CUSTOMS,EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST ZONAL BENCH : AHMEDABAD

REGIONAL BENCH : COURT NO – 3

Customs Appeal No. 28 of 2011-DB
(Arising out of OIA No.- 201/2010/AHD-III/KCG/COMMR-A-/AHD dated 29.12.2010 passed by Commissioner of Central Excise-AHMEDABAD-III)

Torrent Pharmaceuticals Ltd. Appellant
Village : Indrad, Ahmedabad-mehsana Highway,
Taluka : Kadi,
Mehsana,
Gujarat
382715.

-VERSUS-

C.C.E. & S.T., Ahmedabad-iii Respondent
Custom House... 2nd Floor,
Opp. Old Gujarat High Court, Navrangpura,
Ahmedabad,
Gujarat
380009

Present For the Appellant : Shri Anand Nainawati, Advocate

Present For the Respondent : Shri T.K. Sikdar, Asst. Commr.(AR)

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

FINAL ORDER NO. A/11682/ 2019

Date of Hearing: 20/08/2019
Date of Decision: 20/08/2019

RAMESH NAIR

The brief facts of the case are that the appellant have imported bulk drug namely "Levodopa BP" under notification no. 21/02-Cus under S. no. 80 of the notification which contain the condition of following the Customs (import of goods at concessional rate of duty they manufactured on excisable goods) Rules, 1996. After receipt of the imported goods partly used by the appellant in their factory and part quantity of the same goods was diverted to their own manufacturing unit located at Baddi, Himachal Pradesh. The case of the department is that the import was meant for appellant's Indrad, Mehsana Unit, since part of the quantity was transferred to the other different unit in Baddi, the same will not be eligible for exemption. Accordingly, the demand of Custom duty was raised.

2. Shri S.J. Vyas, Ld. Counsel appearing on behalf of the Appellant, submits that regarding the transfer of the imported goods to their Baddi unit, they have applied to the department vide letter dated 17.08.2009. Thereafter, the goods were transferred to their Baddi Unit. He submits that as per the certificate issued by the

Superintendent, Central Excise Range, Baddi, addressed to the Assistant Commissioner of Central Excise, Kalol that the goods which were transferred from their Indrad unit has been received by the appellant in their Baddi Unit. He submits that as per the Notification, the condition prescribed is that the imported goods should be used in the manufacture of the excisable goods specified in the list 3. There is no dispute that the goods so transferred from their Indrad Unit to their Baddi Unit was received and used for the manufacture of Excisable goods. Therefore, even though the goods were transferred, the same is eligible for exemption under notification no. 21/02-Cus. Without prejudice he further submits that since the imported goods is drug, it is also covered under clause 'A' of S no. 80 which does not contain any condition of following the Conditional Duty Rules, 1996. Therefore, as per clause 'A' also they are eligible for exemption without following any condition. He placed reliance on the following judgments:

1. Micro Orgo Chem v/s Commissioner of C.Ex. & Cus., - Surat-II 2002 (8) TMI 171-CEGAT, Mumbai
2. Commissioner of C.Ex., Hyderabad v/s Hetero Drugs Ltd. 2010 (262) E.L.T. 490 (Tri.-Bang.)
3. Astrix Laboratories Ltd. v/s Commissioner of C.Ex. & Cus., Hyderabad-I 2009 (233)E.L.T. 372 (Tri- Bang.)
4. Aurobindo Pharma Ltd. v/s Commissioner of C.Ex., Hyersabad-I 2009 (247) E.L.T. 206 (tri- Bang.)
5. Dr. Reddy's Laboratories Ltd. v/s Commissioner of C.Ex., Hyderabad 2010 (251) E.L.T. 447 (tri- Bang.)
6. Finolex Cables Ltd. v/s Commissioner of Customs & Central Excise, Goa 2017 (3) TMI 1119- CESTAT Mumbai
7. M/s FDC Ltd. v/s Commissioner of Central Excise, Belapur 2016 (12) TMI 1270-CESTAT Mumbai

3. Shri K.J. Kinariwala, Ld. Asst. Commissioner (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. We have carefully considered the submission made by both the sides and perused the records. We find that the only reason for raising the demand by the Revenue is that the goods so imported under notification 21/02-Cus was used in appellant's different unit located at Baddi, Himachal Pradesh. In this regard, we observe that the appellant have bonafidely applied to the Jurisdictional Officer regarding transfer of goods from their Indrad Unit to their Baddi Unit. And after transfer of goods, the Jurisdictional officer of Baddi unit has issued certificate regarding receipt of the goods in the Baddi Unit. Therefore, there is no dispute that the goods were ultimately received by their own Baddi Unit. However, as regard the use of the goods, there is no evidence on record. Therefore, we are of the view that

only for the reason that the goods were transferred to their Baddi unit, the exemption could not be denied subject to verification that the said transferred goods have been used in the Baddi unit. Therefore, the Adjudicating Authority is directed to ascertain the fact of end use of the goods in Baddi Unit. And if it is found that goods were used in the manufacture of final Excisable goods, the appellant shall be entitled for the exemption. Accordingly, the impugned order is set aside. The appeal is allowed by way of remand to the Adjudicating Authority for passing a fresh order after considering our observations hereinabove.

(Dictated and pronounced in the open court)

(Ramesh Nair)
Member (Judicial)

(Raju)
Member(Technical)

Diksha