

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

Appeal No. C/11018-11019/2017-DB

Appeal No. E/11016-11017/2017-DB

[Arising out of OIA NO. OIO-SUR-EXCUS-002-COM-068-16-17 dated 25.01.2017 passed by the
Commissioner of Central Excise and Service Tax-SURAT-II]

M/s Kiran Syntex Ltd
Shri Joy Maheshbhai godiwala

Appellant

Vs

C.C.E. & S.T.,- surat-ii

Respondent

Represented by:

For Appellant: Shri W. Christian (Advocate)

For Respondent: Shri L. Patra (A.R.)

CORAM:

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

HON'BLE MR. RAJU, MEMBER (TECHNICAL)

Date of Hearing/Decision: 19.12.2018

Final Order No. A / 12976-12979 /2018

Per: Raju

These appeals have been filed by M/s Kiran Syntax Limited and Shri Joy Maheshbhai Godiwala against confirmation of demand of duty and imposition of penalty.

2. Ld. Counsel for appellant pointed out that in the case, booked by the Revenue in 2004 vide SCN dated 28.10.2004, a demand of Central Excise duty was made in respect of certain finished goods cleared by them. The allegation was that the appellant have not paid Central Excise duty properly and they have wrongly availed benefit of Notification No. 08/1997-CE. Subsequently a second SCN was issued to the appellant on 29.10.2008 seeking the demand of Customs duty on the inputs used in the finished good allegedly cleared by the appellant in the month of October 2004 and in respect of which Revenue had issued a SCN in the year 2004. Ld. Counsel argued that it has been held consistently by the

Tribunal that when duty is demanded on finished good cleared by a 100% EOU then no duty can be demanded in respect of raw-material used for manufacture of such finished good. He cited following decisions:

- Sarla Polyester Limited Vs. CCE 2008 (222) ELT 376 (T)
- Sanjari Twisters Vs. CCE-2009 (235) ELT 116 (T), 2010 (255) ELT A15 (SC)
- CCE Vs. Amitex silk Milks Pvt Ltd.-2016 (331) ELT A190 (SC)

He pointed out that a decision in the case of M/s Sanjari Twisters (Supra) has also been approved by the Hon'ble Apex Court. He further argued that in respect of M/s. Sarla Polyester Limited (Supra) the facts were that the appellant had clandestinely cleared finished goods and duty was demanded on finished goods as well as on raw-material. In these circumstances, the Tribunal held that once the duty was demanded on finished goods, the same cannot be demanded on raw-material. He also relied on the decision of Tribunal in the case M/s Amitex silk Milks Pvt. Ltd (Supra) wherein similar circumstances, duty demand on raw-material were dropped. He pointed out that the said decision of tribunal has been approved by Hon'ble Apex Court as reported in 2016 (331) ELT A190 (SC.). Ld. Counsel further pointed out that the demand has been issued invoking extended period of limitation. He argued that in 2004 itself the Revenue was aware of the facts of the case and had in fact issued a SCN on the same set of facts. He argued that in such circumstances invocation of extended period on limit is totally unjustified.

3. Ld. AR relied on the impugned order.

4. We have gone through the rival submission. We find that it is not disputed that the present demand on duty is in respect of raw-material

used to manufacture the goods which were the subject matter of the SCN of year 2004. In 2004 demand was raised in respect of finished goods and in 2008 demand has been raised in respect of raw-materials used in the said finished goods.

5. In case of M/s Sarla Polyester Limited (Supra) the facts were similar. There was allegation on M/s Sarla Polyester Limited was that they have cleared goods clandestinely from the 100% EOU, in the instant case the goods have been allegedly removed availing notification which was not available to the appellant. Other than this difference the facts are identical. In the case of M/s Sarla Polyester Limited (Supra) the Tribunal in para 12.1 held as follows:

12.1 *The issue raised in the appeal of the department is no more res integra and the (sic) is decided vide Order No. A/2582/WZB/Ahd/07 dated 28-9-07 in the case of C.C.E., Surat v. M/s. Sanjari Twisters in Appeal No. E/591/2003 wherein it has been held as follows:*

"5. After hearing the Id. SDR, we find that the main issue involved relates to the determination of FOB value of export to arrive at the quantum of eligible domestic clearances and whether the same should include only physical export or it should include deemed export as well. It deemed exports are held to be no included, then the quantum of clearances permitted in DTA will be accordingly reduced. This issue has been decided by the Tribunal in favour of the assessee on a number of precedent decisions, holding that the value of deemed export should be included while determining the FOB value of export, based on which DTA clearances are permitted. However, in this case, the assessee is not in appeal before us. The duty on finished goods stands demanded on the ground that the same is in excess of the permissible limit for the purpose of DTA clearance. The department's claim is to the effect that the raw material used in such finished products cleared in DTA should be treated as not used for the intended purposes and the duty on import should be demanded. We do not agree with this view. In this case, it cannot be said that the raw materials have not been used for the intended purpose. Even if there was clearances in excess of permissible limit it may amount to be case of diversion of finished goods, the duty shall be payable in respect of finished goods and no duty become demandable on the raw material used in the manufacture of such diverted goods."

Similar are the observations in the case of M/s Sanjari Twisters (Supra), approved by the Hon'ble Apex Court as reported in 2010 (255) ELT A15

(SC). Even in the case of M/s Amitex silk Milks Pvt. Ltd (Supra) Tribunal came to similar finding, in para 3 of the said order, following has been observed:

3. Heard the Ld SDR and perused the records. It is seen from the records that the Revenue is in appeal against the impugned order to the extent it dropped the proceedings of the demand of the customs duty from the respondent. In an identical issue, the Bench of this Tribunal in the case of M/s.Mahalaxmi Exports Vs. CCEX, Surat(vise versa) in final order No.A/595 & 596/WZB/Ahd./2007 dt.14/3/2007 held as under

“ 5. As regards the department's appeal relating to the demand of duty on the inputs, which have gone into manufacture of waste and rejects, he submits that the goods have been cleared in violation of Section 72(d) of the Customs Act read with Section 59. On going to provisions of Section 72, it is noticed that the same relates to goods improperly removed from the warehouse and

such provisions will be attracted only in respect of goods, which have been bonded. In this case, the bonded goods namely, the raw materials were not found cleared unauthorizely or in contravention of the Customs Act. On the other hand, we find that the raw materials were admittedly issued for manufacture and a portion of the finished goods have been held to be rejects and waste and they were cleared in the domestic market as per the permission granted by the Development Commissioner. Under the circumstances, no case of diversion or use of the raw materials procured duty free for a purpose other than intended purpose, has been made out. Therefore, no valid grounds have been adduced to interfere with the findings of the Commissioner is so far as non-demand of duty on the raw materials and not taking the consequential penal action.”

Thus, following the ratio of aforesaid decisions, we do not find any merit in the impugned order. The appeals are allowed.

(Operative portion of the order Pronounced in the open court)

(Raju)
Member (Technical)

(Ramesh Nair)
Member (Judicial)

Seema