IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I
APPEAL No. E/51960/2014-EX[DB]

(Arising out of Order-in-Original No. 32/Commissioner/M-II/2013-14 dated 03/02/2014 passed by Commissioner of Central Excise, Meerut-II)

M/s Jubilant Life Sciences Limited **Appellant**

Vs.

Commissioner of Central Excise, Meerut-II **Respondent**

Appearance:

Shri Devinder Sharma, Advocate, for Appellant
Shri Rajeev Ranjan, Joint Commissioner (AR), for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing & Date of Decision : 05/03/2018

FINAL ORDER NO. 70818/2018

Per: Anil G. Shakkarwar

The present appeal is arising out of Order-in-Original No. 32/Commissioner/M-II/2013-14 dated 03/02/2014 passed by Commissioner of Central Excise, Meerut-II.

2. The brief facts of the case are that the appellants were a 100% EOU and they were manufacturing chemicals falling under Chapter 29, which were generally used by manufacturers of pharmaceutical preparations or by pesticides manufacturers. The appellants sought to exit from the EOU Scheme on 31/03/2011 and got in-principle approval for the same. They submitted the details of exported goods, indigenous capital goods, raw-materials, components, consumables, spares, finished goods, work in progress and

finished goods in the stock as on 31/03/2011 to the Departmental Authorities and also submitted the details of the duties of Customs & Central Excise to be paid on exit from EOU. While arriving at such duties of Customs & Central Excise, the appellants claimed benefit of Notification No. 52/2003-Customs & Notification No. 23/2003-C.E. dated 31/03/2003. On 01/04/2011, they submitted the duty calculation sheet to the Jurisdictional Central Officers. On 12/04/2011 they paid the Customs & Central Excise duties for the purpose of exit from 100% EOU Scheme and on 28/04/2011, the said payments were scrutinized and verified by the Jurisdictional Assistant Commissioner. The Jurisdictional Assistant Commissioner also issued a No Objection Certificate on 28/04/2011 stating that there was no objection to the appellant to exit from 100% EOU Scheme. Subsequently, on 10/06/2011 Development Commissioner issued the appellants with a Final de-bonding order informing that they did not enjoy the status of EOU with effect from that date. The bond and the bank guarantee executed with the Jurisdictional Assistant Commissioner of Central Excise were discharged on 01/02/2012. A special audit of the records of the appellants were ordered by the Departmental Officers and on the basis of such report a Show Cause Notice dated 30/03/2012 was issued to the appellants, where there was allegation that the appellants were not eligible for Notification No. 23/2003-Central Excise and that was under-valuation of the Pyridine Residue and appellants were called upon to show cause as to why differential Central Excise duty of Rs.3,37,48,484/- should not be demanded in respect of duty paid on 12/04/2011 & 14/04/2011 on the work in progress, intermediate goods and finished goods lying in stock in the EOU or lying at the premises of job workers. They were, further called upon to show cause as to why differential Central Excise duty of Rs.8,12,05,337/- on clearance of Remnants which was also called Pyridine Residue from EOU to DTA Unit for the period from 01/04/2007 to 31/03/2011 and under-valuation for the period from 01/02/2010 to 31/03/2011 should not be demanded from them. The demand for the period from 01/02/2010 to 31/03/2011 was also by way of contesting the classification of said Remnants. They were also called upon to show cause as to why Customs duty of Rs.9,64,168/- should not be demanded on imported capital goods by denying the benefit of depreciation. On contest the impugned Order-in-Original was passed where all the demands were confirmed and equal penalty was imposed under Section 11AC of the Central Excise Act, 1944. The said Show Cause Notice was issued by invoking proviso to Sub-section (1) Section 11A of the Central Excise Act, 1944 and also corresponding provisions of the Customs Act, 1962. Aggrieved by the said order appellant is before this Tribunal.

3. Heard the ld. Counsel for the appellant, who has submitted that on de-bonding the duties were paid and the

same were scrutinized by the Jurisdictional Officers and No Objection Certificate was also issued for exit from EOU status and that the Central Excise Authorities discharged the bond and the bank guarantee on 01/02/2012 and after discharging of the bond and the bank guarantee, a Show Cause Notice dated 30/03/2012 was issued by invoking the provisions of extended period. He further submitted that the Central Excise duty was demanded to the tune of Rs.3,37,48,484/- on the goods which were within the factory premises or that of job workers and which were not cleared and also on the goods which were under the process of manufacture or manufacture had not been completed. He has submitted that the Central Excise duty is due on manufacture and unless the goods have undergone manufacture, the duty of Central Excise cannot be demanded. It is very clear from the Show Cause Notice that differential Central Excise duty on intermediate goods and work in progress was demanded and manufacture was not completed and therefore, they did not reach the RG-I Stage and they had not become chargeable to Central Excise duty and therefore, such demand is not sustainable. In respect of finished goods which were available in stock in their own factory premises and that of job workers, he contended that duty of Central Excise is to be discharged only on removal of goods from the place of manufacture and that since the goods were still within the factory premises and they were not removed from the factory by them or their job workers, the goods had not reached the stage of discharge of Central Excise duty and therefore, demand of differential Central Excise duty was not sustainable. In respect of differential Central Excise duty on Remnants of Rs.8,12,05,337/- demanded on the issue of classification for the period from 01/04/2007 to 31/03/2011 and under valuation, he submitted that the issue of classification of the same was already decided by Divisional Assistant Commissioner through the proceedings which were initiated by a Show Cause Notice dated 17/03/2008 where the rate of duty and value were examined by Divisional Assistant Commissioner and the appellants were called upon to show cause as to why interest should not be paid on the differential duty of Rs.72,70,713/- for their Cenvat account for payment of duty on Remnants cleared by EOU to DTA. He has argued that since the issue of rate of duty was decided and had come to the knowledge of the Department on 17/03/2008, the Show Cause Notice on the same issue issued on 30/03/2012 was barred by limitation. In respect of valuation of Remnants, he has submitted that they have adopted the valuation as per CBEC Circular No. 933/23/2010-CX dated 16/08/2010, which has superseded the earlier Circular issued by CBEC bearing No. 268/85-CX 8 dated 29/09/1994 whereas the Original Authority has confirmed the demand by relying on said Circular dated 29/09/1994 and therefore, the said confirmation of demand was not sustainable. Further, in respect of demand of Customs duty of Rs.9,64,168/-, he has submitted that the Original Authority denied them the benefit of depreciation claiming that they were not capital goods since they were not put to use and therefore not only treated as catalyst on first charge and that catalyst on first charge were treated as capital goods and that there was not such allegation in the Show Cause Notice and therefore, the adjudication proceedings travelled beyond the Show Cause Notice and therefore confirmation of demand is not sustainable.

4. Heard the ld. A. R. for Revenue, who has supported the impugned Order-in-Original dated 03/02/2014.

5. Having considered the rival contentions and on perusal of the facts on record, we find that the differential Central Excise duty of Rs.3,37,48,484/- is not sustainable for the reasons that the differential duty was demanded on the goods which had not came into existence and on the goods which were not removed from the factory of manufacture of appellant or their job workers. Therefore, we hold that the confirmation of demand of Rs.3,37,48,484/-, interest thereon and equal penalty are not sustainable. Further, we find that in respect of the issue relating to the rate of duty and value in respect of Remnants, the rate of duty was decided through the proceedings initiated by Show Cause Notice dated 17/03/2008 and therefore, the present demand on the issue

of rate of duty is hit by limitation. We also find that the confirmation of demand of under valuation on Remnants is not sustainable because the same was confirmed by relying on CBEC Circular dated 29/09/1994, which is rescinded through Circular dated 16/08/2010. We, therefore, hold that the demand of differential Central Excise duty of Rs.8,12,05,337/-, interest thereon and equal penalty are not sustainable. Further, we also hold that the confirmation of demand of Rs.9,64,168/- was on the ground that they were not capital goods since they were not put to use is not sustainable because catalyst on first charge were treated as capital goods and that there was no such allegation in the Show Cause Notice and therefore, the adjudication proceedings travelled beyond the Show Cause Notice and therefore confirmation of demand is not sustainable. We, therefore, set aside the impugned Order-in-Original and allow the appeal. The appellant shall be entitled for consequential benefit, as per law.

(Dictated in Court)

Sd/-	**Sd/-**
(Anil Choudhary)	**(Anil G. Shakkarwar)**
Member (Judicial)	**Member (Technical)**

Ansari