IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI

Appeal No. E/358/2012

(Arising out of Order-in-Appeal No.26/2012 (P) dated 21.3.2012 passed by the Commissioner of Central Excise (Appeals), Chennai)

Commissioner of Central Excise, Puduchery   Appellant

Vs.

M/s. Sun Pharmaceuticals India Ltd.   Respondent

Appearance

Shri R. Subramanian, AC (AR) for the Appellant
None for the Respondent

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Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing / Decision: **02.05.2018**

Final Order No. **41414 / 2018**

Per Bench

Department is aggrieved by the order passed by the Commissioner (Appeals) who set aside the demand, interest and penalties.

2. Brief facts are that the respondents are 100% EOU and manufacturers of bulk drugs falling under Chapter 29. On perusal of records, it was noticed that they had cleared the goods Danazol in DTA on payment of basic customs duty and

education cess by claiming the concessional rate of 5% BCD under sl. No. 80(A) of Notification No.21/2002-Cus. dated 1.3.2002. According to department, the respondents are not eligible for the said concessional rate of duty and show cause notice has been issued proposing to demand the duty along with interest and for imposing penalties. After due process of law, the original authority confirmed the demand, interest and imposed penalty of Rs.3 lakhs under Rule 25 of Central Excise Rules, 2002. In appeal, Commissioner (Appeals) set aside the same. Hence department has filed this appeal.

3. The ld. AR Shri R. Subramaniam reiterated the grounds of appeal.

4. None appeared on behalf of the respondents, though notice was issued.

5. The matter was taken up for disposal after hearing the ld. AR and on perusal of records.

6. The demand has been raised denying the benefit of Notification No.21/2002-Cus. alleging that the respondents have not followed the condition covered under Entry No.80(B) of Notification and that the drug "Danazol" bulk drug would fall under 80(b). The bulk drug imported by the respondent is not eligible for concessional duty as Sl. No. 80(A) refers to "Drug". The issue whether assessee is eligible for the benefit of Notification and whether the condition attached to S. No. 80(B) is only procedural one was considered by the Tribunal in various

decisions and held in favour of the assessee. In the case of CIPLA Ltd. Vs. CC, Chennai – 200 (218) ELT 547, the Tribunal observed as under:-

> "5. In the instant case, admittedly, the 'bulk drugs' imported by the appellants were specifically mentioned in List 3 appended to Sl. No. 80(A) of Customs Notification No. 21/02 and are liable to be considered as 'drugs' mentioned at 80(A). It is beyond doubt that 'bulk drugs' are also 'drugs'. They are so defined under the Drugs (Prices Control) Order, 1995 also. The imported goods, which are specified in List 3, must fall within the coverage of 'drugs specified in List 3' and consequently the benefit of Sl. No. 80(A) would be admissible to them in relation to BCD. It would follow that, insofar as CVD is concerned, the benefit of Sl. No. 47(A) of the Central Excise Notification would be available to the goods. We have taken this view upon strict interpretation of the language used in the description of goods under the relevant entries of the Notification, in terms of the Apex Court's ruling in *Gujarat State Fertilisers Co.* v. *CCE* - 1997 (91) E.L.T. 3 (S.C.) and other cases cited by learned DR. In the result, all the appeals filed against the appellate Commissioner's order on merits are bound to succeed."

7. Similar view was taken in Commissioner of Central Excise, Hyderabad Vs. Hetero Drugs Ltd. – 2010 (262) ELT 490. This Tribunal has followed the said decisions in the case of Hetero Drugs Ltd. in Appeal No. C/148/2007 dated 18.9.2017. Following these decisions, we find no infirmity in the order passed by the Commissioner (Appeals). The impugned order is upheld and the appeal filed by Revenue is dismissed.

(Operative portion of the order was
pronounced in open court)

(**Madhu Mohan Damodhar**) Member (Technical)	(**Sulekha Beevi C.S.**) Member (Judicial)

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