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

REGIONAL BENCH - COURT NO. 3

Excise Appeal No. 10998 of 2017

[Arising out of Order-in-Original No OIO-VAD-EXCUS-002-COM-042-043-16-17 dated 20.12.1996 passed by Commissioner (Appeal) of Central Excise & ST, Vadodara]

Commissioner of Central Excise & ST, Vadodara .... Appellant
1ST FLOOR... ROOM NO.101,
NEW CENTRAL EXCISE
BUILDING, VADODARA,
GUJARAT - 390023

VERSUS

M/s. Ineos Abs Limited .... Respondent
Halol- Kalol Road,
PANCHMAHAL
GUJARAT

APPEARANCE :

Shri T.G. Rathod, Joint Commissioner (AR) for the Appellant-Revenue
Shri Willingdon Christian, Advocate for the Respondent-Assessee

CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. RAJU, MEMBER (TECHNICAL)

FINAL ORDER NO. A/11517 / 2019

DATE OF HEARING : 03.06.2019
DATE OF DECISION: 03.06.2019

RAJU :

This appeal has been filed by Revenue against the order passed by Commissioner in the case of M/s. Ineos Abs Limited.

2. The respondents were availing Cenvat credit of Styrene Monomer and Acrylonitrite falling under Chapter 29. The goods were cleared under Target Plus Scheme which came into effect 01.09.2004 for exporters based on the incremental growth of exports. Under the scheme duty credit certificates were issued as a reward to export houses for incremental growth of FOB

value of exports made during the financial year 2005-06 over the exports made during the previous financial year 2004-05. The goods when imported into India against duty credit certificates under Target Plus Scheme were exempted from the whole of the customs duty and additional duty leviable threon under the Customs Tariff Act, 1975 and under Section 3 of the said Act, as notified vide Notification No. 32/2005-Cus dated 08.04.2005. The Notification was amended vide Notification No. 73/2006-Cus dated 10.07.2006 which permitted the importers to avail draw back or Cenvat credit of the additional duty leviable against the amount debited under the said certificates issued under Target Plus scheme. Target Plus scheme was discontinued with effect from 01.04.2006 vide Notification No. 57(RE-2005)/2004-09 dated 31.03.2006. While the Target Plus scheme discontinued from 01.04.2006, the respondent availed benefit of said scheme by debiting the additional duty and applicable cess from the licences issued under Target Plus scheme in the capacity of supporting manufacturer and taking Cenvat credit of additional duty and cess thereon after 01.04.2006 also. This credit was challenged by the Revenue on the ground that since Target Plus scheme is discontinued with effect from 01.04.2006, benefit of such scheme was not available. Therefore, Cenvat credit availed by the appellant was incorrect and liable to be disallowed. Extended period of limitation was also invoked.

3. The said demand in the show cause notice was dropped by the Commissioner observing that while the entire scheme was scraped but Notification No. 32/2005-Cus dated 08.04.2005 was amended vide Notification No. 73/2006-Cus dated 10.07.2006 allowing the benefit of the scheme from which the Commissioner concluded that respondent could

continue to avail the benefit of the scheme though the Notification No. 57(RE-2005)/2004-09 dated 31.03.2006 was issued. He also relied on the CBEC Circular No. 18/2006-Cus dated 05.06.2006 which clarified as follows:-

> "**4.** As regards the issue raised as to whether the duty debited through DEPB, DFCE, Tartget Plus etc. schemes would be eligible for Cenvat benefit or drawback facility by the licence holder, it has been made clear in the Finance Minister's Budget Speech that full credit of the 4% special CVD will be allowed to manufacturers of excisable goods. Therefore, it is clarified that the 4% CVD duty debited in DEPB, DFCE, Target Plus etc. certificates may be allowed to be taken back as drawback (brand rate). It may be mentioned here that under the Foreign Trade Policy, additional customs duty (CVD) debited in DEPB scrips/ certificates issued under reward schemes is allowed to be taken as Cenvat/ drawback."

He also relied on the decision of the Hon'ble Punjab & Haryana High Court in the case of *Escort Limited vs. UOI – 2009-TIOL-305-HC-P7H-EXIM* holding that doctrine of estoppels the benefit cannot be denied. He also relied on the decision of Tribunal in the case of *Tecumesh Products India Pvt. Limited vs. CCE Hyderabad – 2010 (256) ELT 276 (Tri. Bang.)* and dropped the demand aggrieved by the said order, Revenue is in appeal.

4. Ld. AR for the Revenue argued that Target Plus scheme came to be abolished from 01.04.2006 onwards. He argued that prior to 01.04.2006, the eligibility criteria in Para 3.7.2 of the Foreign Trade Policy prescribes the entitlement based on only exports made in current licensing year over the previous licensing year. It was argued that the said Notification No. (RE-2006)/2004-2009 dated 12.06.2006 further amended the Target Plus scheme for the exports affected during 01.04.2005 to 31.03.2006. The said amendment was struck down to the extent of its retrospective applicability by the Hon'ble Supreme Court vide order dated 27.10.2015 in Writ Petition (Civil) No. 246 of 2010. It was argued that the Hon'ble Apex Court had struck down this amendment and it imply that benefit of Target Plus scheme was not available for the imports made during the year 2006-07 or

thereafter. It was argued that the order-in-original wrongly relied on the CBEC Circular No. 18/2006-Cus dated 05.06.2006, Notification No. 73/2006-Cus dated 10.7.2006 and the decision of the Hon'ble P&H High Court in the case of Escort Limited (supra) and various case laws including the one in Techmesh Products India Pvt. Limited (supra) as the facts in the said cases are different.

5. Ld. Counsel for the respondent argued that as per Condition No. 7 of the notification, the imports are subject to entitlement of availment of Cenvat credit of additional duty paid as per Notification No. 32/2005-Cus dated 08.04.2005. He argued that they are entitled to use Target Plus scheme as the matter relating to Customs authority. He argued that since they have paid duty used the said scheme and the customs authority has no objection, Central Excise authority cannot raise this issue. He argued that additional duty has been paid and Notification No. 32/2005-Cus in terms of availment of credit of the same cannot be denied. He further argued that Target Plus scheme was abolished but the benefits under Notification No. 32/2005 and Notification No. 73/2006 dated 10.07.2006 were still available. He argued that Target Plus scheme discontinued with effect from 01.04.2006 however, Notification No. 73/2006-Cus was issued specially to tackle all such situation about the credit under Target Plus scheme were issued during 2005-06 and such certificate were permitted to use under the Target Plus scheme on the basis of which exports were made in 2004-05.

6. We have considered the rival submissions. We find that Revenue has essentially related the observation that since the Target Plus scheme was abolished, the certificates issued during the currency of the said scheme

cannot be used thereafter. It is seen that utilization of certificates issued under Target Plus scheme is a matter which falls under the jurisdiction of Customs Authority and not under Central Excise authorities. The Customs authorities have allowed the certificates issued under Target Plus scheme and no demand of duty has been raised by the customs authorities in respect of such imports. Notification No. 73/2006-Cus has been issued after withdrawal of Target Plus scheme which permits utilization of duty credit certificates issued under the scheme on the basis of incremental growth of FOB value of exports made during the year 2005-06. The said certificates were issued after abolition of Target Plus scheme. The said certificates have even been issued in August 2007 and February 2008, then respondent could not have used the certificate after abolition of scheme does not have any force. Moreover, Notification No. 32/2005-Cus is continue even after abolition of Target Plus scheme under condition No. 7 clearly permits availment credit of addition duty paid.

7. In these circumstances, we do not find merits in the appeal filed by the Revenue and the same is dismissed.

(Operative part of the order pronounced in the court)

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)

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