

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.II

Customs Appeal No.70266 of 2017

(Arising out of Order-in-Original No.56/Commissioner/Noida-II/2016-17 dated 25/01/2017 passed by Commissioner of Customs & Central Excise, Noida-II)

M/s Mobase India Pvt. Ltd., **.....Appellant**

(Ecotech-II, Udyog Vihar, Greater Noida)

VERSUS

Commissioner of Customs &

Central Excise, Noida-II

....Respondent

(3rd Floor, Wegmens Business Park,

K.P.-III, Greater Noida)

APPEARANCE:

Shri Atul Gupta, Advocate for the Appellant

Smt Chitra Srivastava, Authorised Representative for the Respondent

CORAM: HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)
HON'BLE MR. ANGAD PRASAD, MEMBER (JUDICIAL)

FINAL ORDER NO.70586/2025

DATE OF HEARING : 14 July, 2025

DATE OF PRONOUNCEMENT : 20 August, 2025

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Original No.56/Commissioner/Noida-II/2016-17 dated 25/01/2017 passed by Commissioner of Customs & Central Excise, Noida-II. By the impugned order following has been held:-

"ORDER

- (i) *I confirm the demand of Customs duty (inclusive of Education Cess and Secondary & Higher Education Cess) amounting to Rs.11,12,24,588/- (Rupees Eleven crore Twelve lakh Twenty four Thousand Five hundred Eighty Eight only) under Section 28(4) of the Customs Act, 1962;*
- (ii) *I confirm the demand of Central Excise duty (inclusive of Education Cess and Secondary & Higher Education Cess) amounting to Rs.4,02,11,121/- (Rupees Four crore Two lakh Eleven thousand One hundred Twenty One only) under Section 11A(4) of the Central Excise Act, 1944;*
- (iii) *I order for recovery of interest from the party at the appropriate rate as applicable on the said confirmed demand of Rs. 11,12,24,588/- under Section 28AA of the Customs Act. 1962:*
- (iv) *I order for recovery of interest from the party at the appropriate rate as applicable on the said confirmed demand of Rs.4,02,11,121/- under Section 11AA of Central Excise Act, 1944;*
- (v) *I impose a penalty of Rs. 11,12,24,588/- (Rupees Eleven crore Twelve lakh Twenty four Thousand Five hundred Eighty Eight only) in terms of Section 114A of the Customs Act, 1962*

(vi) *I impose a penalty of Rs.4,02,11,121/- (Rupees Four crore Two lakh Eleven thousand One hundred Twenty One only) in terms of Section 11AC(1) (c) of the Central Excise Act, 1944;"*

2.1 Appellant is a 100% Export Oriented Unit (100%EOU) registered as EHTP Unit and also having Central Excise Registration. They are engaged in manufacture of parts/components of mobile phone falling under tariff item 85177090 of First Schedule to the Central Excise Tariff Act, 1985.

2.2 On the basis of intelligence gathered Officers visited factory premises of the appellant on 29.07.2015 to inquire with regards to payment of Customs duty and Central Excise duty foregone on the raw materials/inputs (imported as well as procured indigenously) utilized in the manufacture of their finished goods i.e. parts/components of mobile phone, cleared in the domestic tariff area (DTA) at nil rate of Central Excise duty w.e.f 10.03.2015 in contravention of the provision of Notification No. 52/2003-Cus. dated 31.03.2003 (as amended) and Notification No. 22/2003- CE dated 31.03.2003 (as amended).

2.3 As result of investigation undertaken it was found that the appellant apparently had not paid Customs duty of 11,12,24,588/- (inclusive of Education Cess and Secondary & Higher Education Cess) and Central Excise duty of Rs.4,02,11,121/- (inclusive of Education Cess and Secondary -& Higher Education Cess) i.e. total duty amounting to Rs.15,14,35,709/, during the period from 10.03.2015 to 31.03.2016, in contravention of the Notification No.52/2003-Cus dated 31/03/2003 and Notification No. 22/2003-CE dated 31/03/2003.

2.4 It was also observed that they indulged in willful mis-statement

- by not observing all the provisions of the Customs Act, 1962, Central Excise Act, 1944 and the rules and

regulations made there under in respect of their raw materials/ inputs procured duty free

- and not fulfilling the condition stipulated in Customs/Central Excise Notification, as amended under which such raw materials/ inputs had been imported/sourced, as well as the Foreign Trade Policy as amended from time to time.
- suppressed the fact that they had used raw materials/ inputs procured duty free in the manufacture of the finished goods cleared in DTA, at nil rates of basic Customs duty and CVD and had not paid an amount equivalent to the duty forgone on such raw materials/ inputs.
- Thus, the said duty of Rs. 15,14,35,709/- (Rupees fifteen crore fourteen lakh thirty five thousand seven hundred nine only) Inclusive of Education Cess and Secondary & Higher Education Cess appears demandable and recoverable from them under Section 28(4) of the Customs Act, 1962 and Section 11A(4) of the Central Excise Act, 1944.

2.3 Show cause notice dated 31.08.2016 was issued to the appellant asking them to show cause as to why-

"(i) Customs duty & Central Excise duty (inclusive of Education Cess and Secondary & Higher Education Cess) amounting to Rs.15,14,35,709/- (Rupees fifteen crore fourteen lakh thirty five thousand seven hundred nine only) as detailed in Annexure-A to the Show Cause Notice dated 31.08.2016. should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962 and Section 11A(4) of the Central Excise Act, 1944;

(ii) Interest at the appropriate rate payable on the said amount of Customs duty and Central Excise duty not paid by them, should not be demanded and recovered from them under Section 28AA of the Customs Act, 1962 and Section 11AA of Central Excise Act, 1944; and

(iii) Penalty in terms of Section 114A of the Customs Act, 1962 and Section 11AC(1) (c) of the Central Excise Act, 1944 should not be imposed on them for their acts and omissions, as discussed at para-8 of the impugned Show cause noticed dated 31.08.2016.”

2.4 The said show cause notice was adjudicated as per the impugned order referred in para 1 above.

2.5 Aggrieved appellant have filed this appeal.

3.1 We have heard Shri Atul Gupta learned Counsel appearing for the appellant and Smt Chitra Srivastava learned Authorised Representative appearing for the revenue.

3.2 Arguing for the appellant learned Counsel submits that-

- The issue involved in the present case is whether benefit of Notification No. 12/2012-Cus dated 17.03.2012 and Notification No. 12/2012-CE dated 17.03.2012 available on import of mobile parts used further in manufacture of mobile parts which were cleared to other units for manufacture of mobiles, where the importer is a 100% EOU?
- The appellant is eligible to claim exemption provided under Notification No. 12/2012-Cus dated 17.03.2012 and Notification No. 12/2012-CE.
- The issue has been decided by this Bench in case of M/s Samsung India Electronics Pvt. Ltd. Vs Commissioner of Central Excise, Noida-I Final Order No.70024/2025 dated 16.01.2025 and in the case of CCE, Noida Vs M/s Elentec India Pvt. Ltd. Final Order No.70050-70052 of 2025 dated 31.01.2025.
- In view of the above, it is evident that demand could not be sustained on merits of the case.
- As the issues involved in the present case are with regards to bona-fide interpretation of complex legal provisions and there was no mala fide intention involved to evade payment of duty, thus, extended period of limitation is not invocable and penalty is also not imposable.

3.3 Learned Authorised Representative reiterates the findings recorded in the order of the lower authority.

4.1 We have considered the impugned orders along with the submissions made in appeal and during the course of argument.

4.2 Impugned order records the findings as follows:-

"5.1 -----

--- I observe that issue involved is whether the party is required to pay an amount equivalent to the Customs duty and Central Excise duty foregone on raw materials/ inputs utilised in the manufacture of finished goods cleared in DTA, at nil rates of Basic Customs duty and CVD in terms of Notification No. 52/2003-Cus dated 31.03.2003 and Notification No. 22/2003-CE dated 31.03.2003.

5.2 I find that Notification No. 52/2003-Cus, dated 31.03.2003, as amended and Notification No. 22/2003-CE dated 31.03.2003, as amended, respectively exempts raw materials/ inputs imported and procured indigenously by a 100% EOU.

5.2.1 However, I note that that 100% EOU importing or procuring indigenously raw materials/ inputs duty free are inter alia obliged to follow the first Proviso to Para 3 of Notification No. 52/2003-Cus dated 31-03-2003, as amended vide Notification No. 87/2004-Cus dated 06.09.2004, and Proviso to Para 6 of Notification No. 22/2003 - CE dated 31-03-2003, as amended vide Notification No. 46/2004- CE dated 06-09-2004.

5.2.2 The first Proviso to Para 3 of Notification No. 52/2003-Cus dated 31-03-2003, as amended vide Notification No. 87/2004-Cus dated 06.09.2004 states that "Provided that where such finished goods (including rejects, waste, scrap, remnants and byproducts) are either non-excisable-or such finished goods (including rejects, waste scrap, remnant and by-products), if imported, are leviable to nil rate of duty of customs specified under First

Schedule to the Customs Tariff Act, 1975 (51 of 1975) and nil additional duty leviable under Section 3 of the said Customs Tariff Act, read with exemption notification in this regard, if any, no exemption in respect of inputs utilized for the purpose of manufacture of such finished goods (including rejects, waste, scrap, remnant and by-products,) shall be available under this notification."

5.2.3 The second Proviso to Para 6 of Notification No. 22/2003 - CE dated 31-03-2003, as amended vide Notification No. 46/2004- CE dated 06-09-2004, states that "Provided further that where such articles (including rejects, waste, scrap and remnants) are either non-excisable or such articles (including rejects, waste, scrap and remnants), if imported, are leviable to nil rate of duty of customs specified under First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and nil additional duty leviable under section 3 of the said Customs Tariff Act, read with exemption notification in this regard, if any, no exemption in respect of inputs utilized for the purpose of processing, manufacture, production or packaging of such articles (including rejects, waste, scrap and remnants) shall be available under this notification."

5.2.4 I further note that that Para 6.8 (j) of the Foreign Trade Policy (FTP) provides as under:

In case of DTA sale of goods manufactured by EOU, where basic Customs duty and Countervailing duty (CVD) is Nil such goods will be considered as non-excisable.

5.3 Further, I find that the statutory provisions discussed above, have also been clarified by the Central Board of Excise & Customs, at para 8 of the Circular No. 54/2004-Cus dated 13.10.2004, which reads as:

"8. Under the present dispensation, in case of DTA sale of goods manufactured by EOU/EHTP/STP, if basic customs duty and CVD are both 'nil' on similar goods when imported no duty is payable by the EOU

as per proviso to Section 3(1) of the Central Excise Act, 1944. Similar goods manufactured in DTA suffer duty on inputs (as CENVAT Credit is not available in such cases) whereas the EOU/EHTP/STP avail the facility of duty-free inputs. This puts the DTA units manufacturing similar goods at a comparative disadvantage. In order to remove this anomaly, a new provision, i.e., paragraph 6.8(i), has been introduced in the FTP providing that in case of DTA sale of goods manufactured by EOU/EHTP/STP, where basic duty and CVD, both are 'nil' [either tariff rate or effective rate], such goods would be treated in the same manner as non-excisable goods manufactured by an EOU. In other words, when such goods are cleared into DTA, duty foregone on inputs utilized for production of such goods will have to be paid (as in the case of non-excisable goods vide Para 6 of Notification No. 22/2003-CE, dated 31-3-2003 and Para 3 of Notification No. 52/2003-Gus.. dated 31.03.2013)."

In short, the aforesaid two provisions Notification No. 52/2003-Cus dated 31-03-2003 and Notification No. 22/2003 CE dated 31-03-2003 read with Para 6.8 (1) of the Foreign Trade Policy (FTP) and para 8 of the Circular No. 54/2004-Cus dated 13.10.2004, treats the finished goods cleared in DTA, at nil rates of Basic Customs duty and CVD as a non-excisable goods and cast an obligation on the party to pay an amount equivalent to the Customs duty and Central Excise duty foregone on raw materials/ inputs utilised in the manufacture of finished goods. Accordingly, I found that the Department in light of above discussed statutory provisions, had rightly in the impugned show cause notice has demanded from the party an amount equivalent to the Customs duty and Central Excise duty foregone on raw materials/

inputs utilised in the manufacture of finished goods cleared in DTA, at nil rates of Basic Customs duty and CVD, under Sl. No.431 of Notification No. 12/2012-Cus dated 17.03.2012.

5.4 -----

5.5 -----

5.6 *I find the defence put forth by the party are totally out of context and had no relevance to the instant case inasmuch as the first Proviso to Para 3 of Notification No. 52/2003-Cus dated 31-03-2003, as amended vide Notification No. 87/2004-Cus dated 06.09.2004, and second Proviso to Para 6 of Notification No. 22/2003 CE dated 31-03-2003, as amended vide Notification No. 46/2004- CE dated 06-09-2004 categorically states that no exemption in respect of inputs utilized for the purpose of manufacture of such finished goods shall be available under these notifications if finished goods are non-excisable or such finished goods, if imported, are leviable to nil rate of duty of customs specified under First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and nil additional duty leviable under Section 3 of the said Customs Tariff Act. read with exemption notification in this regard, if any, and the Para 6.8 (1) of the Foreign Trade Policy (FTP) has expressly stated that in case of DTA sale of goods manufactured by EOU, where basic Customs duty and Countervailing duty (CVD) is Nil such goods will be considered as non-excisable and the 100% EOU shall be duty bound to pay an amount equivalent to the duty forgone at the time of import or domestically procured. I found that the party has failed to furnish any case laws where the subject matter is same as alleged in the impugned show cause notice the clearance of finished goods by an 100% EOU without payment of basic Customs duty and Countervailing duty under Notification No. 12/2012-Cus dated 17.03.2012. I found that ratio of*

decisions / observation made in cases, namely Green Brilliance Energy P. Ltd. vs. Commissioner of Central Excise & Service Tax, Vadodara-I, and COMMISSIONER OF C. EX., PUNE-III VS. PUDUMJEE PLANT LABORATORIES LTD., as discussed above, is aptly applicable to the instant case and according to these case laws the party is bound to pay an amount equivalent to the Customs duty and Central Excise duty foregone on raw materials/ inputs utilised in the manufacture of finished goods cleared in DTA, at nil rates of Basic Customs duty and CVD.

5.7 The party in their defence reply has stated that product manufactured by the Noticees are excisable and effective rate of duty under notification no. 12/2012 dated 17/03/2012 of Customs under section 25 (1) of Custom Act 1962 vide serial No. 426 is @5% on general import in India and no condition has been put on. Accordingly. there is duty on the finished goods manufactured by the Noticees and therefore the clause as define in notices vide para no.3.5 is not applicable to the Noticees regarding the reversal of duty forgone on procurement of the raw material. I found that the said submission of party is totally different from the written submission made by the party at the time of personal hearing, wherein the party has categorically stated that the parts/components of mobile phones manufactured and supplied by the party to DTA unit Le M/S Samsung India Ltd., were fully exempt from Customs duty (basic as well as CVD) vide serial No. 431 of the Notification No. 12/2012 Cus dated 17.03.2012. To verify the party's contradictory contentions with regard to Serial No. of Notification No. 12/2012 Cus dated 17.03.2012, the application under the Customs (Import of goods at concessional rate of duty for manufacture of excisable goods) Rules, 1996, in form Annexure-III No. 075/15-16 issued by M/s Samsung India Electronics Pvt. Ltd (DTA unit) for import of goods from the party was examined and it revealed that M/s Samsung India

Electronics Pvt. Ltd (DTA unit) has filed the said application for import of goods from the party under S.No. 431 of Notification No. 12/22012 dated 17.03.2012, which fully exempt goods from both duty of customs leviable thereon under the said First Schedule and additional duty leviable thereon under sub-section (1) of section 3 of the said Customs Tariff Act 1975 (51 of 1975) subject to the condition that importer follows the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996. In view of above facts, para no.3.5 of impugned show cause notice, referring to Circular No. 54/2004-Cus dated 13.10.2004, is applicable in the instant case and also I am in complete agreement with the inference drawn at para 5 (1) of the impugned show cause notice that Since M/s DNI cleared their finished goods (parts/components of mobile phone) to M/s Samsung India Electronics Pvt. Ltd., Noida (a DTA unit), during the period 10.03.2015 to 31.03.2016, at nil rates of Basic Customs duty and CVD under Sl. No. 431 of Notification No. 12/2012-Cus dated 17.03.2012 they were required to pay an amount equal to the duty foregone on raw materials and inputs used in the manufacture of such finished goods cleared in DTA at rates of Basic Customs duty and CVD"

5.8 In view of the above discussion and findings supported by Board's Circular and judicial pronouncements as discussed in foregoing paras, I hold that the party is liable to pay Customs duty & Central Excise duty (inclusive of Education Cess and Secondary & Higher Education Cess) amounting to Rs.15,14,35,709/- (Rupees fifteen crore fourteen lakh thirty five thousand seven hundred nine only) under Section 28(4) of the Customs Act, 1962 and Section 11A(4) of the Central Excise Act, 1944 along with interest at the appropriate rate payable on the said amount of Customs duty and Central Excise duty not paid

by them under Section 28AA of the Customs Act, 1962 and Section 11AA of Central Excise Act, 1944.

5.9 Further, I also hold the party liable for penalty in terms of Section 114A of the Customs Act, 1962 and Section 11AC(1) (c) of the Central Excise Act, 1944 for their acts and omissions, namely willful mis-statement before the Department by executing a bond and giving an undertaking that they would observe all the provisions of the Customs Act, 1962, Central Excise Act, 1944 and the rules and regulations made there under in respect of their raw materials/ inputs procured duty free and also fulfill the condition stipulated in Customs/Central Excise Notification, as amended under which such raw materials/ inputs had been imported/sourced, as well as the Foreign Trade Policy as amended from time to time. Also the party suppressed the fact that they had used raw materials/ inputs procured duty free in the manufacture of the finished goods cleared in DTA, at nil rates of basic Customs duty and CVD and had not paid an amount equivalent to the duty forgone on such raw materials/ inputs and same came to department notice only during an enquiry initiated by officers of Anti-evasion. Central Excise, Noida-II.”

4.3 The impugned order relies upon the decision of CESTAT in case of Green Brilliance Energy P Ltd. [2015 (324) ELT 351 (T-LB)] and Pudumjee Plant Laboratories Ltd. [2016 (337) ELT 272 (T-mum)]. Both the judgment are on the interpretation of the word “non excisable goods” used in the Notification No 52/2003-Cus and Notification No 22/2003-CE both dated 31.03.2003. The second decision follows the first decision. Even if the finding recorded in the impugned order, in respect of these two notifications is to be upheld, the claim of appellant in terms of Notification No 12/2012-Cus and 12/2012-CE dated 17.03.2012 needs to be examined.

4.4 We find that the same issue was considered by this Tribunal in the case of CCE, Noida Vs M/s Elentec India Pvt. Ltd.

Final Order No.70050-70052 of 2025 dated 31.01.2025 wherein following has been observed:-

"4.10 Now coming to issue of fulfillment of the condition specified by SI No 2 of Notification No 12/2012-CE and, SI No 5 of Notification No 12/2012-Cus. We find that this issue is squarely covered by the decision of Ahmedabad bench in the case of Salora Components Pvt Ltd. [2019 (370) ELT 925 (T-Ahmd)] holding as follows:

"4.

As regard the entitlement of the exemption notification Nos. 25/1999-Cus., dated 28-2-1999 and 25/2002-Cus., dated 1-3-2002, we find that the lower authorities have denied this exemption only on the ground that the appellant have not followed the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996. In this regard we find that in the peculiar facts of the present case, initially when the goods were imported, the same were received in the factory of the appellant who was 100% EOU and admittedly used within the 100% EOU. The exemption is claimed only at the time of debonding of 100% EOU. The procedure provided under Customs Rules, 1996 is mainly for the purpose of movement of goods from port of Custom up to the factory and use thereof. In the present case, since the goods were imported by 100% EOU which were cleared under notification 52/2003-Cus., dated 31-3-2003. Even as per this notification, the goods are cleared on the presentation of the exemption certificate issued by the jurisdictional officer and on that basis, the movement of goods from the port up to the factory of the appellant is done under bond. More or less the similar procedure is followed either in notification 52/2003 or under notification 25/1999-Cus. and 25/2002-Cus. Therefore, the movement of goods

imported by the appellant from Custom port up to the factory as well as use thereof is completely within the monitoring of the department. Even in the case of procedure prescribed under Customs Rules, 1996, similar procedure is followed. Therefore, even if the procedure of Customs Rules 1996 was not followed but practically the similar procedure was followed with reference to notification 53/2003-Cus., if any lapse on the part of the appellant it is mere procedural lapse. For this reason, the substantial benefit of notification Nos. 25/1999-Cus. and 25/2002-Cus. cannot be denied. The judgments cited by the Ld. Commissioner (A) is in the facts of the case where the goods are cleared from the Customs and received by DTA unit which are not under the control of Customs/Excise department whereas the facts of the present case is different as the appellant is a 100% EOU. Therefore the judgments cited by Revenue stand distinguished. As per the above discussion, we are of the view that the appellant is entitled for exemption under notification 25/2002-Cus. and 25/1999-Cus. Accordingly, the impugned order is set aside. Appeals are allowed."

4.11 *Similar Clarification has been issued by the Director General Export Promotion vide his letter issued from F.No. DGEP/EOU/450/2006 dated 09.02.2007. The relevant text is reproduced below:*

"2.The matter has been examined. It is seen that parts, components and accessories of mobile handsets including cellular phones are exempted from basic customs duty, additional duty of customs under Section 3 (1) and Section 3 (5) of the Customs Tariff Act, 1975 under notification no.21/2005-Cus dated 01.03.2005 and 39/2005-Cus dated 02.05.2005 with a condition that the importer has to follow the procedure set out in the Customs (Import of Goods at

Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996. These parts, components and accessories of mobile hand sets including cellular phones are also exempted from excise duty under notification no. 6/2006-C.E. dated 01.03.06 as amended with a condition for the manufacturer to follow the procedure set out in the Central Excise (Removal of Goods at Concessional rate of Duty for Manufacture of Excisable Goods) Rules, 2001. The DTA manufacturers of mobile phones are thus entitled to import/indigenously procure parts, components and accessories of mobile handsets including cellular phones free of duty under the aforesaid notifications whereas EOU units are being denied the benefit of these notifications.

3. Such parts, components and accessories imported procured indigenously by an EOU are used for manufacture of mobile hand sets including cellular phones in their licensed premises under Section 58 & 65 of Customs Act, 1962. It follows the provisions of Manufacture & Other Operations in Warehouse Regulations, 1966 and executes a bond B-17 binding itself in respect of endues of the imported/ indigenous goods, to maintain records of receipt, consumption and balance in stock and to pay duty on inputs in case they are not used in connection with production within a period of three years along with interest. Further, EOU follows procedure of procurement certificate/ CT-3 certificate for import/ indigenous procurement, gives information of receipt of the goods which are physically verified and warehoused by the officer-in-charge and re-warehousing certificates are issued. These are mandatory features of the EOU scheme for the unit operating under EOU notification 52/2003-Cus and 22/2003-CE. Thus an EOU following such a procedure substantially satisfies the requirements of

the Rules to be followed as stipulated under the notifications 21/2005-Cus dated 01.03.2005, 39/2005-Cus dated 02.05.2005 and 6/2006-C.E. dated 01.03.2006.

4.Despite observance of the provisions of the above rules in spirit, if EOUs are denied exemption on parts, components and accessories on the ground that these notifications are not applicable to EOUs, it would put EOU manufacturers at a disadvantageous position vis-avis DTA manufacturers. This is not the intention behind the relevant provision of EOU notification 52/2003-Cus and 22/2003-CE. Accordingly, it is hereby clarified that exemption of customs and central excise duties on parts, components and accessories of mobile handsets including cellular phones under notification no. 21/2005-Cus dated 01.03.2005, 39/2005-Cus dated 02.05.2005 and 6/2006-C.E.dated 01.03.2006 shall be applicable for EOUs, if all substantive conditions of rules required to be followed under these notifications are fulfilled by an EOU to the satisfaction of the jurisdictional Asstt./ Dy. Commissioner of Customs or Central Excise, as the case may be."

Revenue in their appeal have not disputed the above clarification but have stated that this circular would not be applicable for the reason that these items do not fall within the category of components, parts etc. However for the view taken by us we hold that the said clarification would be applicable and the benefit of said notification will be admissible to the appellant.

4.12 The last issue raised by the revenue in their appeal is whether respondent could have claimed the benefit of this notification subsequent to clearance of the goods. We do not find any merits in the said submission. Commissioner has in the impugned order relied upon the decision of

Hon'ble Apex Court in case of Share Medical to allow the benefit of the said notification claimed by the respondent in the proceedings before him. In case of Indsolar Ltd [2019 (367) ELT 679 (T-All)] coordinate bench has held as following:

"5.19 Apart from the above, I also place reliance upon the Hon'ble Apex Court's decision in the case of Share Medical Care V/s Union of India, 2007 (209) ELT 321 (SC), wherein it was held by the Hon'ble Supreme Court that even if an applicant does not claim benefit under a particular notification at the initial stage, he is not debarred, not prohibited or estopped from claiming such benefit at a later stage. I also note that the ratio of the above Apex Court decision in Share Medical case (supra) was followed by the Hon'ble Tribunal in the case of Cipla Limited Vs Commissioner of Customs, Chennai, 2007 (218) ELT 547 (Tri.-Chennai), where in it was held that it was a settled law that the benefit of an exemption Notification can be claimed at appellate stage also following the ratio of the judgement of Share Medical case (supra). It is therefore even more clear that in the instant case, the benefit of alternative exemption notification of Notification No.12/2012- C.E. and Notification No.24/2005-Cus cannot be denied to the party, particularly in light of Board clarification dated 01.02.2017, since the said clarification allows benefits of these Notification to EOUs in addition to DTA units.

7. The Revenue's grievance in their memo of appeal is that the fact of availability of Alternate Exemption Notification No.24/2005-Cus and 12/2012-CE is not being disputed but as the appellant had not initially claimed the benefit of the said notifications and the imports were not imported under the claim of exemption in terms of the said notification, the

subsequent claim is only a after thought and misleading. The same is hypothetical to a state that they could have procured goods under general exemption notification whereas the fact remains that their procurement/import was specifically under Notification No.52/2003-Cus which was available only to 100% EOU.

8. We find no merits in the above contention of the Revenue. The Revenue is not disputing the fact that the import of raw material could have taken place under the cover of other two Notification No.24/2005-Cus and 12/2012-CE. The Adjudicating Authority, before extending the benefit of the said two notifications to the respondents have referred to and relied upon the various decisions of the higher courts to hold that alternative pleas raised by an assessee are required to be considered. It is well settled law that if the benefit of the notifications is otherwise available to a assessee, even though not claimed at a time of the import of the goods, the benefit cannot be denied. As such, we find no merits in the Revenue's appeal, the same is accordingly rejected."

4.13 The decisions sought to be relied upon by the revenue in their appeal are clearly distinguishable and hence we do not find any merits in the submission made relying on them."

4.5 In the case of M/s Samsung India Electronics Pvt. Ltd. Vs Commissioner of Central Excise, Noida-I Final Order No.70024/2025 dated 16.01.2025 this Tribunal has held as follows:-

"4.3 The only issue for consideration in the present case is admissibility of Notification No 12/2012 by an EOU/ EHTP in respect of the imported goods at the time of debonding along with the notification No 52/2003. The contention of revenue is that the benefit of Notification No

12/2012 would not be admissible in terms of the condition prescribed by the Notification No 52/2003. Both the notification have been reproduce in the impugned order.

4.4 By the letter D O F No 334/7/2016-TRU dated 01.02.2017, JS TRU has clarified as follows:

ANNEX III

CLARIFICATION

The Sub-section (1) of Section 3 of the Central Excise Act, 1944, provides for levy of excise duty, on goods produced or manufactured in India at rates specified in the First and Second Schedule to the Central Excise Tariff Act, 1985. However, as per the proviso to the said sub-section, goods produced or manufactured by Export Oriented Units [EOUs] units and cleared to domestic tariff area [DTA] are liable to excise duty equal to the aggregate of duties of customs leviable on like goods when imported into India. For such clearances from EOUs to DTA, Notification No. 22/2003-CE dated 31.03.2003 prescribes effective rates of excise duty on such DTA clearances under different circumstances.

2. In this context, proviso to sub-section (1) of section 5A of the Central Excise Act, 1944 states that unless specifically provided in a notification, no exemption therein shall apply to excisable goods which are produced or manufactured by an EOU and cleared to the DTA.

3. Further, EOUs are eligible for duty free import or domestic procurement of their inputs or raw materials under Notification No. 22/2003-CE dated 31.3.2003 and Notification No. 52/2003- Customs dated 31.03.2003. However, as per a proviso [the second proviso to para 6 in case of Notification No. 22/2003-CE and first proviso to para 3 in case of Notification

No. 52/2003- Customs], if the goods produced or manufactured by EOUs and cleared to DTA if imported are either non-excisable or leviable to Nil basic customs duty [BCD] and additional duty of customs [CVD], then EOUs cannot avail the exemptions under these notifications on inputs utilized in manufacture/processing/packaging etc. of such goods [cleared to DTA].

4. In addition, there are a number of customs and excise duty exemption notifications which prescribe concessional [including Nil] duty rates on specified goods [inputs/raw materials etc.] for use in manufacture of specified goods, subject to conditions prescribed. In this context, it has been stated that EOUs are not able to avail benefit of such exemptions on inputs imported or procured domestically by them.

5. The matter has been examined. As mentioned in para 2 above, non-applicability of exemptions under notifications issued under section 5A of the Central Excise Act, 1944 is only in respect of excisable goods produced or manufactured by an EOU and cleared to DTA and not in respect of inputs/raw materials procured by them domestically and utilised for production/manufacture of goods which are cleared by them to DTA.

6. In view of the above, it is hereby clarified that EOUs will also be eligible to import or procure raw materials/inputs at other concessional/Nil rate of BCD, excise duty/CVD or SAD, as the case may be, provided they fulfill all conditions for being eligible to such concessional or Nil duty. For these purposes, if an EOU is already registered with the jurisdictional Central Excise Authority, it will not be required to take any fresh registration under the Customs (Import of

Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2016 or the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable and Other Goods) Rules, 2016, as the case may be. Further, there will be no need for an EOU to separately comply with the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2016 for availing the CVD exemption, if the procedure under the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rule, 2016 is followed by it for availing exemption / concession from BCD on imports of inputs/raw materials.

4.5 In terms of the above clarification issued by the JS (TRU) benefit of the exemption as per notification No 12/2012 would be admissible to the EOU/ EHTP subject to fulfillment of the conditions of the notification. The benefit of the said exemption would be available to them at the time of importation of the goods or even at the time of removal of the goods either on debonding or otherwise. The condition 4 of Notification No 52/2003 referred in the impugned order, cannot be reason for denial of the said benefit. Undisputedly the condition prescribed by the said notification had been complied and a bond for Rs 1000 crores was accepted by the jurisdictional authorities on 28.02.2015 as required in terms of IGCR, 1996.

4.6 From the clarification issued by the TRU referred above, it is evident in case the EOU/ EHTP can claimed the benefit of the said notification at the time of import of the said goods even without seeking fresh registration under Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2016 or the

Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable and Other Goods) Rules, 2016. The said clarification also provides that the benefit of the said Notification will be admissible even without separately comply with the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2016 for availing the CVD exemption, if the procedure under the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rule, 2016 is followed by it for availing exemption / concession from BCD on imports of inputs/raw materials.”

4.6 As we find that the issue involved in the present case is squarely covered by the decisions as above, we do not find any merits in the demand made by the impugned order.

4.7 As we are setting aside the demand on merits itself we are not going into the issue of limitation. Penalties imposed are also set aside.

5.1 Appeal is allowed.

(Order pronounced in open court on-20 August, 2025)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)