

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
AHMEDABAD**

REGIONAL BENCH, COURT NO. 3

EXCISE APPEAL NO. 10778 OF 2017

[Arising out of OIO-BHR-EXCUS-000-COM-86-16-17 dated 31/10/2016 passed by Commissioner of Central Excise, Customs and Service Tax-Bharuch]

SUN PHARMACEUTICALS INDUSTRIES LTD

Appellant

Plot No. 25, Phase-iv, GIDC,
Panoli Industries Estate,
Bharuch,
Gujarat

Vs.

COMMISSIONER OF CENTRAL EXCISE-BHARUCH

Respondent

Vadodara-II, GST Bhavan, Subhanpura,
Vadodara,
Gujarat-390023

Appearance:

Shri A.B. Nawal, Cost Accountant for the Appellant

Shri Rajesh Nathan, Assistant Commissioner (AR) for the Respondent

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

FINAL ORDER NO. 11587/2024

Date of Hearing : 27.06.2024

Date of Decision : 15.07.2024

RAJU

This appeal has been filed by Sun Pharmaceuticals against order in original denying the benefit of Cenvat credit, demand of interest and imposing penalty under Rule 15 of the Cenvat credit Rules.

2. The facts of the case are that the appellant had taking Cenvat credit in their Cenvat account on the basis of their own invoices on which inputs were cleared to M/s. Sun Pharmaceuticals Industries Ltd for manufacturing of Bulk Drugs namely PENTOXIFYLLYNE falling under 29 of the Central Excise Tariff

Act, 1985, on job work basis. The goods were meant for export on behalf of the appellant after obtaining permissions by Jurisdiction Deputy Commissioner. These permissions for granted by Deputy Commissioner after imposing certain conditions. The permissions granted were in terms of Circular No. 67/1998-Customs dated 14.09.1998, 74/1999-Customs dated 05.11.1999 and 49/2000-Customs dated 22.05.2000. The proceedings were initiated on the ground that the appellant had not followed the following conditions:

3. *As against the conditions imposed, the assessee has violated the following conditions and acted their own as against the permission granted by jurisdictional Deputy Commissioner.*

A. The assess has not filed shipping bills in the manner prescribed under said permissions as all shipping bills were filed in the name of head office and name of supporting manufacturer i.e. 100% EOU was also not incorporated/mentioned in shipping bills and all such shipping bills were filed under DEPB/DEPD cum Drawback/Drawback Scheme.

B. The assessee has filed one drawback claim for the shipping bill No. 8763564 dated 17.08.2010 for the product "Pentroxylfullin" which was first exported under permission granted by jurisdictional Deputy Commissioner. The said drawback application was rejected by the department on the ground that they have taken benefits of other incentives and availed different schemes for manufacture of exported goods.

C. Cenvat credit was availed by the assessee on the duty paid inputs procured & used by 100% EOU for job work.

2.1 On the ground that the appellant had not followed the aforementioned condition, the Cenvat credit availed was sought to be denied in the impugned proceedings. The issue under dispute has already been examined in the Tribunal vide order No. A/10110/2023 dated 13.01.2023 in the said order following has been observed:-

"This appeal is filed against the impugned Order-in-Original No. SUR-EXCUS-002-COM-039-13-14 dated 03.12.2013 passed by the Commissioner of Central Excise & Service tax, Surat -II.

1.2 The brief facts of the case are that during the course of audit while scrutiny of the Cenvat Credit register of inputs, it was observed that appellant have taken Cenvat Credit on the basis on their own invoices on which inputs were cleared to their 100% EOU on job work purpose. Appellant have two units one is DTA unit and another is 100% EOU, both manufacturing Bulk Drugs falling under chapter 29 of the CETA 1985. The 100% EOU unit has applied for Job Work permission and sought annual permission for manufacture of 417600 Kgs. of PENTOXIFYLLYNE meant for export on behalf of DTA unit. The said permission was sought under Circular No. 69/1998-Cus dated 14.09.1998 and 74/1999-Cus dated 05.11.1999. The Deputy Commissioner, Division -III, Ankleshwar has granted permission to the 100% EOU unit with specific condition. On perusal of the Circular No. 69/98-dated 08.09.1998 it is observed that the Circular pertains to import of irrigation equipment for use in contract farming under EPCG scheme and for export of Agro products, therefore it has no relation with the sub- contracting of manufacture of goods meant for export, by EOU unit on behalf of DTA unit. Further the Circular No. 74/99-CUS dated 05.11.1999 is in relation to Job Work undertaken by EOU/EPZ/EHTP units from DTA. As per para 3 of said circular the benefit of para 4 of circular No. 67/98-Cus. dated 14.09.1998 has been extended to EOU /SEZ units in aquaculture, animal husbandry, electronics hardware and software sector also subject to the condition that finished products produced by such EOU/SEZ units will be exported directly from such units and these goods shall not be allowed to be brought back to DTA unit and it was also clarified that no drawback/DEPB benefits shall be admissible either to EOU/EPZ units or the DTA units for such exports. Further, as per para 11 of Circular No. 49/2000-Cus dated 12.05.2000, the facility to undertake job work on behalf of DTA unit has been extended to EOU/EPZ units in all sector and it has been decided that the DTA unit shall be entitled to avail of the brand rate of duty drawback for such job work undertaken by EOUS/EPZ units concerned. Board's Circulars 67/98 - Cus. dated 14.09.1998 and 74/99-Cus. dated 05.11.1999 stand modified to the above extent. As per Exim policy, the circulars and the conditions laid down by the Deputy Commissioner for Job work, the Appellant (DTA unit) is only entitled for benefit of Brand rate of Duty Drawback of the Duty paid on inputs used in the manufacture of goods meant for export by 100% EOU unit on Job Work basis on behalf of DTA units; the assessee is not entitled for the benefit of Cenvat Credit of such inputs. It appears that the DTA unit is only entitled for refund of duty paid on the inputs by way the brand rate of duty drawback. Accordingly, show cause notice was issued for recovery of cenvat credit availed by the appellant along with interest and penalty. On adjudication demand was confirmed vide impugned order with interest and penalty. Hence, the present appeal.

2. Shri A.B Nawal, Learned Cost Accountant along with Ms. Nidhi Nawal, Learned Advocate for the appellant submits that the present demand is on DTA unit and in order to utilize idle capacity of the EOU, they sent raw materials and input to the EOU unit for Job work. DTA unit procured inputs from the suppliers/other related parties against the various invoices. In accordance with para 6.14 (b) (1) of FTP job work permission was taken from the Deputy/Assistant Commissioner for manufacture of specific quantity of finished goods. During the period May 2010 to October 2010 appellant have received main inputs on which they have paid duty of Rs. 78,14,427/- but appellant have not taken Cenvat credit on those inputs in accordance with job work permission letter. Brand rate application was filed but was rejected. Since brand rate application for claiming drawback equivalent of cenvat portion was denied as also rebate claim was not granted and there is no bar for availing Cenvat credit on excisable goods. Appellant submitted letter before department to get permission to avail cenvat credit.

2.1 He also submits that circular No. 67/1998-Cus. dated 14.09.1998, Circular No. 74/1999-Cus dated 05.11.1999 and Circular No. 49/2000-Cus. dated 22.05.2000, Circular No. 31/2000-Cus dated 20.04.2000 have not restricted for availment of Cenvat credit, but only given the procedure of exportation. These circular cannot override legal provisions and hence considered void by various judicial decision. The said circulars were not applicable to the pharmaceutical units still impugned order is passed considering the above circulars.

2.2 He further submits that appellant objected to arbitrary condition mentioned in the Job Work permission letter dated 26.04.2010 and 27.07.2011 and letter dated 04.06.2010. Thereafter in subsequent permission letter dated 07.02.2012 granted by the DC, the condition of barring DTA unit to avail cenvat credit has been removed. It clearly shows that department has accepted their error and therefore they have removed this invalid condition from subsequent job work permission.

2.3 He also submits that DTA unit has sent the goods to the EOU unit against the Job Work Challan and not against the invoices and therefore, EOU unit, otherwise also, is not entitled to avail the cenvat credit and therefore EOU unit have not taken the Cenvat Credit. There cannot be bar to avail the Cenvat credit on the dutiable goods which has been exported.

2.4 Learned Counsel for the appellant has relied upon the various judgments in his support:

(i) Topcom India Vs. Union of India 2021(376)ELT 573 (Gau,)

(ii) *J.K. Lakshmi Cement Ltd. Vs. Commercial Tax officer, Pali* 2018(14)GSTL 497(SC)

(iii) *Sun Pharmaceutical Industries Ltd. -* 2015(328)ELT 792 (GOI)

(iv) *Pioneer Miyagi Chemical Vs. Central Board of Cx. &Cus., New Delhi* 2000(116) ELT 441 (Mad.)

(v) *Central Board of Excise & Customs, New Delhi Vs. K.G. Denim Ltd.* 2020(371) ELT 646(Mad.)

(vi) *Commissioner of Customs, Tuticorin Vs. L.T. Karle & Co.* 2007(207)ELT 358 (Mad.)

(vii) *Ranadey Micronutrients Vs. Collector of Central Excise* 1996 (87)ELT 19(S.C.)

(viii) *Commissioner of C.Ex. Bolpur Vs. Ratan Melting & Wire Industries* 2008(12)STR 416 (SC)

(ix) *International Travel House Ltd. Vs. CCE, Chennai* 2011(22)STR 629(Tri. Chennai)

(x) *Faridabad Iron & Steel Traders Association Vs. Union of India* 2004(178) ELT 1099 (Del.)

3. *Shri Ghanshyam Soni, Learned Additional Commissioner (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.*

4. *On careful consideration of the submission made by both the sides and the perusal of the records, we find that in the present matter for confirmation of Cenvat demand revenue is of the view that the Appellant is not entitled to take Cenvat Credit on the inputs which were sent for Job Work to EOU unit and exported there from. As per the department's view Appellant has to go for drawback claim against the duties suffered on the inputs which were sent for Job work to EOU, Appellant is eligible for brand rate of draw back against duties suffered on inputs. In this context revenue referred Para 9.17 (b) of the Foreign Trade Policy 1997-2002, circulars and Job work permission granted by the Assistant/Deputy Commissioner.*

4.1 *We find that jurisdictional Assistant / Deputy Commissioner of Central Excise, Ankleshwar allowed job work from DTA to EOU unit vide permission letters dated 26-4-2010 and 27-7-2011 subject to following conditions:*

"1. *The DTA unit shall be eligible for grant of drawback against duty suffered on their inputs which are processed by EOU unit for the manufacture of goods, which are exported. The DTA exporter is eligible for payment of Brand Rate of drawback against duty suffered on inputs, on submission of proof of duty.*

2. *No CENVAT credit shall be allowed to the DTA unit on the duty paid on inputs procured for DTA to job work manufacturing.*

3. *The finished goods has to be exported from the EOU itself and cannot be allowed to be taken back to the DTA Unit.*

4. *The export is not to be counted under the parameters of EOU schemes and no benefit would accrue to the EOU.*

5. *Shipping Bill to be filed in the name of DTA unit and the name of the EOU unit will also be mentioned on Shipping Bill as a job worker. Both units' name*

and address to be mentioned on ARE-1 & invoice. ARE-1 shall be signed by both the parties.

6. No DEPB benefit shall be admissible either to EOU unit or to the DTA unit for such exports. Such exporters will not be allowed to claim all industry rate of drawback."

The first condition stipulates that DTA unit will be eligible for brand rate of drawback with regard to duty suffered on inputs. Since above Job Work permission issued to appellant provides a condition that DTA unit shall be eligible for Brand Rate of Duty Drawback, also put condition that no cenvat credit shall be allowed to DTA units. Clearly the intention behind the said condition that doubles benefit cannot be availed. However in the present matter it is admitted facts that Appellant has not received duty draw back. Brand rate application for claiming duty drawback of cenvat portion has been already rejected by department. Due to this only appellant availed the Cenvat Credit in the present matter.

4.2 We consider it appropriate to reproduce the relevant statutory provisions applicable in the present case i.e., Rule 3 and 4(5)(a) of Cenvat Credit Rules, 2004:

"Rule 3, CENVAT credit (1) A manufacturer or producer of final products or a provider of taxable service shall be allowed to take credit of -

(1) the duty of excise...

(ii) the duty of excise...

(vi) the education cess...

paid on-

(1) any input or capital goods received in the factory of manufacturer of final product or premises of the provider of output service.

(ii) any input service received by manufacturer of final product.....

Including the said duties, or tax,

"Rule 4(5)(a) The Cenvat credit shall be allowed even if any inputs or capital goods as such or after being partially processed are sent to a job worker for further processing, testing, repair, re- conditioning, or for the manufacture of intermediate goods necessary for the manufacture of final products or any other purpose, and it is established from the records, challans or memos or any other document produced by the manufacturer or provider of output service taking the CENVAT credit that the goods are received back in the factory within one hundred and eighty days of their being sent to a job worker and if the inputs or the capital goods are not received back within one hundred eighty days, the manufacturer or provider or output service shall pay an amount equivalent to the CENVAT credit attributable to the inputs or capital goods by debiting the Cenvat credit or otherwise, but the manufacturer or provider of output service can take the CENVAT credit again when the inputs or capital goods are received back in his factory or in the premises of the provider of output service."

From the above, we find that it is very clear that cenvat credit can be availed by the manufacturer of final products for duties paid on inputs used in goods sent for Job work.

4.3 We have also gone through the finding of impugned order. The Ld. Commissioner held that appellant had deliberately availed inadmissible Cenvat Credit on inputs knowing well that the same is barred by the permission granted by AC for Job work, the Exim Policy and Circulars. However Ld. Commissioner in the impugned order nowhere referred any para of said circulars wherein it has been mentioned that the DTA unit cannot be eligible for Cenvat credit. Further in subsequent Job work permission granted by the Deputy Commissioner vide letter dtd. 07.02.12 the condition of barring DTA unit to avail Cenvat Credit has been removed. It clearly shows that department has imposed the condition on Appellant which is legally not correct. Further we also observe that para 6.14(b)(1) of FTP provides that DTA unit will be entitled for refund of duty paid on inputs by way of brand rate of duty drawback, no condition related to non availment of Cenvat credit was mentioned therein. Without prejudice, even circular, FTP, job work permission restrict the same but nowhere in Central Excise Act and rules made thereunder including Cenvat Credit Rules, 2004 it provides for such condition that no Cenvat credit is eligible if goods are sent to EOU for Job work.

4.4 On perusal of the impugned order, we find that the Learned Commissioner has decided the disputed cenvat matter, without proper examination of the issue and relevant provisions of cenvat credit rules. Furthermore, it is also observed by us that the submissions made by the appellant and judgments relied upon by the Appellant were not addressed in effective manner for adjudication of the dispute. Therefore, we are of the considered view that the issues involved in this case are required to be reconsidered by the Learned Commissioner for arriving at a proper conclusion that whether or not the appellant should be entitled for cenvat benefit.

4.5 In view of above discussions, the impugned order is set aside and the matter is remanded to the Learned Commissioner for deciding the issues afresh. For the said purpose, the Learned Commissioner should examine the submissions of appellant to be made before him. Needless to say, that opportunity of personal hearing should be granted to the appellant before deciding the issues afresh.

5. In the result, the appeal is allowed by way of remand.”

2.3 In the instance case also we find that while the conditions mentioned in the permission letters have been examined no authority of law has been produced which prohibit availment of such credit. Availability of credit cannot be dependent on the CBIC circulars. The availability or non-availability of Cenvat credit would depend only on the provisions of Act and the Rules. We find that there is no such examination in the impugned order. In these circumstances we have constrained to remand the matter back to the

original adjudicating authority for fresh adjudication citing the proper provisions of law under which the credit can be allowed or denied.

3. Appeal is allowed by way of remand.

(Order pronounced in the open Court on 15.07.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Dharmi