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

Appeal No.C/160/2007

[Arising out of Order-in-Appeal C.Cus.No.4/07 dt. 08.01.2007 passed by the Commissioner of Customs (Appeals), Chennai]

Troikka Pharmaceuticals Ltd. Appellant

Versus

Commissioner of Customs, Chennai Respondent

Appearance:

Ms. J. Ragini, Advocate
For the Appellant

Shri K. Veerabhadra Reddy, JC (AR)
For the Respondent

CORAM :

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

Date of hearing : 18.09.2017
Date of Pronouncement : 21.9.2017

FINAL ORDER No. 42148/2017

Per Bench

The brief facts of the case are that M/s. Troikaa Pharmaceuticals, Gujarat (the appellant herein) imported 50 kgs of Amiodarone Hcl vide Bill of Entry No.519862 dt. 01.04.2003 and claimed benefit of Notification No.21/2002-Cus. Sl.No.80(A). The goods were classified under CTH 29420090 and duty @5% + nil CVD were paid and the goods cleared. It appeared that the said goods viz. Amiodarone Hcl would fall under Sl.No.80(B) of the said notification and not 80(A) thereof, but the importers had not claimed or complied with the condition of 80(B) in that they had not fulfilled the conditions of Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods), Rules, 1996 (for short, IGCRDMEG Rules). It therefore appeared that the importers were not eligible for the notification benefit as above, hence, the importers were called upon to show cause to the Deputy Commissioner of Customs as to why benefit of Notification 21/2002 Sl. No 80(B) should not be denied and duty charged at the rate of 20% BCD + 16% CVD, and the differential duty of Rs.79,684.00 was demanded under Section 28(1) of the Customs Act, 1962. The lower authority found that the appellant had not followed the procedure set out in the IGCRDMEG Rules '96 at the time of clearance, that this cannot be rectified subsequently since there is no provision in the notification for the same, and confirmed the demand along with interest under the Customs Act, 1962. The appeal filed by appellant was rejected by the

Commissioner (Appeals) vide impugned order dt.08.01.2007. Hence this appeal.

2. On 18.09.2017, when the matter came up for hearing, ld. Advocate Ms. J. Ragini made the following oral submissions which can be summarized as under :

(i) Appellant had mistakenly claimed exemption under Sl.No.80(A) but subsequently sought notification benefit under Sl.No.80(B) of the notification.

(ii) Department has denied benefit of the notification on the ground that procedures set out in IGCRDMEG Rules were not followed. Ld. Advocate submits that due to the change in claim of notification from Sl.No.80(A) to Sl.No.80(B), the appellant could not follow the procedures set out in the Rules.

(iii) When the department itself allowed the benefit under another entry, it is impossible for appellant to comply with certain other conditions at the time of clearance.

(iv) Appellants however have produced certificate issued by jurisdictional Superintendent of Central Excise dt. 13.01.2006 to the effect that subject goods cleared under Bill of Entry No.519862 dated 01.04.2003 kgs. of in the manufacture of Eurythmic tablets and injections in the year 2003-04. For obtaining the benefit of

Customs, Excise & Service Tax Appellate Tribunal classification and assessment under Sl.No.80(B) of the Notification No.21/2002 the appellant had to follow the Rules and the imported goods had to be used in the manufacture of drugs or medicines specified in List No.3 appended in the Notification. Before the respondent the appellant had also produced a consumption certificate issued by the Assistant Commissioner, Food and Drugs Control Administration, certifying that the imported materials had been used in the manufacture of Eurythmic (Amiodarone Hcl) injections and tablets. Appellants also had been importing Amiodarone Hcl and had registered with the Jurisdictional Assistant Commissioner of Central Excise in terms of the Rules.

3. On the other hand, Ld. A.R Shri K. Veerabhadra Reddy supports the adjudication. He submits that complying with the requirements of the IGCRDMEG Rules is a substantive condition and not just merely a procedural. He relied upon the case law of Hon'ble Supreme Court in *Eagle Flask Industries Ltd. Vs CCE Pune* – 2004 (171) ELT 296 (SC) to point out that the undertaking/declaration ought to have been filed by the appellant was not an empty formality and that they was, in fact, the foundation for availing the benefit under the notification.

4.1 Heard both sides and have gone through the facts. The core issue that comes up for appellate decision is whether the IGCRDMEG

Rules, 1996 will have the effect of denying the benefit extended under exemption notification.

4.2 Discernably, the appellant had claimed the exemption of the imported goods under Sl.No.80A of the Notification No.21/2002-Cus. From the facts, it emerges that this was also initially allowed by the department. It was only later that the appellant changed their claim to benefit of Sl.No.80(B) of the notification.

4.3 At this point, it would be useful to understand entries Sl.No.80(A) and Sl.No.80(B) of the Notification No.21/2002-Cus., as under :

S.No.	Chapter heading No. or sub-heading No.	Description of goods	Std.rate	Addl. duty rate	Condition No.
(1)	(2)	(3)	(4)	(5)	(6)
...	...	....			
80	28,29 or 30	The following goods, namely —			
		(A) Drugs or medicines specified in List 3	5%	-	-
		(B) Bulk drugs used in the Manufacture of the drugs or Medicines at (A) above	5%	-	5

4.4 From the above it is evident that there is no post-import condition for Sl.No.80(A). The requirement of following procedure laid down in IGCRDMEG Rules comes into the picture only when the goods are imported under claim of benefit under Sl.No.80(B). The appellant has a point that when the goods had been imported with initial claim of benefit under Sl.No.80(A), there would not have been any inkling of the requirement of the said rules. For this reason itself, appellant cannot be faulted for not having taken correct registration and filed declaration as provided for in the said Rules. In any case, appellant ~~at their request~~ have submitted letter of the jurisdictional Superintendent of Central Excise dt. 13.1.2006 confirming the use of the imported goods in the manufacture as required.

4.5 The Tribunal had occasion to analyze the non-following of procedure prescribed in IGCRDMEG Rules in the case of *CCE Hyderabad Vs Hetero Drugs Ltd.* - 2010 (262) ELT 490 (Tri.-Bang) The relevant portion of the order is reproduced as under :

> "**7.** We also find that the revenue has no case that the disputed consignments had not been utilized in further production of medicines by the consignee. The assessee was forced to make clearances for further manufacture without the buyer producing the requisite certificate as the jurisdictional Asstt. Commissioner of the buyer firm had not granted the said certificate and had informed them that such certificate was not necessary. In the circumstances, the reliance of the assessee on the decision in the case of *M/s. Sundaram Fasteners Ltd.* v. *CCE* [1987 (29) E.L.T. 275 (Tri.-Delhi)] in respect of the claim for the benefit carries considerable force. In the said decision, it was held that the condition which was impossible to comply with because of the action of the revenue should be taken to have been dispensed with. We also note that there is substantial compliance with the requirement of the rules by the assessee."

4.6 We find that in the instant case also, there is no allegation that the goods imported have not been utilized for the intended purpose. There is also no allegation that the goods have been otherwise diverted for some other purpose. The certificate of the jurisdictional Superintendent has also attested the usage of the imported goods. The purpose of the IGCRDMEG Rules is to ensure mandate of the import and its manufacture and its subsequent processing etc. without obviating commission of fraud etc. There is no such allegation here. The usage of the imported goods have been sufficiently established which, in our view, would be sufficient compliance of the condition of the notification. In the event, the impugned order holding to the contrary cannot be sustained and will have to be set aside, which we hereby do.

5. Appeal is allowed with consequential relief, if any, as per law.

(Pronounced in court on 21.9.2017)

(Madhu Mohan Damodhar)
Member (Technical)

(Sulekha Beevi C.S)
Member (Judicial)

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Customs, Excise & Service Tax Appellate Tribunal

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