

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.3

CustomsAppeal No.10028 of 2024

(Arising out of OIO No.AHM-CUSTOM-000-PR-COM-23-23-24 dated 15.12.2023
passed by Commissioner (Appeals)–Ahmedabad)

Sahjanand Medical Technologies Ltd.

...Appellant

Plot No. 32 to 35 and 52 to 54
Surat Special Economic Zone,
Sachin, Surat-394230

VERSUS

C.C.-Ahmedabad

...Respondent

Custom House,
Near All India Radio Navrangpura,
Ahmedabad-Gujarat

WITH

Customs Appeal No. 10029 of 2024

(Arising out of OIO No.AHM-CUSTOM-000-PR-COM-23-23-24 dated 15.12.2023
passed by Commissioner (Appeals)–Ahmedabad)

Vascular Concepts Ltd.

...Appellant

Plot No. 7C, KIADB Industrial Area
Bangluru Rural, Bangluru-561203

VERSUS

C.C.-Ahmedabad

...Respondent

Custom House,
Near All India Radio Navrangpura,
Ahmedabad-Gujarat

AND

Customs Appeal No. 10030 of 2024

(Arising out of OIO No.AHM-CUSTOM-000-PR-COM-23-23-24 dated 15.12.2023
passed by Commissioner (Appeals)–Ahmedabad)

Sahjanand Medical Technologies Ltd.

...Appellant

Sahajanand Estate
Wakharia Wadi, Nr Dabholi Char Rasta
Ved Road, Surat-395004

VERSUS

C.C.-Ahmedabad

...Respondent

Custom House,
Near All India Radio Navrangpura,
Ahmedabad-Gujarat

APPEARANCE:

Shri Vipul Khandhar, Chartered Accountant appeared for the Appellant
Shri Girish Nair, Assistant Commissioner (Authorized Representative) for the
Respondent

CORAM:

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

Final Order No. 12708-12710 /2023

DATE OF HEARING: 07.11.2024
DATE OF DECISION: 14.11.2024

RAMESH NAIR

These appeals are directed against order-in-original No. AHM-CUSTM-000-PR-COM-23-23-24 dated 15.12.2023 passed by Commissioner (Appeals) – Ahmedabad wherein the demand of differential custom duty on the ground of under valuation has been confirmed against the appellant's SEZ unit along with penalty and also imposed penalties on co-appellant who are appellant's DTA buyers of the goods. The value of the goods cleared by SEZ unit is not proper and correct. It was contended in the impugned order that the appellant's SEZ unit who supplied the goods and the buyer in DTA are related persons, therefore, the price cannot be considered as a sole consideration. The price was enhanced by relying on the price of identical goods cleared by another SEZ M/s Purple Medical Solution Private Limited who are located in the same SEZ. The adjudicating authority have also discarded the CAS-4 Certificate given by the appellant on the ground that there are other expenditure such as R&D etc. which were not taken into consideration to arrive at the value as per CAS-4. Being aggrieved by the order-in-original, appellant preferred the present appeals.

2. Shri Vipul Khandhar, learned Chartered Accountant appearing on behalf of the appellant raised multiple issues countering the finding of the adjudicating authority. He submits that in case of supply from SEZ, the DTA buyer is treated as importer and who is legally supposed to file the bill of entry, therefore, if at all any duty demand is made, the same can be raised only against the DTA buyer and not against the SEZ supplier therefore on this ground itself, the demand is not sustainable. He further submits that as per section 17(4) if at all the declared value was not acceptable to the department, the customs must have reassessed the bill of entry only then the demand of differential duty can be made. However, in the present case without reassessment straightaway demand was raised which is not correct. As regard the contention of the Revenue that SEZ Unit and DTA Unit are related, he submits that the SEZ Unit and DTA Unit are operated under different Act, therefore, both the units should be treated as unrelated and on that ground valuation of goods cannot be disputed. He further submits that for enhancement of the value, Customs Valuation Rules were not followed, therefore, the demand is not sustainable. As regard, the adoption of value of third party SEZ sale of goods in DTA, it is his submission that it is not justifiable of third party clearances, it is his

submission that there are lot of variations such as size of unit manufacturing facility quantum of supply, turn over etc., between the appellant's SEZ unit and M/s Purple Medical Solutions Private Limited, therefore, the price of Purple Medical Solutions Private Limited cannot be adopted for the clearance of appellant's SEZ Unit. He further submits that as regard, the cost working i.e. CAS-4 submitted by the appellants, the same has to be accepted when no contrary price was brought on record. He further submits that the major amount of duty is IGST which is available as input tax credit to the buyer of the goods, therefore, as regard payment of differential IGST there is a Revenue neutral situation, on this ground also, the demand is not sustainable. He submits that in view of above submissions since the demand of differential duty itself is not sustainable consequential demand of interest and penalties, fine are also not sustainable. He also submits that there is no suppression of fact on the part of the appellant, the price was declared by the appellant and no any material which shows that the price was undervalued at the time of filing the bill of entry, therefore, there is no suppression of fact on the part of the appellant, hence the demand is also hit by limitation. In support of his submission, he placed reliance on the following judgments:

- Tega Industries Ltd. 2022 (67) GSTL 81 (Tri. Amd.)
- Essar Project India Ltd. 2019 (369) ELT 1547 (Tri. Amd)
- ITC Ltd. 2019 (368) ELT 216 (SC)
- Jairath International 2019 (370) ELT 116 (P&H)

3. Shri Girish Nair, learned Assistant Commissioner (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. We have carefully considered the submission made by both the sides and perused the records. We find that the learned counsel have raised multiple points to challenge the enhancement of the valuation of goods cleared from SEZ Unit to the DTA. The issue as regard whether the appellant being a SEZ Unit is required to pay the duty or the DTA buyer is required to pay the duty is a very contentious issue which needs to be dealt with applying the SEZ Act and Customs Act intendum. We find that the adjudicating authority has not given a proper finding on this issue. Second it is also observed that the Revenue has disputed the CAS-4 Certificate submitted by the appellant SEZ Unit in support of their declared value however the adjudicating authority has raised the dispute that certain expenditure such as R&D etc. were not taken into consideration to arrive at the cost of the product in CAS-4, therefore he rejected the price arrived at on the basis of CAS-4 Certificate. In this regard,

we find force in the discussion of the learned adjudicating authority however the appellant shall be granted an opportunity to explain the costing of the product arrived at in the CAS-4 Certificate. Therefore, on this count also, the matter needs to be reconsidered. The appellant have vehemently submitted that though the price of third party clearance was applied in the present case however the various factors such as the size of the manufacturing facility, turn over, quantum of clearance and the quality of products have to be considered to apply the price of comparable goods which in our view the adjudicating authority has not properly verified such factors, therefore, on this count also the matter needs to be reassessed. The appellant have also raised the issue of time bar, therefore, on all the issues, the adjudicating authority must give elaborate finding dealing with each and every defense made by the appellants. Therefore, we are of the considered view that entire matter needs to be re-considered on all the issues. We, therefore, set aside the impugned order and allow the appeals by way of remand to the adjudicating authority for passing a fresh de-novo order.

(Pronounced in the open court on 14.11.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Neha