

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

REGIONAL BENCH- COURT NO.3

Excise Appeal No.12193 of 2016

(Arising out of OIO-BHR-EXCUS-000-COM-81-2016-17 dated 30/09/2016 passed by Commissioner of Central Excise and Service Tax-Bharuch)

Sun Pharmaceuticals Industries Ltd

.....Appellant

Plot No. 24/2, 25, Gidc Industrial Estate,
Phase-Iv, Panoli, BHARUCH, GUJARAT

VERSUS

C.C.E-Bharuch

.....Respondent

Vadodara-Ii,Gst Bhavan,Subhanpura,Vadodara
Vadodara, Gujarat-390023

APPEARANCE:

Shri A B Nawal & Ms. Nidhi Nawal, Advocate for the Appellant
Shri Ghanasyam Soni, Joint Commissioner (AR) for the Respondent

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

Final Order No. A/ 10047 /2023

DATE OF HEARING: 14.09.2022
DATE OF DECISION: 13.01 .2023

RAMESH NAIR

This appeal is directed against order-in-original No. BHR-EXCUS-000-COM-081-2016-17 dated 29.12.2016. The brief facts of the case are that the appellant is engaged in the manufacture of Bulk Drugs falling under chapter 29 of the Central Excise Tariff Act., 1985. They are registered as 100%EOU. During the course of audit, the officers observed that the value of DTA sales during the year 2012-13 and 2013-14 by the appellant was more than 50% of FOB value of physical exports made during these years. As per the Notification No. 23/2003-CE dated 31.03.2003 clearance to DTA sales by the EOU in a financial year at concessional rate is allowed only upto the 50% aggregate value of the FOB value of physical exports. If value of DTA sales exceeds the 50% value of the FOB, full duties provided under Section 3 of the Central Excise Act, 1994 are chargeable on such goods. Therefore, Show Cause Notice dated 09.03.2006 was issued demanding short payment of excise duty alongwith interest and penalty. By the impugned order-in-original, the Adjudicating authority confirmed the demand of duty along with interest and penalty. Hence, the present appeal

02. Shri A B Nawal and Ms. Nidhi Naval, learned counsels appearing on behalf of the Appellant submits that Appellant started their commercial activity from 18.11.2006 and first export was made in the financial year 2006-07. Thereafter, in accordance with the para 6.8(a) of the Foreign Trade Policy they are eligible for DTA clearances upto the 50% of FOB value of Exports, hence they had started DTA clearance within entitlement. There was no any dispute regarding DTA sale entitlement and achievement of positive NFE by the Appellant. Further it is also not disputed that appellant has intimated to the Development Commissioner about DTA sale entitlement.

2.1 He further submits that as per Appendix 14-I-H, if DTA sale entitlement is not utilized within the same year then it can be carry forwarded and can be utilized in the next two years. In the impugned matter, Appellant has not utilized entire DTA sale entitlement within same year. Hence, it was carry forwarded in the next year/ quarter and utilized in the next year /quarter. As per the guidelines provided under Appendix 14-I-, DTA sale entitlement can be availed of within three years of the accrual of entitlement. It means, if DTA sale entitlement is obtained for the F.Y. 2012-13 on the basis of export made during the F.Y. 2011-12 then that DTA sale entitlement can be used for next 2 years if it is not utilized within first year of obtaining of DTA sale entitlement. Accordingly , in the present matter there was no excess DTA sale by the appellant. He produced the detail charts and carry forward calculation as per Appendix 14-I-H. According to this during the F.Y. 2012-13 and 2031-14, there was sufficient DTA sale entitlement.

2.2 He also submits that the Learned Commissioner has erred while calculating the DTA entitlement. While issuing order he has not considered the carry forwarded eligible closing balance of last quarter.

2.3 He also submits that in Annexure –A of SCN department has proposed to recover special additional duty (SAD) on clearance made to DTA. As per the Sr. No. 1 and condition No. 1 of Notification No. 23/2003-CE dated 13.03.2003 special CVD is exempted if the said goods cleared in the DTA are not exempted by the state Government from payment of sales tax. The goods cleared by the Appellant are not exempted from levy of sales tax and they are paying sales tax/CST as applicable. Appellant were making DTA

clearance to their sister concern as well as to other parties and claim the exemption from SAD on all their clearances in terms of the above Notification as the products manufactured by them i.e. Bulk Drugs are not exempt from payment of Sales Tax by Statement Government of Gujarat and they had paid the sales tax /VAT as the case may be on the DTA sales made by them to other parties. But when the goods are cleared to their own sister units on stock transfer basis the VAT/CST is not charged as 'no sale' has taken place. In case of clearance of goods on stock transfer the sales tax is not leviable. Since the said goods are not exempted by the state government appellant has not paid the SAD in terms of Notification No. 23/2003-CE dtd 31.03.2003. Appellant have followed the conditions as mentioned in the Notification No. 23/2003 dated 21.03.2003 and rightly claimed the exemption from payment of the SAD. He placed reliance on the following decisions:-

- MICRO INKS VS. COMMISSIONER OF CENTRAL EXCISE & SERVICE TAX, DAMAN 2014-TIOL-258-CESTAT -AHM.
- M/S VVF LTD. VS. COMMISSIONER OF CENTRAL EXCISE, BELAPUR 2014-TIOL-04-CESTAT-MUM
- STI INDUSTRIES VS. CCE 2014-TIOL-CESTAT-AHMED.

03. Shri Ghanasyam Soni, the learned Departmental Representative opposed the contentions of the learned Counsel by reiterating the findings of the Learned Commissioner in the impugned order and emphasised that the appellant do not satisfy the conditions subject to which the exemption under Notification No. 23/2003-C.E. is available in respect of DTA clearances. He, therefore, pleaded that the appeal be dismissed.

04. Heard both sides and perused the records of the case. A perusal of Paragraph 6.8 of the FTP would show that subject to the conditionalities contained therein, an EOU unit can make a DTA sale. The primary condition being, that sales to DTA units is limited to 50% of the FOB value of exports, subject to the fulfillment of positive NFE on payment of concessional duty. Here there is no dispute about the DTA sale entitlement and achievement of positive NFE by the Appellant and intimation to the development commissioner about the DTA sale entitlement. We have also gone through the Appendix -14-I-H of Handbook of Procedure which provide the guidelines for sales of goods in the Domestic Tariff Area (DTA) by the EOU /EHTP/STP/BTP units. The para (d) of the said guidelines provides as under

" (d) The DTA sales entitlement shall be availed of within three years of the accrual of entitlement."

As per the above guideline there is no doubt that EOU unit can avail DTA sales entitlement within three years of the accrual of entitlement.

4.1 We also gone through the relevant condition 2 of Notification No. 23/2003-CE dated 31.03.2003 disputed in the present matter the same is reproduced below:-

(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 exceed 50% of the Free on Board value of exports made during the year (starting from 1st April of the year and ending with 31st March of next year) by the said unit;

4.2 The case of the revenue is that during the year 2012-13 and 2013-14, the assessee has made excess clearances into DTA than their actual entitlement i.e. 50% of the FOB value of export and such excess clearance of the goods into DTA were not entitled to get exemption of duties under Notification No. 23/2003-CE dated 31.03.2003. Whereas Appellant claimed that during the year 2012-13 and 2013-14 there was no excess DTA sales and it was within entitlement. Department has not considered the carry-forward sales entitlements which were utilized during the disputed period. We find that in the present matter Learned Commissioner wrongly interpreted the condition of Notification and denied the benefit of Notification for the reason that the DTA clearances made by appellant during the period 2012-13 and 2013-14 were in excess of 50% of the FOB value of the physical exports made during the 2012-13 and 2013-14. Whereas, it is clear from the guidelines of Appendix 14-I-H, if DTA sale entitlement is not utilized within same year then it can be carry forwarded and can be utilized in the next two years. The said Appendix 14-I-H clearly provides that the DTA sales entitlement shall be availed of within three years of the accrual of entitlement. The detail charts related to DTA sale entitlement submitted by the appellant clearly shown that during the disputed period there was sufficient DTA sale entitlement balance with them and they have not exceeded the limit as disputed by the department. Further the condition of notification only restricted that the clearance into DTA is not more than of 50% of the Free on Board value of exports made during the year. In the

present matter Appellant has not exceeded the said limit, they have correctly utilized the carry forwarded balance which was valid upto three years from its accrual.

05. In our view, the benefit of notification cannot be denied to the appellant. In view of the above discussion, the impugned order is not sustainable. The same is set aside. The appeal is allowed.

(Pronounced in the open court on 13.01.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Mehul