CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
AHMEDABAD
REGIONAL BENCH, COURT NO. 2

CUSTOMS APPEAL NO. 12009 OF 2014 -DB

(Arising out of OIO-VAD-EXCUS-002-COM-062-13-14 dated 10/02/2014 passed by Commissioner of Central Excise, Customs and Service Tax-Vadodara-II)

C.C.E. & S.T.-Vadodara-ii **........Appellant**
1st Floor... Room No.101,
New Central Excise Building,
Vadodara, Gujarat-390023

Versus

Xron Gases Pvt Ltd **......Respondent**
4/4259, Hathiwala Street,
Begampura,
Surat, Gujarat

Appearance:
Shri Mukesh Soni, Advocate for the Appellant
Shri Sanjay Kumar, Superintendent (AR) for the Respondent

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

Final Order No. 11776/2024

DATE OF HEARING: **19/04/2024**
DATE OF DECISION: **13.08.2024**

RAMESH NAIR

The brief facts of the case are that the respondent M/s. Xron Gases Pvt Ltd. are 100% EOU for which letter of permission (LOP) has been granted by the Development Commissioner, Kandla Special Economic Zone, Gandhidham for the manufacture and export of Refrigeration Gas R-134 A (HCFC -134A) falling under ITC (HS) Chapter Heading No. 2903 4910 and the Development Commissioner has granted broad banding permission vide their letter F. No. KASEZ/100%EOU/II/11/10-11/1202 dated 03.05.2011 for manufacture Refrigeration Gas R-22 (HCFC-22) gas from imported bulk Refrigeration gas R-22 (HCFC-22). The respondent has imported bulk R-22 (HCFC-22) gas in

ISO tanks carried out manufacturing of the same by refilling gas in small containers/cylinder as per Chapter note 10 of the Chapter 29 of Central Excise Tariff Act, 1985.

1.1. Being not export order in hand on 18.07.2012, the respondent has applied for advance DTA sale permission to the Development Commissioner who has granted advance DTA sale permission of 31.07.2012 for a total sale of Rs. 673.32 lakhs in respect of their manufactured gas namely HCFC-134A Gas and HCFC-22 Gas. DRI has investigated the matter and show cause notice dated 05.08.2013 was issued wherein it was alleged that respondent have imported HCFC-22 Gas without obtaining permission/ special import license from DGFT required as per the provisions of Foreign Trade Policy 2009-2014. It is also alleged that respondent has attempted illegal removal of imported goods i.e. 5 ISO containers containing 108000 kgs of R-22 Refrigerant Gas valued at Rs. 9440633/- into DTA and also attempted illegal clearance of 74901.60 Kgs R-22 Refrigeration Gas valued at Rs. 66,18,327/- in respect of which they had paid duty but goods were not removed from the factory. Further, respondent has short paid Central Excise Duty on DTA clearance of 320909 Kgs R-22 Gas valued at Rs. 2,83,55,613/- which were cleared against advance DTA sale permission. In the notice the respondent were alleged for violation of the condition of the Foreign Trade Policy – 2009 - 2014 by importing HCFC-22 Gas without obtaining license from the competent authority i.e. DGFT. The Adjudicating Authority adjudicated the show cause notice by passing Order -In -Original No. VAD-EXCUS-002-COM-062-13-14 Dated 10.02.2014 wherein the following order was passed :-

" (A) As regards para 45(A) of the notice:

(I) I confirm the demand of Central Excise duty of Rs. 11,38,356/- (Eleven lakhs thirty eight thousand three hundred fifty six only) against M/s. XRON Gases, 100% EOU under Section 11A of the Central Excise Act, 1944 and the B-17 bond executed by them and Notfn No. 23/2003-CE.

(II) I confirm the demand of interest on Rs. 11,38,356/-, at the applicable rate, under Section 11AA of the Central Excise Act, 1944.

(iii) I Impose penalty of Rs.2,50, 000/- against M/s. XRON Gases, 100% EOU under Rule 25 of Central Excise Rules, 2002.

(iv) The proposal for confiscation and demand of Customs duty along with interest and penalty under Customs on the raw material is dropped.

B) As regards para 45(B) of the notice,

(i) I confirm the demand of Central Excise duty of Rs. 2,18,929/- (Two lakhs eighteen thousand nine hundred twenty nine only) and Rs. 1,21,826/- (One lakh twenty one thousand eight hundred twenty six only), against M/s XRON Gases, 100% EOU under Section 11A of the Central Excise Act. 1944

(ii) I confirm the demand of interest on Rs. 2,18,929/- & Rs. 1,21,826/-, at the applicable rate, under Section 11AA of the Central Excise Act. 1944.

(iii) I impose penalties of Rs. 50,000/- on M/s XRON Gases, 100% EOU under Rule 25 of Central Excise Rules, 2002

(iv) I also order confiscation of 4831 kgs valued at Rs 578792/- of R-22 Refrigerant Gas found outside bonded premises under rule 25 of Central Excise Rules, 2002. I impose a redemption fine of Rs.50,000/- against M/s. XRON Gases, 100% EQU in lieu of confiscation

(v) I also impose equivalent penalty of Rs. 1,21,826/- on M/s XRON Gases, 100% EOU under Rule 25 of Central Excise Rules, 2002 read with Section 11AC of the Central Excise Act, 1944

(vi) The proposal for confiscation and demand of Customs duty along with interest and penalty under Customs on the raw material is dropped

(C) As regards para 45 (C) of the notice;

(i) The proposal for confiscation and demand of Customs duty on the raw material along with interest and penalty under Customs on the raw material is dropped.

(D) As regards para 45(D) of the notice:

(1) The proposal for confiscation and demand of Customs duty on the raw material along with interest and penalty under Customs on the raw material is dropped as no SIL is required

(E) As regards para 45 (E) of the notice-

(i) The proposal for confiscation and demand of Customs duty on the raw material along with interest and penalty under Customs on the raw material is dropped as no SIL is required

(F) As regards para 45 (F) of the notice:-

(1)The proposal for confiscation and demand of Customs duty on the raw material along with interest and penalty under Customs on the raw material is dropped.

(G) I also impose a penalty of Rs. 2,00,000/-on Shri. Kartik Hathiwala, Director of M/s XRON Gases (100% EOU) under Rule 26 of Central Excise Rules, 2002. There shall be no penalty under Customs Act

(H) I order to appropriate and adjust the amount of Rs. 20,00,000/- already deposited by M/s XRON Gases (100% EOU) against the above confirmed liability.

(I) I also order to recover the confirm demand from B-17 bond executed by Mis. XRON Gases (100% EOU) to the Assistant Commissioner of Central Excise & Customs, Division-Halol, Vadodara-II

(J) I impose penalties of Rs. 10,000/- each on (1) Shri Mitesh Shah, Proprietor of Mis. Shah Brothers, (2) Shri Bharat Chandlekar, Proprietor of Mis. Ami Control Services, (3) Shri Amit Chorariya, Proprietor of Mis. Capri Refrigeration, (4)Shri Haji Rasidkhan Arsallakhan Pathan, Authorized Person of Mis. Baba Transport Co. (5) Shri Rajendra Singh Kamdar, Proprietor of M/s Samraddhi Enterprises under Rule 26 of Central Excise Rules, 2002 There shall be no penalty under Customs Act."

Being aggrieved by the said Order-In-Original the revenue has filed the present appeal for the correct determination of the following points arising out of the said order :-

9.1 Whether the Commissioner, Central Excise, Vadodara-II has

(I) erred in not ordering confiscation of goods i.e. R-22 Refrigerant Gas totally weighing 320909.00 Kgs. valued at Rs.2,83,55,613/- imported duty free under 100% EOU scheme and unauthorizedly cleared in Domestic Tariff Area (DTA) on the grounds mentioned above;

(ii) in not imposing penalty under Section 11AC of the Central Excise Act, 1944 on the grounds mentioned above;

(iii) in dropping the demand of Customs duty amounting to Rs.73,30,629/- foregone in respect of 320909.00 Kgs. of the goods used in R-22 Refrigerant Gas unauthorizedly cleared in Domestic Tariff Area (DTA) alongwith demand of consequential interest and imposition of penalty on the grounds mentioned above;

9.2 Whether the Commissioner, Central Excise, Vadodara-II has erred

(1) in not ordering the confiscation of goods i.e. seized R-22 Refrigerant Gas totally weighing 70070 Kgs. valued at Rs.60,39,535/- (Rs. 66,18,327/- being value of 74901.60 Kgs. less Rs.5,78,792/- being value of 4831.60 Kgs.) imported duty free under 100% EOU scheme and unauthorizedly cleared in Domestic Tariff Area (DTA) on the grounds mentioned above;

(ii) in not imposing penalty under Section 11AC of the Central Excise Act, 1944 on the grounds mentioned above;

(iii) in dropping the demand of Customs duty amounting to Rs.17,11,002/- foregone at the time of importation in respect 74901.60 Kgs. (70070 Kgs. plus 4831.60 Kgs) of R-22 Refrigerant Gas used in unauthorized clearance in Domestic Tariff Area (DTA) alongwith demand of consequential interest and imposition of penalty on the grounds mentioned above;

9.3 Whether the Commissioner, Central Excise, Vadodara-II has erred

in not ordering confiscation of the seized goods i.e. R-22 Refrigerant Gas weighing 108000.00 Kgs., valued at Rs.94,40,633/- imported duty free under 100% EOU scheme and found outside the bonded premises in five (5) containers and not imposing penalty on the grounds mentioned above;

(ii) in dropping the demand of Customs duty amounting to Rs.24,40,638/- foregone at the time of importation of 108000.00 Kgs of R-22 Refrigerant Gas alongwith demand of consequential interest and imposition of penalty on the grounds mentioned above.

9.4 Whether the Commissioner, Central Excise, Vadodara-II has erred in not confiscating the goods i.e. R-22 Refrigerant Gas weighing 8750 Kgs., valued at Rs.7,30,851/- imported duty free under 100% EOU scheme and not imposing penalty on the grounds mentioned above;

9.5 Whether the Commissioner, Central Excise, Vadodara-II has erred

(i) in not ordering confiscation of the seized goods i.e. R-22 Refrigerant Gas totally weighing 3639.400 Kgs., valued at Rs.3,21,198/- imported duty free under 100% EOU scheme and claimed as non-recoverable loss and not imposing penalty on the grounds mentioned above;

(ii) in dropping the demand of Customs duty amounting to Rs.83,038/- foregone at the time of importation of 3639.400 Kgs of R-22 Refrigerant Gas alongwith demand of consequential interest and imposition of penalty on the grounds mentioned above.

9.6 Whether the Commissioner, Central Excise, Vadodara-II has erred

(i) in not ordering confiscation of the seized packing material i.e. 2650 Nos. small disposable cylinders (13.6 Kg.) (including 2296 Nos. used for filing R 22 gas) valued at Rs.29,47,642/- imported duty free under 100% EOU scheme and attempted unauthorized clearance in Domestic Tariff Area (DTA) & found outside the bonded premises on the grounds as mentioned above;

(ii) in dropping the demand of Customs duty amounting to Rs.8,50,449/- foregone at the time of importation of 2650 Nos. small disposable cylinders (13.6 Kg.) i.e. packing material attempted to be unauthorized cleared in Domestic Tariff Area (DTA) and found outside the bonded premises, alongwith demand of consequential interest and imposition of penalty on the grounds mentioned above;

9.7 Whether the Commissioner, Central Excise, Vadodara-II has erred in not imposing the penalty on Shri Kartik Hathiwala, Director of respondent under Section 112(a) of Customs Act, 1962 and also not imposing the penalty in consonance with the gravity of offence under Rule 26 of the Central Excise Rules, 2002 on the grounds mentioned above.

2. Shri Sanjay Kumar learned Superintendent (AR) appearing on behalf of the revenue reiterates the grounds of appeal. He further submits that there is specific requirement for special import license for import of Refrigerant Gas, since goods is restricted or import. Therefore, without obtaining special import license from DGFT the appellant are liable to pay custom duty and consequential confiscation and penalty also needs to be confirmed.

3. On the other hand Shri Mukesh Soni learned Advocate appearing on behalf of the respondent at the outset submits that appellant being 100% EOU eligible for import of any goods other than prohibited goods, under their LOP issued by the Development Commissioner of Kandla SEZ. Therefore, no separate special import license is required to be obtained for import of any restricted goods. He also refers to the policy handbook of procedure- 2009-14. According to which para No. 6.2.7 the LOP is sufficient for all the authorization which are otherwise required.

3.1. He submits that the identical case has been decided by this Tribunal in the case of appellant itself vide Final Order No. A/88365/2017 SMB 19.07.2017. The said judgment was also relied upon by the Division Bench of this Tribunal in the case of JVS Engineers vide Final Order No. A/11042/2023 dated 24.04.2023.

3.2. It was confirmed that for EOU no separate special import license is required since the appellant possess the LOP therefore, the entire basis of the demand and the appeal filed by the revenue is not tenable. As regards the issue that when the manufactured goods is cleared by the appellant whether custom duty is required to be paid on the raw material used in such manufacture goods, he submits that this issue is squarely covered by the judgment in the case of Amitex Silk Mills Pvt Ltd 2007 216 ELT 589 (Tri.-Ahmedabad) confirmed by the Hon'ble Supreme Court in Civil Appeal D No. 10301 of 2008. Therefore, once the Excise Duty is demanded on the manufactured goods no custom duty demand on the raw material used in such manufactured goods can be made.

3.3. As regard the personal penalty proposed on the Director of the respondent company Shri Kartik Hathivala, he submits that he has acted in legal and transparent manner and the Director has not suppressed any fact from Custom Authority at the port of import and jurisdictional Central Excise Authority and since, no special import license was required the penalty on the director cannot be imposed.

4. We have carefully considered the submission made by both the sides and perused the record. We find that the main issue involved in the present case for which the revenue filed the appeal is that whether the appellant being 100% EOU is required to obtain special import license for import of refrigerant gas in bulk as said goods is restricted as per the policy of DGFT. We find that this issue is no longer res integra as the same was decided in the appellants own case by this Tribunal vide Final Order No. A/88365/2017-SMB dated 19.07.2017.

4.1. The said judgment was considered by the Division Bench of this Tribunal in the case of JVS Engineers vide Final Order No. A/11042/2023 dated 24.04.2023 wherein the Tribunal has passed the following order :-

“5. We have considered the rival submission. We find that the Foreign Trade Policy in para 2.17 prescribed as under:

> *“All second hand goods, except second hand capital goods, shall be restricted for imports and may be imported only in accordance with provisions of FTP, ITC (HS). HBP v1, Public Notice or an Authorization issued in this regard.*
>
> *Import of second hand capital goods, including refurbished /re-conditioned spares shall be allowed freely. However, second hand personal computers / laptops, photocopier machines, air conditioners, diesel generating sets will only be allowed against a licence.*
>
> *Import of re-manufactured goods shall be allowed only against a licence”.*

6. We find that para 6.2(b) of the FTP reads as under :

> *“ (b) An EOU / EHTP/STP/BTP unit may import and/or procure from DTA or bonded warehouses in DTA / international exhibition held in India without payment of duty* **all types of goods, including capital goods, required for its activities, provided they are not prohibited items of import in the ITC (HS)***. Any permission required for import under any other law shall be applicable. Units shall also be permitted to import goods including capital goods required for approved activity, free of cost or on loan / lease from clients. Import of capital goods will be on a self certification basis. Goods imported by a unit shall be with actual user condition and shall be utilized for export production”.*

6.1 From the combine reading of above two provision it is seen that while the import of restricted items is not permitted without express authorization from the authorities in case of all importers, the said restriction would not apply to EOU in terms of para 6.2(b) of the FTP. In terms of 6.2(b) an importer is permitted to import all items that are not prohibited for import.

6.2 In this case we notice that that appellant has imported ‘used valves’ which according to revenue are restricted items. In terms of para 6.2 (b) this restriction of import of restricted items is not applicable to EOU’s. Further, it is seen that the letter of permission in the appellant’s case clearly covers valves as raw materials/ components. Annexture-1 to the letter of LOP is reads as under:-

EXEMPTION MATERIALS ANNEXURE-I

1. Plant, Machinery and Equipment to be Imported.

No.	Description of goods	Value in Foreign currency	Value in Lakhs
01	HASS Make, Model VF-3YT CNC Vertical machining center with accessories SO# 651142 Sr. No. 1050816 (8457-10-20)	75000.00 USD	34.50
02	Pinacho smart turn electronic lathe model Smart 5-375X2000 with accessories Sr. No. 52465 (8458-11-00)	40230. Euro	24.13
03	Pinacho Smart Electronic Lathe Samrt 5-310 X1000 MM Between Centres with accessories Sr. No. 52433 (8458-11-00)	25,750.00 Euro	15.45
04	Testing System	50000.00 USD	23.00
05	CNC Lathe / Machining Centre 8458-11-00 / 8457-10-20	200000.00 USD	92.00
06	Auto Welding System	50000.00 USD	23.00
07	CNC Boring Machine	200000.00 USD	92.00
08	Unplanned Capital Equipment	100000.00 USD	46.00

2. Raw Materials, Components and Consumables to be Imported.

No.	Description of material	Value in Foreign currency	Value in Lakhs
01	Seals / Stem Packing for chokes	50000.00 USD	23.00
02	Tungsten carbide trim (flow cage / flow sleeve) 8101-94-00	125000.00 USD	57.50
03	Actuators	200000.00 USD	92.00
04	Positioners	50000.00 USD	23.00
05	Hammer Union connections, flanges, valves parts, bearings 7307-21-00,	100000.00 USD	46.00
06	Forgings / castings / flanges / valves (8481-90-30)	150000.00 USD	69.00
07	Alloy steel pipes 7304-21-10/90	50000.00 USD	23.00
08	Un planned purchase like special bearings, drive unit, actuator motors, Scrap Material	500000.00 USD	230.00

For JVS ENGINEERS.
Partner

Attested By Me
(M. J. SHAH)
NOTARY
DIST. KUTCH (GUJARAT)
11 SEP 2006

For JVS ENGINEERS.
N. Shah
Partner

7. We also find that the similar view has been taken in the case of Xron Gases P. Ltd (supra) and in the case of Geetanjali woollens Pvt. Ltd (supra). In the case of Xron Gases P. Ltd in para 5 following has been observed:-

> ***5.*** *I find that adjudicating authority as well as Commissioner(Appeals) held the goods for absolute confiscation on the ground that appellant*

have not obtained the Special Import License for import of R-22 Gas. As per FTP, 2009-2014, the goods R-22 Gas is restricted items and the import of the same can be made only after obtaining import license. In the present case, appellant being 100% EOU is under the jurisdiction of Development Commissioner, who is also regional licensing authority, accordingly for all the purposes related to FTP, the Development Commissioner is the authority incharge of the appellant's unit. The said licensing (Development Commissioner) Gandhidham, Gujarat issued an LOP dated 3-1-2011 which is scanned below :

[illegible]
Office of the Development Commissioner [illegible]
[illegible]
Kandla Special Economic Zone
[illegible]
Ministry of Commerce & Industry
[illegible]
Gandhidham-Kutch-370 230
Phone [illegible]
Fax [illegible]
Email [illegible]
Website [illegible]

KASEZ

No. KASEZ/100%EOU/II/11/10-11/ [illegible] 03.01.2011

M/s. Kartik Traders,
[illegible], [illegible] Street,
[illegible],
Surat-395 003.
Gujarat.

Sub: Your [illegible] application for establishment [illegible] unit [illegible]

Dear Sirs,

With reference to the above mentioned application the Development Commissioner is pleased to extend to you all the facilities and privileges admissible and subject to the provisions as envisaged in EOU scheme 2009-14 for establishment of a new undertaking at Survey No. 079/1, 16-30, Village-Navi [illegible], P.O. [illegible], Taluka-[illegible], Dist. Panchmahal in the State of Gujarat for manufacture of the following item(s) up to the capacities specified below on the basis maximum utilization of plant and machinery:

ITEM (S) OF MANUFACTURE	Annual Capacity (in MTs)
Refrigerant Gas R-134A(HCFC 134A)	[illegible]

2. The above permission is subject to the conditions stipulated in the Annexure in addition to the following conditions:

FOR XRON GASES PVT. LTD.

DIRECTOR

From the LOP, it can be seen that except prohibited goods, all items of import and local purchases are permitted. It is undisputed that goods R-22 Gas is not prohibited goods therefore the said goods is permitted to be imported as per LOP dated 3-1-2011. It also observed that on 3-5-2011, request of the appellant for broad banding of LOP in respect of refrigeration gas R-22 gas was allowed by the Development Commissioner, which is scanned below :

KASEZ

Kandla Special Economic Zone
[illegible]
Ministry of Commerce & Industry
[illegible]
Gandhidham-Kutch-370 230
Phone (02836) 253300, 252475, 252260
Fax (02836) – 252250 & 252194
E-mail [illegible]
Website [illegible]

No.KASEZ/100%EOU/II/11/10-11/ 1262

03.05.2011

M/s. Xron Gases Pvt. Ltd.,
4/4259, Hathiwala Street,
Begampura,
Surat – 395 003.

Sub: Request for Broadbanding of Letter of Permission.

Dear Sirs,

I am directed to refer to your letter dated 25.04.20011 on the above subject and to permit broad banding of the Letter of Permission No.KASEZ/100%EOU/II/11/10-11/2277 dated 03.01.2011, as amended, to include the following items for manufacture and export as per the provisions contained in Para 6.32(S) of Handbook of Procedures 2009-14, subject to the same terms and conditions of your Letter of Approval.

Sr. No.	DESCRIPTION OF ITEMS
1	Refrigeration Gas R-22(HCFC-22)

With this addition, the items of manufacture in your Letter of Permission shall read as under:

Sr. No.	DESCRIPTION OF ITEMS
1	Refrigerant Gas R-134A (HCFC-134a)
2	Refrigeration Gas R-22(HCFC-22)

2. All other terms and conditions stipulated in the aforementioned Letter of Permission, as amended, shall remain un-altered. This letter may be kept attached with the original Letter of Permission dated 03.01.2011, as amended and Green Card No. KASEZ/05/2010-11 dated 18.02.2011.

Yours faithfully,

(Upindra Vasishth)
Jt. Development Commissioner,
Kandla Special Economic Zone

Copy to: The Assistant Commissioner, Central Excise & Customs, Division [illegible], [illegible] Commissionerate, 3rd Floor, Central Excise & Customs Building, Subhanpura, Vadodara.

Thereafter vide letter dated 29-5-2012, Development Commissioner has granted specific permission for import of R-22 gas which is scanned below :

Dear Sirs,

I am directed to refer to your letter dated 25.05.2012 on the above subject and to convey no objection for import/procure from indigenous sources of following raw materials in terms of Para 6.2(b) of Foreign Trade Policy, 2009-14 for manufacture and export of products approved in the letter of permission No.KASEZ/100%EOU/II/11/10-11/2277 dated 03.01.2011, as amended, subject to the condition that the value of the imported goods shall be taken into account for the purpose of calculation of NFE:

Sr. No.	Description	ITC(HS) Code
1	Refrigerant Gas R-22(HCFC-22)	29034490

2. Any permission required for import under any other law shall be applicable.

3. This shall form part of the exempted goods covered under your Legal Undertaking executed with this office.

Yours faithfully,

R.N. Bairwa

(R.N. Bairwa)
Dy. Development Commissioner(I/C),
Kandla Special Economic Zone

From the LOP dated 3-1-2011, letter dated 3-5-2011 for broad banding of LOP in respect of R-22 Gas and letter dated 29-5-2012 by which specific permission was granted for import of R-22 Gas. It is clear that appellant had indeed valid license in possession for import of R-22 gas. As regard the contention of the lower authority that LOP is not sufficient for allowing import of restricted items, appellant should have obtained specific import license. In this regard, I refer to para 6.2.7 of Handbook of Procedure which reads as under :-

> *"6.2.7. LOP/LOI issued to EOU/EHTP/STP/BTP units by concerned authority would be construed as an authorization for all purposes"*

From the above para of the policy, it is clear that once the LOP is obtained by EOU, no further license is required as LOP is authorization of all purposes. This issue also has come up in the case of Geentanjali Woollens Pvt. Ltd. (supra) wherein coordinate bench of this Tribunal observed as under :

> *"5. We have considered the submissions. We take the letter dated 20-12-2000 to be clarificatory in nature emphasising that the appellants were capable of importing raw materials which were required for their manufacture. At this stage we also notice, Paragraph 9.8 of the Handbook of Procedures which permits raw materials to be imported by an EOU provided they are not prohibited items in the ITC(HS) classifications. The note thereto permits such goods to be in second-hand condition also. There is no doubt that both rags and serviceable garments were raw materials. The paragraphs did not make any specification. Even if the importers had in their letter of indent to the Free Trade Zone authorities specified rags, the list was not required to be attested. Thus, in terms of the clear wordings of the Policy and also by the correspondence with the people who were entrusted with enforcing the Policy, it appears that there was no significant*

distinction held by the Licensing Authority between the rags and unmutilated rags/uncut worn clothing. At this stage, we have also seen the certificate dated 15-11-2000 given by the Central Excise Authorities to the appellants on which reliance was placed by Shri Jain. This is a certificate meant for presentation to the Customs House and certifies that the importers would be an EOU and it does not in any way restrict or prohibit the importability of raw materials by an EOU".

In view of the above observations of the Tribunal, it is settled that once the 100% EOU has been permitted to import certain goods, for import of such goods, restriction prohibition of goods provided under policy shall not apply. Similarly, in the present case, when Development Commissioner has specifically allowed the import of R-22 Gas, there is no need of special import license".

Similar view are in the decision in the case of Geetanjali woollens Pvt. Ltd (supra). The ratio of above decision is squarely applicable to the instant case.

7.1 In view of the above facts, we are of the view that "used valves" are permitted for import to the appellant in their EOU for use as raw materials/Components.

8. In view of the above, we do not find any merit in the impugned order, the same is set aside and appeal is allowed."

From the above consistent view taken by this Tribunal the issue is no longer res integra that an 100% EOU is not required to take separate license for imported goods which are otherwise restricted and even the foreign trade policy also categorically provided in para 6.2.7 of hand book of procedure that " LOP/LOI issued to EOU (ESTP/STP/BTP) units" by concerned authority would be as an authorization for all purposes. Therefore there is absolutely no doubt that since appellant admittedly being 100% EOU obtained LOP they were not required to obtain special import license for import of refrigeration gas. Therefore, on that count demand of custom duty, interest, penalty, redemption fine proposed in the revenues appeal is absolutely illegal and incorrect, hence to this extent the impugned order does not suffer from any infirmity. As regards the Custom Duty demand in respect of the raw material which was used in the manufacture of excisable goods i.e. conversion from imported bulk gas to the small pack the Excise Duty on the manufactured goods was admittedly paid therefore, no Custom Duty demand can be raised in respect of the imported raw material, this issue has been consistently held in various Judgments one of the Judgment is produced as under :-

- Amitex Silk Mills Pvt Ltd 2007 216 ELT 589 (Tri.- Ahmedabad)

  "These appeals are filed by the Department against the orders of the Commissioner No. 29/Dem/2002 26/8/2002 & 30/Dem/2002 d. 28-8-2002. The respondents in both the appeals are the same party.

  2. We heard both sides.

  3. The relevant facts, in brief, are as follows :-

  (a) The respondent, a 100% EOU, imported duty free Texturized yarn/PFY in terms of Notification No. 53/97- 3-6-1997 and manufactured Twisted yarn and cleared them on deemed export basis to other 100% EOUS for their use.

  (b) The periods involved in the appeals are Feb, 2000 to August, 2000 and Feb, 2001 to April, 2001.

  (c) The Development Commissioner during the relevant period has permitted up to 50% of FOB value of exports to be cleared in the DTA area on payment of applicable duties.

  (d) DTA clearances including rejects/wastes cleared in the domestic market where sought to be subject to duty without extending the benefit of Notification No 2/95 and Notification No 13/6 and show cause notices were issued accordingly demanding excise duty under Section 11A Show cause notice also proposed recovery of duties of customs under Section 218 on the raw materials used in the finished products/rejects and wastes so sold.

  (e) The Commissioner demanded the duty on the finished goods as proposed in the show cause notice but held that no customs duty on the duty free inputs used in the manufacture of such goods sold in the OTA will the applicable.

  (f) The Departments is on appeal against non-demand of duty on the inputs which has gone into the finished products including wastes and rejects which have been cleared into DTA with the permission of Development Commissioner.

3. The Id. DR relied on the decision in the case of Al's. Asian Alloys Limted v CCE Delhi (Trib.-Del)

4.1 The basic dispute arises on account of differing perception on the terms "exports There are two categories of exports namely, physical exports, which are physically exported out of the country and the deemed exports, which are suppress made to 100% EOUS as raw materials for further manufacture and the manufactured goods being ultimately exported The Development Commissioner has granted permission for DTA sales upto 50% in terms of Exim Policy for the DTA sales treating deemed exports on par with the physical exports. The Revenue Department held that deemed exports cannot be equated with physicals exports and as DTA sales arrived at try them was in excess of the 50% (by taking only the physical exports into account and hence demanded the duty.

4.2 This issue as to where the deemed exports has to be included for the purpose of determining entitlement in the OTA has been decided by the Tribunal in the case of the same respondent as reported in (Del Therefore, the clearances made by the respondent are clearly within the permissible limit of DTA sales as permitted by the Development Commissioner.

4.3 We find that the raw materials were admittedly issued for manufacture in the 100% EOU and no raw materials as such has been diverted and hence demand of infirmity in the order of the Commissioner of duty on the raw materials is not sustainable. Therefore, we do not find any in not demanding the duty on the raw materials which have gone into manufacture of finished products/wastes and rejects, which have been sold in DTA with the permission of the Development Commissioner.

5. The reliance placed by the Department on the decision in the case of M/s Asian Alloys Limited cited supra is misplaced. In that case, there is a finding that the unit has diverted the goods without taking necessary permission

6. The appeals by the Department are rejected."

The above judgment has been upheld by the Hon'ble Supreme Court reported at Commissioner V. Amitex Silk Mills P. Ltd.- 2010 (254) E.L.T. A98 (S.C.)

4.2. In view of the above decision once the raw material is converted into manufactured excisable goods and excise duty applicable on 100% EOU has been paid, no custom duty demand can be made on the raw material used in such manufactured goods.

As regards the proposal of penalty on Director under Section 112A of Custom Act, 1962. Since demand of duty was rightly set aside, the penalty being consequential there to shall also not sustain.

5. As per our above discussion and finding no ground in the Revenue's Appeal stands on merit. Therefore, we uphold the impugned order and dismiss the Revenue's Appeal.

(Pronounced in the open court on **13.08.2024** *)*

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

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