CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Central Excise Appeal No.21691 of 2014

(Arising out of Order-in-Appeal No.77/2014-CE dated 18.02.2014 passed by the Commissioner of Central Excise (Appeals-I), Bangalore.)

M/s. Global Green Co. Ltd.,
100% EOU, No.14, 80 ft. Road,
4th Block, Koramangala,
Bangalore-560 034.

Appellant(s)

VERSUS

The Commissioner of Central Excise,
Bengaluru-I.

Respondent(s)

APPEARANCE:

Mr. Mohammed Ibrahim, Advocate for the Appellant
Mr. Maneesh Akhoury, Assistant Commissioner (AR) for the Respondent

CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR. PULLELA NAGESWARA RAO, MEMBER (TECHNICAL)

Final Order No. 20499 /2025

DATE OF HEARING: 17.03.2025
DATE OF DECISION: 17.03.2025

PER : D.M. MISRA

This is an appeal filed against Order-in-Appeal No.77/2014 dated 18.02.2014 passed by the Commissioner of Central Excise (Appeals-I), Bangalore.

2. Briefly stated the facts of the case are that the appellants are 100% EOU and engaged the manufacture and export of Gherkins in Vinegar etc., falling under Chapter 20 of Central Excise Tariff Act, 1985. The appellant through their letter dated

27.08.2010 sought permission for destruction of goods manufactured by them which became unfit for human consumption, after obtaining necessary permission from the Development Commissioner, Cochin Special Economic Zone. The appellant, consequently, were informed by the Department that according to the conditions prescribed under Notification No.52/2003-Cus and No.22/2003-CE both dated 31.03.2003, they were required to pay an amount equal to the duty leviable on the indigenous/imported inputs along with interest, since the said inputs and packing materials had not been cleared for export or home consumption within the stipulated period of 3 years from the date of procurement.

3. The appellant on receipt of letter dated 21.01.2011 from the Department, paid a total amount of Rs.34,90,392/- under protest. Consequently, the Department by letter dated 11.02.2011 permitted destruction of the manufactured goods. Accordingly, the destruction of the indigenous/imported goods within the factory premises was carried out between 24.03.2011 to 16.09.2011. Thereafter, the appellant had filed a refund claim for Rs. 34,90,392/- in Form-R seeking refund of the said amount paid earlier. The adjudicating authority rejected the said refund application. Aggrieved by the same, they filed appeal before the learned Commissioner (Appeals) who in turn upheld the order of the adjudicating authority.

4.1. At the outset, the learned advocate for the appellant had submitted that the appellant had complied with all the conditions imposed on EOU including condition No.8 of the Notification No. 52/2003-Cus dated 31.03.2003 as amended by the Notification No.34/2015-Cus dated 25.05.2015 which specifically provides that no duties are leviable in respect of capital goods, raw materials, consumables, spares, goods manufactured, processed or packages and scrap/waste/remnants/rejects which are destroyed within the unit after intimation to Customs authorities or destroyed outside unit with the permission of Customs authorities.

4.2. It is his contention that when an amendment has been brought about by way of substitution, it has retrospective effect and the same has to be read and construed as if the altered words had been written into Act or Rules from their inception. In support, they referred to the judgment of the Hon'ble Supreme Court in the case of Government of India Vs. Indian Tobacco Association [2005 (187) ELT 162 (S.C.)]. Further, they have submitted that as per provisions of Clause 6.15 of the FTP, the appellant's were never required to pay duty on the finished goods which were destroyed. In support, they have referred to the judgment of the Tribunal in the case of Tyco Electronics Corporation India (P) Ltd v. CCE & ST, Bangalore [2023 (11) TMI 916-CESTAT Bangalore]. Further, he has submitted that in any case the appellant are entitled for remission of duty under Rule 21 of the Central Excise Rules, 2002 of the goods which were allowed to be destroyed and became waste. In support, they referred to the judgments in the case of Bidar Sahakari Sakkare Karkhane Ltd. Vs. CCE, Belgaum [2016 (332) ELT 833 (Tri.-Bang.), J.J. Foams Pvt. Ltd. Vs. CCE, Ghaziabad [2015 (327) ELT 349 (Tri.-Del.)] and Bharat Sugar Mills Ltd. Vs. CCE & ST, Patna [2013 (290) ELT 690 (Tri.-Kolkata)].

5. The Learned AR for the Revenue has reiterated the findings of the learned Commissioner (Appeals). He has submitted that after the Department passed an order informing the appellant that as per the conditions of the Notification No. 52/2003-Cus and No.22/2003-CE both dated 31.03.2003, they are required to pay an amount equal to the duty leviable on the

indigenous/imported goods, the appellant did not dispute the same by filing any appeal against the observation of the Department that the appellant are ineligible to the benefit of the said notifications. On the contrary, the appellant paid duty under protest and directly filed a refund claim without challenging the admissibility otherwise of the Notification No. 52/2003-Cus and No.22/2003-CE both dated 31.03.2003. It is his contention that in view of the judgment of the Hon'ble Supreme Court in the case of ITC Vs. CCE, Kolkata-IV [2019(368) ELT 216 (SC)], the appellant is required to challenge the assessment order letter dated 21.01.2011 if not acceptable, before the appellate forum. The judgment by the Hon'ble Supreme Court in ITC's case was delivered in the year 2019; therefore, it was not before the authorities below. Therefore, he requested that the appeal may be remanded to the adjudicating authority.

6. We find force in the contention of the learned AR for the Revenue inasmuch as the duty foregone was computed after deciding the admissibility or otherwise of Notification No. 52/2003-Cus and No.22/2003-CE. It is observed that the condition for duty-free procurement of inputs, *prima facie,* had not been complied in the present case by the appellant. The appellant, without disputing the admissibility of the notifications or otherwise, paid the amount under protest. Later, without challenging the order of the Department, they filed a refund application straightaway. This aspect has not been addressed by the adjudicating authority as per the principle of law prevailing at the relevant time, as it allowed the appellant to file the refund claim directly which has been considered by the Hon'ble Supreme Court in ITC's case(supra) and it is observed that the assessment order need to be challenged before claiming the refund, their Lordships observed as:

> **"47.** When we consider the overall effect of the provisions prior to amendment and post-amendment

> under Finance Act, 2011, we are of the opinion that the claim for refund cannot be entertained unless the order of assessment or self-assessment is modified in accordance with law by taking recourse to the appropriate proceedings and it would not be within the ken of Section 27 to set aside the order of self-assessment and reassess the duty for making refund; and in case any person is aggrieved by any order which would include self-assessment, he has to get the order modified under Section 128 or under other relevant provisions of the Act".

7. In the result, the impugned order is set aside and the appeal is allowed by way of remand to the adjudicating authority to address the said issue after giving an opportunity to the appellant. Appeal is allowed by way of remand.

(Operative part of this Order was pronounced in Open Court on conclusion of the hearing.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(PULLELA NAGESWARA RAO)
MEMBER (TECHNICAL)

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