

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, CHENNAI**

Excise Appeal No.65 of 2003

(Arising out of Order-in-Appeal No. 56/2003 dated 20.1.2003 passed by the Commissioner of Central Excise (Appeals), Coimbatore)

M/s. Lakshmi Machine Works Ltd.

Perianaickenpalayam,
Coimbatore – 641 020.

Appellant

Vs.

Commissioner of GST & Central Excise

No. 6/7, A.T.D. Street, Race Course
Coimbatore – 641 018.

Respondent

With

- (i) Appeal No. E/168/2003 – M/s. Lakshmi Machine Works Ltd. Vs. CGST & Central Excise, Coimbatore (Arising out of Order-in-Appeal No. 8/2003 dated 23.1.2003 passed by the Commissioner of Central Excise (Appeals), Coimbatore)
- (ii) Appeal No. E/358/2003 – M/s. Lakshmi Machine Works Ltd. Vs. CGST & Central Excise, Coimbatore (Arising out of Order-in-Appeal No. 12/2003 dated 24.1.2003 passed by the Commissioner of Central Excise (Appeals), Coimbatore)
- (iii) Appeal No. E/462/2002 – CGST & CE, Coimbatore Vs. M/s. Lakshmi Machine Works Ltd. (Arising out of Order-in-Appeal No. 112/2002 (CBE) (GVN) dated 28.5.2002 passed by the Commissioner of Central Excise (Appeals), Trichy)
- (iv) Appeal No. E/463/2002 – CGST & CE, Coimbatore Vs. M/s. Lakshmi Machine Works Ltd. (Arising out of Order-in-Appeal No. 113/2002 (CBE) (GVN) dated 28.5.2002 passed by the Commissioner of Central Excise (Appeals), Trichy)

APPEARANCE:

Shri J. Shankar Raman, Advocate for the Appellant

Shri Arul C. Durairaj, Superintendent (AR) for the Respondent

CORAM

Hon'ble Ms. SulekhaBeevi C.S., Member (Judicial)

Hon'ble Shri P. Anjani Kumar, Member (Technical)

Date of Hearing : 21.09.2021

Date of Decision: 21.09.2021

Final Order Nos. **42329-42333 / 2021**

Per Ms. SulekhaBeevi C.S.

The above appeals were earlier disposed by this Tribunal vide common Final Order No. 135 to 139/2005 dated 25.1.2005. The Tribunal held therein that the assessee is liable to pay duty on the MODVAT credit availed inputs which were removed as such to 100% EOU. Against such order, the assessee filed appeals before the Hon'ble High Court and vide judgment in CMA No. 2197 to 2201/2005 dated 26.9.2018, the Hon'ble High Court remanded the matter to the Tribunal for fresh consideration and also to consider the applicability of the judgment of the Hon'ble High Court of Karnataka in the case of CCE Vs. Soletron Centum Electronics Ltd. – 2014 (309) ELT 479 (Kar.). The parties herein are referred to as assessee and department for the sake of convenience.

2. Brief facts are that the assessee is engaged in manufacture of CNC lathes machines and parts classifiable under sub-heading 8457, 8458, 8459, 8466 of CETA, 1985. The assessee holds central excise registration and also availed MODVAT facility. They removed some inputs as such without payment of duty availing exemption under Notification No.1/95-CE dated 4.1.1995. The department was of the view that as per condition No. 1(b) of Notification No. 1/95, the user industry has to procure the goods directly from the factory of manufacturer or from the warehouse and use the goods for the purposes of export. The assessees have not manufactured the inputs in their factory and therefore not entitled to the exemption as per the notification. Show Cause Notice was issued alleging the above violation and also proposing to demand duty. After due process of law, the original authority held the issue against the assessee and confirmed the demand proposed in the Show Cause Notice. Against this, the

assessee preferred appeals before Commissioner (Appeals) and vide orders impugned, the Commissioner (Appeals) allowed appeal vide Order in Appeal dated 28.5.2002 setting aside the demand. The department has filed Appeal Nos. E/462/2003 and E/463/2003 against such orders. In other appeals, the Commissioner (Appeals) upheld the confirmation of demand vide Orders in Appeal dated 20.1.2003, 23.1.2003 and 24.1.2003. In Appeal Nos. E/65/2003, E/168/2003 and E/358/2003, the assessee is before this Tribunal aggrieved by the confirmation of the demand.

3. The short issue that arises for consideration is whether the assessee is liable to pay duty in respect of the inputs on which MODVAT credit has been availed and thereafter removed against CT-3 certificates to a 100% EOU.

4. The Hon'ble High Court while remanding the matter referred to the judgment of the Hon'ble High Court of Karnataka in Soletron Centum Electronics Ltd. – 2014 (309) ELT 479 (Kar.). In para 16 it has been observed by the Hon'ble High Court as under:-

“In the light of the decision in the case of Soletron Centum Electronics Ltd., we are of the considered view that the matters require reconsideration by the Tribunal. Though it may be true that the decision was not available when the Tribunal decided and passed the impugned common order, nevertheless, when the matter travelled upto the Supreme Court in the case of Lakshmi Automatic Loom Works Ltd., and the matter was remanded to the High Court of Karnataka for a fresh consideration, we are of the view that the Tribunal should have a fresh look into the matter taking note of the legal position as laid down in the case of Soletron Centum Electronics Ltd.”

5. With this background, we proceed to analyse the issue before us.

6. The learned counsel Shri J. Shankar Raman referred to Notification No. 1/95-CE dated 4.1.1995. The condition at 1(b) of the said Notification reads as under:-

“In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excises and Salt Act/ 1944 (1 of 1944), read with sub-section (3) of section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957), the Central Government being satisfied that it is necessary in the public interest so to do, hereby exempts excisable goods, specified in Annexure I to this notification (hereinafter referred to as the said 6 goods), when brought in connection with -

(a) the manufacture and packaging of articles into a hundred percent export oriented undertaking (hereinafter referred to as user industry); or

(b) manufacture or development of electronics hardware and software by a unit in Electronics Hardware Technology Park (hereinafter referred to as user industry) under Electronic Hardware Technology Park (EHTP) Scheme notified by the notification of the Government of India in the Ministry of Commerce No. 42 (N-8)/92-97, dated the 14th September, 1992; or

(c) manufacture or development of software by a unit in Software Technology Parks (hereinafter referred to as user industry) under Software Technology Parks (STP) Scheme notified by the notification of the Government of India in the Ministry of Commerce No. 33/(RE)/92-97, dated the 22nd March, 1994, from the whole of,

(i) the duty of excise leviable thereon under section 3 of the Central Excise Act, 1944 (1 of 1944), and

(ii) the additional duty of excise leviable thereon under sub-section (1) of section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957), subject to the following conditions, namely :-

(1) the user industry, in the case of,

(i) hundred per cent export oriented undertaking has been approved by the Board of Approval for hundred per cent export oriented undertaking (hereinafter referred to as the said Board) appointed by the Central Government in exercise of the powers conferred by section 14 of the Industries (Development and Regulation) Act, 1951 (65 of 1951) and the rules made under that Act;

(ii) unit in Electronic Hardware Technology Park (EHTP) Scheme has been approved by the inter-Ministerial Standing Committee (hereinafter referred to as the said Committee) appointed by the notification of the Government of India in the Ministry of Industry (Department of Industrial Development) No. S.O. 117(E), dated the 22nd February, 1993;

(iii) unit in Software Technology Parks (STP) Scheme, has been approved by the said Committee;

(b) the user industry brings the excisable goods directly from the factory of manufacture or from the warehouse and uses them for purposes as specified in clauses (a) to (c) above solely for export;”

7. He adverted to para 10.2 of the Export Import Policy dated 1.4.1997 to 31.3.2002. The above para clarifies the point that supply of goods to Export Oriented Units (EOUs) shall be regarded as 'Deemed Exports' under the Policy, provided that the goods are manufactured in India. Para 10.3 of the Export Import Policy 1997 – 2002 clarifies that deemed exports shall be eligible for the following benefits in respect of manufacture and supply of goods quality as deemed exports:-

- (a) Advance license for intermediate supply / deemed export
- (b) Deemed exports drawback
- (c) Refund of Terminal Excise Duty

8. As per Notification No. 1/95, as amended, 100% EOUs are required to procure excisable goods, without payment of excise duty under the cover of CT-3 certificate from the factory of manufacture. The department alleges that the clearances effected by the appellant without payment of duty to 100% EOUs under the cover of CT-3 certificate are not proper as per the above notifications, since the spares (inputs) were only bought out items of the appellant. According to department, the condition stipulated in Notification 1/95 that the procurement shall be from the factory of manufacture has not been satisfied. Hence Show Cause Notices were issued for recovery of duty of such spares / inputs cleared as such to 100% EOUs. On the one hand, the department denies the clearance of 'inputs as such' alleging that these inputs cannot be considered as manufactured goods at the factory of the appellant. On the other hand, they have proceeded to demand duty on such spares on the basis of the sales price of such spares deeming that they have been manufactured by the appellant.

9. Notification 1/95 is a benevolent notification wherein the 100% EOUs are entitled to procure raw materials and packing materials

without payment of duty for use in their production and subsequent export. The interpretation adopted by the department to deny the benefit is contrary to the purpose for which the notification is issued.

The benefits which are given for physical exports has to be extended to the clearances made to 100% EOUs also, which are deemed exports.

10. The CBEC vide its Circular No. 283/117/93-CX dated 31.12.1996 has clarified that inputs can be cleared without payment of duty, under bond, for exports treating them as if they have been manufactured in the factory. The inputs removed as such during the relevant period of dispute are deemed to be 'manufactured' within the factory. Once such removals are treated as if manufactured then the appellant satisfies the condition under Notification No. 1/95 and the allegation of the department fails. The issue is settled in favour of the assessee in the case of Soletron Centum Electronics Ltd. (supra).

11. The Tribunal in the case of Lakshmi Automatic Loom Works Ltd. Vs. CGST & Central Excise vide Final Order Nos. 42161 to 42164/2021 dated 30.8.2021 has allowed the appeals by applying the decision in the case of Soletron Centum Electronics Ltd. (supra).

12. The learned AR Shri Arul C. Durairaj supported the findings in the impugned order.

13. Heard both sides.

14. The issue stands settled by the decision of the Hon'ble High Court of Karnataka in the case of Soletron Centum Electronics Ltd. (supra) wherein it has been observed as under:-

"15. In so far as the inputs are concerned, it is not in dispute that the assessee while purchasing the said goods for its DTA unit has paid duty. It is only when those inputs as such were removed to the EHTP unit, the Cenvat credit availed was reversed. It is because, if the assessee had purchased those inputs for its EHTP unit by virtue of aforesaid Notification, there was no duty payable, as the said inputs

were removed with the previous permission of the department as reflected in CT-3. There was no liability to pay the duty and already Cenvat credit had been taken, it was reversed under protest and therefore, they were entitled to the refund of the said amount. That question is also answered in favour of the assessee and against the Revenue”.

15. The said decision was applied by the Tribunal in the case of Lakshmi Automatic Loom Works Ltd. (supra). The Hon'ble High Court of Madras in the judgment by which the matter was remanded has referred the said decision in Solelectron Centum Electronics Ltd. (supra) with approval and also directed the Tribunal to consider the applicability of the said judgment. We find that the issue raised and analyzed in the case of Solelectron Centum Electronics Ltd. (supra) is identical and squarely applicable to the issue for consideration before us.

16. Following the same, we are of the considered opinion that the demand of duty on inputs removed as such to 100% EOU cannot sustain. The impugned order confirming the demand, interest and penalties are set aside.

17. In the result, the assessee appeals are allowed. The department appeals are dismissed.

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

(SULEKHA BEEVI C.S.)
Member (Judicial)

(P. ANJANI KUMAR)
Member (Technical)