

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST ZONAL BENCH : AHMEDABAD**

REGIONAL BENCH - COURT NO. 3

Customs Appeal No. 12700 of 2018-SM

[Arising out of Order-in-Appeal No AHM-EXCUS-002-APP-36-18-19 dated 30.07.2018
passed by Commissioner of Central Excise-AHMEDABAD-II]

Dishman Carbogen Amcis Limited

.... Appellant

100% EOU, (Earlier Dishman Pharmaceuticals &
Chemicals Ltd - 100% EOU), 1216/11, 1216/24
To 27, Phase-iv, GIDC, Naroda, Ahmedabad,
GUJARAT-382330

Vs.

**Commissioner of CGST & Central Excise,
Ahmedabad-ii**

.... Respondent

1st Floor, Custom House, Near All India Radio,
Navrangpura, Ahmedabad-380 009

APPEARANCE :

Shri R. Subramanya, Advocate for the Appellant
Shri Prashant Tripathi, Superintendent (AR) for the Revenue.

CORAM:

HON'BLE DR. AJAYA KRISHNA VISHVESHA, MEMBER (JUDICIAL)

DATE OF HEARING : 05.02.2025

DATE OF DECISION : 26.03.2025

FINAL ORDER NO. 10203/2025

DR. AJAYA KRISHNA VISHVESHA :

This appeal is directed against the order of Commissioner (Appeals)
dated 30.07.2018 through which the learned Commissioner (Appeals)
dismissed the appeal of the appellant.

2. The facts of the case are that M/s. Dishman Carbogen Amcis Limited
(100% EOU), is engaged in the manufacture of Bulk Drugs and Fine

Chemicals falling under chapter 29 and 38 of the first Schedule to the Central Excise Tariff Act, 1985.

2.1 During the Audit of the records, it was observed that the appellant failed to pay the anti-dumping duty on Distilled Acetone cleared in Domestic Tariff Area as 'recovered solvent' from the Acetone, imported without payment of Customs duty including anti-dumping duty. Accordingly, a show cause notice No. V/16-8/Dem/Demand/Dishman/P-02/15-16 dated 05.02.2016 was issued to the appellant demanding duty amounting to Rs. Rs. 83,355/- under the provisions of Section 28 of Customs Act, 1962 read with Section 11A (4) of Central Excise Act, 1944 alongwith interest under Section 28 of the Customs Act, 1962 read with section 11AA of the Central Excise Act, 1944 and proposing to impose penalty on the appellant under Section 114A of the Customs Act, 1962 read with section 11AC of the Central Excise Act, 1944. The show cause notice was adjudicated by the Assistant Commissioner, C.G.S.T. & Central Excise, Division-1 (Naroda), Ahmedabad North by issuing order-in-original No. 17/AC/DEMAND/17-18 dated 31.03.2018. The Adjudicating Authority confirmed the demand for duty and interest as proposed in the impugned order and imposed a penalty of Rs. 83,355/- under section 114A of the Customs Act, 1962.

Aggrieved by the order-in-original as mentioned above, the appellant filed appeal before the Commissioner (Appeals). The learned Commissioner (Appeals) came to the conclusion that Domestic Tariff Area clearances made in the instant case without payment of anti-dumping duty was in contravention of the provisions of Notification No. 60/2008-Cus dated 05.05.2008 as well as sub-Section 2A of Section 9A of Customs Tariff Act, 1975. Further on the grounds of limitation, it was found that the evasion of anti-dumping duty remained suppressed till such time that the same was

unearthed by audit. The appellant failed to follow the laid down procedure before making the impugned clearances in the Domestic Tariff Area. Therefore, invoking extended period of limitation was just and proper in the present case. In view of above observations, the learned Commissioner (Appeals) confirmed the demand of duty alongwith interest and imposition of penalty on the appellant and rejected the appeal filed by the appellant. Aggrieved by the impugned order dated 30.07.2018 passed by Commissioner (Appeals), the present appeal has been filed before this Tribunal.

3. The learned Counsel for the appellant submitted that the entire demand of anti-dumping duty is made under Notification No. 75/2008-Cus dated 10.06.2008 and is effective from the date of notification i.e. from 10.06.2008 and in terms of Section 9A(5) of Customs Tariff Act, 1975 it ceased to take effect from the date 09.06.2013 after five years. Since the appellant imported the Acetone vide Bill of Entry No. 3301343 dated 18.09.2013, the said notification had already expired and no anti-dumping duty can be levied on such imports. Therefore, the said demand of anti-dumping duty is illegal and without the authority of law and is liable to be set-aside.

3.1 Learned advocate for the appellant also argued that appellant is 100% EOU. It had filed Bill of Entry No. 3301343 dated 18.09.2013 and availed exemption from Customs duties and also anti-dumping duty under procurement certificate No. 29/2013-14 dated 06.09.2013 and cleared the same without payment of duties. The appellant had also informed the jurisdictional authorities about the receipt of duty-free material on 12.12.2013. The subsequent use of duty-free Acetone for manufacture of export goods 'Cetyl Pyridinium Chloride' and export of the same was also

informed to the department by way of filing periodical returns ER-2. The present demand of anti-dumping duty was raised vide show cause notice dated 05.02.2016 after a lapse of 29 months under Section 28 of Customs Act, 1962 read with Section 11A(4) of the Central Excise Act, 1944. In terms of Section 28 of the Customs Act, 1962, the normal time limit for issuing demand notice was only one year from the date of Bill of Entry. Since all the information was already declared to the Customs/ Central Excise authorities from time to time, there is no suppression or mis-statement and extended period cannot be invoked. Hence the show cause notice dated 05.02.2016 issued after one year from the date of Bill of Entry dated 18.09.2013 is time-barred. Since the demand show cause notice has been issued only after lapse of 29 months and demanded duty forgone under Bill of Entry dated 18.09.2013, the demand is clearly time-barred and hit by limitation. Hence the demand of anti-dumping duty is not sustainable and liable to be set-aside on the ground of limitation also.

3.2 In support of his arguments learned Counsel for the appellant submitted copies of Notification No. 75/2008-Cus dated 10.06.2008, copy of text of Section 9A of Customs Tariff Act, 1975, copy of Bill of Entry No. 33301343 dated 18.09.2013 and procurement certificate.

4. The learned AR for the Revenue reiterated the findings of the impugned order. He cited the decision in Excise Appeal No. 52917 of 2019 dated 03.08.2021 in the case of **Sunbeam Light Weighing Solutions Pvt. Limited** vs. **CCE & CGST, Alwar** – 2021-TIOL-477-CESTAT-DEL in which the Principal Bench New Delhi has held that the appellant wrongly took the CENVAT credit on the services which were not eligible import service. Over and above, there is apparent admission of the appellant that the credit availed has been wrong. Such case is definitively a case of suppression of

facts that too with intention to evade payment of duty. The Tribunal relied upon the of Hon'ble Allahabad High Court decision in the case of **Touraids (I) Travels Service reported in -2014 (35) STR 234 (All.)** in support of its conclusion.

5. I have heard learned Counsel for the appellant and learned AR for the department and perused the records.

5.1 The first argument of the learned counsel for the appellant is that the demand is hit by limitation since bill of entry for import of goods was filed on 18th September, 2013 and show cause notice was issued after a lapse of 29 months. The learned counsel for the appellant submitted that in terms of Section 28 of the Customs Act, 1962 the normal time limit for issuing the demand show cause notice was only one year from the date of bill of entry. Since, all the information was already declared before the Customs / Central Excise Authorities from time to time there is no suppression or mis-statement and standard period of limitation cannot be invoked. Therefore show cause notice dated 05.02.2016 issued after one year year from the date of bill of entry dated 18th September, 2013 is time barred.

5.2 I do not agree with the argument of the learned counsel for the appellant as mentioned above. The provisions from sub-section (4) to Sub-Section (8) of Section 28 of the Customs Act are as follows:-

“(4) where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded or interest payable has not been paid, part-paid or erroneously refunded, by reason of,-

- (a) collusion; or
- (b) any willful mis-statement; or
- (c) suppression of facts,

by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not

been so levied or not paid or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

(5) Where any duty has not been levied or not paid or has been short-levied or short paid or the interest has not been charged or has been part-paid or the duty or interest has been erroneously refunded by reason of collusion or any willful mis-statement or suppression of facts by the importer or the exporter or the agent or the employee of the importer or the exporter, to whom a notice has been served under sub-section (4) by the proper officer, such person may pay the duty in full or in part, as may be accepted by him, and the interest payable thereon under section 28AA and the penalty equal to fifteen percent of the duty specified in the notice or the duty so accepted by that person, within thirty days of the receipt of the notice and inform the proper officer of such payment in writing.

(6) where the importer or the exporter or the agent or the employee of the importer or the exporter, as the case may be, has paid duty with interest and penalty under sub-section(5), the proper officer shall determine the amount of duty or interest and on determination, if the proper officer is of the opinion –

(i) that the duty with interest and penalty has been paid in full, then, the proceedings in respect of such person or other persons to whom the notice is served under sub-section (1) or sub-section (4), shall, without prejudice to the provisions of sections 135, 135A and 140 be deemed to be conclusive as to the matters stated therein: or

(ii) that the duty with interest and penalty that has been paid falls short of the amount actually payable, then, the proper officer shall proceed to issue the notice as provided for in clause (a) of sub-section (1) in respect of such amount which falls short of the amount actually payable in the manner specified under that subsection and the period of two years shall be computed from the date of receipt of information under sub-section(5).

(7) in computing the period of two years referred to in clause (a) of sub-section (1) or five years referred to in subsection (4), the period during which there was any stay by an order of a court or tribunal in respect of payment of such duty or interest shall be excluded.

(7A) save as otherwise provided in clause (a) of sub-section (1) or in sub-section (4), the proper officer may issue a supplementary notice under such circumstances of this section shall apply to such supplementary notice as if it was issued under the said sub-section (1) or sub-section (4).

(8) the proper officer shall, after allowing the concerned person an opportunity of being heard and after considering the representation, if any, made by such person, determine the amount of duty or interest due from such person not being in excess of the amount specified in the notice.”

5.3 Therefore sub-section (4) of Section 28 provides that where any duty has not been levied or not paid on account of collusion, any willful mis-statement or suppression of facts by the importer or exporter or agent or employee of the importer or exporter, the competent officer may act within five years from the relevant date and serve notice on the person chargeable with duty or interest which has not been paid. Therefore, the provisions of sub-section (4) contemplates extended period of limitation for taking duty proceeding for non-payment or short levy of Customs duty. In the impugned order passed by the learned Commissioner (Appeals), it has been clearly mentioned that on the ground of limitation it has been found that evasion of anti dumping duty remain suppressed till such time that the same was unearthed by audit. The appellant had clearly failed to follow laid down procedures before making the impugned clearances in the DTA. Therefore, the invoking of extended period of limitation is just and proper in the present case. I agree with the view expressed by the learned Commissioner (Appeals) in the impugned order.

5.4 The learned authorized representative has cited **Sunbeam Light weighing Solutions Pvt Ltd vs. Commissioner of Central Excise and Central Goods and Service Tax, Alwar** reported in 2021-TIOL-477-CESTAT-DEL, Hon’ble Principal Bench CESTAT Delhi held that apparently and admittedly there was no disclosure on the part of the appellant to the department informing the availment of CENVAT credit post export order. The information was given only after it was demanded by the department post audit of the appellant records. Being a Pvt Ltd Co. engaged in the

manufacture / export of motor vehicle parts and availed CENVAT credit since long is supposed to have knowledge of law and procedure laid down with regard to availment of CENVAT credit. Ignorance of law otherwise is not a defense available.

5.5 The learned authorized representative also cited **Trafigura India Pvt Ltd vs. Union of India** reported in 2023-TION-737-SC-AHM-CUS in which Hon'ble Gujarat High Court had held that in Customs Act, 1962 suppression of facts is not required to be willful and intentionally. If there is suppression of facts that were required to be disclosed, extended period can be invoked. I agree with the legal principles laid down by Hon'ble Gujarat High Court as mentioned above.

5.6 Therefore I am of the view that no illegality or irregularity has been committed by the department in invoking the extended period of limitation.

6. The second argument of the learned counsel for the appellant is that as per Notification No. 60/2008-CUS dated 05.05.2008 in case when the inputs which are not covered under SION are used in the manufacture of export goods and also contained in the waste generated, the duty liability on such goods has to be decided by the Norms Committee. Since, there is no such report of norms committee the demand is not sustainable.

6.1 I do not agree with the learned counsel for the appellant and in my view the above argument cannot be accepted. Regarding this contention the learned Commissioner (Appeals) has rightly observed in the impugned judgment that from the perusal of stipulations in Notification No. 60/200-CUS dated 05.05.2008, it is clear that it was the appellant who was required to self declare ad hoc norms based on which the clearances in DTA of such goods that were not in the SION could be made and the development

commissioner would fix the ad hoc norms within a period of three months from the date of self-declared norms. The appellant was also required to undertake to adjust the self declared ad hoc norms in accordance with norms as finally fixed by the Norms Committee for its unit. The ad hoc norms would continue till such time the final norms were fixed by the Norms Committee. In the instant case, the appellant has given no indication that it had fixed any ad hoc norms that was submitted to the jurisdictional development Commissioner for confirmation or alteration as required, eventually paving way for the Norms Committee to finalize the norms. Further, the appellant has also not claimed that it had filed any undertaking as required in Notification No. 60/2008-CUS dated 05.05.2008 to adjust the ad hoc norms, in accordance with the norms finalized by the Norms Committee. Therefore, it is also clear that the D.T.A. clearances impugned in the instant case, without payment of anti-dumping duty was in contravention of the provisions of the said Notification as well as sub-section 2A of Section 9A of the Customs Tariff Act, 1975. Therefore, there is no merit in the argument of the appellant that the demand should not have been confirmed without the adjudicating authority producing a norms committee report. I fully agree with the conclusion arrived at by the learned Commissioner while passing the impugned order.

6.2 I also agree with the learned authorized representative that the Notification No. 60/2008-CUS dated 05.05.2008 and Notification No. 52/2003-CUS dated 31.03.2003 are exemption notifications and they must be interpreted strictly as observed by Hon'ble Supreme Court in **Commissioner of Customs (input) Mumbai vs. Dilip Kumar & Co.** reported in 2018 (361) ELT 577 (SC).

6.3 During the course of arguments, the learned counsel for the appellant also submitted that the entire demand of anti-dumping duty is made in terms of Notification No. 75/2008-CUS dated 10.06.2008 and in terms of Section 9A (2A) of the Customs Tariff Act 1975. The anti-dumping duty applies to article imported by a 100% EOU only when the imported goods are cleared into D.T.A. as such or the goods manufactured by using the imported goods is cleared into D.T.A. but, in this case the goods cleared into D.T.A. is the 'recovered solvent' which is a waste / remnant on payment of applicable Central Excise Duty. Therefore according to appellant in terms of section 9A (2A) (b) of the Customs Tariff Act, since the imported goods (ACETONE) or the manufactured goods (Cetyl Pyridinium Chloride) is not cleared into D.T.A., the anti-dumping duty cannot be imposed on any other waste or by product arising during the course of manufacture. The argument of the appellant is that the said demand of anti-dumping duty is illegal and without authority of law and therefore liable to be set aside.

6.4 I do not agree with the learned counsel for the appellant. His argument, as mentioned above, cannot be accepted. In the present case, the appellant failed to pay the anti-dumping duty on ACETONE which was cleared in DTA as "recovered solvent" which is a by product produced from ACETONE imported without payment of Customs duty including anti-dumping duty. Therefore, the product which was cleared in DTA was in fact ACETONE by product of which was produced from ACETONE imported without payment of Customs Duty and it was cleared in DTA as "recovered solvent". Therefore, in my opinion the provisions of anti-dumping Notification No. 75/2008-CUS with effect from 10.06.2008 read with section 9A (2A) of the Customs Tariff Act, 1975 are attracted and applicable in the present case.

In view of the above discussion, I have come to the conclusion that no illegality has been committed by the learned Commissioner while passing the impugned order. The order is sustainable and has been passed after proper analysis of the facts of the case and relevant legal principles. Therefore, the appeal is devoid of any merit and is liable to be rejected whereas the impugned order passed by the learned Commissioner is liable to be upheld.

7. Consequently, the appeal is rejected.

(Order pronounced in the open court on 26.03.2025)

(Dr. Ajaya Krishna Vishvesha)
Member (Judicial)