Quality System and ISO/IEC 17020 Accredited
 Inspections are carried out as per Principals instructions and conformity with the General Conditions of TIC
 No. N 6271

NECTAR
INSPECTION SERVICES L.L.C.



نكتار
لخدمات المعاينة س.ذ.م.م.

Certificate

CERTIFICATE NO. 01/NCTR/81094
INVOICE NO. 170194

REF NO. WMX18411

DATE OF ISSUE : 18.11.2021

CERTIFICATE OF CHEMICAL ANALYSIS REPORT

I. Details of Exporter		II. Details of Importer	
a) Name	WM - RECYCLE AMERICA LLC	a) Name	EMAMI PAPER MILLS LTD
b) Address	720 E, BUTTERFIELD ROAD, 4TH FLOOR LOMBARD, IL 60148 U.S.A	b) Address	BALGOPALPUR, P.O. RASULPUR DIST: BALASORE, ODISHA, PIN - 756020 INDIA GSTIN # 21AABCG1428Q1Z0 IEC CODE: 0289007089 PAN : AABCG1428Q
d) Telephone No.	630-573-2463	c) Telephone No.	N/A
f) Fax No.	630-572-2455	e) E-mail	chandan@emamipaper.com

III. Details of Import :		Consignment Quantity KGS
S.No.	Description of Waste Paper Grade	
	WASTE PAPER - COATED / UNCOATED GROUNDWOOD SHAVINGS (47073000)	24,557.00

IV. Container Numbers :		Quantity in KGS
S.No.	Container Numbers	
1	GLDU7668610	24,557.00

After due chemical analysis, I/We hereby certify that:

- V. The Consignment is actually waste paper as per the internationally acceptable parameters for such material.
- VI. There is no putrefiable organic matter in this consignment.
- VII. The approximate content of non recyclable material is 0%
- VIII. No municipal solid waste or medical waste or hazardous waste is part of this consignment.

I/We hereby declare that the particulars and statements made in this certificate are true and correct and nothing has been concealed or held there from.

Date of inspection: 17.11.2021

Official Seal

Signature: *Gajjar Purosh*

Designation:

Address (Office)

Name of the PSIA (as per Appendix 2G):
Address:

Manager

Nectar Inspection Services LLC
Address: P.O. BOX 90468, DUBAI
UNITED ARAB EMIRATES

E-MAIL : nectardxb@gmail.com



P.O. Box : 90468, Dubai - United Arab Emirates, E-mail : nectardxb@gmail.com



Member of
Institute of
Scrap Recycling
Industries, Inc.

India of the Recycling Industry

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6. For the appellants, the learned Advocate Sri Rahul Dhanuka submits that paper, paperboard and paper product waste is listed in Part-D of the Schedule III of the HOWR, 2016, and that for the importation of "other waste" listed therein the importer is not required to take prior permission from the MOEF & CC and that read with Schedule III of the HOWR, 2016, the appellant is required to maintain the record of waste in Form 3. Further, actual users are authorized by State Pollution Control Board (SPCB) to import waste paper subject to verification of documents by Customs (refer Sr. 5 of Schedule VII of HOWR, 2016).

7. He further submits that paper waste is freely importable and therefore the importer had furnished all requisites, as required under Rule 13(2) and Rule 18(2) of the HOWR, 2016 alongwith the Bills of Entry. It is therefore his case that in disregard of the aforesaid Rules, the Customs officers examined the said 65 containers under the subject 11 Bills of Entry by completely de-stuffing the same and submits that despite finding no discrepancy about the importation regarding statutory compliances with the provisions of Customs Act, Foreign Trade Policy, Handbook of Procedures, HOWR 2016 the department chose not to release the consignment. He states that mere physical examination undertaken by Customs Officer and based on eye estimation it could not be concluded that the imported goods were prohibited in nature as enumerated in Schedule-VI, of the said rules. He buttresses his case in view of the Pre-Shipment Inspection Agency (PSIA) Certificate supplied, after inspection of the imported goods at the site of collection, in the country of export, categorically stating that the imported consignments did not contain municipal solid waste/domestic waste or medical wastes.

8. The appellant is therefore aggrieved with the seizure and ultimate confiscation of the imported goods having been made by the department alleging imports in contravention of Para iv of O.M. No.13-1-2004 HSDM dated 11.05.2010, issued by (MOEF & CC). The appellants also have a grievance that the seizing officer has himself not

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examined the consignments physically nor was any Panchnama drawn in the presence of Panchas at the time of seizure, more so as the seizing officer was not himself present at any point of time when the said officers had carried out 100% examination of the seized/confiscated cargo.

9. Adjudication proceedings were undertaken by the department, in view of the aforesaid and Show Cause Notice dated 02.09.2022 issued, which culminated in directions to re-export the goods besides imposition of fine and penalties as stated earlier. What has led the authorities below to arrive at their findings, as can be seen from the adjudication and appellate orders, is essentially the statutory prescriptions for import of such waste paper, as prescribed by the MOEF & CC.

10. We have also heard the Ld. Authorized Representative Sri Tariq Suleman and Sri S. Debnath for the Revenue, who vehemently support the orders of the lower authority and submit that it is inevitably necessary that such offending goods are re-exported by the appellant, at their cost, as prescribed in law and that there is no escape for the appellants to immunize them from consequent penal action for the grave offence of import of prohibited goods. The learned AR thus argues in support of confiscation and ultimate re-export of the entire consignment in terms of Rule 15(2) of HOWR, 2016. However, in view of the appellants submissions that the supplier of the imported goods has categorically refused to take back the imported cargo, and being left with no alternative at their end, the only option available, as permitted by the Ld. Appellate authority to dispose of the goods in waste to energy plants for energy generation under supervision of SPCB, as the only plausible manner of destruction of the hazardous waste and prohibited imports, as laid in law (HOWR, 2016). He therefore supports the order under challenge passed by Commissioner (Appeals), including imposition of fine and penalty on the appellant.

POLICY FOR IMPORT OF HAZARDOUS WASTES

11. The import of different types of wastes into the country is regulated by the Hazardous and Other Wastes (Management and

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Transboundary Movement) Rules, 2016 (HOWR for short) read with the Environment (Protection) Act, 1986. Import of Waste Papers is additionally regulated by the Revised Office Memorandum No. 13-1/2004- HSMD issued by Ministry of Environment, Forest & Climate Change, issued in the specific context of import of waste paper on 11th May, 2010. The said OM also prescribes limits for recyclable material in wastepaper consignments being imported from other countries, besides stating the following:

The revised guidelines and specifications for non-recyclable material in wastepaper consignment as per the **OM dated 11.05.2010** issued by the Ministry of Environment and Forests are as follows:

" i. Import and export of paper, paperboard and paper product wastes shall be regulated in accordance with the provisions laid down under the Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2008 as amended.

ii. Import of paper wastes shall be only for recovery/manufacture at the paper manufacturing unit (henceforth called as "unit") and the imported material shall not be sold further.

iii. The importers would have to ensure that all recyclable materials are actually recycled by them. There should be no disposal of materials - other than by recycling.

*iv. The imported wastepaper consignment **shall not contain any municipal solid waste or post-consumer domestic waste or biomedical waste-or any other type of contaminants. In case of any such contaminant being found, the consignment will have to be sent back to the exporting country and the importer shall bear the cost thereof.***

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v. An inventory of imported material will be maintained by the unit including the name of company and industry from where imported.

vi. A record of waste material generated, while recycling the imported wastepaper, alongwith the quantity and characteristics of the disposal of non- recyclable waste including toxic waste should be maintained by the unit. The non-recyclable waste may be disposed of as per the requirement of the State Pollution Control Board concerned to avoid any surface or ground water contamination.

vii. The extent of recyclable material, which is otherwise on Open General License (OGL), shall not exceed the limits specified below. However, **there shall be no putrefiable organic matter at all in the imported wastepaper consignment.**

Sr. No.	Grade	Limit (In Precent)
1.	Residential mixed paper	2
2.	Soft mixed paper	1
3.	Hard mixed paper	1/2
4.	Boxboard cuttings	1/2
5.	Mill wrappers	1/2
6.	News	1
7.	New, De-ink quality	None permitted
8.	Special News, De-ink quality	None permitted
9.	Over-issue news	None permitted
10.	Magazines	1
11.	Corrugated containers	1
12.	Double sorted corrugated	1/2
13.	New Double-Lined Kraft Corrugated Cuttings	None permitted
14.	Fibre Cores	1
15.	Used brown Kraft	None permitted
16.	Mixed Kraft Cuttings	None permitted
17.	Camer Stock	None permitted
18.	New Colored Kraft	None permitted
19.	Grocery Bag Scrap	None permitted
20.	Kraft Multi-Wall Bag Scrap	None permitted
21.	New Brown Kraft Envelope Cuttings	None permitted

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22.	Mixed Ground Wood Shavings	None permitted
23.	Telephone Directories	None permitted
24.	White Blank News	None permitted
25.	Ground Wood Computer Printout	None permitted
26.	Flyleaf Shavings	None permitted
27.	Coated Soft White	None permitted
28.	Hard White Shavings	None permitted
29.	Hard White Envelope Cuttings	None permitted
30.	New Colored Envelop Cutting	None permitted
31.	Semi Bleached Cutting	None permitted
32.	Unsorted Office Paper	2
33.	Sorted Office Paper	1
34.	Manifold Coloured Ledger	1/2
35.	Sorted White Ledger	1/2
36.	Manifold White Ledger	1/2
37.	Computer Printout	None permitted
38.	Coated Book Stock	None permitted
39.	Coated Ground Wood Section	None permitted
40.	Printed Bleached Board Cuttings	1/2
41.	Misprinted Bleached Board	1
42.	Unprinted Bleached Board	None permitted
43.	Bleached Cup Stock	None permitted
44.	Printed Bleached Cup Stock	None permitted
45.	Unprinted Bleached Plate Stock	None permitted
46.	Printed Bleached Plate Stock Kinds	None permitted
47.	Specialty Grades (White waxed cup cuttings, Plastic Coated Cups. Printed waxed cup cuttings, polycoated bleached Kraft-unprinted, polycoated bleached Kraft-printed, polycoated milk cartoon stock, poly-coated diaper stock, poly-coated box board cuttings, waxed boxboard cuttings, printed and/or unprinted bleached sulphate containing foil, Waxed corrugated cuttings. We strength corrugated cuttings, Asphalt laminated corrugated cuttings, Beer carton scrap, Contaminated bag scrap, Insoluble glued free sheet paper and/or board, White wet strength scrap, Brown wet strength scrap, Printed and/or coloured wet strength scarp, File Stock, New Computer printout, Ruled while, Fly leaf shaving containing hot melt glue, Carbon mix, Book with covers, Unsorted Tabulating Cards, Carbonless treated ledger, Plastic windowed envelopes, Textile boxes, Printed TMP, Unprinted TMP, Manila Tabulating Cards, Sorted colored Ledgers.	None permitted

viii. The content of paper wastes must be verified by the Customs authorities in respect of each consignment imported into the country.

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ix. Adherence to stipulated conditions would be verified by the Customs Authorities, the State Pollution Control Board (SPCB)/Pollution Control Committee (PCC) concerned and the Regional Offices of the Ministry of Environment and Forests. "

12. The learned Adjudicating Authority has pointed out that since, several such consignments of different importers, on examination by Customs and DRI were found to have identical issue of presence of contaminants; a reference was made by the Central Board of Indirect Taxes and Customs (CBIC) to the Ministry of Environment, Forest & Climate Change through the Central Pollution Control Board on 16.02.2022. In reply the HSM Division of the **MOEF & CC vide its OM dated 28.03.2022 issued under reference F. No. 23/53/2020-HSM** advised that "Point (iv) of the OM of 2010, under reference *is an overriding prohibition and no amount of Municipal waste, Post-consumer domestic waste or Bio-medical waste or any other contaminants is allowed with the consignment of waste paper. In case such contaminants are found, then the consignment will have to be sent back to the exporting country.* Such contaminants cannot be segregated and disposed off in India and the Customs authorities have to ensure compliance of the OM in question. It is therefore evident, that the impugned goods covered vide the ten (10) Bills of Entry, as discussed above, were imported in contravention of the policy laid down for the import of paper wastes.

13. Further, in terms of HOWR 2016, paper waste is incorporated in Part D of Schedule III - B-3020 and can be imported without permission of MOEF & CC **provided they are not mixed with hazardous waste** and scrap of paper or paperboard of :

- a) unbleached paper or paperboard of corrugated paper or paperboard.
- b) other paper or paperboard, made mainly of bleached chemical pulp, not coloured in the mass.
- c) paper or paperboard made mainly of mechanical pulp (for example newspapers, journals and similar printed matter)
- d) other, including but not limited to

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- i. laminated paperboard
- ii. unsorted scrap.

14. In terms of Rule 11 of the Import and Export (Trans-boundary Movement) of Hazardous and Other Wastes Rules, the MOEF & CC being the nodal Ministry to deal with such cargo has prescribed, the provisions regulating the imports of such goods and whereby :

"Rule 15. Illegal traffic.-

(1) The export and import of hazardous or other wastes from and into India, respectively shall be deemed illegal, if-

(i) it is without permission of the Central Government in accordance with these rules; or

(ii) the permission has been obtained through falsification, mis-representation or fraud; or

(iii) it does not conform to the shipping details provided in the movement documents; or

(iv) it results in deliberate disposal (i.e., dumping) of hazardous or other waste in contravention of the Basel Convention and of general principles of international or domestic law.

(2) In case of illegal import of the hazardous or other waste, the importer shall re-export the waste in question at his cost within a period of ninety days from the date of its arrival into India and its implementation will be ensured by the concerned Port and the Custom authority. In case of disposal of such waste by the Port and Custom authorities, they shall do so in accordance with these rules with the permission of the Pollution Control Board of the State where the Port exists.

Rule 21. Responsibility of authorities.- *The authority specified in column (2) of schedule VII shall perform the duties as specified in column (3) of the said Schedule subject to the provisions of these rules."*

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15. In view of the nature of contaminants detected during the examination of the cargo by the authorities, it is imperative to go through the relevant description thereof specified in Schedule VI in terms of Rule 12(6) (prohibiting the import of hazardous and other waste) of the HOWR, 2016, which contain Basel No. wise, description of Hazardous and Other wastes prohibited for import. Thus:

"BASEL NO.	Description of hazardous and other wastes
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...
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...
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A4020	<i>Clinical and related wastes; that is wastes arising from medical, nursing, dental, veterinary, or similar practices, and wastes generated in hospitals or other facilities during the investigation or treatment of patients, or research projects.</i>
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...
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...
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B3010	<i>Solid plastic waste:</i> <i>The following plastic or mixed plastic waste, prepared to a specification:</i> <i>-Scrap plastic of non-halogenated polymers and co- polymers, including but not limited to the following:</i> <i>Ethylene, Styrene, Polypropylene, polyethylene terephthalate, Acrylonitrile, Butadiene, Polyacetals,</i>
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Polyamides, polybutylene terephthalate, Polycarbonates, Polyethers, polyphenylene sulphides, acrylic polymers, alkanes C10-C13 (plasticiser), polyurethane (not containing CFC's), Polysiloxanes, polymethyl Methacrylate, polyvinyl alcohol, polyvinyl butyral, polyvinyl acetate

... ..

... ..

Y46 *Wastes collected from household/municipal waste"*

16. Further, Schedule VII prescribed in terms of Rules 13 (6) (MOEF & CC (seeking to ensure compliance with reference to charter of functions) and Rule 21 (Responsibility of Authorities) of Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016, states the following:

SCHEDULE VII

[See Rule 13(6) and 21]

List of authorities and corresponding duties

S. No	Authority	Corresponding Duties
1.		
2.		
3.		
4.		
5.		
6.	<i>Port authority under Indian Ports Act, 1908 (15 of 1908) and Customs Authority under the Customs Act, 1962 (52 of 1962)</i>	<i>(i) Verify the documents (ii) Inform the Ministry of Environment, Forests and Climate Change of any illegal traffic (iii) Analyse wastes permitted for imports and exports, wherever required. (iv) Train officials on the provisions of these rules and in the analysis of</i>

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		<i>hazardous and other wastes</i> <i>(v) Take action against exporter or importer for violations under the Indian Ports Act, 1908 or Customs Act, 1962</i>
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17. The appellant has extensively relied upon the decision of this Tribunal in the case of **Neelkanth Pulp & Paper Boards Vs. Commissioner of Customs¹**, wherein it was held that a technical opinion rendered by way of Pre-Shipment Inspection Agency Certificate cannot be given ago by, and therefore the Tribunal had set aside the order of confiscation and imposition of penalty. Based on non-adherence by the lower authorities in adopting the said decision, the appellant goes in to the realm of judicial indiscipline and adopts the ratio of the law laid down by the Hon'ble Apex Court in the case of **Union of India Vs. Kamalakshi Finance Corporation Ltd.²** and other such judgments viz. **Pal Micro System Ltd. Vs. CCE, Mangalore³** as well as **Commissioner of Income Tax Bhopal Vs. Ralson Industries Ltd.⁴**

18. As earlier, pointed out, the appellant has contested the applicability of the OM No.13-1-2004-HSMD dated 11.05.2010, issued by the Ministry of MOEF & CC prescribing limit for non-paper re-cyclable material in waste paper consignments being imported from other countries and the revised guidelines and specifications mentioned in Para 4 as ***"The imported waste paper consignment shall not contain any municipal solid waste or post-consumer domestic waste or biomedical waste or any other type of contaminants. In case of any such contaminant being found, the consignment will have to be sent back to the exporting country and the importer shall bear the cost thereof.*"** being not applicable, it may be pertinent to point out herein that the said OM has been issued specifically in the context of import of waste paper and therefore it

1 - 2022 (1) TMI – 1185 CESTAT - Ahmedabad

2 1991 (55) ELT 433 (SC)

3 2007 (212) ELT 373 (T)

4 2007 (2) SCC 126

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would be foolhardy to contemplate its inapplicability. Moreover, as referred to in Para 9 earlier, upon a reference by CBIC the administrative ministry concerned viz. MOEF & CC had clarified that the said provision has an **“overriding effect.”** Furthermore, even the subsequent OM issued by MOEF & CC issued on the subject vide F. No. 23/107/2022- HSMD dated 10.01.2023, prescribing revised limits of non-paper re-cyclable material contained in imported waste paper consignments, in respect of **“Bio-Medical Waste, Municipal Solid Waste, Post consumer domestic waste,** and any other waste or contaminants not enlisted in this OM” at **Sr. 50** of the Table clearly states **“None Permitted”**, while enhancing specified limits upto 5% in respect of other grades of non-paper material contained in import consignments of waste paper.

19. We note that the HOWR, 2016 -Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 lists out Hazardous and Other wastes prohibited for import in Schedule VI, and what is contained in Part D of Schedule III on which the appellant relies, is merely a list of waste products that are permitted for import without prior permission of the nodal agency i.e. the MOEF & CC. Even in this list there is a caveat **“provided they are not mixed with hazardous waste.”** The relevant extract of the list is extracted below:

Part D

List of other wastes applicable for import and export without permission from Ministry of Environment, Forest and Climate Change [Annex IX of the Basel Convention*]

Basel No.	Description of wastes
(1)	(2)
B3	Wastes containing principally organic constituents, which may contain metals and inorganic materials
B3020	Paper, paperboard and paper product wastes ** The following materials, provided they are not mixed with hazardous wastes: Waste and scrap of paper or paperboard of: <ul style="list-style-type: none"> - unbleached paper or paperboard or of corrugated paper or paperboard - other paper or paperboard, made mainly of bleached chemical pulp, not coloured in the mass - paper or paperboard made mainly of mechanical pulp (for example newspapers, journals and similar printed matter)

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	- other, including but not limited to (1) laminated paperboard (2) unsorted scrap
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20. In view of the reference contained in the footnote to Schedule VII referred above to which also the appellant has harped upon, it would at this juncture, be apt to invite reference to Schedule VII of the HOWR, 2016 (issued under Rule 13(6) and Rule 21 of Rules *ibid*) that prescribes a list of authorities with their corresponding duties. At Sr. 6 thereof the nature of responsibilities, as assigned to Customs Authority is mentioned and enumerated in Para 16 above. Thus, the challenge rendered by the appellant to the jurisdiction of Customs Authority in the matter, is completely unfounded and a case that the said authorities acted in excess of the responsibility cast upon them under the statute is certainly not made out. It is evident from column (ii) & (iii) of Sr. 6 of the said Table in Para 16, that indeed a "Customs Authority" is prescribed and duly empowered authority- "to analyse wastes permitted for imports and exports wherever required", besides they are also empowered in law to take appropriate action for the violation and infringement of the statutory prescriptions not only under the Customs Act, but also the prescriptions as regulated by MOEF & CC.

21. As the learned Advocate has also disputed the nature of contaminants being noticed in the prohibited hazardous waste and whether they strictly adhere to the contours of municipal solid waste, post-consumer domestic waste and bio-medical waste, it would be required to consider the contaminants ascertained in the imported consignments, as to for their inclusion in such category of prohibited waste. Thus, as noted in Table in para 3.1, the imported waste paper consignments were found to contain the following:

- Municipal and household wastes
(food packets, drink canes (sic), toothpaste tube
- Compressed beverage cans,
- Food packets
- Plastic bottles

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- Plastic bags
- Plastic Sheets
- Soft Drink Cans
- Used plastic containers
- Parts of Tin Containers
- Bio-medical Waste
(three ply mask, tablets and drug boxes)
- Used face masks
- Used rubber gloves

amongst others. A reference to Schedule VI, of HOWR, 2016, giving description of hazardous and other wastes reads as under:

1. The **Basel No. A/4020** reads "*Clinical and related wastes; that is wastes arising from medical nursing, dental, veterinary, or similar practices, and wastes generated in hospitals or other facilities during the investigation or treatment of patients, or research projects,*"

2. The **Basel No. B/3010** reads "*Solid plastic waste.*

The following plastic or mixed plastic waste, prepared to a specification:-

Scrap plastic of non-halogenated polymers and co-polymers, including but not limited to the following: Ethylene, Styrene, Polypropylene, Polyethylene terephthalate, Acrylonitrile, Butadiene, Polyacetals, Polyamides, polybutylene terephthalate, Polycarbonates, Polyethers, polyphenylene, sulphides, acrylic polymers, alkanes C10-C13 (plasticizer), polyurethane (not

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containing CFC's), Polysiloxanes, polymethyl methacrylate, polyvinyl alcohol, polyvinyl butyral, Polyvinyl acetate," and

3. **Basel No. Y 46** reads "*Wastes collected from household/ municipal waste.*" A conjoint reading of the contaminants detected and noticed in the shipment vis-à-vis as indicated under Basel No. S A4020, B3010 and Y46 clearly indicate the said contaminants to be of the category as are prohibited for import under the HOWR, 2016. In view of this, the fact that the imported waste paper should not contain any "*solid municipal waste/post-consumer domestic waste or bio-medical waste*" certainly flows from the ambit of the HOWR, 2016 and are specifically so indicated in Schedule VI whereby it is prescribed that wastes A4020, B3010, Y46 etc. are prohibited to import and thereby waste paper consignment imported ought to be free of such prohibited waste. At the risk of reiteration it is pertinent to mention that the HSM Division of MOEF & CC vide OM dated 28.03.2022 issued from F.No.23/53/2020-HSM had advised the department as under:-

"..... Point (iv) of the OM of 2010, under reference is an overriding prohibition and of Municipal waste, Post-consumer domestic no amount waste or Bio-medical waste or any other contaminants is allowed with the consignment of waste paper."

22. Thus, in the event of such contaminants being found in an import consignment of waste paper, there is no option, but the consignments are required to be sent back to the exporting country and such contaminants are not permitted to be segregated and disposed off within the boundaries of India. Moreover, it cannot be denied that the

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Customs authorities are duly empowered authorities under Rule 13(6) and Rule 21 of HOWR, 2016 to ensure the compliance of the stated provisions HOWR, 2016 and the OM's referred to earlier. Indeed the importer's submission that the OM No. 13-1/2004 HSMD dated 11.05.2010, specifically allows upto 1% of re-cyclable material in import of waste paper consignments at Sl.No.6 of Part-(vii) of the said OM is not having a bearing to the issue at hand. The said reference is certainly not made out in relation to bio-medical, municipal and other such waste contained in the shipment.

23. In so far as presence of municipal waste, post-consumer domestic waste and bio-medical waste or other contaminants contained in the imported consignments are concerned (said 10 Bills of Entry), it is undisputed that the consignments were examined in the presence of the Authorized Representative of the importer (Customs Broker M/s. CAS Agency). The said OM prescribes verification of such consignments by the Customs authorities and calls for adherence to stipulated conditions. In view thereof the action of the Customs authorities is perfectly valid, as enshrined in law and can therefore not be faulted upon. The presence of certain contaminants like organic matters, medical wastes, household/domestic wastes, municipal solid wastes, like food packets, drink cans, toothpaste tube, three ply masks, tablet and drug boxes, compressed beverages cans, food packets, plastic bottles, plastic wastes, plastic sheets, plastic bags, plastic jars, soft drink cans, used plastic bottles, used plastic containers, parts of tin container, used face masks, used rubber hand gloves etc. has not been disputed.

24. As per Import Policy pertaining to import of waste paper, according to the HOWR, 2016, paper waste comes under 'Part D' of Schedule III, Basel No.B3020 and can be imported into India without approval from MoEF & CC, provided they are not mixed with hazardous wastes. Now, the presence of hazardous wastes prohibited to import viz. **Basel No. A/4020, Basel No. B/3010, Basel No. Y 46** i.e., biomedical waste, post-consumer domestic waste, municipal waste in

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these consignments renders the imported goods within the scope of "illegal traffic". Thus Rule 15 of the HWM Rules provides that:-

"Rule 15. Illegal traffic. –

(1) The export and import of hazardous or other waste from and into India, respectively shall be deemed illegal, if, -

(i) it is without permission of the Central Government in accordance with these rules; or

(ii) the permission has been obtained through falsification, misrepresentation or fraud; or

(iii) it does not conform to the shipping details provided in the movement documents; or

(iv) it results in deliberate disposal (i.e, dumping) of hazardous or other waste in contravention of the Basel Convention and of general principles of international or domestic law.

(2) In case of illegal import of hazardous or other waste, the importer shall re-export the waste in question at his cost withi a period of ninety days from the date of its arrival into India and its implementation will be ensured by the concerned Port and the Custom authority."

25. Also, it is immaterial whether the Seizing Officer had himself examined the goods or not as the Examination Report has been prepared on the basis of actual examination (conducted in the presence of the representatives of the appellant) carried out by a duly empowered authority in law and nowhere it is prescribed that it was incumbent on the seizing officer to have examined the goods himself. As it is nowhere prescribed that only the Seizing Officer ought to have examined the goods, prior to such action for seizure, there is no merit in this plea of the appellant. The detailed finding in the Examination Report points out to the exact nature of contaminants found in each container and a very comprehensive list container wise of the contaminants have been drawn at the time of 100% physical examination of the cargo. Moreover, in view of the OM referred (supra) empowering the Customs authorities, the plea of the appellant that the officers were not competent to point out such nature of contaminants

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that too merely on a visual inspection is completely hollow and lacks substance.

26. The appellant have argued that the authorities below have failed to appreciate judicial discipline inasmuch as they did not comply with the provisions of settled law in the case of Neelkanth Pulp and Paper Boards Vs. Commissioner of Customs [2022-TIOL-341-CESTAT-AHM], we are of the view that the said proposition holds no sway in view of our discussion supra and the question of judicial discipline being an issue in the matter is not made out.

27. The appellant's contention that the Customs officers were simply required to verify the PSI Certificate tendered at the time of import further fails to satisfy us, in the least, for what has been discussed earlier, and as the HSM Division of MOEF & CC vide OM dated 28.03.2022 issued from F.No.23/53/2020-HSM advised that "*point (iv) of the OM of 2010, under reference is an overriding prohibition and no amount of Municipal waste, Post-consumer domestic waste or Bio-medical waste or any other contaminants is allowed with the consignment of waste paper. In case such contaminants are found, then the consignment will have to be sent back to the exporting country. Such contaminants cannot be segregated and disposed of in India and the **Customs authorities have to ensure compliance of the OM in question.***" This clarification is quite categorical and leaves no room for intendment.

28. As for the appellant's submissions regarding supply of the Pre-Shipment Inspection Certificate (PSIC) at the time of import, pointing out that the same had been obtained from accredited and recognized agency specified by the DGFT and therefore the subject matter would call for due consideration in support of their stance, debarring the Customs Officers of any interdiction of the cargo, it may be stated that submission of PSIC cannot be considered as a universal gospel and mere furnishing thereof would not preclude the authorities empowered under the Hazardous & Other Wastes (Management & Transboundary Movement) Rules, 2016 (HOWR, 2016) from undertaking inspection/examination of the hazardous cargo at the time of import.

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While the key purpose of the PSIC is to ensure a smooth supply chain, besides being indicative of quality and quantity of the shipped goods and obtained before the cargo leave the overseas shores and is generally suggestive of the product under shipment as complying with the norms/specifications, quality standards and the regulatory requirements, it cannot be however considered a given that the submission of the said certificate is a complete testimony and evidence for certain of total adherence to the prescribed norms. It is felt that submission of the said certificate only helps to mitigate but not completely eliminate the risk of any deception, defective goods or non-compliant goods being shipped. With the PSIC, therefore, for the buyers, there is likelihood of minimizing receipt of sub-standard products while for the seller it lowers the chance of damages or loss of reputation. In fact, PSIC seeks to foster trust and confidence between trading partners providing the conduct of a smooth transaction. Yet, at the same time, it does not preclude any immunity in law in respect of deviant cargo, as ascertained upon verification, though duly received under cover of the said PSIC.

29. In view of the fact that the law itself empowers the Customs authorities for examination of the cargo, the following case law as relied upon by the appellant in the case of –

- a) **M/s. G.V. Foundation Vs. Commissioner of Customs, Bengaluru⁵**
- b) **M/s. DLF Southern Homes (P) Limited Vs. CC(Imports), Chennai⁶**
- c) **J. Sons Foundry Pvt.Ltd. Vs. CC(Import), Jnch, Nhava Sheva⁷**
- d) **Zuari Industries Ltd. Vs. Commissioner of C.Ex. & Customs⁸**

are superfluously referred to and carry no substantiation for the present case at hand and the given circumstances and the legal provisions quoted earlier.

30. We are also not in agreement with the appellant's contention that the MOEF's Office Memorandum dated 11.05.2010 is inapplicable to the

5 - 2022 (4) TMI 1215 – CESTAT BANGALORE

6 - 2024 (1) TMI 258 – CESTAT CHENNAI

7 - 2018 (3) TMI 27 – CESTAT MUMBAI

8 - 2007 (210) E.L.T. 648 (S.C.)

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present facts and circumstances of the case in view of the law as laid down by the apex court in the following cases:

a) Ambica Quarry Works Vs. State of Gujarat & Others⁹

b) Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd. And Others¹⁰

c) Bharat Petroleum Corporation Ltd. & Another Vs. NR Vairamani & Another¹¹

d) ITC Ltd. Vs. Norasia Container Lines Ltd.¹²

e) ITC Ltd. Vs. Norasia Container Lines Ltd.¹³

f) Commissioner of Customs Vs. Magus Metals P. Ltd.¹⁴

We respectfully submit that none of the aforesaid pronouncements cater to the issue at hand and are therefore referred to out of context.

31. The Tribunal in the case of **Krishna Tissue Pvt. Ltd. Vs. Commissioner of Customs (Port), Kolkata** vide Final Order No.MO/75589/2023 & FO/76724/2023 dated 11.09.2023 has held as under:-

"13. In view of our discussions above, the Department in association with SPCB is directed to examine the goods as per terms of the revised OM (F.No.23/107/2022SHMD dated 10.01.2023) containerwise and to be so done in presence of the importer. The containers of paper waste where the goods are found in conformity with OM dated 10-01-2023, may be provisionally released on Bond/Undertaking. Where paper waste is found to be contaminated in a container, it would be dealt with under the new OM dated 10-01-2023 and such goods would be either re-exported or allowed to be disposed of in terms of the said OM dated 10-01-2023. The adjudicating authority shall adjudicate the show cause

notice after the exercise of provisional release is undertaken, which would be subject to final adjudication.

14. Since the new OM would be the governing law which provides for re-export and quantified penalty for local disposal, the Department shall be free to take legal undertaking from the importer to comply with

9 - 1987 (1) Supreme Court Cases 213

10 - 2003 (2) Supreme Court Cases 111

11 - AIR 2004 (SC) 4778 (S.C.)

12 - 2020 (373) E.L.T. 289 (S.C.)

13 - 2009 (247) E.L.T. 60 (Mad.)

14 - 2017 (355) E.L.T. 323 (S.C.)

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conditions of disposal of the goods under new OM. Needless to mention the Department would be at liberty to supervise such disposal of the goods locally/re export for contaminated container if so found.

(Emphasis Supplied)

32. Before concluding, it would be appropriate for us to refer to the following judicial pronouncements with reference to certain issues that have been raised before us in the present appeal:

(i) **Royal Carbon Black (P) Ltd. Vs. Chief Commissioner of Customs, Mumbai** ¹⁵ wherein most revered Hon'ble Justice DY Chandrachud had categorically held that movement of any hazardous waste from an area under the jurisdiction of one country to the jurisdiction of another country was indeed within the ambit of the expression "transboundary movement" and therefore it cannot be anybody's case that certain provisions of the Schedules prescribed thereunder were not applicable to the facts and circumstances of the present matter (there being no specific express exclusion made out in law). Moreover in para 15 of the said judgment the court held that upon arrival of any consignment, it is for Customs authorities to inspect and examine the consignment and follow the procedure established by law. Thus to foreclose the Customs jurisdiction to mere verification of certain documents does not infer from both the letter and spirit of law. Also in the said case with reference to HOWR, 2008 (precursor to the present rules-HOWR, 2016), it was categorically held:

*"The Rules have been made in public interest and with a view to ensure that the **import** management handling of hazardous wastes does not result in a deleterious effect on public health and environment. **The provisions contained in the Rules must be scrupulously enforced.**"*

(Emphasis Supplied)

15 - 2012 (275) E.L.T. 528 (Bom.)

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In view of the aforesaid, certain propositions as discussed at length in preceding paras are no more but plainly fallacious.

(ii) In the case of **Norasia Container Lines Ltd. Vs. Union of India**¹⁶ - a case specific to import of waste paper contaminated with municipal waste, the Hon'ble Madras High Court, wherein certain respondents sought to withdraw the import bills, after it was found to be containing hazardous waste, had held that the same would not tantamount to discharging them of their obligations under the statute. Moreover, on the aspect of disposal of such cargo in terms of the erstwhile rule 15(3) it was held in no uncertain terms that the absence of a statutory obligation under one of the provisions, cannot result in obligation imposed by the other getting wiped out. The court in the case was concerned with the provisions of the Customs Act 1962 and that of the Hazardous Wastes (Management and Handling) Rules 1989. It categorically held that Rule 15(3) of the said rules imposed an obligation on the importer/exporter to ship or dispose off the goods if they are hazardous and had deployed the agencies of the Central Pollution Control Board for a final determination of the hazardous nature of the cargo, with the cost thereof to be borne by the importers (2nd respondent- M/SITC, Ltd. Secunderabad).

Subsequently, in a related appeal in the case of, **ITC Ltd. Vs. Norasia container Lines Ltd.**¹³ with reference to the said imports of mixed waste paper single stream, the Hon'ble court did not grant any relief to the appellants (M/s ITC) of their obligations in law and even directed the government for initiation of legal proceedings against concerned officers at the helm of affairs of the appellant's organization for posing a grave danger to Mother Nature in India and also specified a given time frame thereto, which directions were only set aside by the apex court, once the hazardous waste imported was re-exported (**ITC Ltd. Vs. Norasia Container Lines Ltd.**)¹²

33. In view of the foregoing discussions and the legal position as laid down by the courts and in view of the fact that the appellant had procured and supplied PSIA Certificates alongwith Chemical Analysis

16 - 2008 (222) ELT 323 (Mad.)

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Certificates, in each of the case, the integrity of issuance of which have not been doubted, compromised or malafides attached thereto, and which were obtained from accredited persons as approved by the DGFT, we are of the view that the case does not warrant imposition of penal liabilities upon the appellant under Section 112(a) and/or 112(b) as well as 114AA of the Customs Act 1962. We therefore set aside the penal liabilities so imposed on the appellant. Under the circumstances, if at all the department had a grouse against the said certificates for not indicating the contents truthfully, it was for the department to proceed against such certified bodies and take appropriate action in law against them including de-recognition and cancellation of their certification with the department concerned.

34. Given the context and the discussions supra, we are of the view that the Revenue has made a very strong case towards confiscation of the goods. However, in the interest of justice, we are of the view that principles of natural justice would require us to consider the strong contest raised by the appellant on the issue of challenge to the examination report, by the appellant and the fact that the State Pollution Control Board Authorities (SPCB) are duly empowered under Schedule VII (Sr. 4) of the HOWR, 2016 for:

- (i) Inventorisation of hazardous and other wastes and
- (ii) Monitoring of compliance of various provisions, and are also the specified competent authority to take action against violation of the HOWR, 2016, provisions.

We feel that the subject cargo can be jointly got re-examined afresh by the department in co-ordination with SPCB before initiating any further action in the matter. However the said option is completely at the discretion of the appellant who will be required to file a written undertaking with the jurisdictional Commissioner to the effect of consent thereto and to abide by the consequence of such re-examination. The appellant will be required to bear the cost incurred for

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the re-examination of the goods. Such option if any, will be required to be exercised by the appellant within four weeks of the pronouncement of the order.

35. In the event of the appellant choosing to re-export the goods redemption fine as adjudged by the original authority shall be payable, in lieu of confiscation under Section 125 of Customs Act.

36. In case, the appellant chooses not to exercise the aforesaid option, and also fails to re-export the offending prohibited goods, they will be required to dispose of the goods as directed by Commissioner (Appeals) in the impugned order under challenge, as follows:

" 21. Further,.....

In..... I give the option to the appellant that the appellant can disposed of the impugned goods in waste to energy plants for energy generation under the supervision of respective SPCBs/PCCs, if they have their own waste to energy plant or a standing arrangement with a waste to energy plant or a cement plant for this purpose on payment of 25% of the value of the impugned goods."

37. Coming to the above option of joint re-examination afresh, as given above, if the appellant chooses to opt for re-examination, the decision of the Tribunal would be as under :-

(A) In case the re-examination results in a different conclusion by the examining authority holding that there is no violation of statutory provision of Pollution and Hazardous materials in the imported consignment, the confiscation ordered in the impugned Order-in-Appeal, would be treated as set aside.

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(B) If the re-examination result confirms the earlier conclusion arrived at by the Revenue, in such a case, the appellant would be required to re-export the offending prohibited goods. If they fail to re-export the same, the consequence would be as held in the above paragraph number 36.

(C) The appellant would be bound by the final decision of the re-examining authority as already held.

38. The appeal is thus disposed off in the aforesaid terms.

(Order pronounced in the open court on 17/04/2024.)

Sd/

(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/

(RAJEEV TANDON)
MEMBER (TECHNICAL)

K.M.