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

COURT HALL No.III

EXCISE APPEAL No.40788 of 2014

(Arising out of Order-in-Appeal No.29/2014-C.E. dated 23.01.2014 passed by the Commissioner of Central Excise and Service Tax (Appeals), Salem)

Sri Gugan Mills **.... Appellant**
(A Unit of Sharadha Terry Products Ltd)
BadrakaliammanKovil Road,
Nellithurai PO
Mettupalayam, Coimbatore 641 301

Versus

Commissioner of GST & Central Excise **...Respondent**
No.1, Foulkes Compound, Anaimedu
Salem 636 001

APPEARANCE:

Shri G. Derrick Sam, Advocate
For the Appellant

Shri N. Satyanarayanan, AC (A.R)
For the Respondent

CORAM :

HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

DATE OF HEARING/ DATE OF DECISION: 4/10/2023

FINAL ORDER No.40875/2023

ORDER : Per Ms. SULEKHA BEEVI, C.S.

1. Brief facts are that the appellant are a 100% EOU. They are manufacturing terry towels / terry fabrics of cotton falling under chapter 63 of the Central Excise Tariff Act 1985. As the appellants

failed to adopt 8% ad valorem as per the Central Excise Tariff Act, 1985 while calculating the CVD in respect of clearances effected to DTA as provided in notification No.23/2003 CE dated 31/3/2003 read with section 3 of Central Excise Act 1944, Show Cause Notice was issued to the appellant for the period from January 2010 to December 2010, proposing to demand excise duty of Rs.1,47,581/- along with the interest and for imposing penalties. After due process of law, the original authority confirmed the demand along with interest and imposed penalty. On appeal, the Commissioner (Appeals) upheld the adjudication order. Hence this appeal.

2. On behalf of the appellant, the Ld. counsel Shri Derrick Sam appeared and argued. It is submitted by the Ld. counsel that in the appellant's own case for a different period the very same issue was decided in favour of the appellant. The decision of the Tribunal by final order No.41711/41712/2018 dated 10/5/2018 was relied by the appellant. It is prayed that the appeal may be allowed.

3. The Ld. AR Shri Satyanarayanan reiterated the finding in the impugned order.

4. Heard both sides.

5. After appreciating the facts and evidence placed before us, we find that the issue stands squarely covered by the decision of the Tribunal in the appellant's own case in Final Order no. 41711-

41712/2018 dated 10.05.2018. The relevant part of the decision is reproduced as under:

> 5.1 Undisputedly respondents are 100% EOU. The argument of the department is that as per Section 5 A unless a notification specifically mentions that the same is applicable to EOU, the respondents can not avail the benefit of such notification. Section 5A has to be read along with notification 23/2013 which grants exemption to DTA clearances made by EOU. Sl. No. 2 of this notification is reproduced for better understanding.

Sl.No.	Chapterorheading No. orsub-headingNo.	Descriptionof Goods	AmountofDuty	Condi-tions
(1)	(2)	(3)	(4)	(5)
2.	AnyChapter	Allgoods	In excess of the amount equal to fifty per cent. of the duty leviable under section 3 of the Central Excise Act: **Provided** that the duty payable in accordance with this notification in respect of the said goods shall not be less than the duty of excise leviable on the like goods produced or manufactured outside the export oriented undertaking, Electronic Hardware Technology Park unit or Software Technology Park unit, which is specified in the said Schedule read with the any other relevant notification issued under sub-section (1) of section 5A oftheCentralExciseAct: [* * * *] *Illustration* .-Assuming product X has the value of Rs.100 under section 14 of the Customs Act, 1962 and is chargeable to basic custom duty of 25% *ad valorem,* additional duty of 16% *ad valorem* and special additional duty of 4% *ad valorem.* The computation of duty required to be paid would be as follows: Basic Customs duty = Rs.25/- Value for the purpose of calculation of additional duty =Rs.100/-+Rs.25/-=Rs.125/- Additional duty = 16% of Rs.125/-	2

			=Rs.20/- Value for the purpose of special additional duty if leviable=Rs.100/- +Rs.25/- +Rs.20/-=Rs.145/- Special additional duty if leviable = 4% of Rs.145/- =Rs.5.8/- Total duty payable but for this exemption = Rs.25/- +Rs.20/- +Rs.5.80/-=Rs.50.80/- 50% of aggregate of the duties of customs =50% of Rs.50.80/-= 25.40 Duty required to be paid in accordance with this notification is Rs.25.40/-provided it is not less than the duty of excise leviable on like goods produced or manufactured outside the oriented undertaking etc.	

5.2 It would be worthwhile to note that as per proviso stated inSl.No.2, the duty payable in accordance with this notification shall notbe less than the duty of excise leviable on the like goods produced ormanufactured outside the EOU, which is specified in the said Schedule read with any other relevant notification issued under subsection (1) of Section 5A of Central Excise Act, ibid.Thus for calculating the dutyof excise for the purpose of discharging CVD liability, any notificationissued in respect of the goods cleared by EOU also has to be taken into consideration. The respondents have thus calculated the CVD on the basis of the concessional rate of duty as in notification 29/2004 or30/2004.They have not directly claimed the benefit of concessional rate of duty of 29/2004 or 30/2004, instead they have adopted the concessional rate for the purpose of calculation of CVD for claiming exemption for clearances to DTA as per notification 23/2003.

5.6 Taking note of facts and following the decisions as above, we are of the view that Commissioner (Appeals) has correctly appreciated the facts and applied the law to reach the conclusion in setting aside the demand. We find no grounds to interfere in the impugned order. The appeals filed by department are dismissed.

6. Following the same, we are of the opinion that the demand cannot be sustained. The impugned order is set aside. The appeal is allowed with consequential relief, if any.

(Dictated in open court)

(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

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