Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO. 1

EXCISE Appeal No. 219 of 2011

(Arising out of OIA-SKSS/242/VAPI/2010 Dated-28.10.2010 passed by Commissioner of Central Excise, Customs and Service Tax-VAPI)

Unitech International .....**Appellant**
186/2, SURANGI VILAGE,
SILVASSA, DADRA & NAGAR HAVELI

VERSUS

C.C.C. & S.T. Vapi .....**Respondent**
4TH FLOOR...ADHARSH DHAM BUILDING,
OPP. TOWN POLICE STATION, VAPI-DAMAN ROAD,
VAPI, GUJARAT-396191

APPEARANCE:
Shri Ankur Upadhyay, Advocate for the Appellant
Shri R P Parekh, Authorised Representative for the Respondent

CORAM: HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR. RAJU, MEMBER (TECHNICAL)

Final Order No. 10293 /2022

DATE OF HEARING:24.03.2022
DATE OF DECISION:24.03.2022

ASHOK JINDAL

The appellant is before the Tribunal against the demand of differential duty of excise from the appellant.

1.1 The fact of the case are that the appellant is a 100% EOU and have cleared paper waste after segregation process of waste imported during the period October, 2003 to January, 2005 on payment of excise duty by availing the benefit of concessional Notification No. 23/2003 dated 31.03.2003, read with para 6.8 (A&E) of the EXIM Policy 2002 to 2007.

1.2 The Revenue is of the view that as the appellant has not made any physical export and not taken permission for DTA sales, therefore, clearance under the above said Notification under concessional rate are not eligible. Therefore, the Show Cause Notice was issued on 18.08.2006 by invoking extended period of limitation for demanding differential excise duty along with interest and to impose penalty. The matter was adjudicated, the

demand of duty was confirmed along with interest and equal amount of penalty was also imposed. Against the said order, appellant is before us.

2. Learned counsel for the appellant submits that the appellant is a 100% EOU and is engaged in segregation of Ferrous/ Non-ferrous scrap as per letter of permission dated 18.09.2001 issued by SEEPZ, Mumbai and are holding Central Excise registration. It is his submission that in this case the appellant made clearance of paper waste after segregation in DTA on payment of Central Excise duty @ 22.14% and 19.4% at concessional rate in terms of Notification No. 23/2003-CE dated 31.03.2003. Whereas Revenue sought demand of duty @ 50.08% on proportionate imported value of scrap. It is his submission that this issue is covered by this Tribunal in their own case reported in 2012 (281) ELT 109 (Tri. Amd.), wherein it has been held that activity of segregation is a manufacturing activity, therefore, this Tribunal held that clearance of paper waste in DTA after payment of Central Excise duty at concessional rate of duty is correct. He also relied on the decision of this Tribunal in the case of Hathaway Systems (India) Pvt. Ltd. 2016 (338) ELT 306 (Tri-Del.). He further submitted that the demand is barred by limitation as Show Cause Notice issued to them by invoking extended period of limitation whereas all the details were mentioned in the records already submitted and there is no suppression of facts by the appellants, therefore, the impugned order is to be set aside.

3. On the other hand, Learned Authorized Representative supported the impugned order and submitted that the issue has been dealt by this Tribunal in the case of Hanil Era Textiles Ltd. Vs C.C. Raigad 2014 (312) ELT 324 (Tri. Mum.), therefore, they are not entitled to get the benefit to exemption Notification for payment of concessional rate of duty.

4. Heard the parties. Considered the submissions.

5. We have examined the impugned order as well as the order in appeal. The main thrust of the Revenue is that the activity undertaken by the appellant for segregation were not covered by the definition of Manufacture w.e.f. 01.04.2002 as per EXIM Policy 2002 to 2007. Therefore, they are not entitled to get the benefit of Notification No. 23/03 to avail the benefit thereof for payment of duty at concessional rate. The said observation of the authorities below is against the decisions of this Tribunal in appellant's own case cited herein above wherein it has been held as under:-

> ***"8.*** *We find from the record that there is no dispute that the appellant had been granted LOP No. PER:92(2001)/seepz/eou-47/2001-02, dated 18-9-2001 by the Development Commissioner, SEEPZ, Mumbai for*

segregation of ferrous and non-ferrous scrap or Computer and Electric scrap. It is also seen that the said activity was considered as an activity of manufacture by the authorities, which is reiterated by DGFT vide Circular No. 01/92/182/282/Amo4/VCII/431, dated 29-10-2004, wherein the DGFT has clearly indicated that the unit already set up prior to 1-4-2002 have to be treated differently from the unit set up after 1-4-2002. In other words, an unit engaged in segregation activity, which was set up prior to 1-4-2002 would be continued to be treated as manufacturing concern, as for the entire period original LOP, for the purpose of fulfilment of export obligation and grant of other benefits available under the Foreign Trade Policy and Customs and Central Excise laws. This circular has not been withdrawn by DGFT authorities. As is recorded by us earlier, it is undisputed that the appellant's unit was set up in 2001 for segregation of scrap from imported burnt transformer; considered activity as manufacture. If that be so and there being no dispute that the appellant had segregated the scrap and cleared from EOU will amount to an activity of manufacture. In view of this, we find that there cannot be any demand of Customs duty from the appellant as has been held by this Tribunal in the case of Sanjari Twisters (supra), Dupont Synthetics (supra), Amitex Silk Mills (supra) and various other decisions.

9. *As regards second issue, benefit of notification for discharge of Central Excise duty cleared from EOU to DTA, we find that the appellant-assessee had claimed the benefit of Notification No. 21/2002, which is available to the unit which are situated in DTA and if they are melting units, for import melting scrap. The conditions to the said notification are to be fulfilled, by importer as to the fact that the said scrap has been consumed in the said melting unit. The appellants had cleared the said ferrous scrap to the units engaged in melting ferrous scrap in their melting units and in lieu of which have produced end use certificate before the lower authorities which has been discarded by the lower authorities as certificate on the ground that they have been produced at a later date. In our considered view, such narrow view taken by the lower authorities is incorrect. If the benefit of notification is available to the assessee, on imports goods and produces end use certificate of consumption of the same, benefit of notification cannot be denied to him. We find that in this case, there is no dispute that certificates which was produced are correct, we find that the Tribunal in the case of Ratangiri Textiles, in identical situation held as under :*

> *"Both the appellants are 100% EOUs. Being so, their clearances to Domestic Tariff Area (DTA) are liable to duty in terms of proviso to Section 3(1) of the Central Excise Act. The effect of this is that duty payable on the goods cleared by these units would be the aggregate customs duty leviable on similar goods when imported into India.*
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> *2. In the present cases, dispute has arisen as to what is the rate at which additional duty of customs (CVD) is to be levied on the goods cleared by the appellant's EOU to the Domestic Tariff Area. The appellants contended before the lower authorities that rate of duty applicable would be the effective rate of duty as fixed under exemption notification and not tariff rates of duty. The lower authorities held to the contrary, based on proviso to Section 5A of the Central Excise Act. This finding is challenged in the present appeals.*
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> *3. The appellants contend that it is well settled that additional duty of Customs (CVD) is to be levied at effective rates and not at Tariff Rates. They rely on the decision of the Hon'ble Gujarat High Court in the case of Varsha Exports and Others v. UOI and others - 2000 (40) RLT 9 (Guj.) and Letter F. No.*

> *305/113/94-FTT, dated 19th February, 1998 of the Central Board of Excise and Customs.*
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> *4. We observe that the issue raised before the Hon'ble Gujarat High Court also was the effect of the same proviso to Section 5A on the clearance of goods to DTA by an EOU. After considering the various provisions of the statute, the High Court held that additional duty of customs shall be reckoned on the effective rate and not tariff rate. During the hearing of the case, learned Counsels for the appellants placed before us a copy of the judgment of the Supreme Court dismissing the Special Leave Petition filed against the decision of the Gujarat High Court in the case of Lucky Star International and Others reported in 2001 (134) E.L.T. 26 (Gujarat). The judgment of the Gujarat High Court was common for Lucky Star International and Varsha Exports cases. Apart from this, is the Circular dated 19th February, 1998 of the Ministry. The Circular clarified as under :*
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> *"2. Board have examined the issue carefully and find that the duty leviable under Section 3 of the Central Excise Act is to be calculated after giving effect to the exemption notifications. Therefore, goods produced in EOUs/EPZs cannot be charged to duty at Tariff rate.*
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> *3. Normally duty leviable would be read with notification for the time being in force. Even in absence of such words in the notification, the duty leviable would be effective rate of duty only. Even in Section 3 of the Customs Tariff Act, the words used are leviable for the time being in force."*
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> *5. It is clear from the above that the issue raised in the present appeals remains settled in favour of the appellants. Accordingly, the appeals are allowed with consequential relief, if any, to the appellants after setting aside the impugned orders."*

6. As the activity undertaken by the appellant amounts to manufacture, therefore, the appellant is entitled for the benefit of Notification no. 23/2003-CE dated 31.03.2003 for payment of duty at concessional rate.

7. In view of this, we do not find any merit in the impugned order, the same is set aside. In result, the appeal is allowed with consequential relief, if any.

(Operative portion of the order pronounced in the open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

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