## CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL CHENNAI

REGIONAL BENCH - COURT No. III

### Excise Appeal No. 40073 of 2013

(Arising out of Order-in-Original No.36/2012 dated 17.10.2012 passed by Commissioner of Central Excise, Chennai II Commissionerate, M.H.U. Complex, Nandanam, Chennai 600 035)

**M/s.Bhayani Plastics Limited (100% EOU) .... Appellant**
No.P-33, Vyasarpadi Co-Operative Industrial Estate,
E.H. Road,
Chennai 600 039.

*VERSUS*

**The Commissioner of CGST & Central Excise ... Respondent**
Chennai Outer Commissionerate,
No.2054, I Block, II Avenue,
12th Main Road, Anna Nagar,
Chennai 600 040.

**WITH**

### Excise Appeal No. 42473 of 2013

(Arising out of Order-in-Original No.12/2013 dated 12.09.2013 passed by Commissioner of Central Excise, Chennai II Commissionerate, M.H.U. Complex, Nandanam, Chennai 600 035)

**M/s.Bhayani Plastics Limited (100% EOU) .... Appellant**
No.P-33, Vyasarpadi Co-Operative Industrial Estate,
E.H. Road,
Chennai 600 039.

*VERSUS*

**The Commissioner of CGST & Central Excise ... Respondent**
Chennai Outer Commissionerate
No.2054, I Block, II Avenue,
12th Main Road, Anna Nagar,
Chennai 600 040.

**AND**

## Excise Appeal No. 42474 of 2013

(Arising out of Order-in-Original No.12/2013 dated 12.09.2013 passed by Commissioner of Central Excise, Chennai II Commissionerate, M.H.U. Complex, Nandanam, Chennai 600 035)

**M/s. Atul Bhayani, Managing Director** **... Appellant**
Bhayani Plastics Limited (100% EOU)
No.P-33, Vyasarpadi Co-Operative Industrial Estate,
E.H. Road,
Chennai 600 039.

*VERSUS*

**The Commissioner of CGST & Central Excise** **... Respondent**
Chennai Outer Commissionerate
No.2054, I Block, II Avenue,
12$^{th}$ Main Road, Anna Nagar,
Chennai 600 040.

**APPEARANCE :**

Shri S. Venkatachalam, Advocate, for the Appellant
Shri M. Selvakumar, Authorized Representative for the Respondent

**CORAM :**

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

**FINAL ORDER Nos.41122-41124/2024**

**DATE OF HEARING : 20.08.2024**
**DATE OF DECISION : 23.08.2024**

**Per: Ms. Sulekha Beevi. C.S**

The issue involved in these appeals being the same and connected, these appeals were heard together and are disposed of by this common order.

2. The appellant M/s.Bhayana Plastics India (P) Ltd. is a 100% EOU and holds Central Excise Registration. They are engaged in the manufacture of Plastic Hangers and Plastic Sizers falling under Chapter sub-heading 39269079 and 39269099 respectively of Central Excise Tariff Act, 1985.

3. On verification of records of the appellant by the officers of Internal Audit Group, it was noted that the appellant had procured raw materials like High Impact Polystyrene (HIPS), Hooks, Polypropylene (PP) etc. without payment of duty as per Notification No.22/2003-CE dated 31.03.2003 as amended and Notification No.52/2003-Cus. dated 31.03.2003. The manufactured plastic hangers, sizers were cleared by the appellant to garment manufacturers in Domestic Tariff Area (DTA) without payment of duty as 'deemed exports' under para 6.9 of Foreign Trade Policy. It appeared that the appellant did not follow the conditions of the Notification No.31/2007-CE (NT) dt. 2.8.2007 for supply of the items to the DTA unit.

4. As per Rule 17 (1) of Central Excise Rules, 2002, where any goods are removed from a 100% Export Oriented Unit to DTA, such removal shall be made under an invoice by following the procedures specified in Rule 11 and the duty leviable on such goods shall be paid by utilizing the Cenvat credit or by crediting the duty payable to the account of Central Government in the manner specified in Rule 8 of the said Rules.

5. As per para-3 of the said notification, the EOU shall clear the specified goods to the DTA exporter, based on the certificate (CT1) issued by the Superintendent in charge of the DTA exporter under an

invoice by following the procedure specified in Rule 11 of Central Excise Rules, 2002. The EOU shall intimate about such removal along with a self-attested photocopy of the invoice under which the goods have been moved to its jurisdictional Superintendent in charge who has to verify such removal of the goods with the CT-1 certificate received from the Superintendent in charge of DTA exporter.

6. In the present case, it was noted that the appellant had cleared goods to their DTA customers as 'deemed exports' without receiving CT1 certificate from their buyers (exporters). The Department therefore entertained a view that the clearances so effected were purely DTA clearances made without payment of duty. Show cause notices were issued to the appellant proposing to deny the benefit of Notification No.31/2007 for the period July 2007 to February 2012 as well as for the period March 2012 to January 2013 alleging clearances of goods to DTA without complying the conditions in the notification and proposing to demand the duty on the clearances along with interest and for imposing penalties. After due process of law, the original authority confirmed the duty demand proposed in the SCNs for the disputed periods along with interest and imposed equal penalties. A separate penalty of Rs.10 lakhs was also imposed on the Managing Director of the appellant firm. Aggrieved by such order, the appellants are now before the Tribunal.

7. The Ld. Counsel Shri S. Venkatachalam appeared and argued for the appellant. The appellant, an 100% EOU, has maintained records properly indicating all details of their transactions and filed returns regularly with the Development Commissioner / MEPZ who had jurisdiction over the appellant's factory since inception. Earlier, the unit was under the administration and control of the Customs authority. Subsequently, the statutory control was with the Excise Department. Thereafter, the appellant had been filing returns before the Excise authorities. During the time when the appellant was under the control of the Customs authorities, there was no requirement of fulfilling the condition of clearing the goods on the basis of issuance

of a CT-1 certificate. After change of control to the excise office, the appellants were under bonafide belief that they could clear the goods in the very same manner. The CT-1 certificates are to be issued by the customers of the appellant (exporters).Such customers were not usually registered with the Central Excise Department. Appellant was not able to obtain CT-1 certificates.

7.1 The difficulties faced in furnishing CT-1 certificate was represented by the appellant to the higher authorities including the Prime Minister's office. The case of the appellant was recommended by the Director-General of Federation for Indian Export Organization vide letter dt. 20.10.2014. Based on the representation a fresh Notification No.20/2015 (NT) No.24.9.2015 was issued wherein the requirement to clear the goods on the basis of CT-1 certificate procedure was removed. The period of dispute in these appeals is prior to the said notification.

7.2 The department does not dispute that the hangers have been cleared to DTA units who have exported the goods. The demand of duty has been raised only for the reason that the appellant has not submitted the CT-1 certificate as required under Notification No.31/2007 dt. 2.8.2007. The CBEC in its circular No.703/19/2003-CX dt. 25.3.2003 issued from F.No.B3/1/2003-TRU has announced Simplified Central Excise Procedure for export of ready-made garments. In view of the relaxation and SSI notification, most of the garment exporters did not register themselves with the Department. Hence the appellant could not get CT-1 certificate from the jurisdictional office of the customers/exporters. Ld. Counsel submitted that it is merely a procedural lapse and the demand of duty on exported goods cannot be made for such lapse.

7.3 The Ld. Counsel submitted that to establish that the goods have been exported the appellant had furnished Form-H certificates as well as invoices. This aspect has been noted by the original authority in para 14.6.3 of the impugned order. The contention of the appellant that Form-H would be sufficient to establish that the goods (hangers) have been exported was not accepted by the original authority.

7.4 The Ld. Counsel relied upon the decision in the case of **Annai Chemicals and Associators Vs Commissioner of GST & Central Excise, Salem** (2023) 10 Centax 1 (Tri.-Mad.) It is submitted that in the said case the Tribunal considered the issue as to whether Form-H would be sufficient to establish that the goods have been exported. The issue in the said case was whether value of export clearances can be included so as to deny the SSI exemption. The Tribunal held that when the assesse has furnished 'Form-H' to establish that the goods have been exported, the value of export clearances has to be excluded from the value of domestic clearances for the purpose of considering the SSI exemption under Notification No.8/2003-C dt. 1.3.2003.

7.5 In the said case, the Tribunal had followed the decision in the case of **Vadapalani Press Vs CCE Chennai -** 2007 (217) ELT 248 (Tribunal) and **Ramani Plastics Pvt. Ltd. Vs CCE Chennai** – 2015 (317) ELT 343 (Tri-Chennai).

7.6 The Ld. Counsel submitted that they have obtained Form-H certificates from their customers and have used the same before the Sales Tax authorities for exemption from payment of Central Sales Tax on the goods which have been cleared to their customers which were later exported. Since goods cleared by the appellant was sale in the course of export of the goods out of India, the Department ought not to have denied exemption of the notification alleging that as CT-1 certificate is not produced, the goods have to be considered to be cleared in DTA and not exported.

7.7 Though the SCNs have been issued invoking the extended period alleging suppression of facts with intent to evade payment of duty, the only irregularity noted by the department is the procedural irregularity. There is no positive act of suppression established against the appellant. Further, the unit of the appellant was audited by the internal Audit Group in the year 2008 itself. No objection was raised by the Audit group with regard to the clearances effected by the appellant to the DTA exporters and the procedure followed by the appellants. Moreover, the appellant was making representations to higher authorities on this issue of the difficulties faced for complying with the production of CT-1 certificate as most of the domestic DTA garments customers were not registered under the Central Excise Department. All these would go to show that there are no grounds for invoking the extended period. It is submitted that the demand raised invoking the extended period may be set aside. Ld. Counsel prayed that the impugned orders may be set aside.

8. Ld. A.R Shri M. Selvakumar appeared and argued for the Department. The discussions in paras 13 & 14 of OIO No. 36/2012 dated 17.10.2012 were referred to by the Ld. A.R. It is submitted that as per the notification, the DTA exporter intending to procure goods from EOU is required to register himself for the said purpose, and also has to obtain certificate in Form CT1. In terms of Rule 17 (1) of Central Excise Rules, 2002, the EOU intending to clear goods to DTA exporter without payment of duty shall, on receipt of such CT-1 certificates, clear the specified goods under an invoice by following the procedure specified under Rule 11 of Central Excise Rules, 2002. Further, the EOU unit is required to intimate such removals to the jurisdictional Superintendent with a self-attested photocopy of invoice for cross verification along with the CT-1 certificate received in this regard. They have also to file ER-2 returns for the clearances made. The appellant has not cleared the goods under CT-1 certificate which is violation of condition of Notification No.31/2007 dt. 2.8.2007. In the absence of CT-1 certificate the clearances are to be treated as DTA clearances and cannot be considered as export. The appellant is entitled to make clearances to DTA without payment of duty only if they furnish CT-1 certificate. When the EOU is allowed free import of specified goods

with an obligation to export the resultant products, the clearances made to DTA exporter without payment of duty is a further concession allowed in terms of the Foreign Trade Policy. The appellant has therefore to comply with the procedure as contemplated in the notification. The appellant has not complied with the procedure and therefore demand of duty confirmed along with interest and penalties imposed are legal and proper. Ld. AR prayed that the appeals may be dismissed.

9. Heard both sides.

10. The allegation raised against the appellant is that they have contravened the condition / procedure prescribed under Notification No.31/2007-CE (NT) dt. 2.8.2007. From the conditions and procedure of the notification explained above, it can be seen that the condition is to make sure that the finished goods which are manufactured by the duty free inputs are used for export only. In the present case, the appellant has cleared the hangers to the DTA customers who have exported the goods along with garments. The Department has not made any allegation that the goods manufactured by the appellants have not been exported. The only allegation is that they have not complied with the procedure of removal of goods on the basis of CT-1 certificates. The appellant has explained the difficulty of procuring the CT1 certificate during the disputed period. It is submitted by the Ld. Counsel that most of the exporters, who are garment manufacturers had SSI units and were not registered with the Central Excise Department. For these reasons, the appellant could not get CT-1 certificates. However, the appellant has furnished Form-H which is sufficient to prove that the goods cleared from the factory have been sold to the DTA customers only for the purpose of export. The document in the nature of Form-H establishes that sale of the goods is in the course of transaction of export of goods.

11. The very same issue in respect of clearances of hangers to the domestic exporters and non-production of CT-1 certificates was examined by the Tribunal in the case of **Ramani Plastics Pvt. Ltd**. (supra). Relevant paras read as under :

> “**4.** We find that in appeal No. E/160/2005, the adjudicating authority, after considering the Board’s circular, dated 25-7-2002, and Sales Tax H-Form or ST-XXII Form and the Chartered Accountant’s certificate dropped the proceedings. The relevant portion of findings of the adjudicating authority in OIO, dated 27-7-2004 is reproduced below :-
>
> “In this case, the assessee has cleared plastic hangers to the following units under Form H except Serial No. 1
>
> 1. M/s. Network Clothing Company (P) Ltd., Tirupur
> 2. M/s. Amstrong Knitting Mills, Tirupur
> 3. M/s. C.S. Garments, Tirupur
> 4. M/s. Stanfab Apparels, Chennai
> 5. M/s. R.R. Leather Products Pvt. Ltd., Chennai etc.
> 6. M/s. BNT Innovations, Tirupur
> 7. M/s. Gomathi International, Tirupur
> 8. M/s. Fulchand & Sons, Mumbai.
>
> These hangers have been exported along with garments by the above mentioned units. The corroborative documents for export of hangers along with garments has been provided in the form of Form H in respect of all the units except unit mentioned under serial No. 1 above. The Form H or ST-XXII Form or any other equivalent sales tax form of the Sales Tax Department could be accepted as a proof of export provided the goods have been exported directly from the factory of manufacture as clarified by Board vide Circular No. 648/39/2002-CX, dated 25-7-2002 issued from file F. No. 209/11A/2002-CX.6 which was incidentally issued for clarifying the simplified export procedure available to exempted SSI unit. Though the assessee have not cleared the hangers directly from the factory premises, the Form H furnished is taken as an evidence to conclude that the hangers have been exported from the units mentioned above. On the basis of these documents, I am of the opinion that the assessee is entitled for deduction of the value of hangers cleared to these units from the total value of clearances in terms of Notification No. 47/94.”

> **5.** Revenue in their appeal before the Commissioner (Appeals) contended that the appellants had cleared the Plastic Hangers to various units (buyers) who have exported their own goods viz. Garments with hangers. Thus, the assessee had not directly exported the goods viz. Plastic Hangers from their factory as required in the aforesaid Board's circular.
>
> **7.** On a plain reading of the Board's circular, we find that the dispute relates to acceptance of sales tax documents as proof of export by the exempted SSI units. The Board has clarified that the documents prescribed by the Sales Tax Department viz. H-Form or ST-XXII Form or any other equivalent Sales Tax Form will be accepted as proof of export. In the present case, Revenue has not disputed that the appellant placed sufficient material in the nature of H-Form or ST-XXII Form, Sales Tax Assessment Order as proof of export. There is no dispute that the Hangers were exported with garments by the merchant exporter. Thus, there is substantial compliance of the Board's circular. The Commissioner (Appeals) observed that there is procedural lapse in so far as the goods were not directly exported but through merchant exporter. The Board has clearly clarified that this facility is not available to the supplies made to any other domestic manufacturer who may or may not export its finished products. In the present case, it is observed from the record that the merchant exporter exported the goods which was not disputed at any point of time."

12. The said decision was followed in the case of **Vadapalani Press** (supra) and **Annai Chemicals & Associators** (supra). After appreciating the facts and following the above decisions, we are of the considered opinion that the demand of duty, interest and penalties confirmed on the allegation of procedural irregularities cannot sustain and requires to be set aside. Ordered accordingly. The issue on merits is held in favour of the appellant.

13. Further, the Ld. Counsel has argued on the ground of limitation also. The entire allegation is with regard to non-compliance of the procedure. There were audits conducted who have not objected to the clearances made to DTA exporters. The appellant has been making repeated representations to higher authorities informing inability to furnish CT1 certificates. Later, the notification No.20/2015(NT) dt.24.09.2015 was issued wherein the requirement of CT-1 certificate was omitted. All these would go to show that there no ingredients for invoking the extended period. The show cause

notices are time-barred. The issue on limitation is also answered in favour of the appellant.

14. The penalty imposed on Shri Atul Bhayani, Managing Director is set aside for the reasons recorded above.

15. In the result, the impugned orders are set aside. The appeals are allowed with consequential relief, if any.

(Order pronounced in the open court on 23.08.2024)

| | |
|---|---|
| sd/- | sd/- |
| **(VASA SESHAGIRI RAO)** | **(SULEKHA BEEVI. C.S)** |
| Member (Technical) | Member (Judicial) |

gs