IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT NO. III

EXCISE APPEAL No.41652 of 2013

(Arising out of Order-in-Appeal No.171/2013 (M-II) dated 08.05.2013 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Chennai-I)

M/s. DCM Hyundai Ltd.,
No.2 (Gr.Flr.) Sri Ram Nagar,
Prakash Nagar Main Road,
Thirunindravur – 602 024. **...Appellant**

VERSUS

Commissioner of GST & Central Excise,
Chennai Outer Commissionerate,
Newry Towers, No.2054, I Block, II Avenue,
12th Main Road, Anna Nagar,
Chennai – 600 040.

...Respondent

APPEARANCE:

Mr. T. Ramesh, Advocate
For the Appellant

Ms. Sridevi Taritla, ADC (A.R)
For the Respondent

CORAM:

HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

DATE OF HEARING : 03.03.2023
DATE OF PRONOUNCEMENT:03.04.2023

FINAL ORDER NO.40240/2023

Order : [Per Ms. Sulekha Beevi C.S.]

1. Brief facts are that the appellants were a 100% EOU and sought permission to manufacture and export excisable goods namely Marine Freight Containers, Bodies (including cabins), Trailers and Semi Trailer,

Aluminium Marine Freight Containers and Special Purpose Containers. On verification of sales invoices it was seen that the appellants had sold in DTA, the goods in the nature of 'tipping body' and steel structures availing payment of concessional duty *vide* Notification No.23/2003 CE dated 31.03.2003. It appeared to the Department that the appellant had contravened the provisions of para 6.8 (a) of the Foreign Trade Policy in as much as the appellant had not cleared to DTA, the products similar to the goods which were exported by the unit. Two Show Cause Notices were issued proposing to demand the differential duty along with interest and to impose penalties. After due process of law, the Original Authority confirmed the demand *vide* order dated 31.12.2007. Aggrieved by such order, the appellants preferred an appeal before the Commissioner (Appeals) who *vide* order dated 02.02.2010 remanded the matter to the adjudicating authority for *denovo* consideration. In such re-adjudication the Original Authority *vide* Order-in-Original No.14/2010 dated 26.04.2010 held that the Steel Structures sold in DTA are eligible for concessional rate of duty. However, the Original Authority dis-allowed the concessional rate of duty in regard to tipping bodies. Aggrieved by such order, the appellant filed an appeal before the Commissioner (Appeals) who upheld the order passed by the Original Authority. Hence this appeal.

2. On behalf of the appellant the learned counsel Shri T. Ramesh appeared and argued the matter. He submitted that as per the order of the Developmental Commissioner, MEPZ dated 08.08.1999 the appellant was given permission to manufacture and export (i) Bodies for chassis of vehicles, (v) Containers of iron/steel/aluminum/stainless steel/etc.,. The appellant also received DTA permission under FTP 2004/09 to clear/sell the

goods in DTA at concessional rate of duty *vide* LOP dated 10.04.2003. Based on this permission, the appellant cleared 'tipper body' which is similar to trailers and open top containers. The appellant therefore claimed the exemption under Notification No.23/2003 CE dated 31.03.2003.

3. During the period from November 2006 to March 2007, the appellant has complied with all the conditions of EOU and appellant's unit was permitted to exit from EOU *vide* Final Exit Order dated 30.05.2007. The Show Cause Notice has been issued in October 2007 after exit from EOU by proposing to dis-allow the benefit of the notification dated 31.03.2003 alleging that the goods cleared to DTA are not similar to the goods exported to the appellant as EOU.

4. The learned counsel submitted that the tipper body cleared to DTA on the basis of LOP given by the Development Commissioner is similar to the open top container exported by the appellant as an EOU. The tipper body is nothing but a kind of container only used for transportation. The process adopted for the manufacture of tipper body cleared for DTA and process adopted for the manufacture of other containers including open top container exported by the appellant as EOU are the same. Therefore, tipper body is nothing but similar product to open top container. To support his argument, the learned counsel relied upon the decision of the Tribunal in the case of *Abi Turnamatics Vs. Commissioner of GST & CE 2019 (366) ELT 1048 (Tri. Chennai).*

5. The learned counsel urged that once the No Due Certificate under Final Exit Order dated 30.05.2007 has been issued, subsequently Show

Cause Notice proposing to deny the benefit of notification availed by the appellant as an EOU is without jurisdiction and not sustainable.

6. It is argued by the learned counsel that the view taken by the authorities below is contrary to the licensing norms granted under EOU. The appellant is permitted to manufacture tipper body which falls under category of containers used for transportation. It is also argued that once the competent authority namely Development Commissioner grants permission for DTA clearance, then Central Excise authorities are precluded from questioning its validity or correction. To support his point the learned counsel relied on the decision of the Tribunal in the case of *Amitex Silk Mills Pvt. Ltd. Vs. Commissioner of Central Excise, Surat-I* reported in *2006 (194) ELT 344 (Tri. Del.).* The learned counsel prayed that the appeal may be allowed.

7. The learned AR Ms. Sridevi Taritla appeared for the Department. She supported the findings in the impugned order and submitted that the tipper bodies are not goods similar to Marine Freight Containers which have been exported by the appellant.

8. Heard both sides and perused the records.

9. The issue that arises for analysis is whether the tipper bodies cleared by the appellant into DTA, who is 100% EOU, are eligible for the benefit of concessional rate of duty under Notification No.23/2003 CE. The permission granted to the appellant for DTA sales reads as under:

> *"Please refer to your letter dt. 04.04.2003 on the subject mentioned above. In view on the situation explained in the letter cited, you are permitted to sell the following products manufactured as trial production in your 100% EOU located at No.104, Pollivakkam Village, Tiruvallur Sriperumbudur Road, Tiruvallur – 602 002 in respect of letter permission No. PER 362 (1993)EOB/366/93 dated 27.08.93 for a value of Rs.10 crores in the DTA as "Advance DTA Sale":*
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> *i) Trailers and semi-trailers for heavy vehicles, not mechanically propelled and parts thereof.*
> *ii) Aluminium Structures and Parts of Structures, AluminiumReservoirs, Tanks, Vats and similar containers.*
> *iii) Sheet piling of iron or steel, welded angles, sections, etc. steel structures and parts of structures, railway track construction materials of iron and steel.*
> *iv) Containers of iron/steel/aluminium/stainless steel and/or any other materials both mobile and stationery specially designed and equipped for various applications (other than Marine Freight Containers)."*

10. Form the above document it can be seen that the appellant has been permitted to clear/sell containers of iron/steel/aluminum/stainless steel/etc. (other than Marine Freight Containers). The allegation of the Department is that the appellant have exported only Marine Freight Containers and Special Purpose Containers. The tipper body and Steel Structures cleared by them are not similar to the goods exported as required under 6.8 of the Foreign Trade Policy. The relevant part of 6.8 (a) of FTP is reproduced as under:

> *"Units other than gems and jewellery units, may sell goods upto 50% of FOB value of exports, subject to fulfillment of positive NFE,on payment of concessional duties. Within entitlement of DTA sale, unit may sell in DTA its products similar to goods which are exported or expected to be exported from units."*

11. In the case in hand, the product in dispute is 'Tipping Body'. The authorities below have decided that it is different from Marine Freight Containers and Open Top Containers. The words used in para 6.8 (a) of FTP is that the EOU unit may sell products in DTA which are "similar" to the

goods that are exported by the unit. The word used is similar and not identical.

12. The very same issue was analyzed by the Tribunal in the case of *Abi Turnamatics Vs. Commissioner of GST & CE (supra)* as under:

> *"**5.4** The third ground for denial of notification benefit is that the goods cleared in DTA are not "similar" to the goods exported by the appellant. The adjudicating authority in para 11 of the impugned order has relied upon para 3 of Board Circular 7/2006-Cus., dated 13-1-2006 which has observed that there is no definition of "similar goods". Hence to bring clarification and uniformity that the definition of "similar goods" would be based on the definition of similar goods as provided in the Customs Valuation (Determination of Pride of Imported Goods) Rules, 1988. The relevant portion of the Board's clarification is under :-*
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> > *"The term 'similar goods" means "goods which is although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable with the goods which have been exported or expected to be exported having regard to the quality, reputation and the existence of trade mark and produced in the same unit by the same person who produced the export goods."*
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> ***5.5** In the first place, we find that the Tribunal in the case of Meghmani Industries Ltd. (supra) has addressed the very controversy in respect of the definition of 'similar goods' for exemption under Notification 23/2003-C.E. The Tribunal in the decision after referring to the judgment of the Hon'ble Supreme Court in Wood Craft Products Ltd. - 1995 (77) E.L.T. 23 (S.C.) and of the Tribunal in TELCO - 2000 (126) E.L.T. 1102 (Tribunal) noted that the definitional available in the Customs Act cannot be used in respect of notifications issued under another enactment; that in such cases common parlance or dictionary meaning is to be applied. Secondly, we find from the green card dated 31-3-2006 issued by the Development Commissioner, MEPZ and subsequently also further revised by MEPZ/SEZ that the main products that was manufactured/exported to be turbo charger components. There is no doubt that the appellant had exported bearing housing whereas the goods to be cleared into DTA seeking benefit of Notification 23/2003 was turbo wheel assembly. While, the adjudicating authority has been at pains to cite the difference in characteristics and function of these two items, the fact remains that both of them are components of turbo charger and hence will surely fall under the broad banded term 'turbo charger components' which is the export product as per the EOU/green card issued to the appellant by the Development Commissioner. Hence when the permission granted to appellant has not listed any specific components of a turbo charger but instead has only indicated export product as 12,50,000 nos. of turbo charger component which was even subsequently enhanced to 32,00,000 nos. of turbo charger components, the appellant cannot then be said to have caused a breach of the conditions. Both bearing housing and turbine*

wheel are surely component parts of turbo charger, a fact which has been admitted by the adjudicating authority in para 12 of the impugned order. If on the other hand, the permission granted by the Development Commissioner to the EOU was only for bearing housing, in that event, the clearance of turbine wheel which is a part distinct from bearing housing would have come under the scanner. But when the permission is generic and only states "turbo charger components", the condition of the impugned notification gets satisfied so long as the parts that the exported and the parts cleared into DTA are both the components of turbine charger."

13. It can be seen that the open top containers exported by the appellant is similar to the tipper body used for transportation. It is not necessary that the goods cleared into DTA have to be identical to the goods exported by the EOU. Further, permission has been granted by the MEPZ to clear containers which are similar. We therefore find that the denial of the benefit of the notification is not justified. The impugned order demanding differential duty requires to be set aside which we hereby do.

14. In the result, the impugned order is set aside. The appeal is allowed with consequential relief if any as per law.

(Pronounced in the open court on 03.04.2023)

Sd/- Sd/-

(VASA SESHAGIRI RAO) **(SULEKHA BHEEVI C.S.)**
MEMBER (TECHNICAL) MEMBER (JUDICIAL)

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