

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT No. III

Excise Appeal No. 40292 of 2018

(Arising out of Order-in-Original No. CMB-CEX-000-APP-306/2017 dated 09.11.2017 passed by Commissioner of GST and Central Excise (Appeals), No. 6/7, A.T.D. Street, Race Course Road, Coimbatore – 641 018)

M/s. Blue Mount Textiles

(Unit of Sharadha Terry Products Limited),
Badhrakaliamman Koil Road,
Nellithurai Post,
Mettupalayam – 641 305.

...Appellant

Versus

Commissioner of GST and Central Excise

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

...Respondent

APPEARANCE:

For the Appellant : Mr. S. Durairaj, Advocate

For the Respondent : Ms. Rajini Menon, Authorised Representative

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER No. 40314 / 2026

DATE OF HEARING : 12.12.2025

DATE OF DECISION : 03.03.2026

Per Mr. VASA SESHAGIRI RAO

The appellant, M/s. Blue Mount Textiles (Unit of Sharadha Terry Products Limited), Mettupalayam, is engaged in manufacture of cotton terry towels falling under Chapter 63 of the First Schedule to the Central Excise Tariff Act, 1985.

1.2 During the material period 01.10.2010 to 23.06.2011, the appellant was functioning as a 100% Export Oriented Unit (EOU) and was procuring furnace oil without payment of duty under Notification No. 22/2003-CE dated 31.03.2003, for generation of electricity in its captive power plant. The electricity so generated was used partly within the appellant's unit and partly supplied to its sister division, namely M/s. SKS Mills. It is not in dispute that SKS Mills had exited from EOU status and became a Domestic Tariff Area (DTA) unit in October 2010 *vide* Final Exit Order issued by the Development Commissioner.

1.3 The Department formed a view that electricity generated out of duty-free furnace oil and supplied to a DTA unit would attract duty liability in terms of the third proviso to Para 7 of Notification No. 22/2003-CE read with Para 6.16 of the Hand Book of Procedures (HBP) and Appendix 14-I-C.

1.4 Accordingly, Show Cause Notice No. 20/2015 dated 06.11.2015 was issued proposing recovery of Rs.14,73,571/- being duty attributable to proportionate furnace oil used in electricity supplied to SKS Mills (DTA), along with interest and penalty under Section 11AC. The adjudicating authority confirmed the demand, interest and imposed equal penalty. And, the Commissioner (Appeals) upheld the same.

2. Aggrieved, the Appellant filed this present appeal before this Tribunal.

3. The Ld. Advocate Shri S. Durairaj, appeared on behalf of the Appellant and the Ld. Authorized Representative Ms. Rajni Menon, appeared for the Revenue.

4. The Learned Advocate for the Appellant submitted that: -

4.1 that Blue Mount Textiles and SKS Mills were divisions of the same company and functioned as part of an integrated manufacturing chain for the production and export of terry towels. It was submitted that cotton fibre and PVA fibre were sent to SKS Mills under duly approved job work permissions for conversion into yarn and that the electricity generated in the captive power plant of Blue Mount Textiles was supplied only for such job work activity. According to the appellant, there was no sale of electricity, no commercial transaction and no independent consideration involved, but merely internal utilization of electricity in furtherance of export production.

4.2 it was further contended that paragraph 6.16 of the Hand Book of Procedures and the relevant proviso to

Notification No. 22/2003-CE apply only in cases of sale of surplus power and not to transfer of electricity for job work within an integrated manufacturing setup of the same entity. Reliance was placed on the decisions of the Hon'ble High Courts in *CCE v. Biocon Ltd., 2014 (309) ELT 66 (Kar.)* and *CCE v. Jindal Polyester, 2014 (305) ELT 43 (All.)*, to submit that where electricity generated within factory premises is consumed in related units engaged in manufacture of excisable goods, denial of benefit is unwarranted unless there is an express statutory prohibition.

4.3 the Ld. Advocate further submitted that Notification No. 22/2003-CE stood substantially complied with, as the furnace oil procured without payment of duty was ultimately used in the manufacture of goods which were predominantly exported, and therefore there was no revenue loss to the exchequer. It is argued that the extended period of limitation is not invokable, since the job work arrangements as well as the exit of SKS Mills from EOU status were within the knowledge of the Department and reflected in official records. On these grounds, it was prayed that the demand of duty, interest and penalty be set aside.

5.1 The Ld. Authorized Representative Ms. Rajini Menon for the Revenue supported the findings of the

impugned order and further submitted that the exemption under Notification No. 22/2003-CE is conditional in nature and strictly governed by the terms of the notification and the provisions of the Hand Book of Procedures. It was submitted that once SKS Mills exited the EOU scheme in October 2010 and became a DTA unit, any electricity supplied thereafter was liable to be treated as supply to a DTA unit, thereby attracting the third proviso to Paragraph 7 of the notification, which mandates payment of duty equivalent to the duty foregone on the raw materials used for generation of such power. It was contended that no fresh permission was obtained from the competent authorities after the recipient unit became a DTA unit and that continued supply of electricity without payment of duty constituted a clear violation of the exemption conditions.

5.2 The Ld. Authorized Representative further submitted that the decisions relied upon by the appellant, including CCE v. Biocon Ltd. and CCE v. Jindal Polyester, relate to eligibility of CENVAT credit and interpretation of the term "factory" under the credit scheme and are therefore distinguishable from the present case, which concerns breach of a conditional exemption under an EOU notification. It was argued that the fact of supply of electricity to a DTA unit and the consequent ineligibility to exemption was not disclosed to

the Department and came to light only during audit, thereby justifying invocation of the extended period of limitation as well as imposition of penalty.

6. We have carefully heard the submissions advanced by both sides, examined the appeal records in detail, considered the statutory provisions, and the case Laws cited.

7. Upon consideration, the following issues arise for determination: -

- i. Whether electricity generated from duty-free furnace oil and supplied to SKS Mills (after it became DTA) attracts duty under Notification No. 22/2003-CE?
- ii. Whether the supply was a mere internal job work transfer or constitutes supply to DTA?
- iii. Whether extended period is invokable?
- iv. Whether penalty under Section 11AC is sustainable?

8. We have carefully considered the records of the case, the impugned order, the submissions made by both sides and the statutory provisions. We observe that the core issue that arises for determination is whether the appellant, while functioning as a 100% Export Oriented Unit, was entitled to procure furnace oil without payment of duty under

Notification No. 22/2003-CE dated 31.03.2003 and thereafter utilize the electricity generated out of such duty-free furnace oil for supply to M/s SKS Mills after the latter had exited the EOU scheme and become a Domestic Tariff Area (DTA) unit in October 2010.

9. We note that Notification No. 22/2003-CE grants exemption to EOUs for procurement of specified goods subject to strict compliance with the conditions enumerated therein. We observe that the third proviso to paragraph 7 of the said notification clearly provides that where the user industry is permitted to sell surplus power generated in its captive power plant into the Domestic Tariff Area, such sale shall be allowed only on payment of an amount equal to the duty leviable on consumables and raw materials used for generation of each unit of power so sold. We further note that Appendix 14-I-C to the Hand Book of Procedures read with paragraph 6.16 specifically distinguishes between transfer of power from one EOU to another EOU without payment of duty and sale or supply of power to a DTA unit subject to duty payment and prescribed permissions. It is also necessary to clarify that electricity per se is not an excisable commodity under the Central Excise Act; however, the liability in the present case does not arise on electricity as such but flows from the specific condition in the

exemption notification requiring payment of duty equivalent to the duty foregone on raw materials used in the generation of power supplied to DTA.

10. We find that it is not in dispute that M/s SKS Mills, though originally functioning as an EOU, had exited the EOU scheme vide Final Exit Order dated 25.10.2010 and became a DTA unit with effect from October 2010. We observe that from that date onward, SKS Mills ceased to enjoy the status of an EOU and consequently any supply of electricity to it could not be treated as transfer between EOUs. We further find that the appellant continued to supply electricity generated from duty-free furnace oil to SKS Mills even after its conversion into a DTA unit and admittedly did not obtain fresh permission nor discharge duty attributable to the proportionate furnace oil consumed for such electricity.

11. We note the argument of the appellant that both units are divisions of the same company and that the production process is integrated, and therefore the supply of electricity cannot be treated as "sale" or "clearance" to a different entity. We observe that exemption notifications are to be interpreted strictly and the eligibility criteria must be fulfilled in letter and spirit. The Hon'ble Supreme Court in

Commissioner of Central Excise v. Hari Chand Shri Gopal, 2010 (260) ELT 3 (SC), has held that conditions of exemption notification must be strictly complied with and substantial compliance is not sufficient where the conditions are mandatory. We further note the Constitution Bench judgment in *Commissioner of Customs v. Dilip Kumar & Company, 2018 (361) ELT 577 (SC)*, wherein it was categorically held that in case of ambiguity in exemption notifications, the benefit must go to the Revenue and the burden lies on the assessee to establish eligibility. Applying these principles, we find that once the recipient unit lost EOU status, the continued supply of electricity without following the conditions applicable to DTA clearance constitutes violation of the notification.

12. We observe that the appellant has placed reliance upon the decisions of the Hon'ble Karnataka High Court in *CCE v. Biocon Ltd., 2014 (309) ELT 66 (Kar.)* and the Hon'ble Allahabad High Court in *CCE v. Jindal Polyester, 2014 (305) ELT 43 (All.)*. We note that both these decisions were rendered in the context of admissibility of CENVAT credit on furnace oil used for generation of electricity which was consumed in adjacent units situated within the same factory premises. We find that the issue in those cases pertained to interpretation of the term "input" and "factory"

under the CENVAT Credit Rules, whereas the present dispute arises from violation of a conditional exemption notification governing EOUs. We observe that the scheme of CENVAT credit is materially different from the scheme of conditional exemption under Notification No. 22/2003-CE. We therefore find that the ratio of Biocon and Jindal Polyester cannot be mechanically applied to override specific conditions of an exemption notification. We further find that in the present case the supply was from an EOU to a DTA unit, a situation expressly regulated by the notification itself, thereby rendering the reliance on above decisions inapposite.

13. We observe that the argument that the electricity was ultimately used in manufacture of export goods does not alter the statutory position. The exemption under Notification No. 22/2003-CE is conditional and not outcome-based. The question is not whether export goods were eventually manufactured, but whether the conditions attached to duty-free procurement were complied with or not. We find that revenue neutrality or absence of revenue loss cannot validate non-compliance with mandatory conditions of an exemption notification. The Hon'ble Supreme Court has consistently held that conditional exemptions operate strictly within their statutory framework and cannot be extended on equitable considerations. We

note that the exemption was granted for use within the EOU and transfer to another EOU without duty was specifically permitted. We find that once the recipient became a DTA unit, the legal consequences attached under the notification automatically came into operation. We observe that the corporate relationship between the two units is irrelevant for the purpose of conditional exemption compliance, since EOU status is granted unit-wise and not company-wise. We therefore find that the appellant cannot rely upon integrated manufacturing theory or export outcome to bypass explicit notification requirements.

Thus, the issue No (i) is answered in favour of the Department and against the Appellant.

14.1 Next, we observe that the principal contention of the appellant is that the impugned transaction represents a mere internal job work arrangement within an integrated manufacturing chain and therefore cannot be treated as supply to a Domestic Tariff Area (DTA) unit. We find, however, that this contention overlooks the statutory framework governing Export Oriented Units. The EOU scheme operates on a unit-wise basis and not on a company-wise basis. The moment M/s SKS Mills exited the EOU scheme vide Final Exit Order dated 25.10.2010 and assumed the status of a DTA unit, its legal character changed for all

purposes under the Foreign Trade Policy and the Central Excise notifications governing EOUs. We observe that Notification No. 22/2003-CE specifically contemplates two distinct situations — transfer of power between EOUs without duty and supply of power to DTA subject to duty payment on the proportionate raw materials consumed. We find that after October 2010, SKS Mills no longer fell within the category of an EOU and consequently any electricity supplied to it could only fall within the category of supply to DTA. The plea of “job work” does not alter this statutory consequence, as the notification does not carve out any exception for electricity supplied to a DTA unit merely because such unit undertakes conversion work for the EOU.

14.2 We further clarify that even if the impugned transaction is not a “sale” in the strict commercial sense involving monetary consideration, the expression “sale into DTA” employed in the proviso must be understood in a regulatory sense within the EOU scheme. The notification regulates movement of power from the EOU enclave into the Domestic Tariff Area, irrespective of whether such movement is by way of commercial sale or internal arrangement. What is material is the character of the recipient unit as DTA and not the nomenclature of the transaction. Therefore, once electricity generated out of duty-free furnace oil moved from

the EOU to a DTA unit, the statutory consequences contemplated under the third proviso stood attracted.

15. We further find that the integrated nature of operations or the corporate relationship between the two divisions is legally irrelevant in determining compliance with a conditional exemption notification. The exemption granted under Notification No. 22/2003-CE is conditional and must be strictly construed in light of the principles laid down by the Hon'ble Supreme Court in *Commissioner of Central Excise v. Hari Chand Shri Gopal*, 2010 (260) ELT 3 (SC) and *Commissioner of Customs v. Dilip Kumar & Company*, 2018 (361) ELT 577 (SC), which mandate strict adherence to notification conditions and place the burden of proving eligibility squarely upon the assessee. We observe that once SKS Mills became a DTA unit, electricity generated out of duty-free furnace oil supplied to it could not be treated as captive use within the EOU framework, irrespective of whether the yarn produced was eventually used in export goods. We therefore conclude that the impugned supply was not a mere internal job work transfer in the legal sense contemplated under the EOU scheme but was a supply to a DTA unit attracting duty liability under the third proviso to paragraph 7 of Notification No. 22/2003-CE read with paragraph 6.16 of the Hand Book of Procedures.

The second issue is answered in favour of the Department and against the Appellant.

16. We next consider the invocation of extended period under proviso to Section 11A(1) and Section 11A(4) of the Central Excise Act, 1944. We observe that the adjudicating authority recorded that the appellant did not disclose that electricity generated from duty-free furnace oil continued to be supplied to SKS Mills after its exit from the EOU scheme and that no duty was paid on such supply. We note that the appellant contends that the final exit order was endorsed to the department and therefore there was no suppression. We find, however, that mere endorsement of the exit order does not amount to disclosure that electricity generated from duty-free inputs was being supplied to a DTA unit without compliance of the notification conditions. We observe that suppression for purposes of extended limitation includes failure to disclose material facts necessary for correct assessment, as held by the Hon'ble Supreme Court in *Pushpam Pharmaceuticals Co. v. CCE, 1995 (78) ELT 401 (SC)*. We further find that the appellant, being fully aware of the change in status of SKS Mills, did not seek clarification from the Department, did not amend procurement declarations and continued to avail exemption without fulfilling the conditions applicable to DTA supply. Such

conduct amounts to wilful contravention of the notification conditions with intent to evade payment of duty. We therefore hold that invocation of extended period is legally sustainable.

17. We further observe that once extended period is invokable on account of suppression and contravention with intent to evade payment of duty, penalty under Section 11AC becomes attracted. We note that Section 11AC, as applicable during the relevant period, mandates imposition of penalty equal to duty where non-payment is by reason of fraud, suppression or wilful misstatement. We find that the appellant continued to avail duty-free benefit despite clear change in status of the recipient unit and without obtaining requisite permission or discharging duty. We therefore hold that penalty under Section 11AC has been correctly imposed in accordance with law.

18. We find that the appellant, while functioning as a 100% Export Oriented Unit, procured furnace oil without payment of duty under Notification No. 22/2003-CE dated 31.03.2003 for generation of electricity in its captive power plant and continued to supply such electricity to M/s SKS Mills even after the latter had exited the EOU scheme and assumed the status of a Domestic Tariff Area (DTA) unit with

effect from October 2010. We find that once SKS Mills ceased to be an EOU, any electricity supplied to it could no longer be treated as transfer between EOUs but squarely fell within the category of supply to DTA, thereby attracting the third proviso to paragraph 7 of Notification No. 22/2003-CE read with paragraph 6.16 of the Hand Book of Procedures and Appendix 14-I-C. We hold that the plea of internal job work or integrated manufacturing chain does not override the statutory scheme, as EOU benefits operate unit-wise and are strictly governed by the conditions of the notification. We further hold that electricity generated out of duty-free furnace oil supplied to a DTA unit attracts liability to pay duty equivalent to the duty foregone on the proportionate quantity of raw materials used in such generation. The appellant having failed to obtain requisite permission and failed to discharge the applicable duty, the demand of Rs. 14,73,571/- is legally sustainable.

19. We further hold that the extended period of limitation has been rightly invoked, as the continued supply of electricity to a DTA unit without compliance of notification conditions was not disclosed in the manner required for proper assessment and came to light only during audit. The conduct of the appellant in continuing to avail the exemption despite change in status of the recipient unit constitutes

suppression of material facts with intent to evade payment of duty. Consequently, interest is payable under the applicable provisions of Section 11AB/11AA of the Central Excise Act, 1944. We also uphold the imposition of penalty under Section 11AC, subject to the statutory option of reduced penalty in accordance with law.

20. In view of the foregoing findings, we answer the core issue by holding that the impugned supply was not a mere internal job work transfer but legally constituted supply of electricity to a DTA unit, attracting duty liability under Notification No. 22/2003-CE. The impugned Order-in-Appeal is therefore upheld.

21. Consequently, the appeal filed is dismissed.

(Order pronounced in open court on 03.03.2026)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

MK

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)