CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT BANGALORE
Bench - Single Member Bench
Court - I

Date of Hearing: 07.11.2012

Date of decision: 07.11.2012

Central Excise Appeal No. 483/2011

(Arising out of Order-in-Appeal No. 343/2010 dated 30.12.2010 passed by the Commissioner of Central Excise, Bangalore)

For approval and signature:

Honble Mr. P.G. Chacko, Member (Judicial)

1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?

No

2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?

Yes

3. Whether their Lordship wish to see the fair copy of the Order?

Seen
4. Whether Order is to be circulated to the Departmental authorities?

Yes

M/s. Ashlyn Enterprises ..Appellant

Vs.
The Commissioner of Central Excise
Bangalore Respondent
Appearance
Mr. Cherian Punnoose, advocate for the appellant
Mr S. Tali, Deputy Commissioner (AR) for the respondent

Coram:
Honble Mr. P.G. Chacko, Member (Judicial)

**ORDER**

1. In this appeal filed by the assessee, the challenge is against a demand raised on the appellant in terms of Rule 6(3) of the CENVAT Credit Rules 2004 for the period from July to December 2008. During the said period, the appellant (a unit in the domestic tariff area) had cleared their products to SEZ developers/units. During the same period they had also cleared their products to the DTA on payment of duty. The department treated the clearances to SEZ developers/units as clearance of exempted goods and, having found no maintenance of separate accounts in terms of rule 6(1) of the CCR 2004, chose to demand 10% of the sale price (taxes excluded) of the goods cleared to SEZ developers (units) during the above period. This demand was raised in a show-cause notice wherein the clearances made to 4 parties in the special economic zone were taken into account. When the matter came up before the adjudicating authority, two of the four parties were found to be SEZ units and the demand in respect of the clearances made to those two parties was dropped. The adjudicating authority found the other two parties to be SEZ developers and confirmed the demand against them amounting to Rs. 2,32,409/- being a 10% of the value of goods amounting to Rs. 23,24,086/-. It also demanded interest under section 11AB of the Central Excise Act. It also imposed penalty of Rs. 50,000/- on the assessee under Rule 15 (1) of the CCR 2004. This decision of the Assistant Commissioner was affirmed by the Commissioner (Appeals). The present appeal is directed against the appellate Commissioner's order.

2. The learned counsel for the appellant submits at the outset that the surviving demand under Section 11A of the Central Excise Act read with Rule 6 (3) of the CCR 2004 is in respect of the goods cleared by the appellant to two parties viz. (1) M/s. Wipro Ltd., Electronic City, Bangalore and (2) M/s. L&T Hitech City Ltd., Visakhapatnam. He submits that both these companies have been treated as SEZ developers. However, in respect of M/s. Wipro Ltd., he disputes this and submits that the clearances in question were made to a manufacturing unit of that company set up in the SEZ as permitted by the Development Commissioner. In this connection, the learned counsel refers to the Development Commissioner's permission dated 25.07.2006 issued to M/s. Wipro Ltd. for setting up a unit in the SEZ. It is submitted that the clearances to the other company were made as clearances to SEZ developer. The learned counsel, on this basis, submits that the demand raised on the appellant in respect of the clearances to M/s. Wipro Ltd. (SEZ unit) is liable to be set aside in view of the legal provision itself and that the demand in respect of the clearances made to M/s. L&T Hitech City Ltd. (SEZ developer) is liable to be set aside in view of the Tribunal's decision in Sujana Metal Products Ltd. v. CCE, 2011 (272) E.LT 112 (Tri.-Bang.) wherein Notification No. 50/2008-CE (NT) dated 31.12.2008 was given retrospective effect and, accordingly it was held that any goods cleared from the DTA to a developer of SEZ was liable to be treated as "exports" and not to be considered as "exempted goods" for purposes of Rule 6 (3)

of the CCR 2004. The learned counsel has also cited a plethora of subsequent decisions of the Tribunal to the same effect, shown below:

(1) *India Cements Ltd. &* v. *CCE [2012] 37 STT 573*

(2) *Sujana Metal Products Ltd. (supra)*

(3) *Polycab Wires (P.) Ltd.* [Final Order No. M/651-652/WZB (AHD)/2008, dated 24-6-2008]

(4) *Sujako Interiors (P.) Ltd.* v. *CCE* 2011 (268) ELT 505 (Tri.-Ahd.)

3. The learned counsel therefore prays for allowing this appeal.

4. The learned Deputy Commissioner (AR) points out that an appeal filed by the department against the Tribunal's decision in Suiana Metal Products case (supra) has been admitted by the Hon'ble High Court of Andhra Pradesh and therefore the said decision may not have precedential value. In answer to a query from the bench, however, it is submitted that the Hon'ble High Court has not stayed the operation of the Tribunal's decision.

5. After carefully considering the submissions, I am inclined to follow the case law cited before me in respect of the demand raised on the appellant in relation to the clearances made to M/s. L & T Hi-tech City Ltd. (SEZ developers). Those clearances cannot be treated as clearances of exempted goods and must be considered as exports. Consequently the provisions of Rule 6(3) of the CCR 2004 are inapplicable. In respect of the clearances made by the appellant to M/s. Wipro Ltd., the demand is liable to be set aside in view of the provisions of Rule 6(6)(i) as it stood during the period of dispute. This provision clearly laid down that the provisions of sub-rules (1), (2). (3) and (4) shall not be applicable in the case of excisable goods removed, without payment of duty, to a unit in SEZ. The appellant has established that, during the material period, M/s. Wipro Ltd. were maintaining a manufacturing unit in the SEZ. Apparently, the lower authorities erroneously considered them as SEZ developer. Even upon such erroneous consideration, the appellant would get the desired relief on the strength of the case law cited by their counsel.

6. In the result, the impugned order is set aside and this appeal is allowed.

(P.G. CHACKO)
MEMBER (JUDICIAL)

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