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

REGIONAL BENCH- COURT NO.3

Excise Appeal No.10794 of 2017
(Arising out of OIA-AHM-EXCUS-001-APP-048-2016-17 dated 23/12/2016 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD-I(Appeal))

Dhariyal Chemicals **......Appellant**
18, Amraplash Bungalows, Nr. Amrasagun Bungalows, B/H, Fun Republic Multiplex, Ramdev Nagar Statellite Road,
Ahmedabad
Gujarat

VERSUS

C.C.E.-Ahmedabad-i **.........Respondent**
C. Ex Bhavan,
Nr Panjrapole & Polytechnic, Ambavadi,
Ahmedabad,
Gujarat- 380015

APPEARANCE:
Shri J.C Patel, Rahul Gajera and Ms. Shamita Patel,Advocates for the Appellant
Shri R.P Parekh, Superintendent (Authorized Representative) for the Respondent

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

Final Order No . A/ 10035 /2022

DATE OF HEARING: 21.09.2021
DATE OF DECISION: 18.01.2022

RAMESH NAIR

The issue involved in the present appeal is whether the appellant's are entitled to the refund of the amount Central Excise Duty of Rs 04,07,176/- which was paid on supplies made to ONGC and Oil India Limited against International Competitive Bidding which admittedly were exempt from duty under Serial No 336 of Notification No 12/2012-CE dated 17.03.2012 and which have considered to be deemed exports under the Foreign Trade Policy. In the impugned order the Learned Commissioner (Appeals) allowing the appeal of the revenue denied the refund on the ground that since the final product was exempted under Notification No 12/2012– CE duty was not payable. Accordingly, the appellant was not required to pay duty. Accordingly, refund is not admissible.

2. Shri J.C Patel Learned Counsel along with Shri. Rahul Gajera and Ms. Shamita Patel, Advocates appeared on behalf of the appellant. He submits that the Learned Commissioner (Appeal) has himself in Para 8.3 of the Order-In- Appeal held that the goods were absolutely exempt from duty and no duty was payable and that the goods should have been cleared without payment of duty. However, he has held this to be a ground for rejecting a refund claim which is totally untenable in law. The very fact that the goods were exempt from duty and no duty was payable at the time of clearance would be a ground for grant of refund and for rejecting a refund. In support of his submission he placed reliance on the following Judgments:

- Commissioner Vs. Suncity Alloys Pvt Ltd- 2007 (218) ELT 174 (Raj)
- Arvind Ltd Vs UOI – 2014 (300) ELT 481(Guj.)
- UOI vs Arvind Ltd- 2017(352) ELT A21 (SC)
- Dy Director General of Foreign Trade Vs. Acer India Pvt Ltd- 2020(371) ELT 658 (Kar.)

2.1 He submits that it is a settled law that the benefit of an exemption notification can be claimed at any stage. In this regard he placed reliance on the judgement in the case of CCE Vs Suresh C Nayi – 2010 (262) ELT 116.

2.2 He submits that the decision of Hon'ble Bombay High Court in Sandoz P. Ltd Vs. UOI- 2016 (341) ELT 22 relied upon by the Commissioner (Appeals) has no application to the facts of the present case.

3. Shri R.P Parekh, Learned Superintendent (AR) appearing on behalf of the revenue reiterates the finding of the impugned order.

4 I have carefully considered the submissions made by both sides and perused the records. The limited issue to be decided is that when the goods are exempted and cleared on payment of duty whether subsequently refund can be claimed. I find that in the present case there is no dispute that the goods cleared by the appellant were indeed exempted in terms of

Notification No. 12/2012-CE dated 17.03.2012. Therefore, the excise duty was not payable since the appellant has paid the excise duty which was otherwise not payable the same is refundable to the appellant.

4.1 The contention of the Learned Commissioner (Appeals) that since the goods were exempted the appellant should have cleared the goods under exemption accordingly duty paid by the appellant is not refundable has no support of any law. This issue has been considered time and again in various judgments. In the case of SUNCITY ALLOYS PVT LTD (Supra) The Hon'ble Rajasthan High court held that if in respect of the goods exported under claim for rebate of duty undisputedly duty was not payable and still the manufacturer paid the duty the same has to necessarily refund to the manufacturer. In the case of Arvind Ltd (Supra) the Hon’ble jurisdictional Gujarat High Court has held that when the final products exported on payment of the duty under claim for rebate were admittedly exempted from duty and yet the manufacturer paid duty the same has to be in any case refunded to the manufacturer. This judgement has been upheld by the Hon’ble Supreme court reported at UOI vs Arvind Ltd 2017(352) ELT A21 (SC). In the case of Dy Director General of Foreign Trade Vs. Acer India Pvt Ltd (Supra)The Hon’ble Karnataka High Court has held that where admittedly the supplies were deemed exports on which no duty was payable if duty has been paid the refund therefore cannot be denied. In the case Suresh C Nayi (Supra) it was held that the benefit of exemption notification can be claimed at any stage. In the present case also even if the appellant has claimed the benefit subsequent to clearance of goods or payment of duty the benefit of exemption needs to be extended to the appellant.

5. In view of the above settled legal position there is no reason to deny the refund of excise duty paid by the appellant in respect of exempted goods. Therefore, I hold that the appellant is entitled for the refund.

6. Accordingly, the impugned order is modified and appeal is allowed with consequential relief, if any, in accordance with law.

(Pronounced in the Open Court on 18.01.2022)

(RAMESH NAIR)
(MEMBER JUDICIAL)

Geeta