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

REGIONAL BENCH- COURT NO.1

Customs Appeal No.10961 of 2021

(Arising out of OIO-AHM-CUSTM-000-COM-003-21-22 dated 02/09/2021 passed by Commissioner of CUSTOMS-AHMEDABAD)

GALAXY SURFACTANTS LIMITED **.........Appellant**
Plot No 892 Jhagadia Industrial Estate
Bharuch, Bharuch, Gujarat

VERSUS

C.C.-AHMEDABAD **......Respondent**
Custom House, Near All India Radio Navrangpura,
Ahmedabad,, Gujarat

WITH
Customs Appeal No.10319 of 2022

(Arising out of OIO-AHM-CUSTM-000-COM-019-21-22 dated 21/12/2021 passed by Commissioner of CUSTOMS-AHMEDABAD)

GALAXY SURFACTANTS LIMITED **.........Appellant**
Plot No 892 Jhagadia Industrial Estate
Bharuch, Bharuch, Gujarat

VERSUS

C.C.-AHMEDABAD **......Respondent**
Custom House, Near All India Radio Navrangpura,
Ahmedabad,, Gujarat

APPEARANCE:
Shri Arjun Raghavendra, Advocate, for the Appellant
Shri Girish Nair, Assistant Commissioner (AR) for the Respondent

CORAM: HON'BLE MEMBER (TECHNICAL), MR. RAJU
HON'BLE MEMBER (JUDICIAL), MR. SOMESH ARORA

Final Order No. 12972-12973/2024

DATE OF HEARING: 24.09.2024
DATE OF DECISION:03.12.2024

RAJU

Learned counsel for the appellant pointed out that the appellants are Export Oriented Unit. The appellant are entitled to availed Notification No. 52/2003-Cus., dated 31.03.2003. The appellants also claimed the benefit of Notification No. 50/2017-Cus., dated 13.06.2017 and Notification No. 46/2011-Cus., dated 01.06.2011. The Revenue is of the view that the appellant could not have availed any exemption under notifications other than that provided under Notification No. 52/2003-Cus., which is specially designed for Export Oriented Unit (EOU).

2.1 Learned Counsel argued that there is no bar in any law which prohibits Export Oriented Unit (EOU) from availing benefits of notifications other than Notification No. 52/2003-Cus. He argued that each Exemption Notification is self contained and hence restriction provided in Export Oriented Unit (EOU) Notification No. 52/2003-Cus, if any, cannot apply to exemptions contained other notifications like 50/2017-Cus., or 46/2011-Cus. He further argued that none of these notifications prescribed any restriction for EOU. Learned counsel argued that while Notification No. 52/2003-Cus., is specially designed for EOU's but It is merely on option. The EOU's are free to avail any other notification.

2.2 Learned Counsel also relied on the clarifications issued by DGEP and TRU. He argued that the said clarification issued Vide F. DGEP/EOU/450/2006 dated 09.02.2007 and clarification issued vide D.O.F.No. 334/7/2017-TRU dated 01.02.2017 clearly allowed the EOU's to avail notifications other than Notification No. 52/2003-Cus.

2.3 Learned Counsel also argued that all the facts were declared in Bill of Entry at the time of import. In these circumstances, no suppression or misdeclaration cannot be alleged to invoked extended period of limitation and no penalty can be imposed.

3. Learned AR relied on the decision of Larger Bench of Tribunal in the case of Jaipur Golden Transport Co. Ltd.-2007 (215) ELT 503 (Tri-LB) wherein it has been held that EOU and DTA units are treated differently. He relied on para 14 of the said order which reads as follows:-

> ***"14.*** *We have considered the submissions. We find that the wordings of proviso to Section 3(1) of the Central Excise Act and Notification 125/84 which we have been called upon to interpret are similar and the basic dispute is as to how the words "allowed to be sold in India" are to be interpreted. After going through the various submissions made by both sides, we find that 100% EOUs were allowed to be established with the sole purpose of exporting 100% of their production as is evident from the words 100% EOUs. However, on account of certain hardship faced in getting export order, sales in DTA up to 25% were permitted from the year 1984 but there was a clear intention to distinguish between such sales by the 100% EOU from the sales by domestic units other than 100% EOU and it was for this purpose that proviso to Section 3(1) and Notification 125/84 was introduced. Since there were only two modes of clearance in which the 100% EOUs could have cleared the goods i.e. one by export and the other by domestic sale after obtaining the permission of the Development Commissioner, in respect of domestic sales the words "allowed to be sold in India" were incorporated in both the provisos. The fact however remains that 100% EOUs were never treated at par with other domestic units and for all practical purpose they were considered as units located outside India and accordingly Central Excise duty equal to amount of duties of customs leviable on like or similar goods manufactured outside India when imported into India was made applicable. In fact a different procedure was carved out and a separate Chapter VA was inserted in Central Excise Rules relating to removal of goods from free trade zone and 100% EOU for home consumption and many provisions of the Central Excise Rules were made inapplicable. Even exemption notifications issued under Rule 8 were made inapplicable unless notification itself said so. The intention of the legislature and the purpose of introducing proviso to Section 3(l) and Notification 125/84 is therefore very evident that 100% EOUs are to be treated differently from other domestic units. We are therefore in agreement with the plea raised by the Revenue that no interpretation which would have the effect of defeating the very statutory provision shall be given. It has also been observed by Supreme Court in British Airway's case that while interpreting the statute, courts are required to keep in mind, the consequences which are likely to flow up on the intended interpretation that it is the duty of the court to give a harmonious construction of a statute and that such a construction shall suppress the mischief and advance the remedy. Further as observed by the Supreme Court in the case of Ispat Industries it is no where laid down by our constitution or any other law that only Maxwell's Principles of Interpretation can be used by the court. We can use any system of interpretation which helps*

us solve the difficulties like the mimansa of principle of interpretation which lay down that when there is the conflict between the purpose and the material, purpose is to prevail because in the absence of the prescribed material a substitute can be used, for the material is subordinate to the purpose. If a subordinate idea clashes with the principal idea, the former must be adjusted to the latter or must be disregarded altogether. Further when there is a conflict between the use and the substance, greater regard should be paid to the use. Following these principles, we find that the purpose all along has been to treat 100% EOUs differently from domestic units other than 100% EOU and therefore we hold that so long an hundred per cent EOU continues as an EOU, it will be within the proviso to Section 3(1) of the Central Excise Act and a mere violation of the permission in the matter of sale to DTA will not take it outside the proviso to Section 3(1) of the Central Excise Act and Notification 125/84-C.E. Any other interpretation will mean that while the law abiding assessee will be liable to pay duty on domestic clearances, others violating the law can conveniently escape duty liability and this would be against the principle of suppressing mischief and advancing remedy."

4. We have considered the rival submissions. We find that facts of the case are that appellant M/s. Galaxy Surfactant limited, a unit registered at Export Oriented Unit (EOU), sought to clear goods under Notification No. 50/2017 dated 30.06.2017 and Notification No. 46/2011-Cus., dated 01.03.11. In the ordinarily course of business, the appellants would avail benefit of Notification No. 52/2003-Cus., dated 31.03.2003 which is specifically designed for Export Oriented Unit (EOU).

4.1 Notification 52/2003-Cus., prescribes nil rate of duty for goods imported by Export Oriented Unit (EOU). The said exemption is subject to a large number of restrictions regarding use of the said goods for the purposes of production of goods for the purpose of export. There are also restrictions regarding what can be imported in as far as the goods required to be imported are to be certified by the jurisdictional authorities as needed for the manufacture of goods in the Export Oriented Units (EOU). There are restrictions to the effect that of all the imports made by the Export Oriented Unit under Notification No. 52/2003-Cus., need to be consumed in prescribed manner. The consumption of goods and manufacture of goods out of the imported goods has to be duly accounted for. In this regard, the notification also prescribes a bond. The license premises are also required to be registered under Section 59 of the Customs Act, 1962 as warehouse. If any goods manufactured in the Export Oriented Unit (EOU) are to be cleared in Domestic Tariff Area then the same need to be done in terms of the various conditions is specified under Notification No. 52/2003-Cus. In other words Notification No 52/2003-Cus., is a notification which requires the importer to use the goods for the specified purposes and also account for all the goods manufactured out of the goods imported under Notification No. 52/2003-Cus. The said notification also requires the appellant to fulfill export obligation the terms of the Exim Policy. The said notification also permits to Export Oriented Units, the import capital goods duty free. The goods cleared from the Export Oriented Units into Domestic Tariff Area are treated as imports and are liable to duty in terms of proviso to Section 3A of the Central Excise Act, 1944. This is done specially to provide Level Playing Field to domestic manufacturers as the export Oriented Units are allowed to import their inputs and capital goods without payment of duty.

4.2 Notification No. 50/2017-Cus. and 46/2011-Cus., provide nil rate of duty to importers. None of this notifications prescribes in bar in respect of Export Oriented Units. Learned Counsel for the appellant has relied on the CBIC letter dated 09.02.2007 issued from F. No DGEP/EOU/450/2006 dated 09 February, 2007. The said clarification reads as under:

> *"It has been brought to the notice that at the time of DTA sale of mobile handsets including cellular phones in accordance with the Foreign Trade Policy, a dispute is raised whether on the imported parts of mobile or cellular phones the benefit of notifications 21/2005- Cus dated 01.03.2005, 39/2005-Cus dated 02.05.2005 and 6/2006-C.E. dated 01.03.2006 is available or duty is payable in terms of notification no. 21/2002-Cus dated 01.03.2002 read with Ist proviso to Para 3 of notification no. 52/2003-Cus dated 31.03.2003 read with Board's circular no. 54/2004-Cus dated 13.10.2004.*
>
> *2. The matter has been examined. It is seen that parts, components and accessories of mobile handsets including cellular phones are exempted from basic customs duty, additional duty of customs under Section 3 (1)*

and Section 3 (5) of the Customs Tariff Act, 1975 under notification no. 21/2005-Cus dated 01.03.2005 and 39/2005-Cus dated 02.05.2005 with a condition that the importer has to follow the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996. These parts, components and accessories of mobile handsets including cellular phones are also exempted from excise duty under notification no. 6/2006-C.E. dated 01.03.06 as amended with a condition for the manufacturer to follow the procedure set out in the Central Excise (Removal of Goods at Concessional rate of Duty for Manufacture of Excisable Goods) Rules, 2001. The DTA manufacturers of mobile phones are thus entitled to import/indigenously procure parts, components and accessories of mobile handsets including cellular phones free of duty under the aforesaid notifications whereas EOU units are being denied the benefit of these notifications.

3. Such parts, components and accessories imported/ procured indigenously by an EOU are used for manufacture of mobile hand sets including cellular phones in their licensed premises under Section 58 & 65 of Customs Act, 1962. It follows the provisions of Manufacture & Other Operations in Warehouse Regulations, 1966 and executes a bond B-17 binding itself in respect of end use of the imported/indigenous goods, to maintain records of receipt, consumption and balance in stock and to pay duty on inputs in case they are not used in connection with production within a period of three years along with interest. Further, EOU follows procedure of procurement certificate/ CT-3 certificate for import/ indigenous procurement, gives information of receipt of the goods which are physically verified and warehoused by the officer in-charge and re-warehousing certificates are issued. These are mandatory features of the EOU scheme for the unit operating under EOU notification 52/2003-Cus and 22/2003-CE. Thus an EOU following such a procedure substantially satisfies the requirements of the Rules to be followed as stipulated under the notifications 21/2005-Cus dated 01.03.2005, 39/2005-Cus dated 02.05.2005 and 6/2006-C.E. dated 01.03.2006.

4. Despite observance of the provisions of the above rules in spirit, if EOUs are denied exemption on parts, components and accessories on the ground that these notifications are not applicable to EOUs, it would put EOU manufacturers at a disadvantageous position vis-a vis DTA manufacturers. This is not the intention behind the relevant provision of EOU notification 52/2003-Cus and 22/2003-CE. Accordingly, it is hereby clarified that exemption of customs and central excise duties on parts, components and accessories of mobile handsets including cellular phones under notification no. 21/2005-Cus dated 01.03.2005, 39/2005-Cus dated 02.05.2005 and 6/2006-C.E. dated 01.03.2006 shall be applicable for EOUs, if all substantive conditions of rules required to be followed under these notifications are fulfilled by an EOU to the satisfaction of the jurisdictional Asstt./Dy. Commissioner of Customs or Central Excise, as the case may be."

The appellant have also relied the Joint Secretary (TRU) letter DOF No. 334/7/2017-Tru dated 01.02.2017 which advised as follows:-

"The Sub-section (1) of Section 3 of the Central Excise Act, 1944, provides for levy of excise duty, on goods produced or manufactured in

India at rates specified in the First and Second Schedule to the Central Excise Tariff Act, 1985. However, as per the proviso to the sakl sub-section, goods produced or manufactured by Export Oriented Units [EOUs] units and cleared to domestic tariff area [DTA] are liable to excise duty equal to the aggregate of duties of customs leviable on like goods when imported into India. For such clearances from EOUs to DTA, Notification No. 22/2003-CE dated 31.03.2003 prescribes effective rates of excise duty on such DTA clearances under different circumstances.

2. In this context, proviso to sub-section (1) of section 5A of the Central Excise Act, 1944 states that unless specifically provided in a notification, no exemption therein shall apply to excisable goods which are produced or manufactured by an EOU and cleared to the DTA.

3. Further, EOUs are cligible for duty free import or domestic procurement of their inputs or raw materials under Notification No. 22/2003-CE dated 31.3.2003 and Notification No. 52/2003- Customs dated 31.03.2003. However, as per a proviso [the second proviso to para 6 in case of Notification No. 22/2003-CE and first proviso to para 3 in case of Notification No. 52/2003- Customs), if the goods produced or manufactured by EOUs and cleared to DTA if imported are either non-excisable or leviable to Nil basic customs duty [BCD] and additional duty of customs [CVD], then EOUs cannot avail the exemptions under these notifications on inputs utilized in manufacture/processing/packaging etc. of such goods [cleared to DTA].

4. In addition, there are a number of customs and excise duty exemption notifications which prescribe concessional [including Nil] duty rates on specified goods [inputs/raw materials etc.] for use in manufacture of specified goods, subject to conditions prescribed. In this context, it has been stated that EOUs are not able to avail benefit of such exemptions on inputs imported or procured domestically by them.

5. The matter has been examined. As mentioned in para 2 above, non-applicability of exemptions under notifications issued under section SA of the Central Excise Act, 1944 is only in respect of excisable goods produced or manufactured by an EOU and cleared to DTA and not in respect of inputs/raw materials procured by them domestically and utilised for production/manufacture of goods which are cleared by them to DTA.

6. In view of the above, it is hereby clarified that EOUs will also be eligible to import or procure raw materials/inputs at other concessional/Nil rate of BCD, excise duty/CVD or SAD, as

the case may be, provided they fulfill all conditions for being clable to such concessional or Nil duty. For these purposes, if an EOU is already registered with the jurisdictioral Central Excise Authority, it will not be required to take arry fresh registration under the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods)

Rules, 2016 or the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable and Other Goods) Rules, 2016, as the case may be. Further, there will be no need for an EOU to separately comply with the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2016 for availing the CVD exemption, if the procedure under the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rule, 2016 is followed by it for availing exemption/concession from BCD on imports of inputs/raw materials."

From the above clarifications/circulars, it is clear that the Revenue has specifically allowed EOU's to avail the benefit of notifications other than Notification No. 52/2003-Cus.. In these circumstances, the stance of commissionerate of Customs is contrary to that of the supervising office i.e. CBIC. Once CBIC allows this concession the field formations cannot deny it.

5. In view of above, the impugned order is set aside and appeal allowed.

(Pronounced in the open court on 03.12.2024)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)

Prachi