

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

REGIONAL BENCH - COURT NO. 3

CUSTOMS Appeal No. 10719 of 2017-DB

[Arising out of Order-in-Original/Appeal No VAD-EXCUS-002-COM-037-16-17 dated 23.11.2016 passed by Commissioner of Central Excise-VADODARA-II]

Sun Pharmaceuticals Industries Limited

.... Appellant

Near Anandkendra, Vadodara Road, Halol,
PANCHMAHAL, GUJARAT

VERSUS

Commissioner of Central Excise & ST, Vadodara-ii

.... Respondent

1st Floor, Room No.101, New Central Excise Building,
Vadodara, Gujarat -390023

AND

CUSTOMS Appeal No. 10718 of 2017-DB

[Arising out of Order-in-Original/Appeal No VAD-EXCUS-002-COM-037-16-17 dated 23.11.2016 passed by Commissioner of Central Excise-VADODARA-II]

Mr. Manoj Kanojia

.... Appellant

Assistant Manager & Authorized Signatory
Sun Pharmaceutical Industries Limited
Near Anandkendra, Vadodara Road, Halol,
PANCHMAHAL, GUJARAT

VERSUS

Commissioner of Central Excise & ST, Vadodara-ii

.... Respondent

1st Floor, Room No.101, New Central Excise Building,
Vadodara, Gujarat -390023

APPEARANCE :

Shri A.B. Nawal, Consultant for the Appellant
Shri Prabhat K. Rameshwaram, Addl. Commissioner for the Respondent

**CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)**

DATE OF HEARING : 23.06.2023

DATE OF DECISION: 13.10.2023

FINAL ORDER NO. 12275-12276/2023

C.L. MAHAR :

The brief facts of the case are that the appellant is a 100% EOU Unit and during the year 2012-13 they decided to exit from 100% EOU scheme. Accordingly, the appellant applied for de-bonding of the unit and followed the laid down procedure for de-bonding of 100%EOU unit. The appellant at their own calculated the dues on the stock of finished goods, stock of

imported raw materials and indigenous stock of raw materials, goods lying in work-in-progress and duty liability on capital goods, after taking into consideration the depreciation value as on 04.10.2012. After calculation of dues, the appellant have submitted a detailed calculation sheet/ work sheet to the department and they discharged their Customs and Central Excise duty liabilities and a letter dated 08.10.2010 was sent to the Assistant Commissioner of Central Excise mentioning the details of payment of various kinds of dues. The Assistant Commissioner, Vadodara-ii issued a no dues certificate vide their letter dated 13.10.2012. On receipt of the no-dues certificate, the same was also submitted by the appellant to Development Commissioner who has finally accepted the same and allowed de-bonding of 100% EOU unit. The department later on, on the basis of audit objection entertained a view that appellant has paid the counterveiling duty amounting to Rs. 8,36,96,677/- by utilizing Cenvat credit for raw materials, input goods imported and lying in stock which is wrong on the part of the appellant as amount of counterveiling which is a customs duty duty could not have been paid through accumulated credit of the Cenvat credit and therefore, the show cause notice dated 15.07.2015 was issued to the appellant whereunder extended time proviso has been invoked and penal provisions have also been invoked against the appellant as well as against Shri Manoj Kanojia, Assistant Manager-cum- Authorised signatory, who is also appellant herein.

2. Shri A.B. Nawal, Learned Consultant appearing for the appellant has the first and foremost argued that the period involved in this case is pertaining to year 2012-13 and the show cause notice was issued on 15.07.2015 which is totally beyond the normal period of limitation. It has been contended that since there is no suppression of facts, misdeclaration or fraud with an intention to evade duty and therefore, the show cause notice is barred by limitation. It has further been argued that department issued no dues certificate on 30.10.2012 at the time of de-bonding of the unit and this no dues certificate was issued as a corollary to the details of payment of duty, which also included utilisation of Cenvat credit, submitted to the department by the appellant. The department never took any objection on the same and therefore, the show cause notice is grossly barred by period of limitation as it has been issued beyond the normal period of demand.

3. It has further been argued that they have paid countervailing duty portion and normal excise duty portion was paid by utilizing the Cenvat credit which was lying in balance at the time of de-bonding of 100%EOU. Learned Consultant further submitted that they as a 100% EOU are a manufacturer of excisable goods under the Central Excise Law. As per Section 3 of the Central Excise Act, 1944 and Notification No.23/2003-CE dated 31.03.2003, as amended, the Appellant is liable to pay Excise duty under Section 3 of the Central Excise Act, 1944 and not Custom duty under Section 28 of the Custom Act, 1962. The Appellant is liable to pay the excise duty and computation of excise duty is equal to the aggregate duty of customs duty. It is only the method of computing the excise duty but same is certainly not a Customs duty. Further, in Rule 3(vii) manufacturer is allowed to take credit of CVD which is levied under Section 3 of the Customs Tariff Act, which is equivalent to the duty of excise. It shows the legislative intention to allow the CENVAT credit of countervailing duty and allowance of its utilization for payment of duty. It is submitted that the Hon'ble Supreme Court in the case of Commissioner of Central Excise & Customs vs. Suresh Synthetics, reported in 2007 (216) ELT 662 (S.C.) held for clearance of goods to DTA, the 100% EOU is require to be pay excise duty and not custom duty. The Department appeal was dismissed as show cause notice issued for demand of Customs duty.

4. Appellant also relies on the following case laws in support their submission:

(a) Commissioner of Central Excise & Customs Visakhapatnam-I Commissionerate, Visakhapatnam vs. M/S. Matrix Laboratories Limited- 2011-TIOL-1844-CESTAT-BANG

(b) VVE Limited vs. Commissioner of Central Excise, Belapur - 2015 (315) ELT 303 (Tri-Mumbai).

(c) Commissioner of Central Excise, Pune-I vs. Neha International Limited - 2015 (315) ELT 89 (Tri-Mumbai)

(d) Winsome Yarn Limited vs. Commissioner of C. Ex, Chandigarh - 2001 (131) ELT 187 (Tri. Del.)

Commissioner vs. Winsome Yarn Limited - 2006 (199) ELT A183 (S.C.))

4. We have heard Shri Prabhat K. Rameshwaram, learned Addl. Commissioner, AR who has reiterated the findings as given in the order-in-original.

5. Having heard both the sides, we find that on the issue whether the amount of the counter-veiling duty which is payable at the time of debonding 100% EOU can be paid from the accumulated Cenvat credit by an EOU Unit. We find that this issue is no longer *res-integra* as this issue in the case of *Dishman Pharmaceuticals and Chemicals Pvt. Limited vs. UOI – 2015-TIOL-2869-HC-AHM-CX* has held as follows:-

“6. The facts as emerging from the record clearly demonstrate that in case of similarly situated persons, namely, M/s. Alps Chemicals Pvt. Ltd. and others, as stated in Paragraph 9 of the memorandum of petition, the respondent authorities have permitted them to discharge the excise duty foregone from the Cenvat credit account instead of the cash payment. The petitioners have produced on record a copy of a communication dated 21-11-2014 of the Assistant Commissioner, Central Excise, Division-II, Ahmedabad addressed to the Deputy Development Commissioner in connection with the request for “No Due Certificate” for debonding of Exit out of 100% EOU Scheme by one M/s. Alps Chemicals Pvt. Ltd., which clearly shows that the said unit has been permitted to discharge excise duty for indigenously procured duty paid raw materials lying in stock in their factory from the Cenvat credit account. In Paragraphs 9 and 14 of the memorandum of petition, the petitioners have clearly stated the names of various parties in whose cases the Ahmedabad Commissionerate has permitted payment of excise duty from the Cenvat credit account. The petitioners have also stated that all over the country, EOUs are permitted to discharge the central excise duty foregone from the Cenvat credit account. Thus, on the ground of parity alone, the petitioners have made out a strong *prima facie* case, inasmuch as, when similarly situated assesseees have been permitted to pay the excise duty foregone from the Cenvat credit account, there is no reason as to why the petitioners should be denied such benefit. Besides, the petitioner company is a reputed well established Pharmaceutical Company and hence, the interest of the revenue is in no manner jeopardized if the interim relief, as prayed for, is granted, whereas the petitioner company would have to face a cash crunch if called upon to pay the excise duty foregone in cash, whereas its Cenvat credit account would remain unutilized. Besides, as pointed out by the learned counsel for the petitioners, ultimately the excise duty foregone which is to be paid in cash, is going to be added back to the amount of Cenvat credit lying in the account of the petitioners, under the circumstances, the petitioners have clearly made out a *prima facie* case in

their favour. Besides, as noted hereinabove, in case the petitioner company is required to pay the excise duty foregone in cash instead of from the Cenvat credit account, it is likely to face liquidity crunch, thereby causing irreparable injury to the petitioners. In *Ralli Engine Ltd. v. Union of India and others* (supra), this court, in the facts of the said case has held that when different companies situated in different regions of the country, are granted a particular benefit, the petitioner therein which was situated in Gujarat, was also entitled to the similar treatment. As noted hereinabove, various assesseees, including the assesseees situated within the jurisdiction of Ahmedabad Commissionerate have been given benefit of paying the excise duty foregone from the Cenvat credit account. Under the circumstances, *prima facie*, there appears to be no reason to deny such benefit to the petitioners.”

6. In view of the above, we find that the appellant unit was right in paying amount of counterveiling duty from the accumulated Cenvat credit and therefore the appeal on merit succeeds.

7. We also hold that since the appellant have made a detailed declaration before the proper officer of the department regarding the facts of payment of various kinds of the dues and utilisation of Cenvat credit in the month of August, 2012 and department has already issued a no-dues certificate on 13.10.2012 to the appellants therefore, making allegation of any suppression of facts, misdeclaration or any other contravention with an intention to evade duty are not present in this case. Since the entire demand is beyond normal period, the same is hit by period of limitation and therefore, unsustainable. While holding this view, we also rely upon the decision of this Tribunal in the case of *Kaybee Tex Spin Limited vs. CC, Ahmedabad – 2019 (368) ELT 148 (Tri. Ahmd.)*

“4.7 We find that the appellant have also raised the ground of limitation, on this, the fact is that the appellant have cleared the goods in DTA on payment of full duty by following the procedure such as issuance of excise invoice wherein the duty payment has been shown, the same particulars were reflected in their monthly ER-2 return. In this fact when the department was in complete knowledge regarding the clearance of finished goods in DTA, they were not prevented from verifying the fact that whether the appellant have obtained the permission from Development Commissioner or not. However, the department has not raised any objection at the relevant time, it is only subsequently on scrutiny of ER-2 return were carried out. There is no change of

circumstances at the time of clearance of goods, filing of ER-2 return and the verification of the same at the later stage therefore, there is absolutely no suppression of fact or mis-declaration with intend to evade payment of duty on the part of the appellant. Therefore, we are of the clear view that extended period of demand cannot be invoked hence the demand for extended period is not sustainable on limitation also.”

8. In view of above, we hold that impugned order-in-original is without any merit and we set-aside the same.

9. The appeal filed by Shri Manoj Kanojia, Assistant Manager and Authorized Signatory also succeeds as the main charges in the show cause notice are not sustainable as narrated in the forgoing paras.

10. In view of above, both the appeals are allowed.

(Pronounced in the open court on 13.10.2023)

(Ramesh Nair)
Member (Judicial)

(C L Mahar)
Member (Technical)

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