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

REGIONAL BENCH- COURT NO. 01

Excise Appeal No. 10764 of 2015
(Arising out of OIA-AHM-EXCUS-002-APP-171-14-15 Dated- 31/12/2014 passed by Commissioner of Central Excise-AHMEDABAD-II)

Harsha Engineer Ltd **........Appellant**
Moraiya Farm, Sarkhej - Bavla Road, P O Changodar,
Ahmedabad, Gujarat

VERSUS

C.C.E.-Ahmedabad-ii **........Respondent**
Custom House... First Floor,
Old High Court Road, Navrangpura,
Ahmedabad, Gujarat-380009

APPEARANCE:
Shri. Anand Mishra, Advocate for the Appellant
Ms. Sunita Menon, Superintendent (AR) for the Respondent

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

Final Order No. 10119/2025

DATE OF HEARING:11.02.2025
DATE OF DECISION:11.02.2025

The learned Advocate represents the present appellant, which was a 100% EOU till it was de-bonded in August, 2008. The de-bonding process, was carried out on the authority letter of Development Commissioner which was dated 12.08.2008 and which was in turn was issued only after Customs authorities had given no objection certificate and also no due certificate to this effect. As per the learned Advocate during the course of de-bonding an audit by the department was carried out, the same was again done after de-bonding was finished. During second audit, certain objections were raised that they had received certain inputs from the DTA during the period 2007-2008 and the person who supplied the material had availed the benefit of DFIA Scheme and therefore the twin benefits i.e. DFIA Scheme as well as 100% EOU Scheme were availed on the same goods on the basis of CT-3 certificate issued. The show cause notice issued in the year, 2013 invoked extended period indicating the material was received on CT-3 by the appellant from DFIA availing supplier Scheme was not brought to the knowledge of the department.

2. The Learned Advocate, inter alia, seeks to plead the point of the limitation indicating that repeated audits coupled with "No Objection Certificate" given by the department which is in exercise carried out after going through various records, returns and other documents cannot give authority to the department to invoke extended period. As there was nothing that was not revealed and department came to know about the service on the basis of their records only, the de-bonding permission given by the Development Commissioner was not got modified by the department, such permission marks to culmination of the de-bonding process and same cannot be re-opened after de-bonding is completed. He seeks to rely on the point of limitation on the decision of Ambika Cotton Mills Ltd vide Final Order No. 40492/2018 as reported in 2018 SCC OnLine CESTAT 3576. He particularly relies upon para 5 of the decision which is reproduced below:

> *"5. The Id. counsel has vehemently argued on the ground of limitation. On perusal of records, we find that the department has issued a letter dated 21.6.2007 requiring the appellant to pay duty on the impugned items like HDPE card cans, PP simplex bobbins and tubes etc. on the scrap value of such goods. When the department has requested the appellant to discharge duty on scrap value, later the department has changed their stand and issued the show cause notice dated 29.7.2008 alleging the same goods to be capital goods and demanding duty on the depreciated value. The said show cause notice is issued after one year of the intimation requiting the appellant to pay duty on scrap value of the goods. On receiving the intimation, the appellant had discharged the duty. The original authority has taken note of the Chartered Engineer's certificate and observing that the goods have been procured duty free under cover of CT 3 certificates has dropped the proceedings upholding the payment of duty to the tune of Rs. 31,701/- and interest thereof. It is to be mentioned that the impugned goods were procured under CT 3 certificate and the department was in full knowledge*

about such procurement as well as the exit of the appellant from EOU scheme. Therefore, the show cause notice issued invoking extended period alleging suppression of facts cannot sustain. Further, the appellant cannot be saddled with the intention to evade payment of duty when on receiving the intimation to pay duty on scrap value, the appellant has discharged the duty accordingly."

2.1 He also seeks to rely upon the Division Bench decision of West Zonal Bench-Mumbai as reported in 2011 SCC-OnLine CESTAT 144 in the matter of Commissioner of Central Excise and Customs (Appeals) Aurangabad Vs. M/s. Crompton Greaves Ltd Vs. In the instant case also, he seeks to rely upon para 5 which is reproduced below:

"5. On careful examination of the submissions made by the Ld. DR, we are of the opinion that when the unit was de-bonded and a no dues certificate was issued to the respondent, it is the duty of the officer, who give no dues certificate to verify the contents whether any dues liability is pending against the assessee or he has correctly declared the true facts for de-bonding of unit. When the concerned officer has de-bonded the unit along with no dues certificate, allegation of suppression cannot be alleged against the respondents in this case. Hence, we do not find any infirmity with the impugned order, wherein the lower appellate authority has held that "facts that how the extended period under Section 11A(1) is invocable in the above circumstances, the demand raised against the respondent is time barred". Accordingly, the impugned order is upheld, the appeal filed by the Revenue is rejected."

3. The Learned AR opposes the prayer and states that limitation cannot come to the rescue of the appellant as they were working in 100% EOU which is functioning under conditions of bond as per the provisions of Central Excise Act, 1944 and Customs Act, 1962 and is rather governed by various bonds which effectively provide that all assessment are conditional and therefore provisional.

4. This Court has considered the rival submissions. It finds that the submissions made by the advocate for the appellant specifically on point of limitation are convincing, as after de-bonding was done in 2008 and the bond under which the functioning of EOU was being done, ceases to operate and normal period of limitation as provided in statute comes into existence. The CT-3 certificate goods received, even if, be so, were eventually cleared

on payment of duty during process of de-bonding. All the facts were in knowledge of the department.

4.1 This Court is of the view that once de-bonding is done, the bond that was furnished during functioning of 100 % EOU cannot set to be operative so as to make the assessment, conditional and provisional. Further, the decisions relied upon by the appellant for the advocate are found relevant in deciding the present issue and are therefore endorsed.

5. In view of the foregoing, the appellant is entitled to relief on the ground of limitation. Other points in appeal were not been raised by the advocate nor same are decided.

6. Appeal is allowed with consequential relief.

(Dictated & Pronounced in the open court)

(SOMESH ARORA)
MEMBER (JUDICIAL)

Prachi