1 CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH : AHMEDABAD

REGIONAL BENCH - COURT NO. 3

EXCISE Appeal No. 10209 of 2018-DB

[Arising out of Order-in-Original/Appeal No VAD-EXCUS-001-APP-390-395-2017-18 dated 05.09.2017 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I]

Asahi Songwon Colors Limited **.... Appellant**
Block No. 429-432, ECP Channel Road Vill- Dudhwada,
Tal-Padra, VADODARA, GUJARAT

VERSUS

Commissioner of Central Excise & ST, Vadodara **.... Respondent**
1st floor, Ventral Excise building,
Race Course Circle, Vadodara, Gujarat-390007

WITH

EXCISE Appeal No. 10210 of 2018-DB

[Arising out of Order-in-Original/Appeal No VAD-EXCUS-001-APP-390-395-2017-18 dated 05.09.2017 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I]

A K Nayak, DGM **.... Appellant**
Block No. 429-432, ECP Channel Road Vill- Dudhwada,
Tal-Padra, VADODARA, GUJARAT

VERSUS

Commissioner of Central Excise & ST, Vadodara **.... Respondent**
1st floor, Central Excise Building,
Race Course Circle, Vadodara, Gujarat-390007

AND

EXCISE Appeal No. 12441 of 2019-DB

[Arising out of Order-in-Original/Appeal No VAD-EXCUS-001-APP-259-2019-2020 dated 27.08.2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I]

Asahi Songwon Colors Limited **.... Appellant**
Block No. 429-432, ECP Channel Road Vill- Dudhwada,
Tal-Padra, VADODARA, GUJARAT

VERSUS

Commissioner of Central Excise & ST, Vadodara **.... Respondent**
1st floor, Central Excise Building,
Race Course Circle, Vadodara, Gujarat-390007

APPEARANCE :

Shri Shri Sudhanshu Bissa, Advocate & Shri RR Dave, Consultant for the Appellant
Shri Anand Kumar & Shri AR Kanani, Superintendents (AR), for the Respondent

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

DATE OF HEARING : 05.07.2024 & 02.09.2024
DATE OF DECISION: 13.09.2024

FINAL ORDER NO. 12043-12045/2024

C.L. MAHAR :

The brief facts of the matter are that the appellant are engaged in the manufacture of excisable goods namely Copper Phthalocyanine Blue Crude, Activated Crude and Beta Blue, Ammonium Sulphate, Ammonium Carbonate Liquor, Copper Sludge Waste & Chemical Gypsum falling under Chapter heading 32, 31,28, 26 and 38 respectively of the first schedule of Central Excise Tariff Act, 1985. The appellant are 100% EOU holding license for private bonded warehouse and manufacture in bonded warehouse under Section 58 and 62 of the Customs Act, 1962.

2. The department during the course of audit for the period 2009-2014 of the appellants financial records noticed that the appellant has obtained Letter of Permission (LoP) dated 20.04.2005 issued by Development Commissioner, Kandla Special Economic Zone (KASEZ), Gandhidham, Kutch for manufacture of finished goods as well as by-products. The by-product included Ammonium Carbonate Liquor and Ammonium Sulphate with an obligation to export entire production excluding rejects and sales in the Domestic Tariff Area as per the provisions of EOU scheme for the period of five years from the date of commencement of commercial production. The LoP as well as the green card has been extended for the further period upto 12.03.2015. The LoP as well the export period of the appellant unit has been extended by the Development Commissioner from time to time and at the relevant time it stand extended upto 12.03.2015. The department is of the view that by-product emerging during the course of manufacture namely Ammonium Carbonate Liquor and Ammonium Sulphate cleared in DTA were not similar to the goods which were exported and therefore conditions of Para 2(ii) (a) of the Notification No. 23/2003-CE dated 31.03.2003 was contravened by the appellant thereby the appellant was not eligible to claim concessional rate of duty under the said notification. The department has issued three show cause notices for the period June 2009 to May 2014 and for the period June 2014 to April 2015 and

third show cause notice for the period 2015 to December 2015. The first show cause notice has been issued under Section 11A of Central Excise Act, 1944 by invoking extended time proviso and other two show cause notices have been issued for the normal period of time. The Deputy General Manager, Shri AK Nayak has also been made party to the show cause notice for the purpose of levy of penalty under Rule 26 of Central Excise Rules, 2002. The matter has been adjudicated by the impugned orders-in-original dated 22.02.2017 and 27.03.2019 whereunder all the charges as alleged in the show cause notices have been confirmed by the impugned orders-in-original. The appellants have approached learned Commissioner (Appeals). The Commissioner (Appeals) vide impugned order-in-appeal dated 05.09.2017 and dated 27.08.2019 have not found it fit to grant any relief to the appellants therefore the appeals were rejected. The appellants are before us.

3. Learned advocate appearing for the appellants submitted that Commissioner (Appeals) has committed an error in law by confirming demand for extended period of limitation in the first show cause notice even though the decision in the case of Meghmani Industries Limited vs. CCE, Ahmedabad – 2010 (288) ELT 411 (Tri. Ahmd.) was available on record and which covered the facts and circumstances of the case. It has been the contention of the learned advocate that the larger period of limitation is not invokable by the Revenue against EOU in respect of Domestic Tariff Area clearances at concessional rate of duty of excise which has further been affirmed by the judgment of Hon'ble Gujarat High Court in the case of Commissioner vs. Meghmani Dyes & Intermediates Limited – 2013 (288) ELT 514 (Guj.). The learned advocate has argued that judgment of Hon'ble Gujarat High Court has been referred in the absolutely similar situation as it existed in the case of appellant. The appellant has filed ER-2 returns on monthly basis and has declared all details and information required under ER returns including the details of Domestic Tariff Area clearances and payment of duty thereon on concessional rate of duty under Notification No. 23/2003-CE. It has been the contention of the learned advocate that all the facts of availment of benefit of notification 23/2003-CE dated 31.03.2003 were available before the department and therefore, the period of limitation cannot be extended to five years and no element of fraud, mis-representation, suppression of facts with intention to evade duty are present in this case.

3.1 The learned advocate vehemently argued that Commissioner (Appeals) have erroneously denied them the benefit of concessional rate of duty under Notification No. 23/2003-CE dated 31.03.2003 as the appellant has rightfully been permitted by the competent authority by a letter of permission (LoP). The appellant was also allowed permission for Domestic Tariff Area sales with reference to the goods exported in accordance with the items permitted vide LoP. It has further been submitted that the appellant sold goods on concession rate of duty of excise in Domestic Tariff Area, after fulfilling their export obligation accordance with the items permitted by broad banded LoP within the specified value cap of 50% of the exports of the goods in accordance with the items permitted vide broad banded LoP.

3.2 The learned advocate vehemently argued that it was not open for the department to have held that by-product emerging during the process of manufacture of finished goods could not have been cleared in DTA at concessional rate of duty because the appellant had exported another chemical product though all these products were chemicals of the same group classified under the same Chapter of Central Excise Tariff as well as Customs Tariff and covered under LOP. It has further been added that Domestic Tariff Area sales made by the appellant of goods exported in accordance with the items permitted vide broad banded LoP and DTA sales were not in excess of 50% of quantities of the exports of the similar goods. The learned advocate has emphasized that goods exported in accordance with the items permitted vide broad banded LoP and impugned order denying benefit of Notification No. 23/2003-CE dated 31.03.2003 is legally wrong and Central Excise duty of differential amount cannot be demanded from the appellant.

3.3 It has further been continued that, it was wrong on the part of the Commissioner (Appeals) to hold that the goods exported by the appellant in accordance with the items permitted vide broad banded LoP were different goods i.e. they were not the similar goods because according to the department the raw materials, manufacturing process and end use of these products were different and they were not in the nature of commercially interchangeable goods. The main thrust of the appellant is that it was wrong on the part of the Commissioner (Appeals) to hold that goods exported were not similar to the goods sold in DTA as the goods were commercially interchangeable or "similar goods" and since the goods cleared in DTA availing benefit of Notification No. 23/2003-CE dated 31.03.2003 were not similar to the one which cleared in DTA and therefore concessional rate of duty benefit was not available to the goods namely Ammonium Carbonate Liquor and Ammonium Sulphate.

3.4 The learned advocate has relied upon various decisions especially in the case of this Tribunal in Defiance Clothing Company -2008 (87) ELT 743 and M/s. ABN Granites Limited vs. CC, Cochin – 2001 (133) ELT 483 (Tri. Bang.) as well as the decision in the case of Ginni International Limited vs. CCE, Jaipur – 2002 (139) ELT 172 (Tri. Del.) and all these decisions issue raised in the show cause notice was that the appellant cleared by-product on concessional rate of duty of excise of eligible limit, the Tribunal in the above mentioned decisions has held that Domestic Tariff Area sales were actually were allowed by the Development Commissioner as per Exim Policy. Once a LoP has allowed manufacture and export of the same as well as sale in DTA, it is wrong on the part of the department to demand full rate of excise duty denying the concessional rate of duty benefit that there is no violation of either LoP or Exim Policy.

3.5 The learned advocate also objected the imposition of penalty on Shri AK Nayak, DGM, stating that there is no evidence of Shri Nayak's involvement in willful avoidance of Central Excise duty. The appellant Shri AK Nayak was an employee of the main appellant and there was no personal gain which he could have gained by resorting to any infringement of any law with intention to evade Central Excise duty. It is vehemently argued that Adjudicating Authority as well as Commissioner (Appeals) has not applied their mind in imposing penalty under Rule 26 of Central Excise Rules, 2002. The learned advocate has relied upon the decisions of this Tribunal in the case of Shri Vinod Kumar vs. CCE, Delhi – 2006 (199) ELT 705 (Tri. Del.) as well as in the case of RK Ispat vs. CCE, Raipur – 2007 (211) ELT 460 (Tri. Del.)

4. We have heard learned AR appearing for the Revenue who reiterated the findings as given in the impugned orders-in-appeal.

5. We have heard rival submissions and perused the record of the appeals. We find that office of the Development Commissioner, KASEZ has approved inclusion of by-products in the LoP vide its letter dated 29.04.2005 where in Ammonium Sulphate Liquor, Ammonium Carbonate Liquor and hazardous

waste have been included. It is matter of record that appellant have been exporting their products Copper Phthalocyanine Blue Crude, Activated Crude and Beta Blue, Ammonium Sulphate, Ammonium Carbonate Liquor, Copper Sludge Waste & Chemical Gypsum etc. which they were permitted to manufacture and export under 100% EOU manufacturing scheme. There is no denying to the fact that required export obligation has been fulfilled by the appellant with regard to their various products and they have been filing regular returns with regard to exports as well as the clearances which have been effected by them availing concessional rate of Central Excise duty as per provisions of Notification No. 23/2003-CE dated 31.03.2003. We find from the record that there is no allegation that the appellant have not fulfilled export obligation as provided under LoP issued by Development Commissioner, KASEZ, Gandhidham. The only dispute which needs to be resolved by us is whether the appellant are entitled to the concessional rate of Central Excise duty on the clearances effected by them on Ammonium Carbonate Liquor and Ammonium Sulphate. It will be relevant to have a perusal of Notification No. 23/2003-CE dated 31.03.2003, which reads as follows:-

> "(i) the goods are cleared into Domestic Tariff Area in accordance with sub-paragraphs (a), (b), (d) and (h) of Paragraph 6.8 of the Export and Import Policy;
>
> (ii) exemption shall not be availed until Deputy Commissioner of Customs or Assistant Commissioner of Central Excise or until Deputy Commissioner of Customs or Assistant Commissioner of Central Excise, as the case may be, is satisfied with the said goods including Software, Rejects, Scrap, Waste or remnants;
>
> (a) **being cleared in Domestic Tariff Ares, other than scrap, waste or remnants are similar to the goods which are exported or expected to be exported from the units during specified period of such clearances in terms of Export and Import Policy;**
>
> (b) the total value of such goods being cleared under sub- paragraphs (a), (b), (d) and (h) of Paragraph of the Export and Import policy, into Domestic Tariff Area from the unit does not excess 50% of the Free on Board value of exports made during the year (starting from 1st April of the year and ending with 31 March of next by the said unit;
>
> (c) the balance of the production of the goods which are similar to such goods under clearance into Domestic Tariff Area, is exported out of India or disposed of in Domestic Tariff Area in terms of Paragraph 6.9 of the Export and Import Policy;"

It is apparent from the above mentioned provisions of exemption notification that the domestic clearance of the product manufactured by 100% EOU can be cleared at concessional rate of duty as per the provisions of Para 6.8 (a) and (g) of the Foreign Trade Policy 2009-204 which reads as follows:-

> "Entire production of EOU / EHTP/STP/BTP units shall be exported subject to following:
>
> (a) Entire production of EOU / EHTP / STP / BTP units shall be exported subject to following: Units, other than gems and jewellery units, may sell goods upto 50% of FOB value of exports, subject to fulfillment of positive NFE, on payment of concessional duties. Within entitlement of DTA sale, unit may sell in DTA, its products similar to goods which are exported or expected to be exported from units. However, units which are manufacturing and exporting more than one product can sell any of these products into DTA, upto 90% of FOB value of export of the specific products, subject to the condition that total DTA sale does not exceed the overall entitlement of 50% of FOB value of exports for the unit, as stipulated above. No DTA sale at concessional duty shall be permissible in respect of motor cars, alcoholic liquors, books, tea (except instant tea), pepper & pepper products, marble and such other items as may be notified from time to time. Such DTA sale shall also not be permissible to units engaged in activities of packaging / labeling / segregation / refrigeration / compacting / micronisation / pulverization / granulation / conversion of monohydrate form of chemical to anhydrous form or vice-versa. Sales made to a unit in SEZ shall also be taken into account for purpose of arriving at FOB value of export by EOU provided payment for such sales are made from Foreign Exchange Account of SEZ unit. Sale to DTA would also be subject 70 to mandatory requirement of registration of pharmaceutical products (including bulk drugs). An amount equal to Anti Dumping duty under section 9A of the Customs Tariff Act, 1975 leviable at the time of import, shall be payable on the goods used for the purpose of manufacture or processing of the goods cleared into DTA from the unit.
>
> ---
>
> (g) By-products included in LoP may also be sold in DTA subject to achievement of positive NFE, on payment of applicable duties, within the overall entitlement of sub-para 6.8(a). Sale of by-products by units not entitled to DTA sales, or beyond entitlements of sub-para 6.8 (a), shall also be permissible on payment of full duties."

From the perusal of the above provisions, it is clear that appellant are entitled for sale of their by-products into Domestic Tariff Area availing benefit of Notification No. 23/2003-CE dated 31.03.2003. We find that the provisions of Foreign Trade Policy under Para 6.8 (a) and (g) of Foreign Trade Policy 2009-2014 as mentioned in preceding paras, provides for sale of goods of 50% of FOB value of exports subject to fulfillment of positive net foreign exchange earnings, on payment of concessional rate of duty. It further stipulates that within entitlement of DTA sale, unit may sell in DTA, its products similar to goods which are exported or expected to be exported from units. It is a matter of record that the appellants have fulfilled the export obligation and only the by-products as mentioned above have been cleared at the concessional rate of duty availing benefit of Notification No. 23/2003-CE dated 31.03.2003.

5.1 We find that provisions of Para 6.8 (g) of the Foreign Trade Policy 2009-2014 specifically covers by-products which can be cleared for the Domestic Tariff Area and reads as follows:-

> "(g) By-products included in LoP may also be sold in DTA subject to achievement of positive NFE, on payment of applicable duties, within the overall entitlement of sub-para 6.8(a). Sale of by-products by units not entitled to DTA sales, or beyond entitlements of sub-para 6.8 (a), shall also be permissible on payment of full duties."

It can be seen from the above provisions of Para 6.8 (g) of the Foreign Trade Policy that by-products can be cleared at the concessional rate of duty if 100% EOU has already achieved positive NFE.

5.2 We find that appellant have fulfilled their export obligation and there is no allegation that NFE has not been achieved by the appellant of permissible export products and therefore, we are of the view that the provisions relating to clearance of its by-products in Domestic Tariff Area at the concessional rate of duty are undoubtedly available to the appellant, more so when NFE has been positive in case of the appellant. While taking the above view, we rely on this Tribunal's decision in the case of DCM Hyundai Limited vs. CCE, Chennai – 2023 (4) TMI 982- CESTAT Chennai, which reads as follows:-

> **"12.** The very same issue was analyzed by the Tribunal in the case of Abi Turnamatics vs. Commissioner of GST & CE (supra) as under:
>
> > **"5.4** The third ground for denial of notification benefit is that the goods cleared in DTA are not "similar" to the goods exported by the appellant. The adjudicating authority in para 11 of the impugned order has relied upon para 3 of Board Circular 7/2006-Cus., dated 13-1-2006 which has observed that there is no definition of "similar goods". Hence to bring clarification and uniformity that the definition of "similar goods" would be based on the definition of similar goods as provided in the Customs Valuation (Determination of Pride of Imported Goods) Rules, 1988. The relevant portion of the Board's clarification is under :-
> >
> > "The term 'similar goods" means "goods which is although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable with the goods which have been exported or expected to be exported having regard to the quality, reputation and the existence of trade mark and produced in the same unit by the same person who produced the export goods."
> >
> > **5.5** In the first place, we find that the Tribunal in the case of Meghmani Industries Ltd. (supra) has addressed the very controversy in respect of the definition of 'similar goods' for exemption under Notification 23/2003-C.E. The Tribunal in the decision after referring to the judgment of the Hon'ble Supreme Court in Wood Craft Products Ltd. - 1995 (77) E.L.T. 23 (S.C.) and of the Tribunal in TELCO - 2000 (126) E.L.T. 1102 (Tribunal) noted that the definitional available in the Customs Act cannot be used in respect of notifications issued under another enactment; that in such cases common parlance or dictionary meaning is to be

applied. Secondly, we find from the green card dated 31-3-2006 issued by the Development Commissioner, MEPZ and subsequently also further revised by MEPZ/SEZ that the main products that was manufactured/exported to be turbo charger components. There is no doubt that the appellant had exported bearing housing whereas the goods to be cleared into DTA seeking benefit of Notification 23/2003 was turbo wheel assembly. While, the adjudicating authority has been at pains to cite the difference in characteristics and function of these two items, the fact remains that both of them are components of turbo charger and hence will surely fall under the broad banded term 'turbo charger components' which is the export product as per the EOU/green card issued to the appellant by the Development Commissioner. Hence when the permission granted to appellant has not listed any specific components of a turbo charger but instead has only indicated export product as 12,50,000 nos. of turbo charger component which was even subsequently enhanced to 32,00,000 nos. of turbo charger components, the appellant cannot then be said to have caused a breach of the conditions. Both bearing housing and turbine wheel are surely component parts of turbo charger, a fact which has been admitted by the adjudicating authority in para 12 of the impugned order. If on the other hand, the permission granted by the Development Commissioner to the EOU was only for bearing housing, in that event, the clearance of turbine wheel which is a part distinct from bearing housing would have come under the scanner. But when the permission is generic and only states "turbo charger components", the condition of the impugned notification gets satisfied so long as the parts that the exported and the parts cleared into DTA are both the components of turbine charger."

13. It can be seen that the open top containers exported by the appellant is similar to the tipper body used for transportation. It is not necessary that the goods cleared into DTA have to be identical to the goods exported by the EOU. Further, permission has been granted by the MEPZ to clear containers which are similar. We therefore find that the denial of the benefit of the notification is not justified. The impugned order demanding differential duty requires to be set aside which we hereby do.**"**

5.3 In view of above we hold that the appellant have rightfully availed the benefit of concessional rate of duty under Notification No. 23.2003-CE dated 31.03.2003 an clearances of its by products..

6. The learned advocate has also contended that the first show cause notice which covers the extended time proviso from June 2009 to May 2014 dated 07.07.2014 is also hit by period of limitation. He submits that all the details have been disclosed by the appellant before the concerned authorities of the department. We take note of the fact that all the details of the goods being manufactured and cleared for export and for the Domestic Tariff Area clearance have been disclosed by the appellant to the authorities from time to time. We reproduce a letter dated 26.09.2013 addressed to Development Commissioner and copy endorsed to Assistant Commissioner as well as Superintendent of Central Excise, Division-II, Vadodara Commissionerate, the same is reproduced below:-

85

Asahi Songwon

September 26, 2013

To,
The Development Commissioner,
Office of the Development Commissioner,
Kandla Special Economic Zone,
Kandla, Gandhidham,
KACHCHH 370 230

Ref.: (1) Letter of Permission No.KASEZ/100%EOU/II/62/2003-04/13937 dtd.05.03.04
Ref.: (2) Letter of Permission No.KASEZ/100%EOU/II/62/2003-04/4577 dtd.31.07.12

Sub.: Annual performance report for the Period of April '12 - March '13

Respected Sir,

We are enclosing herewith ***"Annual Performance Report"*** of 100% EOU for the Period of **April'2012 to March'2013** in prescribed format Annexure-IV, duly Certified by Chartered Accontant..

Hope you will find the above in order.

Thanking you,

Yours faithfully,
For ASAHI SONGWON COLORS LTD.

AUTHORISED SIGNATORY

CC To: The Asst. Commissioner,
C. Ex. & Customs office,
Division-II, Vadodara-I,
Race Course, Vadodara.

The Superintendent
C. Ex. & Customs Office,
Range-II (Padra),
Padra, Dist. Vadodara.

केन्द्रीय उत्पाद शुल्क
Central Excise
सहायक आयुक्त
30 SEP 2013
Div.-II
मण्डल-II वडोदरा-I
No.

S.B.Parmar
INSPECTOR / निरीक्षक
C.Ex.Customs/ केन्द्रीय उत्पाद एवं सीमाशुल्क
Range-II(Padra)/ रेन्ज-IIपादरा.
Div.II Vadodara-1/ मण्डल-IIवडोदरा-१

Asahi Songwon Colors Ltd.
Corporate office:
"Asahi House" Chhatral - Kadi Road, Indrad – 382721. Mehsana, India.
Tele: 91-2764 233 007 - 10 • Fax: 91-2764 233 020 • E-mail: admin@asahisongwon.com
Works:
Block No.429-432, ECP Channel Road, Village: Dudhwada, Taluka: Padra, District: Vadodara – 391450
Tele: 91-2662 273657 – 58 • Fax: 91-2662 273688 • E-mail: admin@asahisongwon.com

86

ANNEXURE – IV

FORMAT FOR ANNUAL PROGRESS REPORT FOR THE WORKING UNITS
PERIOD OF REPORTING: ANNUAL: *APRIL '2012 - MARCH '2013*

1. Details of the unit:
   a) Name of the unit : M/s. ASAHI SONGWON COLORS LTD.
   b) IEC No. : 0893007625

2. PERIOD OF REPORTING : **APRIL '2012 TO MARCH '2013**

3. Approval No. & Date : KFTZ/100% EOU/II/62/2003-04/13937 DTD.05.03.2004
   KFTZ/100% EOU/II/62/2003-04/Vol-I/4577 DTD.31.07.2012

4. Item of manufacture/service – Annual Capacity (Details of all items to be provided)

Sr #	Name of Finish Products	Annual Capacity
A	1) Copper Phthalocyanine Blue Crude (CPC Blue Crude) 2) Beta Blue 3) Activated Crude Crude (ACC Blue Crude)	17000 MT. Per Annum.
B	1) Pigment Alpha Blue15/15.1 2) Pigment Violet – 23 3) Polychloro Copper Phthalocyanine Green-7/36	5000 MT. Per Annum.

5. Factory Location / Address / Telephone No. : Block No.429-432, Vill. Dudhwada, Tal. Padra, Dist. Vadodara. Tel. No. (02662) 273657-58,

6. Regd. Office Address/Tel/Fax No. : ASAHI SONGWON COLORS LTD;
   "Asahi House", Chhatral- Kadi Road,
   Indrad, Mehsana – 382 721
   Tel. No. (02764) 233007
   Fax No.(02764) 233020

7. (a) e-mail Address (Compulsory) : admin@asahisongwon.com
   (b) Web Site (Compulsory) : www.asahisongwon.com

8. Date of commencement of production : 13.03.2005 (Trial Production)

9. Details of Foreign Exchange Inflow/ Outflow : INFLOW : Rs.13028.10 Lac

   OUTFLOW : Rs. 3672.92 Lac (Raw Materials)
   Rs. 13.48 Lac (Capital Goods)
   Rs. 56.29 Lac (Travel)
   Rs. 12 .12 Lac (Commission)
   Rs. 19.46 Lac (Dividend)

   Total : Rs. 3774.27 Lac

J. K. PARMAR & CO. M. No. 12138 AHMEDABAD CHARTERED ACCOUNTANTS

Asahi Songwon Dudhwada

Contd ... 2/-

87

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EXPORT (INFLOW)

			(Rs. In lac)	$ in Million (Ex. Rate 54.34)
10.	FOB value of exports for the year :			
	a)	GCA exports :	13155.02	24.21
	b)	RPA exports :	NIL	NIL
	c)	Total :	13155.02	24.21
11.	(a)	Goods sold in DTA in terms of Para 6.9(b) for year :	NIL	
	(b)	Deemed exports for other Categories during the year :	829.43 (Against CT-3) 93.13 (Against CT-1) ------------- Total 922.56 (Figures as per Annexure "F", para B & C)	
12.	Cumulative exports up to the current year.		: Rs. 64067.25 Lac Rs. 6630.58 Lac (Deemed Export) (From March '05 to March '13)	
13.	Cumulative exports up to the previous year		: Rs. 50912.23 Lac Rs. 5708.02 Lac (Deemed Export) (From March '05 to March '12 Figures inclusive of Deemed Export)	
14.	Country-wise details of exports		(ANNEXURE 'A' ENCLOSED)	

IMPORT (OUTFLOW)

		(Rs. In Lac)	$ in Million (Ex. Rate 49.47)
15.	Opening balance of imported RM, Consumables, spares, etc. during the year :	144.450	00.292
16.	Raw materials/consumables/components: Spares etc. imported during the year	4385.178	08.864

(ANNEXURE 'B' ENCLOSED)

Contd ... 3/-

J.K. PARMAR & CO. CHARTERED ACCOUNTANTS AHMEDABAD M. No. 34138

Asahi Songwon Dudhwada

88

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17.	RM/ Consumables etc. transferred to other units during the year	:	NIL	
18.	RM / consumables etc. received under the inter-unit transfer during the year	:	NIL	
19.	Cumulative import of RM / consumable Etc. during the year	: Rs.	4385.178	08.864
20	Imported RM / Consumables etc. CONSUMED during the year	: Rs.	4413.499 Lac	08.922
	TOTAL	Rs.	4413.499 Lac	08.922
21	Closing balance of imported RM/ Consumables etc, at the end of year	: Rs.	116.129 Lac	00.235
22	Opening balance of imported capital goods: including spares (Value of capital goods year-wise since inception to be annexed)		NIL	
23.	Import of capital goods including spares during the year	: Rs.	13.201 Lac (ANNEXURE 'C' ENCLOSED)	
24.	Capital goods including spares received under inter-unit transfer	:	NIL	
25.	Capital goods including spares Transferred Inter-unit transfer	:	NIL	
26.	Cumulative imports of capital goods Including spares during year	: Rs.	13.201 Lac	
	Sub-Total [Column No. 19 + Column 26]	: Rs.	4398.379 Lac	

27. Other FE outflow (Royalty/ technological Know-how/investment / Dividend payment/ Travel / Commission etc.) During the year :

Travel	:	Rs. 56.29 Lac
Tech. Fees	:	Rs. 0.00 Lac
Dividend	:	Rs. 19.46 Lac
Commission	:	Rs. 12.12 Lac
TOTAL	:	Rs.87.87 Lac

(Cumulative for the current financial year)

TOTAL OUT FLOW [Column No. 19 + 26 + 27] : Rs. 4486.249 Lac

Contd ... 4/-

89

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28.	Net foreign exchange earning (NFE)	:	67.93 % Achieved (Cumulative for the current Financial Year)	
29.	Opening balance of indigenous capital Goods including spares during the year	:	NIL	
30.	Purchase of indigenous capital goods During the year	:	Rs. 721.476 Lac (ANNEXURE 'D' ENCLOSED)	
31.	Cumulative balance of indigenous Capital goods purchased during the year	:	Rs. 0.000 Lac (Purchased & Issued to Plant for use)	
32.	Opening balance of indigenous RM/ Consumables etc. during the year	:	Rs. 162.896 Lac (R.M., FUEL & PACKING MTRL)	
33.	Purchase of indigenous RM/ Consumables etc during the year	:	Rs. 4559.558 Lac (R.M.& FUEL & PACKING MTRL) (ANNEXURE 'E' ENCLOSED)	
34.	Cumulative balance of indigenous RM/ Consumables purchased during the year	:	Rs. 252.122 Lac	

DTA SALE

35.	(a)	Sales of goods effected in DTA if any	:	Quantity	Value
		FP (Duty Paid)		564300.000 KGS	154065612.00
				(Figures as per Annexure "F" para A)	
	(b)	Sales of rejects in DTA if any	:	Quantity	Value
				NIL	NIL
	(c)	Sale of Waste/Scrap/Remnant	:	Quantity	Value
			*	346480.000 KGS	363741.00
	(d)	Sale by product	:	Quantity	Value
				656660.00 KGS	475517.00
	(e)	Total	:	Quantity	Value
		Finished product		564300.000 KGS	154065612.00
		By Products		656660.000 KGS	475517.00
		Waste *		346480.000 KGS	363741.00

*** On full duty payment.**

J. K. PARMAR & CO. CHARTERED ACCOUNTANTS AHMEDABAD

Asahi Songwon Dudhwada

Contd ... 5/-

90

:: 5 ::

36.	DTA sale on full duty	:	Quantity 346480.000 KGS		Value 363741.00
37.	Items of manufacture / service Annual Capacity (at the end of financial year)	:	10000 M.T. P. A. FP		
38.	Foreign/NRI/Indian investment (to be Submitted quarterly / annually)	:	Foreign	NRI	Indian (As on 31.03.2013)
i)	Authorised capital	:	Nil	Nil	Rs.2000.00 Lac
ii)	paid up capital	:	Nil	Nil	Rs.1227.23 Lac
iii)	Foreign Direct Investment	:	(I) Approved : Rs. 86.52 Lac (II) Actual Inflow During the year : Rs. NIL Lac (III) Cumulative Balance for the year (excluding Share Premium) : Rs. 86.52 Lac		
iv)	NRI capital	:	(I) Approved : Nil (II) Actual Inflow During the year : Nil (III) Cumulative Balance for the year : Nil		

39. Employment :

			Total	Managerial	Skilled	Unskilled
a)	No. of Male workers employed in The unit	:	301	15 Pern.	158 Pern.	128 Pern.
b)	No. of Women workers employed in the unit	:	01	00 Pern.	01 Pern.	00 Pern.
c)	TOTAL (a + b)	:	**302**	**15Pern.**	**159 Pern.**	**128 Pern.**

Contd ... 6/-

J. K. PARMAR & CO. CHARTERED ACCOUNTANTS AHMEDABAD

Asahi Songwon

91

:: 6 ::

40. OTHER INFORMATION:

a)	Goods exported without GR Forms under intimation to the Development Commissioner of SEZ such as (i) imported goods found defective for the purpose of replacement by foreign suppliers or collaborators, imported goods on loa basis, export of free samples, surplus goods imported from foreign suppliers or collaborators free of cost for production operations, consignments imported for participation in exhibitions etc. (only for SEZ Units)	N.A.
b)	Overseas investment Overseas investment made by the unit at the end of last quarter / year c) Less than one years Amount in $ d) More than one years Amount in $ (only for SEZ Units)	NIL
c)	Cases of Pending Foreign Exchange Cases of pending Foreign Exchange realisation outstanding for more than 180 / 360 days at the end of last quarter / financial year (180 days for EOU/EPZ units and 360 days for SEZ Units)	NIL
d)	External Commercial borrowing External commercial borrowing pending at the end of last quarter / year (a) Less than three years Amount in $ (b) More than three years Amount in $	NIL
e)	Revenue contribution Revenue contribution by EOU/EPZ/SEZ units (a) Excise duty on DTA sale during the financial year i) For FP Rs.25988019.00 ii) For By Products Rs. 1335759.00 iii) For Waste Rs. 77284.00	Rs. 274.01 Lac
	(b) Income tax paid, if any, during the financial year Rs.333.32 Lacs (MAT)**	
	(c) State taxes, cess duties & levies (including CST paid on domestic procurement) i) For CST Rs. 89.30 Lac ii) For GST Rs.103.95 Lac	Rs. 193.25 Lac
	(d) Tax deducted at source in respect of employees.	Rs. 5.23 Lac

** **The Company has paid advance tax of Rs.333.32 Lac for the financial year 2012-2013.** The process of determining of taxable income is on. This will be finalized within one month from now. The above tax paid is not only for DTA sales of EOU.

For. J. K. PARMAR & CO.
Chartered Accountants
(J. K. PARMAR)
Proprietor

FOR ASAHI SONGWON COLORS LTD.
[100% EOU]
AUTHORIZED SIGNATORY
(SIGNATURE)
With seal of Co.

Notes: -

1) The above information should be given separately for each letter of Permission
2) The information given in the formats for APRs should be authenticated by the authorized signatory of the unit and should be certified for its correctness by a Chartered Accountant, with reference to the account records and registers maintained by the unit.
3) APRs must be submitted electronically only if the zones have provided on line facilities
4) The signature of the authorised signatory of the unit must be sent to the zone electronically.

From perusal of above letter and its contents, it is clearly established that the appellant have been informing the department about the by-products which have been cleared by them availing concessional rate of duty under Notification No. 23/2003-CE dated 31.03.2003. We find that element of fraud, mis-representation, suppression of facts with intention to evade duty are not present in this case and therefore, we do not find it legally sustainable to invoke extended time proviso under Section 11A of Central Excise Act, 1944 for demanding Central Excise duty. We therefore, hold that first show cause notice is barred by period of limitation also.

7. Since, we are allowing the appeals of the main appellant on merit, we find no reason for imposition of penalty on Shri A.K.Nayak and accordingly, we set aside the penalty imposed an appellant Shri A.K.Nayak.

8. In view of above discussion, we hold that impugned orders-in-appeal are without any merits. We set-aside the same. Appeals are accordingly allowed.

(Pronounced in the open court on 13.09.2024)

(Ramesh Nair)
Member (Judicial)

(C L Mahar)
Member (Technical)

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