CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Appeal(s) Involved:

C/7/2009-DB

[Arising out of OIA No. 135/2008 dated 31/10/2008 passed by CC(Appeals), Bangalore]

SUTURES INDIA PVT. LTD
NO 472-D, 13th CROSS, IV PHASE PEENYA
INDUSTRIAL AREA BANGALORE

Appellant(s)

Versus

C.C-BANGALORE-CUS
C.R. BUILDING,QUEENS ROAD,
P.B.NO. 5400,
BANGALORE
KARNATAKA
560001

Respondent(s)

Appearance:

Shri G.H. Pradyumna, Advocate — For the Appellant

Smt. Kavita Podwal, Superintendent(AR) — For the Respondent

Date of Hearing: 04/09/2018
Date of Decision:11/12/2018

CORAM:
HON'BLE MR. S.S GARG, JUDICIAL MEMBER
HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER

Final Order No. 21869 / 2018

Per : S.S. GARG

The present appeal is directed against the impugned order dt. 31/10/2008 passed by the Commissioner(Appeals) whereby the Commissioner(Appeals) has rejected the appeal of the appellant.

2. Briefly the facts of the present case are that the appellants are a 100% EOU engaged in the manufacture and export of 'Surgical Sutures

and Needles'. They are holders of Customs Private Bonded Warehousing Licence and In-Bond Manufacturing Sanction Order No.146/2005 dt. 11/07/2005 for their EOU operations. The appellant approached the Superintendent of Customs, EOU, Bangalore and obtained CT-# certificate bearing No.951/2005 dt. 27/07/2005 for the duty-free procurement of item carrying description 'Pre-fabricated Construction complete with walls, doors and other accessories' in terms of exemption provided under Notification No.22/03-CE dt. 31/03/2003 as amended. The value of the said item was shown as Rs.34,56,547/- and the duty forgone was Rs.5,69,639/-. The said item was procured from a company called Rinac India Ltd., Bangalore. Subsequently, a show-cause notice dt. 14/03/2008 was issued to the appellant demanding the foregone duty on the ground that the item in question did not find place in the list of items and EOU was entitled to procure without payment of duty as appearing in Annexure-I to the Notification No.22/03-CE and the said item was not used in connection with the manufacture and packaging of articles of export goods. The amount of duty foregone was deposited by the appellant along with interest on 28/07/2007 and the same was proposed to be appropriated. After following the due process, the original authority vide Order-in-original dt. 16/08/2008 confirmed the demand along with interest and also appropriated the duty and interest paid by the appellant. Aggrieved by the said order, appellant filed appeal before the Commissioner(Appeals) who rejected the appeal.

3. Heard both sides and perused records.

4.1. Learned counsel for the appellant submitted that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the evidence. He further submitted that the impugned order is contrary to the binding judicial precedent decided by this Tribunal in many cases. He further submitted that it is not in dispute that the appellant had procured the goods and warehoused the same against valid CT-3 certificate issued by the Range Officer under Notification No.22/03-CE and the same was warehoused by the Range Officer after necessary verification that the said goods are covered by the Notification for exemption. He further submitted that the Range Officer was fully satisfied about the utility of the impugned items for use in the manufacture of export goods. He further submitted that the said items were bonded under the supervision of the Customs Officer and are all put to use in the EOU premises and the same is also not in dispute. He further submitted that once this was accepted by the Department, then the Department cannot brush aside the certificate issued by the Range Officer and come to a finding that the said item was not used in the manufacturing activity. He further submitted that there is no allegation in the show-cause notice as well as in the impugned order that the impugned goods have been diverted or have not been put to use in the EOU. He further submitted that the goods are still used in the EOU. He also submitted that the duty in respect of goods warehoused in an EOU can only be demanded at the time of debonding or removal from warehouse. Consequently, the demand of duty prior to removal is premature. For this submission, the learned counsel relied upon the following submissions:-

i. DSL Software Vs. CC, Bangalore [2005(181) ELT 250 (Tri. Bang.)]
ii. CC Vs. Infosys Technologies [2003(159) ELT 863]
iii. Natural Stone Exports Ltd. Vs. CC(Appeals) [2006(198) ELT 440 (Tri. Bang.)]
iv. Applicomp India Ltd. Vs. CC, Bangalore [2007(213) ELT 317 (Tri. Bang.)]
v. Ceeta Industries Ltd. Vs. CC [2006(198) ELT 209 (Tri. Bang.)]
vi. Transparent Technologies Pvt. Ltd. Vs. CCE [2006(200) ELT 118 (Tri. Bang.)]

4.2. He further submitted that both the authorities have overlooked the principle underlying the various pronouncements of the CESTAT insofar as demand of duty on warehoused goods are concerned. He further submitted that the impugned goods had been procured under CT3 certificate issued by the Department after proper verification regarding eligibility for exemption, then no duty can be demanded. For this submission, he relied upon the decision delivered in the case of Aditi Technologies Vs. Commissioner [2003(151) ELT 343 (Tri. Bang.)] wherein it has been held that once the goods had been procured against CT-3 certificate, demand would not be sustainable. The ratio of this decision was reaffirmed by CESTAT in the case of Oracle India Pvt. Ltd. [2006(2000) ELT 545 (Tri. Bang.)]. He further submitted that with regard to the same goods, the Development Commissioner has accorded subsequent approval. Both the authorities have wrongly come to the conclusion that the subsequent approval relates to different goods but the fact of the matter is that there is no difference between the two items and the subsequent procurement of the same item was approved by the Development Commissioner and therefore, the duty cannot be demanded and the item procured against valid CT-3 certificate and duly warehoused and put to use in the EOU premises.

5. On the other hand, the learned AR for the Department defended the impugned order and submitted that the goods imported were not covered by the said Notification and therefore both the authorities have rightly demanded the duty.

6. After considering the submissions of both sides, we find that there is no dispute regarding the fact that the goods were procured by the appellant against valid CT-3 certificate issued by the Range Officer under Notification No.22/2003-CE dt. 31/03/2003 and the said goods were warehoused by the Range Officer after necessary verification and after full satisfaction regarding the use of the impugned items in the manufacture of export goods. It has not been disputed by both the authorities below that the impugned goods have not been diverted by the appellant and have been put to use in the EOU. We also find that subsequently, the Development Commissioner has accorded approval for procurement of prefabricated RPUF Insulated Panels which is identical in nature with only

difference in description. Further we find that in view of the various decisions relied upon by the appellant cited supra, the duty can only be demanded at the time of debonding and demand prior to debonding would be premature. Further we find that the Division Bench of this Tribunal in the case of CCE, Chandigarh Vs. Kejriwal Bee Care (I) Ltd. [2011(266) ELT 233 (Tri. Del.)] has held that there is no definition for capital goods in Notification No.22/2003-CE and the definition of capital goods under CENVAT Credit Rules, 2004 are not applicable to exemption notification EOU. It is pertinent to reproduce relevant para 3.1 of the said judgment.

> *3.1 The respondent are an agricultural EOU engaged in production of honey and Beewax a by-product for export. There is no dispute about the fact that the items, in question, are required for the cold room, which is a must for the storage and processing of honey. The only ground on which the department seeks to deny the benefit of the notification to the respondent is that since there is no definition of the term "capital goods" in the exemption notification, it is the definition of this term, as given in Rule 2 of Cenvat Credit Rules, 2002, which has to be adopted and that the goods, in question, are not covered by the definition of term "capital goods" as given in the Cenvat Credit Rules. This contention of the Department is totally wrong as the definition of the term "inputs" and "capital goods" as given in the Cenvat Credit Rules, 2002 or Cenvat Credit Rules, 2004 is relevant only for the purpose of Cenvat credit and there is no justification to apply the same to an exemption notification meant for 100% EOUs. Since there is no definition of term "capital goods" in the exemption Notification No. 22/03-C.E., the term has to be interpreted in the sense in which it is understood in common parlance and on this basis, the pre-fabricated structures, PUFF panels and RPF panels required by the respondent for cold room would have to be treated as items of capital goods. We find that same view has been taken by the Tribunal in the case of CCE, Pune-I v. Weikfield Agro Products (supra), wherein Tribunal held that FRP panels sandwiched with PUFF insulation, cold insulation materials, fibre woven reinforced plastic sheets etc. used for insulation purpose in the mushroom production room to prevent loss of chilled water temperature, have to be treated as capital goods or their components and would be eligible for the benefit of exemption*

under Notification No. 1/95-C.E.

7. In view of our discussion above and by relying upon the ratio of the decision cited supra, we are of the considered view that the impugned order is not sustainable in law and therefore the same is set aside by allowing appeal of the appellant, with consequential relief, if any.

(Order pronounced on 11/12/2018)

P. ANJANI KUMAR	**S.S GARG**
TECHNICAL MEMBER	**JUDICIAL MEMBER**

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