

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT No. III

Excise Appeal No. 42015 of 2017

(Arising out of Order-in-Appeal No. 57/2017 dated 22.06.2017 passed by Commissioner of Central Excise (Appeals-I), Central Revenue Building, Lal Bahadur Shastri Marg, Madurai – 625 002)

M/s. Shruthika Greenss, (100% EOU)

...Appellant

No. 1109-E, Srivilliputhur Road,
Rajapalayam – 626 117.

Versus

Commissioner of GST and Central Excise

...Respondent

Tirunelveli Commissionerate,
Central Revenue Buildings,
NGO 'A' Colony,
Tirunelveli – 627 007.

APPEARANCE:

For the Appellant : Mr. B. Ganesan, Consultant

For the Respondent : Ms. G. Krupa, Authorised Representative

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER No. 41301 / 2025

DATE OF HEARING : 12.08.2025

DATE OF DECISION : 12.11.2025

Per Mr. VASA SESHAGIRI RAO

This appeal challenges the Order passed by the Commissioner (Appeals), Madurai *vide* Order-in-Appeal No. 57/2017 dated 22.06.2017 ('Impugned Order' for short) that the appellants consumed vinegar in excess of the permitted Standard Input-Output Norms (SION) in the manufacture of "gherkins in vinegar" confirming demand of Customs duty and Central Excise Duty (with interest) on the excess quantity and for imposition of Penalty.

2.1 Brief facts of the case are that M/s. Shrutika Greens, Rajapalayam hereinafter referred to as 'Appellant' is, a 100% EOU, engaged in the manufacture of Gherkin in Vinegar and Gherkin in Brine and clearing their final product for export. They had imported the raw material, vinegar, free of duty under Notification No.52/2003-Customs, dated 31.03.2003 read with Foreign Trade Policy 2009-14 and they had also procured indigenous vinegar without payment of Central Excise Duty under CT3 Certificate in terms of Notification No. 22/2003-CE, dated 31.03.2003.

2.2 During the Audit of the appellant's accounts, it was noticed that there was an excess consumption of Vinegar over and above the SION norms for which an objection was raised. Objection was also raised for payment of duty on 1600 numbers of Crate Trolley without allowing depreciation on capital goods to the tune of Rs. 49393/- which were found missing in the factory premises and there was a duty demand on the HDPE barrels.

2.3 The department issued the Show cause notice demanding customs duty of Rs. 15,50,944/ Central Excise duty, Rs. 55800/-on inputs and Rs. 49393/- on Trolley Crates along with interest and proposed penalties.

2.4 After due process of law, the Original Adjudicating Authority confirmed the demand of Customs Duty of Rs. 15,50,944/- under sec. 28 & 72 of the Customs Act 1962, Rs. 1,05,193/- under sec. 11A (1) of Central Excise Act 1944 and imposed equal penalty of Rs. 15,50,944/- under sec. 72 and 112 of CA 1962 and Rs. 1,05,193/- under sec. 11AC of CEA 1944. On being aggrieved, the Appellant filed an Appeal before the Commissioner (Appeals). The Commissioner (Appeals) after due process of Law modified the demand only on the clearance of Crate Trolleys to the extent of depreciated value and upheld the remaining portion of demand.

2.5 Once again aggrieved, the Appellant is in appeal before this forum.

3. The Ld. Consultant Mr. Ganesan, appeared on behalf of the Appellant and the Ld. Authorised Departmental Representative Ms. G. Krupa on behalf of the Respondent/Department and made their submissions.

4. The Ld. Consultant's arguments are that: -

4.1 The demand of duty on excess usage of Vinegar unsustainable, as the entire quantity of vinegar was utilized in the manufacturing process and the finished goods were exported. Being a food product, the preservative vinegar was utilized more than the ratio of 1 Kg:0.4 litters of Gherkins and vinegar respectively. The appellant also submitted that at times the Gherkins in vinegar could not find export market even after two months from the date of manufacture, the same was again subjected to treatment with vinegar so as to keep the food product fit for consumption. Some foreign purchasers required extra vinegar to have longer life to the food product which was acceded to. The appellant accepted the extra utilization of input vinegar in the manufacture of finished goods for export and there was no misuse of input vinegar or illicit removal of the same. The conditions of notification under which the vinegar was imported without payment of Customs duty was satisfied and there was no violation of conditions prescribed in the notification. Since the vinegar was used extra only in the manufacture of Gherkins and exported and not diverted to any other purpose and there was no allegation of misuse or diversion of vinegar by the department no customs duty on the inputs used extra in the manufacture cannot be demanded.

In this connection they relied on several case Laws in support of their case, which are discussed in the paras infra.

4.2 The demand is hit by limitation of time, as the entire particulars of manufacture of Gherkins and consumption of preservative Vinegar in the manufacture was duly declared in the monthly ER-2 returns prescribed for EOUs. From the particulars declared in the ER-2 returns it can be easily arrived at as to the quantity of Gherkins manufactured and the vinegar consumed in the manufacture. The ER-2 monthly returns have been regularly filed from June 2009 to October 2013. The show cause notice has been issued on 05.06.2014 invoking extended period alleging suppression that the extra consumption of preservative Vinegar in the manufacture has not been informed to the department. The Commissioner (Appeals) has observed that the manufacturer has not informed the extra usage of Vinegar to the DGFT and hence there was suppression. When all the particulars are furnished in the ER-2 then there was no suppression and no extended period can be invoked. In support of this connection they relied upon several case Laws.

4.3 The Ld. Consultant summing up his averments submitted that it is clear that the food product Gherkins have been subjected to extra preservative vinegar for longer life and exported. As the inputs were used only in the processing of Gherkins and exported to fulfil export obligation, no Customs duty can be demanded on exported goods on the allegation of consumption of preservative vinegar more than that the ratio fixed in SION norms. Further the entire particulars of manufacture of Gherkins and consumption of Vinegar were declared in monthly ER-2 returns. Hence there was no suppression on the part of the appellant. Hence the Show cause notice issued invoking extended period alleging suppression of facts is unsustainable. Accordingly, the entire demand of duty, interest and penalty are unsustainable and prayed that the impugned order to be set aside and thus render justice.

5. *Per Contra*, the Authorised Departmental Representative Ms. G. Krupa submitted that the consumption of Imported and indigenous Vinegar is in excess of the Norms fixed by DGFT and the Appellant had not approached the Development Commissioner for regularisation. The consumption exceeds SION norms and there is no record of valid self-declared norms or ad-hoc sanction for the excess consumption for the disputed period. Further, SION is the

statutory entitlement; and any consumption beyond SION without prior approval is unauthorised and liable to recovery under Notifications No.52/2003-Cus and 22/2003 CE and allied instructions. Therefore, merely reflecting the data on excess utilisation of inputs in contravention of SION norms will not absolve them from the penal proceedings initiated under Section 28 or Section 72. In this regard, it is imperative to note that there is no time limit specified under Section 72 to initiate action in such cases of violation of SION norms and the orders passed by the Lower Adjudicating Authorities is not hit by limitation and therefore liable to be upheld.

6. We have heard the contentions of both the sides, perused the Appeal records, FTP, HBP, relevant Notifications and the Case Laws relied upon.

7. The issues that arise before us for consideration are: -

- i. Whether the appellants had utilised excess vinegar in the manufacture of "gherkins in vinegar" beyond the permitted consumption under the applicable Standard Input-Output Norms (SION); and whether such

excess (if established) is permissible, or is covered under Para 6.7(e) of the Hand Book of Procedures 2008–09 (effective 01.04.2008) read with Notifications No.52/2003-Cus dated 31.03.2003 and Notification No 22/2003 CE?

- ii. Whether the extended period of limitation is applicable in this case and imposition of penalties is justified?

8.1 We note that the SION (Standard Input-Output Norms) are permitted quantity for input entitlement for EOUs/related units. and Para 6.7(e), Hand Book of Procedures 2008–09 (effective 01.04.2008) provides a specific administrative remedy: where additional items are required or waste/scrap exceeds 2% of inputs, a Unit may file self-declared norms and the jurisdictional Development Commissioner may allow within three months from the date of filing, subject to final adjustment in accordance with norms fixed by the Norms Committee (DGFT). And Notification Nos.52/2003-Cus dated 31.03.2003 and 22/2003 CE dated 31.3.2003 sets out the Customs/Central Excise administrative framework for supply / imports to EOUs and empowers recovery of duty where conditions are violated.

8.2 We note that the SCN alleged that the appellant "has not regulated their operations based on the norms fixed by the Development Commissioner" and hence, the duty free concessions availed on imports/domestic procurement of vinegar was incorrect and appellant is liable to pay duty to the extent of such excess utilisation.

8.3 We observe from submissions before the Original Adjudicating Authority, the details of Exports are as follows: -

YEAR	GHERKINS IN BRINE (IN KGS)	GHERKINS IN VINEGAR (IN KGS)
2009-10	55600	128800
2010-11	536110	241860
2011-12	82480	42400
2012-13	25744	NIL
	699,934	413,060

Closing Balance of Gherkins in Vinegar in the year 2012-2013 – 49955 Kgs.

8.4 Thus, the main allegation is, the usage of vinegar is not as per the norms prescribed in SION. The Appellant has contended that the department has not taken in to account the Gherkins manufactured using both Vinegar

and brine and exported as Gherkins in brine, and that if the entire Gherkins exported are taken into account as finished product as per the MEPZ letter, B17 Bond and Private Bonded Ware House Licence, the usage of vinegar will be within the norms prescribed in SION. Since the finished product is a food product, the same should have been exported before the expiry of 2 months. When there was no market for the product, Gherkins in vinegar within 2 months from the date of manufacture, which was due to abnormal market condition and beyond the control of the manufacturer, then the same was subjected to reprocessing using vinegar not less than 400ml/kg to rejuvenate the Gherkins to sustain for long time and fit for consumption. Hence no duty can be demanded as if the inputs were not used in the production of exported goods or used in excess of SION norms. Hence the demand confirmed in the Order-in-Original is unsustainable.

8.5 We find that the SION norms for gherkins are as follows: -

E20	Gherkins (Pickled Fruits and Vegetables)	1 kg	1		Natural Vinegar	Alcohol	0.4 litre
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There is only one entry for Gherkins as per the DGFT website. It doesn't differentiate between Gherkins in brine and gherkins in vinegar.

8.6 The Appellant has contended that vinegar is also used for Gherkins in brine and submitted that the SION norms did not discriminate or distinguish exported Gherkins into "Gherkins in Vinegar" and Gherkins in Brine". It only states that the quantity allowed is 0.4 litre of vinegar for each 1 kg of gherkins. Hence, what is required to be compared would be the quantity of vinegar consumed versus the total quantity of Gherkins exported. Vinegar is used as preservative in pickling processes mainly for its strong antibacterial properties since Gherkin is used in a raw state in the pickles and the life span of the pickled gherkins was not long. When there is delay in export of the pickled gherkins, these are to be exported after adding additional vinegar to enhance its shelf life and to withstand the travel delays.

8.7 The Order-in-Original of Joint Commissioner has held in para 7 as follows: -

"..... Appellants had procured 129080 litres of vinegar under Notification No.22/2003-CE, dated 31.03.2003 and imported 240000 litres of vinegar under Notification No 52/2003-Customs, dated 31.03.2003 as amended, without payment of duty. As per SION, for manufacture of 1 Kg. of finished goods, 0.400 litre of vinegar is allowed. During the period from June 2009 to October 2012, the appellants had consumed a total quantity of 369080 litres of vinegar in the manufacture of 449425 Kgs. of finished product. As per the ratio fixed in the SION, appellants should have consumed only 179770 litres of vinegar for the said manufacture of 449425 Kgs. of gherkins. As per the aforesaid provisions contained in the Hand Book of Procedures, the consumption of the inputs, i.e. vinegar is restricted to the allowance fixed in the SION by the jurisdictional Development Commissioner/norms committee. After allowing the admissible quantity of 179770 litres, the balance quantity of duty-free raw material worked out to 189310 litres. The adjudicator had observed that the appellants had not regulated their operations based on the norms fixed by the Development Commissioner and thereby not fulfilled the conditions laid down under Notification No 52/2003-Customs, dated 31.03.2003 and Notification No.22/2003-CE, dated 31.03.2003 and therefore the benefit of duty foregone cannot be allowed for 189310 litres of duty free vinegar procured indigenously as well as imported, which has been used in excess of SION. Para 6.7(e) (i) of the Hand Book of Procedures prescribes that where generation of waste, scrap and remnants is beyond 2% of input quantity, use of such inputs shall be allowed by the jurisdictional Development Commissioner within a period of three months from the date of and based on self-declared norms, with the unit undertaking to adjust self-declared/ad hoc norms in accordance with norms as finally fixed by norms committee in DGFT. From the above it can be inferred that the appellants should have intimated the Development Commissioner of the excess requirement of vinegar than allowed by SION on the basis of a self-declaration/ad-hoc norms with an undertaking to adjust it with the norms finally fixed by norms committee in the DGFT. In view of the above, the excess utilisation of vinegar by the appellant unit had not been ratified by the DGFT and as a result, the excess usage of vinegar stands proved."

8.8 We have weighed the rival submissions of both the sides in this regard. We find that the Appellant did not

approach the regulatory authority i.e., the Development Commissioner or the Norms Committee to regulate this excess avilment as alleged by the Department. The main bone of contention is the quantity of gherkins for computation of inputs permitted to be consumed as per SION Norms as the respondent has taken only the gherkins in vinegar and ignored the Gherkins in brine, even though both have been exported.

8.9 On the other hand, the Appellant submitted that in the impugned dispute, the total quantity of gherkins manufactured was 10,64,725 kg. As per SION norms that the total quantity of vinegar permitted for duty free procurement (at 0.4 litre per kg of goods manufactured) was 4,25,890 Ltr. In the appellant's case, they had consumed only 3,69,080 Ltr. This clearly shows that the appellant was well within the SION norms as regards the consumption of vinegar was concerned and they had fully complied with the conditions of said Notifications.

Thus, from the above legal and factual information it can be surmised that the department had made selective referencing to suit their allegation and issued the notice without backing of facts. Considering the further fact that there was no allegation of mis-use or diversion of the alleged

excess qty of vinegar or unaccounted manufacture and clearance of Gherkins the impugned demand merely based on SION norms was liable to be set aside and appeal is liable to be allowed on merits.

8.10 We observe that the respondent has not given any finding as to why the quantity gherkins in brine should not be taken for calculation, whereas the Appellants have claimed that vinegar is also used in gherkins in brine as submitted by them above, which was also put forth before the Lower Authorities who did not put forth any valid reasoning to brush aside the claim of the Appellant except for the fact, that the Appellant did not approach the Regulatory authority to ratify the excess usage over and above the SION Norms and therefore, Customs and Excise Duty are rightly demandable on the excess usage.

8.11 We also note that there is no mention of diversion/clandestine removal of inputs for home consumption. We have perused some sample ER 2 Returns placed with the Appeal paper book and find that Gherkins in brine and vinegar are separately declared with grade wise details for the disputed period quantity of Vinegar procured, used and closing stock is also declared. The department also

did not prove that vinegar cannot be used in the Gherkins in brine as claimed by the Appellant. The Department could have done this exercise as the EOU's are operating under their closed supervision.

The Appellant on the other hand submitted that being a food product, pickled gherkin has a short shelf life of 2 months only and in the event of delay in securing the export orders, more vinegar has to be added to preserve the product. In case of abnormal delay, the goods have to be taken up for destruction under Customs supervision for remission of duty has to be claimed under Section 23 of Customs Act 1962.

8.12 Finally we find that there is considerable force in the Appellants contention that gherkins in brine also have to be reckoned for computation of SION norms as the SION norms doesn't discriminate between the two and the Appellant has submitted that vinegar is also used in Gherkins in Brine also. As there are no findings contrary to the claims of the Appellant, we find that quantity of Gherkins in brine exported is also to be reckoned to compute the total quantity of Gherkins exported, and in doing so, we find that there is no excess avilment of Vinegar in this case.

8.13 We find that the Appellant has relied upon several decisions in their favour where it has been held that Duty cannot be demanded despite excess consumption of inputs as compared to SION norms when there is *bonafide* use of inputs in the manufacture of exported final products and no clandestine removal of inputs is alleged or established.

a. In the case of *Anil Special Steel Industrial Area Ltd Vs. CCE Jaipur- 2010 (262) ELT 685 (Tri-Del)*, the Tribunal Delhi has held that: -

"5. We have carefully considered the submissions of both the sides. We are of the, prima facie, view that SION norms can be regarded only as guide lines. In this particular case, we do not find any allegation or finding of diversion of any raw materials to contradict the claim of the applicant about the actual excess use of inputs (beyond SION norms). Further, there appears to be no provision restricting the quantum of refund as per SION norms. Therefore, we hold that the applicant has made out a case for waiver of pre-deposit of dues as per the impugned order".

b. In the case of *CCE Indore Vs. Agarwal Indotex Ltd. - 2010 (261) ELT 935 (Tri-Del)* again Tribunal Delhi has held in Para 5 of the order that: -

"5. I have carefully considered the submissions and perused the records. At the outset, it is to be noted that SION norms are based on average consumption in the industry. The actual consumption by any manufacturer could be more or less. If the variation is very wide then it definitely calls for investigation. However, no presumption can be made that excess raw materials have been used merely because the quantity is in excess of SION norms. In the present case, certain presumptions have been made that the raw materials procured is in excess of the requirement merely based on SION norms. The respondents have used certain quantities of duty-paid Cenvatable inputs in the manufacture of export products. There is no dispute about export of the final products. The inputs going into export product need not suffer

duty. It could be procured duty-free or if it was duty-paid, the same can be taken as CENVAT Credit. The said CENVAT Credit is useable for paying duty on the goods cleared to the domestic market or the same is eligible as refund. Under these circumstances, the order of the Commissioner (Appeals) holding that the/refund claim is admissible cannot be faulted”.

8.14 Having found merit in the submissions of the Appellant and in the absence of any sustainable ground for denial of relief, we hold that the impugned order cannot be sustained. Based on our findings Supra and respectfully following the ratio of the above decisions, we have no hesitation in holding that the consumption of inputs (Vinegar) is not in excess of the SION Norms. and that there cannot be any demand of Customs/Central Excise Duty which we set aside on this count. The interest and penalty on this portion of the demand is also set aside.

Thus, the appeal succeeds and is allowed to the extent of Excess Vinegar consumption.

9. On the issue of demand of duty on the Crate Trolleys on the depreciated value, we observe that the impugned order has already discussed and allowed this issue on the depreciated value and we do not wish to interfere on this count, and also there is no contest on this issue before us.

10. Regarding the duty demand on HDPE barrels, we find that the demand is already confirmed in the impugned order and there is no contest on this issue from the beginning at various stages of litigation and therefore we are not inclined to interfere on this issue on the ground of 'NO CONEST' by the Appellant.

11. Summing up, the demand of duty, interest and penalty on excess consumption of Vinegar fails on merits and is so ordered to be set aside, and there is no contest in respect of other two minor issues.

12. As the main demand is answered on merits, there is no requirement to look into the question of limitation, framed by us.

13. The Appeal stands modified as *supra* and allowed partially with consequential benefits as per Law.

(Order pronounced in open court on 12.11.2025)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

MK