CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE

REGIONAL BENCH, COURT NO. 2

Excise Appeal No. 27247 of 2013

(Arising out of Order-in-Appeal No. 193/2013- CE dated 17.04.2013 passed by the Commissioner of Central Excise (Appeals-I), Bangalore)

Ge India Technology Pvt., Ltd.,
No. 122, Epip, Phase-II,
Whitefiled Road,
Bangalore, Karnataka-560066. **.......Appellant**

VERSUS

Commissioner of Central Excise, Bangalore-I
P.B. No. 5400, CR Building,
Queens Road, Near Bangalore GPO
Bangalore, Karnataka - 560001. **.......Respondent**

Appearance:

Shri. Nischal K.M, Advocate Present for the Appellant
Shri. Rajesh Shastry, Authorised Representative Present for the Respondent

Coram:
Hon'ble Mr. P.A. Augustian, Member (Judicial)
Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)

<u>Final order No. 21151 /2025</u>

Date of Hearing: 03.01.2025
Date of Decision: 03.01.2025

Per: P.A. Augustian

The issue in the present appeal is regarding rejection of refund claim filed by the Appellant.

2. M/s. Ge India Technology Pvt., Ltd., the Appellant are the holders of private bonded warehouse and undertake in-bond manufacturing for research and development under EOU scheme.

3. The Appellant had imported antistatic synthetic carpets, Bristol chairs, polycoms and telematic equipment (IP phones) etc., and bonded in their premises. Thereafter Appellant vide letter dated 11.01.2011 applied for permission to shift the above referred items to their other unit M/s GE Medical System under Inter Unit Transfer (IUT)procedure. In the similar case of same claimant, Department had objected transfer of the bonded modular furniture and applicable duty was demanded vide Order-in-Original No. 20/2007 dated 07.08.2007. Aggrieved by said orders, the Appellant herein had filed appeals, and this Tribunal vide Final Order No. 109 & 110/2009 dated 10.02.2009 reported in 2009 (247) E.L.T. 402 (Tri.-Bang.) set aside the Order-in-Original and allowed the appeal and held that:-

> *"5. Once the items have been imported in terms of the notification, later the Customs cannot question their eligibility to the said notification. In our view, there is no question of violation of the conditions of permission given by the Development Commissioner for IUT. It has been clearly provided in Foreign Trade Policy that capital goods may be transferred or given on loan to other EOU/EHTP/STP/BTP/SEZ units with prior intimation to concerned Development Commissioner and Customs Authorities (Para 6.13(b). Moreover, in the Annexure-1 to Notification No. 53/2003-Cus., dated 31-3-2003, Sl. No. 1 lists 'Capital Goods'. Other items are listed in Sl. No. 2 to 30. The board has clarified that even the items which are listed in Sl. Nos. other than Sl. No. 1 may also be allowed the facility of IUT, if these items qualify to be considered as capital goods depending upon their use. Further even after the transfer, the impugned goods are in customs bond only. In such a circumstance, there is no justification in confirming the duty and imposing penalties especially when the transfer has been made after obtaining the permission of the Development Commissioner and Customs Authorities. In view of the above, we do not find any merit in the impugned orders. Therefore, the said impugned orders are set aside and we allow the appeals with consequential relief......*

4. Aggrieved, by the above decision of the Tribunal, Customs Appeal No. CSTA No.24/2009 was filed by the Revenue before the Hon'ble High Court of Karnataka and since the case was pending before the Hon'ble High Court, the Appellant was not permitted to shift the said goods under Inter Unit Transfer (IUT) procedure to their other unit without payment of duty. Since the goods were urgently required, they have paid due amount under protest. Subsequently, Hon'ble High Court of Karnataka had rejected the appeal filed by the Revenue vide order dated 20.04.2011.

5. In the meantime, a refund application was submitted by the Appellant for an amount of Rs.10,27,895/- which was paid under protest, while transferring the capital goods. The refund claim was rejected vide order dated 19.10.2011 and aggrieved by said order, an appeal was filed before the Commissioner (Appeals) and Commissioner (Appeals) as per the order dated 17.04.2013, rejected the appeal. Aggrieved by said order, present appeal was filed.

6. When the appeal came up for hearing, the Learned Counsel for the Appellant draws our attention to the communication made by the Appellant with the office of the Development Commissioner and Respondent herein seeking transfer of the goods. The Learned Counsel also draws our attention to the letter dated 19.01.2011 where the Respondent had directed the Appellant to produce the documents and the Appellant had made detailed submissions to that effect. The Learned Counsel submits that; the Hon'ble High Court of Karnataka vide Order No. CSTA No. 24/2009 dated 20.04.2011 rejected the appeal filed by the Department on the ground that as the matter involved determination of rate of duty the High Court did not have jurisdiction to hear the appeal; it is significant to note that on dismissal of the Department's Appeal by the High Court of Karnataka, the Department could have appealed against the Tribunal's Final Order dated 10.02.2009 before the Hon'ble Supreme Court of India. However, the Department refrained from filing such an appeal and thus the Tribunal's Final Order dated 10.02.2009 has attained finality. Therefore, the current position of law is that goods such as antistatic carpets, modular

furniture and all such goods which are capital goods in nature and use can be transferred through Inter Unit Transfer (IUT) procedure.

7. The learned Authorised Representative (AR) for the Revenue reiterated the findings in the impugned order.

8. Heard both sides and perused the records.

9. We find that as per the evidence on record, similar issue was considered by this Tribunal in appellant's own case, and the appeal was dismissed on 10.02.2009. The appeal filed by the Revenue against the Tribunal's order was dismissed by Hon’ble High Court of Karnataka vide order dated 20.04.2011. However, the Department has not filed an appeal before the Hon'ble Supreme Court of India thus the Tribunal's Order dated 10.02.2009 has attained finality. Further as regards the issue on merit, we find that considering the issue in detail and following the decisions of the Tribunal in similar cases, this Tribunal as per the Final Order No. 109 & 110/2009 dated 10.02.2009 allowed the appeals.

10. In view of the above discussion we find that the impugned order is unsustainable. Accordingly, the impugned order is set aside, and the appeal is allowed with consequential relief, if any, in accordance with law.

(Operative portion of the order was pronounced in open court on conclusion of hearing.)

(P.A Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

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