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

REGIONAL BENCH- COURT NO. 1

Customs Appeal No. 11867 of 2017-DB

(Arising out of OIA-VAD-EXCUS-002-APP-158-2017-18 Dated-27/06/2017 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I)

Jvs Engineers **........Appellant**
A-1/33, Bank Of Baroda Lane, Gidc, Makarpura
Vadodara, Gujarat

VERSUS

C.C.E. & S.T.-Vadodara-ii **........Respondent**
1st Floor... Room No.101,
New Central Excise Building,
Vadodara,Gujarat-390023

APPEARANCE:
Shri. Saurabh Dixit, Advocate for the Appellant
Shri. Anand Kumar, Superintendent (AR) for the Respondent

CORAM: HON'BLE MR. RAJU, MEMBER (TECHNICAL)
HON'BLE MR. SOMESH ARORA MEMBER (JUDICIAL)

Final Order No. A/ 11042 /2023

DATE OF HEARING: 24.04.2023
DATE OF DECISION:24.04.2023

Raju

This appeal has been filed by M/s. Jvs Engineers against demand of Customs duty on "used valves" imported by them in their EOU.

2. Learned Counsel for the appellant pointed out that they were importing "used valves" as raw materials/ components for the final products manufactured by them. In the annexure-1 of the Letter of Permission issued by Development Commissioner they have been permitted import of "Valves" as raw material/ components and consumables. He further pointed out that the procurement certificates were issued to them by the concerned authorities namely Superintendent of the Central Excise wherein specific permission is granted to import "used valves". The said valves were also re warehoused in their EOU has been seen from the warehousing certificate produced by the learned Counsel. The learned Counsel pointed out that the

Order-in-Original as well as the Order-in-Appeal seek deny the benefit of exemption notification on the ground that Foreign Trade Policy in para 2.17 restricts import on second hand goods except second hand capital goods. He pointed out that as an EOU they are permitted to import all kinds of goods as can be seen from para 6.2(b) of the chapter 6 of the Foreign Trade Policy pertaining to EOU. He pointed out that revenue has treated the goods as restricted goods in terms of the policy and have failed to notice that hand book of procedure in para 6.3.7 prescribes that LoP/LoI issued to EOU/EHTP/STP/BTP units by concerned authority would be construed as an authorization for all purposes. He further relied on para 6.2 (b) which provided they are not prohibited items of import in the ITC (HS). He argued that the restriction prescribed in para 2.17, will therefore not be applicable to EOU's. He relied on the decision of Tribunal in the case of Xron Gases P. Ltd-2017 (356) ELT 121 (Tri.-Mumbai) and on the decision in the case of Geetanjali woollens Pvt. Ltd-2002 (149) ELT 1192 (Tri.-Mumbai)

3. Learned Counsel further raised the issue regarding jurisdiction of excise authorities to issue the show cause notice. On the ground that the import assessment was done by the Customs Authorities. It was argued that Excise Authorities were trying to modify the said assessment done by Customs Authorities. He also raised the issue of limitation pointing out that they had declared the import goods as "used valves".

4. Learned AR relies on the impugned order.

5. We have considered the rival submission. We find that the Foreign Tade Policy in para 2.17 prescribed as under:

> *"All second hand goods, except second hand capital goods, shall be restricted for imports and may be imported only in accordance with provisions of FTP, ITC (HS). HBP v1, Public Notice or an Authorisation issued in this regard.*

Import of second hand capital goods, including refurbished /re-conditioned spares shall be allowed freely. However, second hand personal computers / laptops, photocopier machines, air conditioners, diesel generating sets will only be allowed against a licence.

Import of re-manufactured goods shall be allowed only against a licence".

6. We find that para 6.2(b) of the FTP reads as under :

" (b) An EOU / EHTP/STP/BTP unit may import and/or procure from DTA or bonded warehouses in DTA / international exhibition held in India without payment of duty **all types of goods, including capital goods, required for its activities, provided they are not prohibited items of import in the ITC (HS)***. Any permission required for import under any other law shall be applicable. Units shall also be permitted to import goods including capital goods required for approved activity, free of cost or on loan / lease from clients. Import of capital goods will be on a self certification basis. Goods imported by a unit shall be with actual user condition and shall be utilized for export production".*

6.1 From the combine reading of above two provision it is seen that while the import of restricted items is not permitted without express authorization from the authorities in case of all importers, the said restriction would not apply to EOU in terms of para 6.2(b) of the FTP. In terms of 6.2(b) an importer is permitted to import all items that are not prohibited for import.

6.2 In this case we notice that that appellant has imported 'used valves' which according to revenue are restricted items. In terms of para 6.2 (b) this restriction of import of restricted items is not applicable to EOU's. Further, it is seen that the letter of permission in the appellant's case clearly covers valves as raw materials/ components. Annexture-1 to the letter of LOP is reads as under:-

EXEMPTION MATERIALS ANNEXURE-I

1. Plant, Machinery and Equipment to be Imported.

No.	Description of goods	Value in Foreign currency	Value in Lakhs
01	HASS Make, Model VF-3YT CNC Vertical machining center with accessories SO# 651142 Sr. No. 1050816 (8457-10-20)	75000.00 USD	34.50
02	Pinacho smart turn electronic lathe model Smart 5-375X2000 with accessories Sr. No. 52465 (8458-11-00)	40230. Euro	24.13
03	Pinacho Smart Electronic Lathe Samrt 5-310 X1000 MM Between Centres with accessories Sr. No. 52433 (8458-11-00)	25,750.00 Euro	15.45
04	Testing System	50000.00 USD	23.00
05	CNC Lathe / Machining Centre 8458-11-00 / 8457-10-20	200000.00 USD	92.00
06	Auto Welding System	50000.00 USD	23.00
07	CNC Boring Machine	200000.00 USD	92.00
08	Unplanned Capital Equipment	100000.00 USD	46.00

2. Raw Materials, Components and Consumables to be Imported.

No.	Description of material	Value in Foreign currency	Value in Lakhs
01	Seals / Stem Packing for chokes	50000.00 USD	23.00
02	Tungsten carbide trim (flow cage / flow sleeve) 8101-94-00	125000.00 USD	57.50
03	Actuators	200000.00 USD	92.00
04	Positioners	50000.00 USD	23.00
05	Hammer Union connections, flanges, valves parts, bearings 7307-21-00,	100000.00 USD	46.00
06	Forgings / castings / flanges / valves (8481-90-30)	150000.00 USD	69.00
07	Alloy steel pipes 7304-31-10/90	50000.00 USD	23.00
08	Un planned purchase like special bearings, drive unit, actuator motors, Scrap Material	500000.00 USD	230.00

For JVS ENGINEERS, Partner

Attested By Me

(M. J. SHAH)
NOTARY
DIST. KUTCH (GUJARAT)
11 SEP 2006

For JVS ENGINEERS, N. Shah Partner

7. We also find that the similar view has been taken in the case of Xron Gases P. Ltd (supra) and in the case of Geetanjali woollens Pvt. Ltd (supra). In the case of Xron Gases P. Ltd in para 5 following has been observed:-

5. *I find that adjudicating authority as well as Commissioner(Appeals) held the goods for absolute confiscation on the ground that appellant have not obtained the Special Import License for import of R-22 Gas. As per FTP, 2009-2014, the goods R-22 Gas is restricted items and the import of the same can be made only after obtaining import license. In the present case, appellant being 100% EOU is under the jurisdiction of Development Commissioner, who is also regional licensing authority, accordingly for all the purposes related to FTP, the Development Commissioner is the authority incharge of the appellant's unit. The said licensing (Development Commissioner) Gandhidham, Gujarat issued an LOP dated 3-1-2011 which is scanned below :*

[illegible]
Office of the Development Commissioner [illegible]
Kandla Special Economic Zone
[illegible]
Ministry of Commerce & Industry
[illegible]
Gandhidham-Kutch-370 230
Phone [illegible]
Fax [illegible]
Email [illegible]
Website [illegible]

KASEZ

No. KASEZ/100%EOU/II/11/10-11/ [illegible] 03.01.2011

M/s. Kartik Traders,
[illegible], [illegible] Street,
[illegible],
Surat 395 003.
Gujarat.

Sub: Your unit application for establishment [illegible]

Dear Sirs,

With reference to the above mentioned application the Development Commissioner is pleased to extend to you all the facilities and privileges admissible and subject to the provisions as envisaged in EOU scheme 2009-14 for establishment of a new undertaking at Survey No. [illegible] Village-[illegible], P.O. [illegible], Taluka-[illegible], Dist. [illegible] in the State of Gujarat for manufacture of the following item(s) up to the capacities specified below on the basis maximum utilisation of plant and machinery:

ITEM (S) OF MANUFACTURE	Annual Capacity (In M/T)
Refrigerant Gas R-134A (HCFC 134A)	[illegible]

2. The above permission is subject to the conditions stipulated in the Annexure in addition to the following conditions:

FOR XRON GASES PVT. LTD.

DIRECTOR

From the LOP, it can be seen that except prohibited goods, all items of import and local purchases are permitted. It is undisputed that goods R-22 Gas is not prohibited goods therefore the said goods is permitted to be imported as per LOP dated 3-1-2011. It also observed that on 3-5-2011, request of the appellant for broad banding of LOP in respect of refrigeration gas R-22 gas was allowed by the Development Commissioner, which is scanned below :

KASEZ

Kandla Special Economic Zone
Ministry of Commerce & Industry
Gandhidham-Kutch-370 230
Phone (02836) 253300, 252475, 252260
Fax (02836) – 252250 & 252194
E-mail [illegible]
Website [illegible]

No.KASEZ/100%EOU/II/11/10-11/ 1202 03.05.2011

M/s. Xron Gases Pvt. Ltd.,
4/4259, Hathiwala Street,
Begampura,
Surat – 395 003.

Sub: Request for Broadbanding of Letter of Permission.

Dear Sirs,

I am directed to refer to your letter dated 25.04.20011 on the above subject and to permit broad banding of the Letter of Permission No.KASEZ/100%EOU/II/11/10-11/2277 dated 03.01.2011, as amended, to include the following items for manufacture and export as per the provision contained in Para 6.32(S) of Handbook of Procedures 2009-14, subject to the same terms and conditions of your Letter of Approval.

Sr. No.	DESCRIPTION OF ITEMS
1	Refrigeration Gas R-22(HCFC-22)

With this addition, the items of manufacture in your Letter of Permission shall read as under:

Sr. No.	DESCRIPTION OF ITEMS
1	Refrigerant Gas R-134A (HCFC-134a)
2	Refrigeration Gas R-22(HCFC-22)

2. All other terms and conditions stipulated in the aforementioned Letter of Permission, as amended, shall remain un-altered. This letter may be kept attached with the original Letter of Permission dated 03.01.2011, as amended and Green Card No. KASEZ/05/2010-11 dated 18.02.2011.

Yours faithfully,

(Upindra Vasishth)
Jt. Development Commissioner,
Kandla Special Economic Zone

Copy to: The Assistant Commissioner, Central Excise & Customs, Division [illegible], [illegible] Commissionerate, 3rd Floor, Central Excise & Customs Building, Subhanpura, Vadodara.

Thereafter vide letter dated 29-5-2012, Development Commissioner has granted specific permission for import of R-22 gas which is scanned below :

Dear Sirs,

I am directed to refer to your letter dated 25.05.2012 on the above subject and to convey no objection for import/procure from indigenous sources of following raw materials in terms of Para 6.2(b) of Foreign Trade Policy, 2009-14 for manufacture and export of products approved in the letter of permission No.KASEZ/100%EOU/II/11/10-11/2277 dated 03.01.2011, as amended, subject to the condition that the value of the imported goods shall be taken into account for the purpose of calculation of NFE:

Sr. No.	Description	ITC(HS) Code
1	Refrigerant Gas R-22(HCFC-22)	29034450

2. Any permission required for import under any other law shall be applicable.

3. This shall form part of the exempted goods covered under your Legal Undertaking executed with this office.

Yours faithfully,

R.N.Bairwa

(R.N. Bairwa)
Dy. Development Commissioner(I/C).
Kandla Special Economic Zone

From the LOP dated 3-1-2011, letter dated 3-5-2011 for broad banding of LOP in respect of R-22 Gas and letter dated 29-5-2012 by which specific permission was granted for import of R-22 Gas. It is clear that appellant had indeed valid license in possession for import of R-22 gas. As regard the contention of the lower authority that LOP is not sufficient for allowing import of restricted items, appellant should have obtained specific import license. In this regard, I refer to para 6.2.7 of Handbook of Procedure which reads as under :-

> *"6.2.7. LOP/LOI issued to EOU/EHTP/STP/BTP units by concerned authority would be construed as an authorization for all purposes"*

From the above para of the policy, it is clear that once the LOP is obtained by EOU, no further license is required as LOP is authorization of all purposes. This issue also has come up in the case of Geentanjali Woollens Pvt. Ltd. (supra) wherein coordinate bench of this Tribunal observed as under :

> *"5. We have considered the submissions. We take the letter dated 20-12-2000 to be clarificatory in nature emphasising that the appellants were capable of importing raw materials which were required for their manufacture. At this stage we also notice, Paragraph 9.8 of the Handbook of Procedures which permits raw materials to be imported by an EOU provided they are not prohibited items in the ITC(HS) classifications. The note thereto permits such goods to be in second-hand condition also. There is no doubt that both rags and serviceable garments were raw materials. The paragraphs did not make any specification. Even if the importers had in their letter of indent to the Free Trade Zone authorities specified rags, the list was not required to be attested. Thus, in terms of the clear wordings of the Policy and also by the correspondence with the people who were entrusted with*

> *enforcing the Policy, it appears that there was no significant distinction held by the Licensing Authority between the rags and unmutilated rags/uncut worn clothing. At this stage, we have also seen the certificate dated 15-11-2000 given by the Central Excise Authorities to the appellants on which reliance was placed by Shri Jain. This is a certificate meant for presentation to the Customs House and certifies that the importers would be an EOU and it does not in any way restrict or prohibit the importability of raw materials by an EOU".*

In view of the above observations of the Tribunal, it is settled that once the 100% EOU has been permitted to import certain goods, for import of such goods, restriction prohibition of goods provided under policy shall not apply. Similarly, in the present case, when Development Commissioner has specifically allowed the import of R-22 Gas, there is no need of special import license".

Similar view are in the decision in the case of Geetanjali woollens Pvt. Ltd (supra). The ratio of above decision is squarely applicable to the instant case.

7.1 In view of the above facts, we are of the view that "used valves" are permitted for import to the appellant in their EOU for use as raw materials/Components.

8. In view of the above, we do not find any merit in the impugned order, the same is set aside and appeal is allowed.

(Dictated and pronounced in the open court)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)

PRACHI