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

REGIONAL BENCH – COURT NO. 03

CUSTOM Appeal No. 10952 of 2017

[Arising Out Of OIA-VAD-EXCUS-001-APP-483-2016-17 Dated-27/12/2016 Passed By Principle Commissioner Customs, Excise and Service Tax-VADODARA-I(Appeal)]

Sujag Fine Chemicals Pvt Ltd **.....Appellant**
C-1b/42/6&7, Gidc, Nandesari
VADODARA, GUJARAT

VERSUS

C.C.E. & S.T.-Vadodara-i **.....Respondent**
1st Floor...Central Excise Building,
Race Course Circle, Vadodara, Gujarat-390007

APPEARANCE:
Shri. Anil Gidwani, Advocate for the Appellant
Shri. Himanshu P Shrimali, Superintendent (AR) for the Respondent

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

FINAL ORDER NO.A / 11159 /2023

DATE OF HEARING:29.05.2023
DATE OF DECISION:29.05.2023

Raju

This appeal has been filed by M/s. Sujag Fine Chemicals Pvt. Ltd against the demand of Customs Duty, interest and imposition of penalty. The appellant is 100% EOU during the period 2010-2011 to 2013-2014. The appellants were sending the raw-material namely Dimethyl Acetamide (DMAC) to the Job worker for the purpose of distillation and they were obtaining Dimethyl Acetamide (DMAC) including Pyridinol Methyl Ester in return. For sending the goods for the said purpose they are obtained permission of the jurisdictional authorities. In the said permission, they also declared evaporation loss approximately 5%. Learned Counsel pointed out that the actual evaporation loss was slightly different from the approximately

5% shown in their application for the job work. He pointed out that on the quantity of loss exceeding the declared percentage they have already discharged the appropriate customs duty. These proceedings are seeking to demand duty on declared percentage loss claimed by the appellant. The impugned order confirmed the demand holding that there is no evidence produced by the appellant to show that the actual loss of material during the process of distillation is approximately 5%.

2. Learned counsel pointed out that they had specifically informed the revenue that the evaporation loss is approximately 5% and revenue had in their permission letters dated 8.12.2011, 28.03.2010 and 12.01.2009 accepted the said loss as approximately 5%. In these circumstances, he pointed out that the extended period of limitation could not have been invoked by the revenue.

3. Learned AR relies on the impugned order.

4. We have considered the rival submissions. We find that the appellant had given declaration that they will be a loss of approximately 5% in the process of distillation during job work. The said permission was granted by the jurisdiction authorities year after year wherein at the evaporation loss of approximately 5% was clearly indicated in permission letter itself. Now revenue is seeking the demand the duty on this loss of approximately 5% on the ground that it is no evidence to support the fact that there is actual loss of approximately 5% during this process. Learned counsel pointed out that the entire facts were in knowledge of the revenue has granted permission accepting the loss of approximately 5%. He argued that in these circumstances extended period of limitation could not have been invoked. We are agreement with the argument made by the learned counsel, We find that revenue had itself accepted in the permission letters year after year that they will be loss of approximately 5% in the process of distillation. Now revenue cannot come back in question if there is actual loss or otherwise. The fact of loss is clearly declared by the appellant to the revenue and it

accepted by the revenue. In these circumstances, invoking extended period of limitation cannot be upheld.

5. The appeal is allowed on the ground of limitation.

(Dictated and pronounced in the open Court)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)

PRACHI