CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.3

CUSTOMS Appeal No. 10502 of 2013
(Arising out of OIO-63-COMMR-SURAT-II-2012 dated 01.10.2012 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-II)

HARYANA STEET GLASS LIMITED **...Appellant**
1ST FLOOR, HSG HOUSE,
VIJAY CHAR RASTA, NAVRANGPURA,
AHMEDABAD-GUJARAT

VERSUS

C.C.E. & S.T.-SURAT-II **...Respondent**
NEW C.EX BUILDING...OPP. GANDHI BAUG,
CHOWK BAZAR,
SURAT, GUJARAT-395001

WITH

EXCISE Appeal No. 10020 of 2013
(Arising out of OIO-63-COMMR-SURAT-II-2012 dated 01.10.2012 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-II)

HARYANA STEET GLASS LIMITED **...Appellant**
1ST FLOOR, HSG HOUSE,
VIJAY CHAR RASTA, NAVRANGPURA,
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VERSUS

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NEW C.EX BUILDING...OPP. GANDHI BAUG,
CHOWK BAZAR,
SURAT, GUJARAT-395001

APPEARANCE:
Shri Paritosh Gupta, Advocate appeared for the Appellant
Shri R. Nathan, Assistant Commissioner (Authorized Representative) for the Respondent

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

Final Order No. 12542-12543 /2023

DATE OF HEARING: 31.08.2023
DATE OF DECISION: 03.11.2023

RAMESH NAIR

The brief facts of the case are that the appellant (being 100% EOU) engaged in the manufacture of sheet glass. On 24.10.1996 the appellant have started a trial production subsequently, they requested to the department to convert the 100% EOU to EPCG. The trial production was extended up till 30.06.1997. From July 1997, the production discontinued. During the period 1996-1997, the appellant vide various letters addressed to the Development Commissioner, the appellant requested clearance to finished goods/ rejects to DTA, the request was accepted and permission was granted for clearance of the said goods to DTA. Various goods were, therefore cleared to DTA under permission of the Development Commissioner on payment of appropriate duty. Vide letter dated 14.10.1997, the Customs Authorities directed the appellant for payment of duty, thereafter on 03.11.1997, a license was granted to the appellant under the EPCG Scheme by the department. Thereafter, vide letter dated 14.12.1998 department directed the appellant to deposit a sum of Rs. 6,76,07,490/-. The appellant challenging the said demand letter dated 14.12.1998 filed an SCA No. 5478 of 1998 before the High Court of Gujarat. The Writ Petition of the appellant was admitted by the Hon'ble High Court of Gujarat and interim relief was granted in favour of the appellant. In the said order, it was observed that permission for converting the EOU to EPCG was granted which would have a substantial impact on the duty demanded by the department. A deboning letter was also issued by the appropriate authority. The SCA No. 5478 of 1998 was allowed vide order dated 11.07.2018 whereby the demand letters issued by the department were quashed and set aside on the ground that such demand letters could not have been issued without issuance of show cause notice and adjudication thereon. The department being aggrieved by the said order of the Hon'ble High Court challenged the same before the Hon'ble Supreme Court by way of SLP No. CC/4808 of 2009. The Hon'ble Supreme Court while disposing the SLP, ordered for permission to the department to issue show cause notice. Also by recording that appellant would not raised the issue of limitation in the adjudication proceedings. Thereafter department issued the show cause notice dated 04.05.2009. The appellant in its interim reply requested the department for providing the basis of quantification of demand thereafter the appellant have repeatedly request for same details of quantification stating that without the said detail, it would not be possible for the appellant to defend its case and attend the hearing in the absence of such details. The adjudicating authority has passed the order-in-original whereby the demand proposed in the show cause notice was confirmed. Being aggrieved by the said impugned order-in-original, the appellant filed the present appeal.

2. Shri Paritosh Gupta, learned counsel appearing on behalf of the appellant, at the outset, submits that till date the department has not provided the basis of quantification of the demand proposed in the show cause notice. He referred to the chart given in the impugned order, whereby he submits that very broad description against each amount was given from which it cannot be known the basis calculation of such demand. He further submits that the appellant have paid the appropriate duty on the clearance of goods in DTA and the duty of capital goods needs to be quantifying considering the conversion from EOU to EPCG. However, no any detail was provided either in the show cause notice or even thereafter despite repeated request made by the appellant. In this position, the demand confirmed by the adjudicating authority is not sustainable. The appellant, post hearing, filed written submission dated 22.10.2023 which is taken on record.

3. Shri R. Nathan, learned Assistant Commissioner (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. On careful consideration of the submission made by both the sides and perusal of record, we find that at present the limited issue raised by the appellant is that the department has not provided the details of computation of the demand of duty, therefore, the appellant is unable to make their defense submission. To appreciate the appellant's claim, where it is right or otherwise, we find that show cause notice dated 04.05.2009 has not relied upon any document from which the demand can be quantified. Moreover, in the show cause notice the details of the demand is given as under:

Sr. No.	**Particulars**	**Duty Involved**
1.	DTA Sales, differential duty, Period Oct, 96 to March 97	60,02,348-00
2.	DTA Sales, differential duty, Period Match, 97 to Jan 98.	1,45,27,000-00
3.	Duty on imported Capital Goods	3,14,70,237-00
4.	Duty on indigenous Capital Goods. (Machineries)	8,53,231-00
5.	Duty on indigenous Capital Goods. (Machineries)	4,48,093-00
6.	Indigenous Capital Goods (Bricks, Refractories) consumed	46,00,160-00
7.	Indigenous Refractories, Balance in Stock	5,48,555-00
8.	Stock Balance of Raw Material	24,413-00
9.	Indigenous Capital Goods Consumed (Spare/Parts)	7,40,095-00
10.	Finished Goods Balance in Stock (Packed & Loose)	1,66,293-00
11.	Stock of Cullets lying in the factory	57,523-00
12.	Furnace Oil (Consumed) Received under CT-3	52,48,318-00
13.	Soda Ash (Consumed) Received under CT-3	25,32,970-000
14.	LDO (Consumed) Received under CT-3	8,078-00
15.	HSD (Consumed) Received under CT-3	84,976-00
16.	Sodum Sulphate (Consumed) Received under CT-3	2,85,200-00
	TOTAL	**6,76,07,490-00**

On perusal of the above detail it is found that the individual duty demand from serial No. 1 to 16 is not supported by the documents it is necessary to arrive at the conclusion that whether the quantification of demand is correct and whether such duty is payable by the appellant.

5. In the above fact, we are of the view that the matter needs to be reconsidered by the adjudicating authority by providing the necessary

documents whereby the correct quantification of duty, if any can be ascertained. Accordingly, we set aside the impugned order and allow the appeal by way of remand to the adjudicating authority for passing a fresh order.

(Pronounced in the open court on 03.11.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

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