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

Appeal No. E/363/2011

(Arising out of Order-in-Original No.10/2011 dated 31.3.2011 passed by the Commissioner of Central Excise, Chennai – III)

M/s. ABI Showatech India Ltd. Appellant

Vs.

Commissioner of GST & Central Excise
Chennai Respondent

Appearance

Shri S. Murugappan, Advocate for the Appellant
Ms. T. Usha Devi, DC (AR) 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 :18.12.2018
Date of Pronouncement :19.02.2019

Final Order No. **40320 / 2019**

Per Bench

The facts of the appeal are that the appellants M/s. ABI Showatech India Ltd. are 100% EOU with green card for manufacture and export of precision automotive components, ancillaries, turbo chargers and parts thereof, casting and tools, dies and moulds, jigs and fixtures. The appellants exported some quantity of bearing housings and large quantity of precision automotive components (cylinders). In DTA, they cleared large quantity of bearing housing. On scrutiny of records, it appeared to the department that in terms of para 6.8(a) of Foreign Trade Policy 2009 – 2014, the units other than gems and jewellery units, may sell goods upto 50% of FOB value of exports subject to fulfillment of positive NFE on payment of concessional duties. Within this entitlement of DTA sale, a unit may sell in DTA, its products similar to the goods which are exported or expected to be exported. However, units which are manufacturing and exporting more than one product can sell any of these products into DTA upto 90% of the FOB value of export of specific products subject to the condition that the total DTA sale does not exceed the overall entitlement of 50% of FOB value of exports for the unit.

2. From the ER-2 returns filed by appellant for the period from April 2009 to March 2010, the following facts emerged:-

Bearing Housing Machined (parts of Turbo Charger)			Precision automotive components		
FOB Value of exports (Rs.	Value of DTA clearances	DTA clearances as a % of FOB value of exports	FOB value of exports	Value of DTA clearances	DTA clearances as a % of FOB value of exports
25135	7,03,86,720	280035%	209052935	Nil	---

It appeared to the Department that value of DTA clearances of bearing housing machined (parts of turbo charger) is more than the prescribed limit of 90% of the FOB value of exports; that appellant had cleared bearing housing machined into DTA at concessional rate of duties in excess of their entitlement in terms of para 6.8(a) of FTP 2009 – 2014 and in contravention of the conditions stipulated in Sl. No. 3 of Notification 23/2003-CE dated 31.3.2003. Hence, show cause notice was issued to the appellant inter alia proposing differential duty of Rs.62,51,633/- with interest thereon on the value of clearances of bearing house machined (parts of turbo charger) into DTA for the period from April 2009 to March 2010. In addition, the Commissioner vide the impugned order dated 31.3.2011 confirmed the proposed demand with interest and also imposed penalty under Rule 25(1) of the Central Excise Rules, 2002. Hence this appeal.

3. When the matter came up for hearing, ld. counsel Shri S. Murugappan made oral and written submissions which can be broadly summarized as under:-

3.1 There is no distinction between turbo charger components or precision automotive components in the green card. Hence, scope of the expression is to be seen in this context.

3.2 "Similar goods" definition cannot be taken from another enactment / rule. In this regard, he relied on the following decisions:-

a. Meghmani Industries Ltd. Vs. Commissioner of Central Excise, Ahmedabad – 2010 (261) ELT 411 (Tri. Ahmd.)

b. Commissioner of Central Excise, Pune Vs. TELCO – 2000 (126) ELT 1102 (Tribunal).

3.3 For units making more than product, within the overall value of 90% of FOB value of export products, any product can be cleared within DTA without restriction. Hence respondent's interpretation is wrong.

3.4 DGFT is a final authority for deciding the interpretation of the provision in the policy. Hence assuming but not admitting there is doubt the matter can be referred to DGFT/Development Commissioner. In this regard, he relied on Greatship (India) Ltd. Vs. Union of India reported in 2016 (338) ELT 545 (Del.).

3.5 Even if there is any non-payment, it can be due to interpretation of the policy provisions. Hence, imposition of equal penalty under Rule 25(1) cannot be sustained.

4. On the other hand, ld. AR Ms. T. Usha Devi supports the findings in the impugned order. She pointed out that the appellant have made one export of 50 numbers of bearing house machined for the FOB value of Rs.25,135/- during the impugned period. Hence accrual of the DTA entitlement that could have happened through the physical exports of the said bearing housing would be only 90% of such FOB value and not the combined FOB value of exports for both the products.

5. Heard both sides.

6.1 The first allegation is that Bearing Housing and Precision Automotive components are not similar goods within the meaning of para 6.8(a) of Foreign Trade Policy 2009 -2014 so as to allow the benefit of Notification No.23/2003-CE dated 31.3.2003 vide Sl. No. 3 of the Notification. In para 9(a) of the impugned order, the adjudicating authority has observed that it may be a fact that Bearing Housing Machine and Precision Automotive components may belong to the broad categories commonly known as 'automotive components'. In the Green car, the permission is for manufacture / export of Precision Automotive Components and Ancillaries, Turbo Chargers and parts thereof. The department has relied upon Board Circular to hold the goods are not similar. The said Circular refers to definition of similar goods from Customs Valuation Rules. In Meghmani Industries – 2010(261) ELT 41 (Tri. Ahmd.),it is held that the definition of similar goods in Customs Valuation Rules cannot be imported for interpretation of Foreign Trade Policy. Both these would surely fall under the broad-banded category of automobile components. For appreciation para 6.8(a) of Foreign Trade Policy is reproduced as under:-

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DTA Sale of Finished Products / Rejects / Waste / Scrap / Remnants and by-products	6.8	Entire production of EOU / EHTP / STP / BTP units shall be exported subject to following:- (a) Units, other than gems and jewellery units, may sell goods upto 50% of FOB value of exports, subject to fulfillment of positive NFE, on payment of concessional duties. Within entitlement of DTA sale, unit may sell in DTA, its products similar to goods which are exported or expected to be exported from units. However, units which are manufacturing and exporting more than one product can sell any of these products in to DTA, upto 90% of FOB value of export of the specific products, subject to the condition that total DTA sale does not exceed the overall entitlement of 50% of FOB value of exports for the unit as stipulated above.

6.2 Thus, it can be seen that within entitlement of DTA sale, unit may sell in DTA, its products similar to goods which are exported or expected to be exported from units. The description of goods in the Green card does not differentiate or specify goods on the basis of Customs Tariff. It merely treats them belonging to a class. Bearing machines are considered by department as part of Turbo Charger which are parts of automobile, then Precision Automotive Components also being part of Automobiles should fall in the same class, since they are engaged in manufacture and export of various parts of automobiles as stated in the Green Card. Further, as per the Table given in para 2 above, the appellant has cleared in DTA Bearing Housing only. Precision Automotive Component was not cleared in DTA. In para 6.8 what is stated is that when more than one product is exported, such unit can clear in DTA upto 90% of value of such specified goods provided the total DTA sale does not exceed 50% FOB value of exports of the unit. The appellant have sold 90% FOD of value of export of Bearing Housing in DTA and has not exceeded 50% of FOB value of the unit since there is no DTA sale of Precision Automotive Component. The condition is therefore fully satisfied. The denial of concessional rate of duty as per the notification is unjustified. The demand raised cannot sustain and requires to be set aside, which we hereby do. The impugned order is set aside and the appeal is allowed with consequential relief, if any.

(Pronounced in court on 19.02.2019)

(**Madhu Mohan Damodhar**)
Member (Technical)

(**Sulekha Beevi C.S.**)
Member (Judicial)

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