

Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad
REGIONAL BENCH- COURT NO.3

Excise Appeal No.349 of 2012

(Arising out of OIA-107/2012/COMMR-A-/RBT/RAJ dated 02/03/2012 passed by Commissioner of Central Excise, Customs and Service Tax-RAJKOT)

Jindal Saw Ltd

Nana Kapaya, Taluka-Mundra,
KUTCH, GUJARAT

.....Appellant

VERSUS

C.C.E. & S.T.-Rajkot

Central Excise Bhavan,
Race Course Ring Road...Income Tax Office, Rajkot, Gujarat-360001

.....Respondent

APPEARANCE:

Shri R.Santhanam, Advocate for the Appellant

Shri Rajesh K Agarwal, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. C.L. MAHAR
Final Order No. A/ 11079 /2023

DATE OF HEARING: 02.03.2023
DATE OF DECISION: 28.04.2023

RAMESH NAIR

The issue involved in the present case is that whether the appellant is liable to pay additional duty of customs on import of HSD by 100% EOU. The case of the department is that since the exemption provided to 100% EOU under notification no 53/2003-Cus dated 31.03.2003 does not prescribe the exemption from payment of additional duty of customs at the relevant time on HSD, the same is liable to be paid by the appellant's 100% EOU.

02. Shri R.Santhanam, learned counsel appearing on behalf of the appellant at the outset submits that this issue has been decided by the larger bench in the case of PARAS FAB INTERNATIONAL- 2010 (256) E.L.T. 556 (Tri.-LB) and many other judgments by this tribunal which are cited below:-

- STI INDIA LTD.- 2007-TIOL-2314-CESTAT-DEL
- M/S. AREVA T & D INDIA LTD.- vide Final Order No. 42931-42932/2017 dated 14.11.2017
- M/S. EUROTUX INDUSTRIES & EXPORTS LTD.- 2016-TIOL-2841-CESTAT-MUM

- M/s. PARAS FAB INTERNATIONAL- 2010-TIOL-963-CESTAT-DEL-LB
- M/S. TAI CHONBANG TEXTILE INDUSTRIES LTD.- 2011-TIOL-791-CESTAT-AHM

Therefore, the issue is no longer res-integra.

03. We have carefully considered the submissions made by both the sides and perused the records. We find that the issue that whether in absence of specific exemption to additional duty of customs under notification No. 53/2003-Cus dated 31.03.2003, 100% EOU is required to pay additional duty on HSD or otherwise. This issue has been considered by the Division Bench in the STI India Ltd. (supra). This issue was also considered by the larger bench in the case of PARAS FAB INTERNATIONAL (supra) the same is reproduced below:-

8.*We have carefully considered the referral order, submissions made on behalf of the appellants and submissions made on behalf of the department. We find that the issues under reference pertain to cases of demand of Customs duty. The Customs Act, 1962 is a self-contained legislation dealing with levy and collection of customs duty on imported and export goods and allied matters. In so far as the imported goods are concerned, Section 46 of the Act provides for presentation of a Bill of Entry for home consumption or for warehousing. Section 47 deals with clearance of goods for home consumption. Warehousing provisions are contained separately in Chapter IX of the Customs Act. "Warehouse" is defined in Section 2(43) of the Act. Under Section 58 of the Act, a warehouse can be licensed only at a place declared as a warehousing station under Section 9 of the Act. Section 65 of the Act deals with manufacture and other operations in relation to warehoused goods. Section 66 contains the power to exempt material used in the manufacture of goods in a warehouse. Section 68 deals with clearance of warehoused goods for home consumption and Section 69 deals with clearance of warehoused goods for export. Section 71 provides that no warehoused goods shall be taken out of a warehouse except on clearance for home consumption or for re-exportation or for removal to another warehouse or otherwise as provided by the Act. Section 72 deals with goods improperly removed from warehouse and provides for demand of duty on such goods.*

9.*In paragraph 10 of the Customs Manual dated 1st September, 2001 issued by the Board, it is stated that the premises of EOU are approved as a Customs bonded warehouse under the Warehousing provisions of Customs Act. It is also stated therein that the manufacturing and other operations are to be carried out under customs bond. In paragraph 12, the Manual states that the goods are required to be imported into the EOU premises directly and prior to undertaking import, the unit is required to get the premises customs bonded. It also says that the imported goods, except capital goods and spares are required to be utilized within a period of one year or within such period as may be extended by the Customs authorities and the importer is required to maintain a proper record and proper account of the import, consumption*

and utilization of all imported materials and exports made and file periodical returns. Paragraph 5 of the Manual also states that the EOUs are licensed to manufacture goods within the bonded premises for the purpose of export.

10. On a perusal of the provisions relating to warehousing in the Customs Act, 1962 and the provisions relating to EOU Scheme under the Customs Manual, we find that the entire premises of a 100% EOU is required to be licensed as a customs bonded warehouse and the imported goods are required to be imported directly to such premises. The manufacturing is also required to be done within the bonded premises. Hence, we find support for the contention of the appellants that the entire premises of 100% EOU is a bonded warehouse. Neither the Manual nor the Customs Act speaks of any requirement to pay any duty on the warehoused goods which are used for manufacture in bond nor it requires filing of any ex-bond bills of entry at that stage. Section 68 of the Act deals with clearance of warehoused goods for home consumption and it requires filing of an ex-bond of Bill of entry payment of import duty and other charges and an order for clearance for home consumption. Section 65 of the Act which deals with manufacturing in bond on the other hand, does not require any filing of ex-bond bills of entry or payment duty before taking warehoused goods for manufacture inside the bonded premises. We also find that Section 66 of the Act empowers the Central Government to exempt imported material used in a warehouse. It is thus clear that neither the scheme of the Act nor the provisions contained in the Manual require filing of ex-bond bills of entry or payment of duty before taking the imported goods for manufacturing in bond nor there is any provision to treat such goods as deemed to have been removed for the purpose of Customs Act, 1962. The Warehousing provisions under the Customs Act, 1962 deals with two kinds of removals from the Customs bonded warehouse;-

- (i) Removal under order of clearance of the proper officer after filing ex-bond bill of entry and payment of duty, etc. as provided under Section 68, and;
- (ii) Improper removal for which Section 72 provides for demand of duty, penalty, interest etc.

Impugned goods authorized to be used for in-bond manufacture under Section 65 do not fall under any of these categories.

11. Learned SDR has cited the decision of the Hon'ble Supreme Court in the case of Kohinoor (Supra) in support of the argument that captive consumption should be treated as deemed removal. We note that the said decision was rendered in the context of manufactured goods captively used in the further manufacture of other excisable goods and in the context of levy of excise duty under the Central Excise Act, 1944. In our view, the ratio of the said decision rendered in the context of levy of Excise duty, cannot be applied to a case of manufacturing in bond under the Customs Act, 1962 for which separate and specific provisions are contained in the said Act. None of these provisions stipulate that using the imported warehoused material for manufacture in bond in the same warehouse would amount to removal for home consumption or that duty is required to be paid thereon. In fact, if such use has to be treated as

removal for home consumption and duty is required to be paid on such use, there will not be any incentive for an assessee to undertake manufacturing in bond and the provisions made in this regard would not be of any use whatsoever. The policy objective behind enactment of such statutory provisions and designing of the EOU Scheme to make available duty free imported material for manufacturing export goods would be entirely defeated. In any case, the express provision of law does not require such use to be treated as deemed removal nor there is any stipulation requiring payment of duty at the point of use. We also note that there are separate provisions to deal with the resultant finished goods and the waste arising from the manufacturing process.

12.*In view of the law as spelt out and our finding as above, we answer the reference as follows :-*

The entire premises of a 100% EOU has to be treated as a (a) warehouse if the licence granted under Section 58 to the unit is in respect of the entire premises.

(b), (c) and (d) Imported goods warehoused in the premises of a 100% EOU (which is licensed as a Customs bonded warehouse) and used for the purpose of manufacturing in bond as authorized under Section 65 of the Customs Act, 1962, cannot be treated to have been removed for home consumption.

The decision of the Tribunal rendered in the case of (e) STI India (supra) holding that imported goods were not cleared from the warehouse and hence there cannot be any demand of duty on the same is the correct view in law.

13.*Having answered the points under reference as above, we return both the appeals to the Division Bench for decision on merit.*

From the above larger bench decision of this tribunal, it was held that even though the specific exemption from additional customs duty is not covered under the notification no 53/2003-Cus dated 31.03.2003 but since the goods have been bonded in 100% EOU and consumed their itself and the same was not removed as such from the 100% EOU, no additional duty of customs can be demanded.

04. Following the ratio of the above decision on the identical issue, the demand in the present case is not sustainable accordingly, we set aside the impugned order and allow the appeal with consequential relief.

(Pronounced in the open court on 28.04.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(C.L. MAHAR)
MEMBER (TECHNICAL)