FAX : 011-26108426 REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
CUSTOMS APPEAL BRANCH

Dated: 01/04/2014

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **C/A/51303/2014-CU[DB]** dated **28/03/2014**

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section **129-A(4) of the Customs Act, 1962.**

Asstt. Registrar(CUSTOMS Appeal Branch)

Application	Appeal	Name and Address of Appellant
1	C/191/2009	**C.C.E Allahabad** 38,M.G.Marg, civil Lines, Allahabad
		Name and Address of Respondent
1	C/191/2009	**HI-TECH MEDICAL PRODUCTS LTD.,** GIDA, GORAKHPUR, (U.P.)

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s):

-- --

4 Bar Association, CESTAT, Delhi

5 Director Publications, Customs, Excise, I.P. Estate, Delhi

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

9 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

13 C.D.R. 14 Office Copy 15 Guard File

Asstt. Registrar(CUSTOMS Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
Court No.-II

Custom Appeal No.C/191/20~~08~~09 -CUS[DB]

[Arising out of Order-in-Appeal No. 12-CE/ALLD/2009 dated 22.01.2009 passed by Commissioner Custom (appeal), Allahabad]

CCE, Allahabad ...Appellant

Vs.

M/s. Hi- Tech Medical Products Ltd. ... Respondent

Present for the Appellant : Shri R.K. Mishra, DR
Present for the Respondent : Shri J.M. Sharma, Consultant

Coram: Hon'ble Mr.D.N.Panda, Judicial Member
Hon'ble Mr.Rakesh Kumar, Technical Member

Heard and reserved on: 06.11.2013
Pronounced on: 28/03/2014.

Final ORDER NO. 51303/2014 DATED: 06.11.2013

PER: D.N.PANDA

Department filed an appeal against Order-In-Original No. MP(Dem-50/2007)05 of 2008dated 23.01.2008 and being unsuccessful before ld. Commissioner (Appeal) came in appeal before Tribunal in this appeal.

2. Assessee obtained a LOP No. PER-512(1995)COU/646/95 dated 22.09.1995 from Development Commissioner, NEPZ, NOIDA for manufacture and export of Syringes "with or without needles". However, subsequently, a revised LOP dated 22.11.2002 was issued to allow manufacture and export of (1)

syringes with or without needles and (2) parts of syringes. Accordingly Assessee was permitted to manufacture and export parts of syringes i.e. needles only after 22.11.2002.

3. It was observed that during the period from **May 2000 to November 2002** the assessee exported 2,35,54,000 pieces of imported cannulae attracting Customs Import Duty of Rs. 10,97,687/- for which they were not permitted by the Development Commissioner, NEPZ, Noida in the LOP dated 22.09.1995. Such fact of export of needles without obtaining the permission from the Development Commissioner, NEPZ, NOIDA was not intimated by Assessee to the jurisdictional Central Excise authorities. Accordingly there was allegation of contravention of conditions of LOP dated 22.09.1995 by appellant. So also contravention of the provisions of Customs (Import of goods at concessional rate of duty for manufacture of excisable goods) Rule 1996 was made against appellant. Accordingly amount of duty involved in imported raw material i.e. cannulae, amounting to Rs. 10,97,687/- used for manufacture of needles exported became recoverable from appellant under Rule 8 of he Customs (Import of goods at concessional rate of duty for manufacture of excisable goods) Rule, 996 invoking extended period of five years as provided under section 28 of the Customs Act, 962 alongwith interest payable under Sec 28AB of the Customs Act, 1962. Similarly Central Excise duty of Rs. 33,20,546/- was leviable on the exported needles was recoverable from the appellant invoking the extended period of five years as provided under section 11A(1)

of the Central Excise Act, 1944 treating export of 2,35,54,000 pieces of needles valued at Rs. 92,88,279/- as DTA sale equivalent to Customs duty under Notification No. 13/96-CE dated 02.06.1998 alongwith interest under section 11AB of the Central Excise Act, 1944.

4. Show Cause Notice No. 7/Addl Commissioner, Allahabad/2005 dated 27.06.2005 was issued to the appellant and that was adjudicated vide Order-In-Original No. MP(Dem-55/2005)30 of 2006 dated 09.10.2006 where Customs duty and Central Excise duty demanded by the SCN was confirmed and penalty under section 117 of Customs Act, 1962 and penalty under section 11AC of the Central Excise Act, 1944 was imposed.

5. Respondents filed appeal against above order of adjudication before the Commissioner (Appeals), Central Excise, Allahabad which was registered as appeal No. 144/CE/APPL/ALLD/2006. Ld. Commissioner (Appeals) by order-in-Appeal No. 32/CE/Alld/2007 dated 19.02.2007 remanded the case for reconsideration of the entire issue afresh considering the following points-

(i) Whether the case was covered by the provisions of Rule 8 of the Customs (Import of Goods at concessional rate of duty for manufacturing of excisable goods) Rules, 1996 or covered by the provisions of Notification No. 53/97-Cus dated 03.06.1997 and the Board, circular No. 21/1995 dated 10.03.1995, as amended by Notification No. 122/95-Cus dated 28.11.1995.

Anil.

(ii) Whether the demand is time barred or not as the impugned order is non speaking in that regard.

(iii) The subject needles though not incorporated in the LOP whether were diverted for home consumption.

6. The adjudicating authority vide Order-In-Original No. MP(Dem-50/2007)05 of 2008 dated 23.01.2008 held that the case is of export of goods and not included in LOP shall not be liable to duty. He further held that the charge of suppression of facts/fraud/collusion etc. can not be made against the respondent and Show Cause Notice was barred by limitation. He further held that there is nothing on record to show that the subject needles were diverted for home consumption for which the adjudication called for dropping of the demand.

7. On appeal of Revenue against above re-adjudication order, learned Commissioner (Appeal) observed that both the aforesaid LOPs allow to manufacture and export syringes with or without needles. This means that manufacture and export of needles if not explicitly permitted under the LOPs, it is not prohibited either. Moreover, the appellant was regularly submitting prescribed returns/documents evidencing export of needle. Respondent were importing / exporting the goods under given LOPs and the Department had Knowledge of the concerned LOPs. If there was any violation on the part of the respondent regarding export, it should have been immediately pointed out because export is strictly done under the physical supervision of the departmental officers. He also held that there was no suppression on the part of respondent.

8. Ld. Commissioner (Appeal) further observed that nothing was on record to suggest that needles, made out of duty free imported cannulae, were diverted to the DTA for sale. According to him if the imported goods were duty free and the same were exported by the 100% EOU, the net impact is revenue neutral. He also found that the respondent unit was de-bonded on 25.03.2004 and Department gave no objection certificate as no dues were pending against the unit. On such very ground as well as on ground of limitation the demand was held to be not sustainable.

9. Revenue being aggrieved by the above order of ld. Commissioner (Appeal), came in appeal before Tribunal.

10. Revenue submits that the Assessee Respondent during **May, 2000 to November, 2002** exported 2,35,54,000 pieces of cannulae attracting custom duty of Rs. 10,97,687/- in violation of LOP norms. Similarly, export of needles involved central excise duty of Rs. 33,20,546/- being sold in DTA. When the assessee did not comply to the LOP norms, needles exported being without authority of law, fate of exported goods was to be determined on the basis of evidence and excise duty was leviable. Failure to disclose all such facts to Revenue amounts to suppression of facts for which extended period of limitation was invokable.

11. On behalf of the Respondent it was submitted that syringes exported were with needles since needle was part thereof. When the appellant unit was de-bonded on 25.3.2004 and no demand existed, Show cause notice issued was time

barred. Learned Commissioner (Appeals) has rightly considered that when LOP dated 22.11.2002 included manufacture and export of syringes with or without needles as parts of syringes and both LOPs i.e. original and revised did not specify inclusion or allow the export of bulk needles at all, there is no violation of LOP condition. Both the LOPs allowed export and manufacture of syringes with or without needles which means manufacture and export of needles if not explicitly permitted under LOP, that does not prohibit either. According to appellant, ld. Commissioner (Appeal) has also rightly held that when the respondent regularly submitted respective returns and necessary documents showing import of goods and export of needles under the terms of LOP, the proceeding was time barred. So also when the unit was de-bonded on 25.3.2004 and no objection certificate was issued by the department there was no dues pending against the assessee. Accordingly, on that ground as well as on limitation, Revenue's appeal was rightly rejected by learned Commissioner (Appeals).

12. Heard both sides and perused the record.

13. In the case of same assessee while disposing appeal No. C/580/2008 on 14.03.2014 we have noticed that Cannulae and Needles were imported duty free by the appellant availing exemption granted under Notification No. 53/97-CUS dated 03.06.97 for use in the manufacture of Disposable syringes with or without needles. On enquiry, it was noticed that the appellant had imported **20,72,50,000 pcs of Cannulae** and

20,49,03,815 pcs of Needles during the period **November, 96 to April, 2003** and **issued 12,16,50,000 pcs of Cannulae and 20,49,03,815 pcs of Needles** for the manufacture of finished goods. Out of such issue, 65,52,285 pcs of cannulae and 3,26,64,788 pcs of needles **were claimed to be waste** and scrap.

14. While Original LOP covered the goods syringes with or without needles, revised LOP covered the goods: (1) syringes with or without needles and (2) parts of syringes. Both the LOPs were subjected to certain conditions and the revised LOP was also issued to fulfil the terms and conditions of original LOP. As noticed in appeal No. C/580/2008 of the assessee disposed on 14.03.2014 that when the assessee had shown wastage and scrap of the imported material meant for use in the manufacture of syringes with or without needle, unless the waste and scrap aspect is reconciled for the period **November, 96 to April, 2003** it is difficult to reach to any conclusion prematurely about the export or no export of **2,35,54,000** pieces of cannulae. Unless cannulae is properly accounted for it is difficult to hold the manufactured quantity of specific goods were exported. Therefore, it is required to be ensured that the claim of waste and scrap as that is in appeal No. C/580/2008 should not grant undue advantage to the plea of export in the present appeal. Present appeal is therefore required to be remanded to the learned Adjudicating Authority to conclude the matter along with matter covered by appeal No. C/580/08 remanded to him on 14.3.2014 by a separate order.

15. In the result, this appeal is also remanded to the learned Adjudicating Authority for common disposal along with the controversy in C/580/2008. Since reconciliation aspect is to be carried out in C/580/2008 for the period November, 1996 to April, 2003 and the period under present appeal falls within that period, it is difficult to opine on limitation issue at this stage. Conduct of the assessee may be attributable to the aspect of limitation which shall depend on fact finding by learned Adjudicating Authority while disposing both matters.

[Order pronounced in the open court on...28/03/2014]

28/3/2014

(RAKESH KUMAR)
TECHNICAL MEMBER

28/3/2014.

(D.N.PANDA)
JUDICIAL MEMBER

Neha