CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Central Excise Appeal No. 23287 of 2014

(Arising out of Order-in-Appeal No. 434/2014-CE dated 23.07.2014 passed by the Commissioner of Central Excise(Appeals), Bangalore)

M/s. Hindustan Aeronautics Limited,
Engine Division (EOU),
Bangalore Complex, Old Madras Road,
Post Bag No.9310, Bangalore – 560 093.,
Karnataka.

Appellant(s)

VERSUS

The Commissioner of Central Excise,
C.R. Building,
P.B. No.5400, Queen's Road,
Bangalore – 56001.

Respondent(s)

APPEARANCE:

Mr. B.G. Chidananda Urs, Advocate for the Appellant

Ms. Arpitha S, Joint 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. 21066 /2025

DATE OF HEARING: 01.07.2025
DATE OF DECISION: 01.07.2025

DR. D.M. MISRA

This is an appeal filed by the appellant against Order-in-Appeal No. 434/2014-CE dated 23.07.2014 passed by the Commissioner of Central Excise(Appeals), Bangalore.

2. Briefly stated the facts of the case are that the appellant are an 100% EOU, a Government of India enterprise, engaged in the manufacture and export of engines and parts of engines for aeroplanes and helicopters. They were using the duty-free raw

materials / capital goods imported and also procured indigenously duty-free availing the benefit of Notification No.52/2003 (Customs) dated 31.03.2003 and Notification No.22/2003-CE dated 31.03.2003. They were issued with a private bonded licence for storage and manufacture of the said goods. A show-cause notice was issued to them on 03.12.2012 based on the audit report that they have imported capital goods viz. 'F35A GT Hydraulic Dynamometer' falling under CTH 9031 8000 of the Central Excise Tariff Act, 1985 and filed Bill of Entry No.481098 dated 02.08.2010 for warehousing the said goods by availing the benefit of Notification No.52/2003-Cus dated 31.03.2003, as amended. Alleging that the capital goods so imported duty-free was installed in the test bed area of the factory which is not within the bonded area of the EOU, used to test the engine received for repair and maintenance / overhauling, being not exclusively used for the testing of engines manufactured by the EOU, duty foregone of Rs.27,20,388/- was demanded with interest and penalty. On adjudication, the demand was confirmed with interest and penalty. Aggrieved by the said order, the appellant filed appeal before the learned Commissioner(Appeals), who in turn rejected their appeal. Hence, the present appeal.

3. At the outset, the learned advocate for the appellant has submitted that in response to the objection of the audit that the imported capital goods viz. 'F35A GT Hydraulic Dynamometer' installed outside the bonded area of the EOU, it was explained that engine test bed is a high-cost testing facility which incorporates various instruments and systems; the said capital goods no doubt kept in a non-bonded area of the EOU but the engines manufactured by the appellant was tested in the test bed and supplied to Ministry of Defence. Further, they have submitted to the audit that the capital goods imported were exempted under Notification No.39/96-Cus dated 23.07.1996

and at the time of import, it has been wrongly cleared claiming benefit under Notification No.56/2003-Cus dated 31.032003. Further, it is submitted that they have approached the Customs Department to amend the Bill of Entry under Section 149 of the Customs Act to allow exemption under Notification No.39/96-Cus. However, pending the request for the amendment of the Bill of Entry, the present show-cause notice was issued for recovery of the duty foregone without disposing their application seeking amendment to Bill of Entry claiming the benefit of alternate Notification No.39/96-Cus dated 23.07.1996. In support, he has relied upon the judgment of the Hon'ble Supreme Court in the case of Share Medical Care Vs. UOI [2007(209) ELT 321 (SC)].

4. Learned Authorised Representative(AR) for the Revenue has reiterated the findings of the learned Commissioner(Appeals).

5. Heard both sides and perused the records.

6. The issue revolves in the very narrow compass. Even though initially the importer filed the Bill of Entry claiming benefit of Notification No.52/2003-Cus dated 31.03.2003, later after realising the mistake that they were entitled to the benefit of alternate Notification No.39/96-Cus dated 23.07.1996, they approached the Department to amend the Bill of Entry taking recourse to Section 149 of the Customs Act, 1962. However, without disposing their request about the admissibility to alternate Notification No.39/96-Cus dated 23.07.1996, the Department proceeded to issue the show-cause notice demanding duty foregone and later confirmed by the authorities below. We find that the situation in the present case is squarely covered by the ratio of the Hon'ble Supreme Court in the case of Share Medical Care (supra). Their lordships, more or less on

similar grounds, allowed to claim alternate benefit of notification in the event the same is claimed by the appellant. Their lordships observed as follows:-

> ***16.*** *In the instant case, the ground which weighed with the Deputy Director General (Medical), DGHS for non-considering the prayer of the appellant was that earlier, exemption was sought under category 2 of exemption notification, not under category 3 of exemption notification and exemption under category 2 was withdrawn. This is hardly a ground sustainable in law. On the contrary, well settled law is that in case the applicant is entitled to benefit under two different Notifications or under two different Heads, he can claim more benefit and it is the duty of the authorities to grant such benefits if the applicant is otherwise entitled to such benefit. Therefore, non-consideration on the part of the Deputy Director General (Medical), DGHS to the prayer of the appellant in claiming exemption under category 3 of the notification is illegal and improper. The prayer ought to have been considered and decided on merits. Grant of exemption under category 2 of the notification or withdrawal of the said benefit cannot come in the way of the applicant in claiming exemption under category 3 if the conditions laid down thereunder have been fulfilled. The High Court also committed the same error and hence the order of the High Court also suffers from the same infirmity and is liable to be set aside.*

7. In view of the above, we do not find merit in the impugned order. Consequently, the same is set aside and the mater is remanded to the adjudicating to examine the claim of the appellant seeking amendment to the Bill of Entry under Section 149 of the Customs Act, 1962 and admissibility to the benefit of alternate Notification No.39/96-Cus dated 23.07.1996 before adjudicating the demand of duty foregone. Appeal is allowed by way of remand to the adjudicating authority.

(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)

Raja…