

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

REGIONAL BENCH- COURT NO. 3

EXCISE APPEAL NO. 11078 OF 2017-DB

(Arising out of OIO-VLD-EXCUS-000-COM-048-16-17 Dated 15/02/2017 passed by
Commissioner of Central Excise, Customs and Service Tax-VAPI)

Bayer Vapi Pvt Limited

Plot No.306/3, 143, 2nd Phase,
Gidc, Vapi,
VAPI,GUJARAT

.....Appellant

VERSUS

Commissioner of C.E. & S.T.-Vapi

4TH FLOOR...ADHARSH DHAM BUILDING,
OPP. TOWN POLICE STATION, VAPI-DAMAN ROAD, VAPI
VAPI,GUJARAT-396191

.....Respondent

APPEARANCE:

Shri Jitendra Motwani, Advocate with Miss Sweta Garge, Advocate appeared for
the Appellant

Shri Mihir G Rayka, Additional Commissioner (AR) appeared for the Respondent

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

FINAL ORDER NO. 12843/2024

DATE OF HEARING:09.10.2024
DATE OF DECISION: 26.11.2024

RAMESH NAIR

This appeal has been filed against the impugned Order-in-Original No.VLD-Excus-000-COM-048-16-17 dated 15-02-2017 passed by the Commissioner of Central Excise, Customs and Service Tax, Valsad Commissionerate. The main issue before us is whether the Learned Commissioner is correct in confirming the central excise demand on debonding of a 100% EOU unit to DTA, on finished and semi-finished goods, which are either exported on bond or cleared in domestic market on payment of excise duty, during 18.12.2012 (cutoff date) to 15.02.2013 (final exit order).

1.1 The brief facts of the case are that the appellant is engaged in the manufacture of agrochemicals. On 24-12-2012 the appellant, then 100% EOU, sought permission from the central excise department to convert the

100% EOU into DTA. The department issued 'no dues certificate' on 16.01.2023 basis which Deputy Development Commissioner, Kandla issued 'final exit order' on 15.02.2013. Subsequently, during the department audit in December 2013, preventive officers were called for verification of quantum of finished goods on cutoff date of EOU and during the said inquiry statements of office bearers of appellant were recorded. Upon concluding inquiry, a show cause notice dated 17.12.2013 was issued demanding central excise duty of Rs. 5,75,13,596/-, alleging that the appellant has not paid the duty on finished goods lying in their EOU unit on the cutoff date of debonding and by virtue of the said act the appellant has contravened para 6.18 of Foreign Trade Policy read with appendix 14-I-L of the Hand Book of Procedures which requires for payment of customs and excise duty on debonding. During inquiry the appellant paid duty of Rs. 9,35,522/- along with interest of Rs. 1,65,164/- on 11.12.2013. Further, under protest payment of Rs. 3,50,94,584/-, and Rs. 2,14,83,490/- was made on 17.12.2013 and 27.12.2013, respectively. The SCN was adjudicated by the Learned Commissioner whereby the central excise demand has been confirmed along with interest and equal penalty. Aggrieved by the said order, the appellant has filed the present appeal.

2. Shri. Jitendra Motwani, the Learned Counsel with Miss Sweta Garge, Advocate, appearing on behalf of the appellant made detailed arguments before us.

- a) Para 6.18 of FTP read with appendix 14-I-L of the HBP does not mandate payment of duties on semi-finished goods and the unit is permitted to export finished goods without any payment of duty.
- b) He further argued that the finished goods may acquire the character of excisable goods on de-bonding, duty on the same would be

payable only when the said goods are cleared from the factory and not before that. He relied on below mentioned decisions to argue that the duty on finished goods is not to be paid on debonding but is to be paid on clearance:

- (i) Commissioner of Customs and Central Excise, Vadodara v/s Solitaire Machine Tools Pvt. Ltd.- 2003 (152) ELT 384 (Tri-Mum);
- (ii) Jubilant Life Sciences v. CCE, Meerut II - 2013 (11) TMI 1213 CESTAT New Delhi.

c) He also argued that the department has wrongly considered the goods lying in WIP stage as finished goods. He explained that the goods manufactured by the appellant are wide array of agricultural and environmental science products including organic chemicals and other chemical products which do not reach the finished product stage unless mandatory quality checks are carried out. Since without completing the quality check, the said goods are not marketable, they are out of purview of Section 2(d) of the Act which defines 'excisable goods'. He relied on below mentioned decisions to argue that no duty is payable on semi-finished goods on debonding:

- (i) Tirumala Seung Han Textiles Ltd V/s. Commissioner of Central Excise, Hyderabad, 2008 (9) TMI 252 CESTAT Bangalore as upheld by Hon'ble Andhra Pradesh High Court 2016 (3) TMI 1317 (HC-AP);
- (ii) Lupin Ltd V/s. CGST & CE Bhopal 2019 (2) TMI 937 CESTAT New Delhi;
- (iii) CGST & CCE, Trichy V/s. EID Parry India Limited 2018 (8) TMI 1494, Hon'ble Chennai Tribunal;
- (iv) IPCA Laboratories Ltd V/s. CCE & ST, Surat-II 2022 (11) TMI 336-CESTAT Ahmedabad.

- d) He relied on the CA certificate dated 15.11.2016 which provides for actual exports which took place from 18.12.2012/cutoff date to 15.02.2013/date of debonding. Relying on the CA certificate, he provided a product wise explanation that entire quantity of goods on which the demand is confirmed stands exported or cleared domestically on payment of duty. Therefore, no duty is required to be paid. The said report is not disputed by the department.
- e) He submitted that the Learned Commissioner, while confirming the demand, heavily placed reliance on some letter dated 20.01.2017 apparently issued by the Jurisdictional Assistant Commissioner allegedly verifying the correctness of the facts of clearance of goods in export and domestic clearance on payment of duty, however, copy of the same was not provided to the appellant. The documents relied upon in the adjudication order are required to be supplied to the appellant in terms of principles of natural justice as has been held by the Hon'ble Supreme Court in Kothari Filaments v. Commissioner — 2009 (233) E.L.T. 289 (S.C.). Also, the CA certificate which is tangible evidence submitted by the appellant was ignored. He argued that both actions of the Learned Commissioner are contrary to the principles of natural justice.
- f) On allegation of mis declaration or suppression, he submitted that no dues certificate was issued to appellant after due verification and no fact was hidden and therefore allegation of mis declaration or suppression cannot sustain.
- g) He also pointed out that there is a calculation error in demanding the duty and even if duty liability sustains, in terms of Notification

23/2003-C.E dated 31.03.2003, it would be Rs. 3,50,94,584/- and not Rs. 5,75,13,596/-.

h) He argued that penalty under Section 11AC has been wrongly imposed as the appellant has not contravened any provision and when the debonding was done after issuance of 'no due certificate' after due verification, penalty has to be dropped.

3. Shri. Mihir Rayka the Learned Departmental Representative appearing for the Revenue opposed the contention of the appellant and reiterated the findings made in the impugned order by the Learned Commissioner.

4. We have carefully considered the submissions made from both the sides and perused the records. Ongoing through the entire facts of the case, relevant legal provisions and decisions relied upon by the appellant in paragraph 2 above, prima facie, we are of the view that the issue of non-payment of central excise duty on final goods on debonding is settled in favour of appellant. Also, prima facie, the other issue that no duty is payable on semi-finished goods is settled in favour of appellant in terms of decisions relied upon in paragraph 2 above. However, it is seen that although the Learned Commissioner took verification report dated 20.01.2017 from jurisdictional office, the same was not furnished to the appellant. The Hon'ble Supreme Court in *Kothari Filaments v. Commissioner* — 2009 (233) E.L.T. 289 (S.C.) has held that documents relied upon in the adjudication order are required to be supplied to the appellant in terms of principles of natural justice. We find considerable force in appellant's submission that question of demand of excise duty does not arise if goods are exported which fact can be verified from the CA certificate

dated 15.11.2016 which was submitted before the Learned Commissioner, however, the same was not considered. The same needs to be considered.

4.1 In the above fact, we are of the view that the matter needs to be reconsidered by the Learned Commissioner/ adjudicating authority by (i) providing the letter dated 20.01.2017 issued by the jurisdictional Assistant Commissioner to the appellant; and (ii) considering the CA certificate dated 15.11.2016 to ascertain claim of export of goods, along with other evidence which may be put on record by the appellant. We direct the adjudicating authority to give the said letter dated 20.01.2017 to the appellant well in advance and to grant an opportunity of hearing before passing reasoned order in the matter. While deciding the matter the decisions relied upon by the appellant are to be considered.

5. Accordingly, we set aside the impugned order and allow the appeal by way of remand to the adjudicating authority for passing a fresh order.

(Pronounced in the open court on 26.11.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)