

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

REGIONAL BENCH-COURT NO. 1

Excise Appeal No. 10498 of 2020-DB

(Arising out of OIO-KCH-EXCUS-000-COM-01-2020-21 Dated 17/04/2020 passed by Commissioner of Central Excise, Customs and Service Tax-Kutch (Gandhidham))

EXOTIC GRANITE LLP

SURVEY NO. 339*14,
VILLAGE RATADIYA
KUTCH, GUJARAT

.....Appellant

VERSUS

COMMISSIONER OF C.E.-KUTCH (GANDHIDHAM)

CENTRAL EXCISE & SERVICE TAX COMMISSIONERATE,
CENTRAL EXCISE BHAVAN
PLOT No. 82, SECTOR 8,
GANDHIDHAM(KUTCH), GUJARAT

.....Respondent

APPEARANCE:

Shri Manish Jain, Advocate with Ms. Surbhi Chandani, Advocate appeared for the Appellant

Shri Rajesh R Kurup, Superintendent (AR) appeared for the Respondent

CORAM:

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

HON'BLE MEMBER (TECHNICAL), MR. SATENDRA VIKRAM SINGH

Final Order No. 10159/2026

DATE OF HEARING: 13.01.2026

DATE OF DECISION: 03.03.2026

SATENDRA VIKRAM SINGH

M/s Exotic Granite LLP (100%EOU), Mundra (Kutch) (Appellant) are engaged in manufacturing of Polished Granite Slabs and Tiles classifiable under CTH 68029300 of the Central Excise Tariff Act, 1985. During scrutiny of their records by the Central Excise Officers, it revealed that the appellant had removed polished granite in DTA sale by undervaluing the same and therefore they are liable to pay differential duty on this account. The basis of the allegation is that DGFT vide Notification No. 38(RE-2013)/2009-2014 dated 26.08.2013 had at Sr. No. 3 mentioned that "import permitted freely provided CIF value is USD 80 and above per square meter." This condition is applicable for HSN codes 68022310, 68022390, 68022900 and 68029300.

1.1 The officers also found that the appellant was permitted advance DTA sale of total value of Rs. 550 lakhs by the Development Commissioner with

certain conditions, such as execution of differential duty bond and clearance in DTA to those units which have import authorization from DGFT for such products. The Revenue has alleged that advance DTA sale are covered at Sr. No. k of para 6.8 of the Import and Export Policy for which concessional duty benefit under Notification No. 23/2003-CE dated 31.03.2003 is not admissible. The benefit of concessional duty on DTA sales is admissible for the sales covered under sub-paras a, b, d & h of para 6.8 of the policy.

1.2 After conducting investigation, Revenue issued them show cause notice dated 07.01.2009 demanding Central Excise duty of Rs. 3,62,43,148/- under Section 11A of the Central Excise Act, 1944 along with interest under Section 11AA and proposal to impose penalty under Section 11AC of the said Act. The notice was decided by the Commissioner vide impugned dated 17.04.2020, wherein he confirmed demand of Central Excise duty of Rs. 3,62,43,148/- under Section 11A(4) of the Central Excise Act, 1944 along with interest under Section 11AA and imposed an equal penalty under Section 11AC(1)(c) of the said Act. Aggrieved with the above order, the appellant filed present appeal before the Tribunal.

2. In their appeal, the appellant took the following grounds: -

- DTA clearances made by 100% EOU cannot be termed as import of goods as the finished goods were manufactured in India and Central Excise duties are levied in terms of Section 3 of the Central Excise Act, 1944 on such clearances.
- The learned Commissioner has wrongly equated their clearances in DTA with imports and applied minimum import price decided by DGFT vide notification No. 38(RE-2013)/2009-2014 dated 26.08.2013.
- Proviso to Section 3(1)(b)(ii) of the Central Excise Act, 1944 provides for levy and collection of Central Excise duty on the goods produced and manufactured in 100% EOU and brought to any other place in India. The said section says that the duties of excise shall be an amount equal to the

aggregate of the duties of customs which would be leviable under the Customs Act, 1962 or any other law for the time being in force, on like goods produced or manufactured outside India, if imported into India, and where the said duties of customs are chargeable by the reference to their value; the value of such excisable goods shall, notwithstanding anything contained in any other provision of this Act, be determined in accordance with the provisions of the Customs Act, 1962 and the Customs Tariff Act, 1975. From the above, duty to be levied even though equal to Customs duties but it has to be Central Excise duties.

- DTA clearances, therefore, cannot be stated to be import or deemed fiction of import. Therefore, above notification dated 26.08.2013 of DGFT cannot be applied for valuation of goods manufactured in 100% EOU because no imported goods were brought from outside India.
- They have imported rough granite blocks falling under CTH 25161200 and not under CTH 68029300 which covers polished granite slabs. Therefore, the conditions of said DGFT Notification will not apply in case of DTA sale made by the appellant.
- Otherwise also, enhancing transaction value by the Adjudicating authority on the sole basis of DGFT notification fixing minimum import price of imported granite slabs is not legally sustainable. There is no evidence of any manipulation in the transaction value charged by the appellant as sale has been made to independent buyers and price is the sole consideration. The show cause notice also does not allege these charges.
- The Provisions related to value of goods contained under Section 14 of the Customs Act, 1962 are applicable for the purpose of assessment of imported goods. Under this Section, CBIC has been empowered to fix tariff value for any class of imported goods or export goods by issue of notification in the official gazette. In the case of Polished Marble slabs, no such Notification has been issued by CBIC fixing tariff value.

- Section 14(3) of the Customs Act, 1962 provides that where value cannot be determined under Sub-section (1), Customs Valuation Rules, 2007 may be adopted. The MIP declared by DGFT vide notification dated 26.08.2013, cannot be considered as assessable value of the imported goods because MIP is neither the transaction value under Section 14(1) of the Customs Act, 1962 nor a tariff value determined by the CBIC under Section 14(2) nor a value determined under Customs Valuation Rules, 2007. Therefore, in absence of any enabling provisions, enhancement of transaction value by the Adjudicating authority is not legally sustainable.
- Learned Commissioner also failed to follow the decision of Mumbai Tribunal in the case of Cristal Granites and Marbles Pvt Ltd. Vs. Commissioner of Central Excise, Pune-II reported at 2017 (7) GSTL 121 which is identical to the present case. He has relied on the decision in the case of Siemens Gamesa Renewal Power Ltd Vs. Commissioner of Customs, Mundra reported at 2019 (365) ELT 361 (Tri. - Ahmd.). Hon'ble Mumbai Tribunal has clearly ruled that minimum import price fixed for imports cannot be automatically considered as cost of raw materials imported by the importer. The price in the domestic market is driven by various factors and when the transaction is between two unrelated persons, there is no reason to doubt the said transaction value. Even the decision in Siemens Gamesa Renewal Power Ltd (supra) has not been followed fully by the learned Commissioner. Against this order of the Tribunal, Revenue filed appeal before the Hon'ble Gujarat High Court for reduction in fine and penalty which clearly shows that the issue of valuation has not even been challenged by the Revenue. It is therefore prayed that the duty confirmed by the learned Adjudicating authority on this issue may be set aside.
- The learned Commissioner has also confirmed Central Excise duty of Rs. 28,59,386/- in respect of DTA sales pertaining to year 2014-15 by invoking extended period. DTA sales for the year 2014-15 made by the appellant were under advance DTA sales permission dated 17.04.2014 given by the

Development Commissioner, Kandla SEZ. The ground for confirmation of this demand is that Notification No. 23/2003-CE dated 31.03.2003 is not applicable to advance DTA sales. The said demand is barred by limitation as the show cause notice has been issued on 07.01.2019 for the demand pertaining to 2014-15. The grounds taken by the learned Commissioner for invoking extended period are not sustainable as copy of the permission dated 17.04.2014 received from the Development Commissioner was also marked to the Jurisdictional Officer. Therefore, this fact was well within the knowledge of the department and hence, demand is liable to be set aside on the ground of limitation itself.

- When demand is not sustainable, interest cannot be charged from them under Section 11AA of the Central Excise Act, 1944. Likewise, penalty under Section 11AC is also not sustainable as neither the allegation of undervaluation is confirmed nor is there any fraud, suppression of fact, willful misstatement, etc. in the instant case. The appellant therefore, prays for allowing their appeal and setting aside the impugned order of the Commissioner.

3. During hearing, learned Advocate highlighted the grounds taken by them in their appeal. Regarding invocation of extended period for confirming the demand of Rs. 28,59,386/-, he produces copy of letter dated 17.04.2014 issued by the Development Commissioner, Kandla SEZ, showing that a copy of the letter was also marked to the Assistant Commissioner, Central Excise Division, Gandhidham. He also produces copy of letter dated 14.07.2015 of Superintendent Central Excise range ER-IV Bhuj, intimating Deputy Development Commissioner, Kandla SEZ regarding clearance of finished goods valued at Rs. 5,42,62,442/- in DTA sales, during the period from 17.04.2014 to 16.04.2015 on concessional rate of duty. On the basis of these two letters, he submits that the entire issue was well-known to the department and hence, extended period is not invokable. Regarding major part of the demand which relates to undervaluation of goods cleared in DTA, he argued that minimum

import price fixed by DGFT for import of goods is not applicable to DTA sales made by 100% EOUs. With the help of decision of Mumbai Tribunal in the case of Cristal Granites and Marbles Pvt Ltd. (supra) and other similar decisions, he pleads that clearance from EOU to DTA are not imports and hence, DTA Notifications are not applicable. He pleads that demand confirmed by the lower authority is not sustainable and prays for allowing the appeal.

4. Learned Authorized Representative argued that the appellant has sold Granite slabs & tiles in DTA at very low prices i.e. significantly lower than Minimum Import Price (MIP) of USD 80 per sq. mt. fixed by the DGFT. He relies on the decision of CESTAT Bangalore in the case of Tungbhadra Special Products Vs. Commissioner of Customs, Central Excise and Service Tax, Belgaum, reported at 2018 (364) ELT 147, wherein, it was held that any clearance by EOU into DTA are to be treated as imports in India and the same are governed by the Customs Act, 1962. He also relies on the decision of Hon'ble Apex Court in the case of Hindustan Granites Vs. Union of India, reported at 2007 (211) ELT 3 (SC), wherein the issue was regarding validity of policy circular dated 30.08.2005 and Notification No.24 dated 31.08.2005 which has the effect of the amending para 6.8(a) & 6.8 (h) of the Foreign Trade Policy of 2004-2009. It was held by Hon'ble Apex Court that nothing prevents the Central Government in public interest to plug the loophole by tinkering with the existing policy as is done in the present case. The Court accordingly held that there is no merit in the challenge to the impugned circular and the notifications by the above 100% EOUs.

4.1 Learned AR also pleaded that the appellant has wrongly availed benefit of concessional duty rate under Notification No. 23/2003-CE dated 31.03.2003 which does not cover advance DTA sales under para 6.8(k) as allowed to the appellant in this case and applies only to regular DTA sales under FTP para 6.8(a), (b), (d) & (h). He submits that the appellant failed to execute differential duty bond as required under permission letter granted by the

Development Commissioner. He relies on the decision of CESTAT Delhi, in the case of Bony Polymers Pvt. Ltd. Vs. CCE, Delhi-III, reported at 2016 (343) ELT 288 (Trib.) wherein, it was held that goods sold in DTA against advance DTA sales permission are not covered by Notification No.23/2003-CE. This decision has also been upheld by the Hon'ble Apex Court as reported at 2017 (345) ELT A69 (SC). On these grounds, he prays for upholding duty demand of Rs.28,59,386/- against the appellant along with interest as well as penalty. He also justifies invocation of extended period on the ground that the appellant did not mention the correct para of the Foreign Trade Policy in their ER-2 returns showing clearance of goods and also withheld advance DTA sale permission from the jurisdictional range for scrutiny.

5. We have heard the rival submissions. Following two issues emerge in the present matter:-

(a) Whether value of granite slabs and tiles cleared by the appellant (a 100% EOU) in DTA sales will be governed by DGFT notification fixing Minimum Import Price (MIP) or under Section 14 of the Customs Act, 1962?

(B) Whether benefit of notification No.23/2003-CE dated 31.03.2003 is available to the appellant on advance DTA sales made by it?

5.1 The revenue has alleged in the show cause notice that granite slabs and tiles cleared by the appellant against advance DTA sale permission was under valued and thereby, the appellant has evaded Central Excise duty. As per revenue, the appellant has cleared 55,887.97 Sq. Mt. of polished granite slabs during the period from 2014-15 to June 2017 showing value of Rs.13,27,53,834/- whereas, as per MIP fixed by DGFT Notification No.38 dated 26.08.2013, this clearance value should have been Rs.28,94,09,990/-. The appellant has thus evaded duty of Rs. 3,33,83,762/- by undervaluing granite slabs. After rejecting the contentions of the appellant, learned Adjudicating Authority vide impugned order upheld under valuation of goods

and confirmed the differential duty by taking minimum import price fixed by the DGFT as the assessable value of the goods. He relied on the decision of Hon'ble Supreme Court in the case of Hindustan Granite Vs. Union of India (cited supra). He also held that CESTAT Ahmedabad decision in the case of M/s. Siemens Gamesa Renewal Power Limited (cited supra) has not been accepted by the department and an appeal filed against this order has been admitted by Hon'ble High Court of Gujarat. He also rejected reliance of the appellant on the decision in the case of Crystal Granite as well as in the case of M/s. Siemens Gamesa Renewal Power Limited.

5.2 We find that in the case of Tungbhdra Special Products (cited supra), the issue was whether the appellant are liable to pay duty on DTA clearances because as per their claim, the process does not amount to manufacture. It was in this context, the Tribunal held that the appellant's contentions are misplaced. Irrespective of the fact that whether the process undertaken by the appellant amounted to manufacture or otherwise, they are liable to pay duty in term of clause (iii) proviso to Section 3(i)(b) of the Central Excise Act, 1944. The decision relied by the department in the case of Bony Polymer (P) Ltd. (cited supra) pertains to the issue in hand as in the said decision, it was held that benefit of concessional rate of duty in Notification No.23/2003-CE is not available for advance DTA sale in terms of para 6.8(k) of FTP of the relevant years. We further find that valuation of goods cleared by 100% EOU in DTA was not the subject matter before Hon'ble Supreme Court in the case of Hindustan Granite (cited supra) where the issue was whether DGFT can regulate import or export of goods by issue of policy circulars/ notifications. It was held that the Central Government has powers in public interest to plug the loophole by tinkering with the existing policy by issue of policy circulars and the notifications. In the present case, dispute is regarding value of goods cleared by the appellant in DTA and not the powers of DGFT to issue policy Circulars and Notification.

5.3 As per proviso to Section 3(1) of the Central Excise Act, 1944, duties of excise collected on any excisable goods which are produced or manufactured by a Hundred Percent Export-Oriented Undertaking, and brought to any other place in India, shall be an amount equal to the aggregate of the Duties of Customs which would be leviable under the Customs Act, 1962 (52 of 1962) or any other law for the time being in force, on like goods produced or manufactured outside India if imported into India, and where the said duties of Customs are chargeable by reference to their value; the value of such excisable goods shall, notwithstanding anything contained in any other provision of this Act, be determined in accordance with the provisions of the Customs Act, 1962 and the Customs Tariff Act, 1975. Therefore, value of the goods cleared by the appellant has to be determined on the basis of Section 14 of the Customs Act, 1962 read with Customs Valuation Rules. We find that this issue has specifically been dealt with by CESTAT Mumbai, in the case of Crystal Granite and Marble Pvt. Ltd. reported at 2017 (7) GSTL 121 (Tribunal), wherein, it was held that the value of goods cleared in DTA by 100% EOUs cannot be enhanced on the basis of DGFT circular prescribing minimum import price (MIP) of imported marbles blocks. The department has no evidence of any manipulation in transaction value charged by the appellant and the sale was made to independent buyers and price was the sole consideration of sale. The relevant para 5 of the said decision is reproduced below:-

"5. We have carefully gone through the facts of the case and records. We find that the demand has been raised mainly on the basis of DGFT circular fixing the minimum import price of the imported Marble Blocks. However we find that there is no evidence of any manipulation in transaction value charged by the appellant to their buyers. The sale has been made to the independent buyers and the price is the sole consideration of sale. In case of M/s Eicher Tractors Ltd. v. Commissioner - [2000 \(122\) E.L.T. 321](#) (S.C.), the Hon'ble Apex Court held that unless the "special circumstances" exists, the Transactional value cannot be rejected. The minimum import price of the Marble blocks cannot be used as basis to assess/ the fix sale price of marble slabs cleared by the appellant automatically. We do not find any legal reason to do so. The minimum import price fixed for imports cannot be automatically considered as cost of raw material imported by the importer. The reasoning given by the adjudicating authority is thus fallacious. There is no investigation/findings that the importer has paid the amount equal to minimum import price to the seller of the Marble blocks. The application of Rule 8 of the Valuation Rules by

reckoning the Minimum Import Price as the base price is not an approved method under the Customs law and the valuation arrived at by this method is not correct. Even otherwise, there is no comparison of appellant's sale price with the market price during the relevant period so as to term the transaction value as incorrect. The price in the domestic market is driven by lot of factors and when the transaction is between the appellant and unrelated buyer there are no reasons to doubt the said value. The demand of duty is solely based upon the ground and reasoning that the Minimum Import Price fixed by the DGFT of the Marble Blocks is much higher and therefore, the transaction value is not correct. We are unable to appreciate the same. We therefore hold that the impugned order does not sustain. In view of our above findings and discussion, we set aside the impugned order and allow the appeal with consequential reliefs."

5.4 In view of the above, we hold that the department has enhanced value of goods cleared by the appellant in DTA solely on the basis of minimum import price fixed by the DGFT vide Notification No.38 and there is no other evidence or allegation of under valuation of the goods so as to reject the transaction value. In absence of any cogent reason and evidence, we have no hesitation in allowing the contention of the party. Accordingly, we allow the party's appeal on this count and set aside the duty demand of Rs.3,33,83,762/-.

5.5 As regards applicability of Notification No.23/2003-CE dated 31.03.2003 on advance DTA sales, learned Advocate pleads that the demand is time barred. He submitted that a copy of the permission granted by Development Commissioner for Advance sale of goods in DTA was also endorsed to the jurisdictional Assistant Commissioner and hence, it was in the knowledge of the department. He also refers to a letter dated 14.07.2015 of the Jurisdictional Superintendent written to the Deputy Development Commissioner intimating details of clearances during the period 17.04.2014 to 16.04.2015. On the basis of these two communications, he pleads that the demand is not sustainable on the ground of limitation as the show cause notice was issued in January, 2019 for demanding differential duty for the period 2014-15.

5.6 As per Condition 2 against Sr. No.2 of the Notification No.23/2003, the benefit of concessional duty is subject to following conditions:-

Condition No.2 is as under:-

"If,-

(i) the goods are cleared into Domestic Tariff Area in accordance with sub-paragraphs (a), (d), (e) and (g) of Para-graph 6.8 of the 5[Foreign Trade Policy];

(ii) exemption shall not be availed until Deputy Commissioner of Customs or Assistant Commissioner of Customs or Deputy Commissioner of Central Excise or Assistant Commissioner of Central Excise, as the case may be, is satisfied with the said goods including Software, Rejects, Scrap, Waste or Remnants;

(a) being cleared in Domestic Tariff Area, other than scrap, waste or remnants are similar to the goods which are exported or expected to be exported from the units during specified period of such clearances in terms of [Foreign Trade Policy];

(b) the total value of such goods being cleared under sub-paragraphs (a), (d), (e) and (g) of Paragraphs of the [Foreign Trade 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;

(c) the balance of the production of the goods which are similar to such goods under clearance into Domestic Tariff Area, is exported out of India or disposed of in Domestic Tariff Area in terms of Paragraph 6.9 of the [Foreign Trade Policy];

(iii) clearance of goods into Domestic Tariff Area under sub-paragraphs (a), (d), (e) and (g) of Paragraph 6.8 of the [Foreign Trade Policy] shall be allowed only when the unit has achieved positive Net Foreign Exchange Earning; and

(iv) clearance of goods into Domestic Tariff Area under [sub-paragraph (d)] of Paragraph 6.8 of the [Foreign Trade Policy] in excess of 5% of free on board value of exports made by the said unit during the year (starting from 1st April of the year and ending with 31st March of the next year) shall be allowed only when the unit has achieved positive Net Foreign Exchange Earning."

Thus, benefit of this Notification is applicable only to those goods which are cleared in DTA in accordance with para 6.8 (a), (d), (e) and (g) of the Foreign Trade Policy. As Advance DTA sale permitted in this case is governed by para 6.8 (k) of the FTP, benefit of this Notification is not available to these clearances. We therefore hold that the appellant was not entitled to concessional duty benefit under Notification No.23/2003 dated 31.03.2003.

5.7 We further find that the Development Commissioner, Kandla, SEZ, had vide letter dated 17.04.2014 permitted advance DTA sales for Rs.550 Lakhs subject to the following conditions:-

1. The above advance DTA sale was allowed subject to adjustment of the facility against future entitlements. In case of failure to fulfill this requirement, action will be initiated under the provisions of the Foreign Trade (Development & Regulation) Act, 1992 and the Rules made there under.

2. The permission shall be followed by monitoring on six monthly basis and the unit is required to submit documents duly certified by the CA for monitoring.

3. The permission shall be subject to the condition as mentioned below and required to be strictly followed:

(a) The colour and texture of imported granites are different from the granite available in India and colour-wise it can be easily bifurcated. However, after polishing it will be darker than the original one. All the imported blocks will be serially numbered. They will maintain a proper processing system. At the time of import, photographs or marble/granite blocks shall be taken to ascertain that the imported material is only going for processing.

(b) The EOU unit shall sell finished product with ITC(HS)-25161200 only to those DTA units which have Import authorization from DGFT for such products.

4. If the product sought to be sold in the DTA requires any quality control certificates, import licences, etc. under any Act/Rules/Regulations, etc. such sale will be allowed only after production of the same/after fulfilling such requirements.

5. The prescribed clearance procedures, as stipulated by the Customs/Central excise authorities shall be followed.

6. The clearance is permitted subject to such review/revision and curtailment, as the Government may consider necessary.

7. The permission will be valid for a period of 6 (six) months counted from the date of issue of this letter.

8. This permission is operatable only after execution of differential duty bond with the jurisdictional Assist./Deputy Commissioner of Central Excise & Customs.

5.8 As per the allegations which were not also challenged by the appellant, they had not executed the "differential duty bond" with the Jurisdictional Assistant/ Deputy Commissioner of Central Excise in absence of which (as per Condition No.8), permission was not operatable. The appellant has blatantly violated the conditions specified by the Development Commissioner, and therefore, they cannot now take shelter of extended period. We further find that the letter dated 14.07.2015, of the Jurisdictional Superintendent provides only the clearance value of goods in DTA on concessional rate of duty and it nowhere indicates the relevant para of the FTP under which DTA sales were being carried out by the appellant. We have also seen some of the ER-2 returns filed by the appellant where they have declared sale in DTA **under para 6.8 of the FTP** and have conveniently suppressed mentioning of para 6.8(k) of the FTP under which they were granted permission to clear goods in DTA on advance sale basis. Relevant part '4A' of the ER 2 return for the month of September, 2014 is reproduced below. The above return at Sr. 10 contains, "Self-Assessment Memorandum" where at Sr.(a) they have declared that, "*I hereby declare that the information given in this Return is true, correct and complete in every respect and that I am authorised to sign on behalf of the assessee.*"

Part '4A' of the ER-2 Return:-

4A. DETAILS OF CLEARANCES IN DTA AND DEEMED EXPORTS AND DUTY PAYABLE- (Part-I)								
SI No.	Para No. of FTP under which goods cleared into DTA	CETSH No.	Description of Goods	CTSH No.	Unit of Quantity	Quantity cleared	Value(Rs)	
1.1	Para 6.8	68029900	GRANITE SLABS & TILES	68029900	M2	2018.9	5686574	
4A. DETAILS OF CLEARANCES IN DTA AND DEEMED EXPORTS AND DUTY PAYABLE- (Part-II)								
SI No	Duty Type	Tariff Rate	Customs/C.Ex. Notification		C.Ex.(EOU) Notification		Effect-ive Rate	Amount Payable (Rs.)
			No.	SI No.	No.	SI No.		
1.1.1	BCD	5.0	58/2000	1	37/2000	1	5.0	284329
1.1.2	CVD	12.0	58/2000	1	37/2000	1	12.0	716508
1.1.3	EDU_CESS	2.0					2.0	20017
1.1.4	SEC_EDU_CESS	1.0					1.0	10008
Total Cenvat Payable :					1000837			

5.9 We rely on the decision of CESTAT Delhi, in the case of Bony Polymers Pvt. Ltd (cited supra) wherein, in para 6, 7, 8, 9, 10 & 11, it was held that for claiming the benefit of Notification No.23/2003-CE, attached conditions have to be fulfilled by the assessee and non-fulfillment of the same would make them disentitled to the benefit. It was also held that non-fulfillment of the conditions was not brought to the notice of the department by the assessee and therefore, extended period has rightly been invoked in the case. In the light of above, we find that the appellant's contention regarding non applicability of extended period is not acceptable. We hold that the appellant has suppressed vital information from the department and wrongly availed

benefit of Notification No.23/2003. Accordingly, we confirm the demand of duty of Rs.28,59,386/- upon the party under Section 11A of the Central Excise Act, 1944 along with applicable interest but hold that they are not liable to penalty of equal amount under Section 11AC of the Central Excise Act, 1944, as they had duly informed about the permission and its conditionalities to the department which exhibited no mens rea as such.

6. The appeal is partly allowed and the impugned order is modified to the extent as discussed above.

(Pronounced in the open court on 03.03.2026)

(SOMESH ARORA)
MEMBER (JUDICIAL)

(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)

Bharvi