

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH - COURT NO. II

Excise Appeal No. 54025 of 2018-SM

(Arising out of order-in-appeal No. 161 (AK) CE/JPR/2018 dated 28.06.2018 passed by the Commissioner (Appeals), Central Excise & Central Goods, Service Tax, Jaipur).

M/s Sun Art Exporter

2, Main Pali Road

Jhalamand Circle

Distt- Jodhpur (Rajasthan).

Appellant

VERSUS

**Commissioner of Central Goods and
Service Tax,**

G-105, New Jodhpur Industrial Area

Jodhpur (Rajasthan).

Respondent

APPEARANCE:

Shri O. P. Agarwal, C. A. for the appellant

Ms. Tamanna Alam, Authorised Representative for the respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO. 51615/2021

DATE OF HEARING: 26.03.2021

DATE OF DECISION: 01.07.2021

ANIL CHOUDHARY:

After hearing both sides I find that appellant was a 100% EOU. At the time of debonding on 27.07.2015, they paid duty in respect of stock lying as on date for issue of NOC for debonding, as is evident from the NOC dated 27.07.2015 issued by the Assistant Commissioner of Central Excise. On the unsold 153 Nos. of finished goods (handicraft) lying in stock as on 27.07.2015, appellant deposited duty of Rs. 7,22,290/-. As per the appellant the said goods were subsequently exported and they sought refund of the duty paid

Rs.7,22,290/-, exported thereafter. Thus they applied for refund on 18.07.2016 on the ground that they had deposited duty for issue of NOC on the stock of finished goods as on 27.07.2015. Now, they have exported the entire stock, which is evident from the copy of ARE-I bond. They further enclosed documents like copy of NOC dated 27.07.2015, copy of stock statement as on 27.07.2015, self attested copies of invoice, packing list, copy of shipping bill, bill of lading – proving export of goods lying in stock as on 27.07.2015. It was also submitted that appellant have maintained separate stock register of finished goods from the date of debonding. The Court below have rejected the refund claim on the ground that goods were exported after claiming drawback, doubt was also expressed if the appellant have exported the goods lying in stock on the date of debonding. The appellant have urged that this ground was not taken in the show cause notice for rejecting the refund claim, that the appellant has claimed drawback, they are not entitled to refund. Thus, the Adjudicating Authority have travelled beyond the scope of show cause notice. The Commissioner (Appeals) observing that it is mentioned in the show cause notice that the appellant have not supplied complete documents at the time of filing the refund claim, and thereafter complete documents were supplied at the time of adjudication only. Accordingly, it cannot be conclusively proved that they have exported the goods which were lying in stock, at the time of debonding. Being aggrieved, the appellant is before this Tribunal.

2. The appellant is in appeal before this Tribunal on the ground that in the facts and circumstances and the documents

produced, there could not be any doubt about export of finished goods which were lying in stock on the date of debonding. The Court below have rejected the refund claim on surmises, by a non-speaking order. The appellant had submitted complete documents for verification namely - copy of ER-I, copy of shipping bill, copy of export promotion invoice, copy of bill of lading. Further, the goods were exported soon after debonding and admittedly duty have been paid on such goods at the time of debonding. Admittedly, 153 pieces of handicrafts were lying in stock on 27.07.2015, on the date of debonding. Thereafter, there was further production and there was closing stock of 601 units on 29th July. However, the appellant have exported over 448 units on 30.07.2015 which included the stock of 153 units as on 27.07.2015. Further, the appellant have been exporting their total production, both before the date of debonding and subsequently also. Thus, there is no question of clearance of goods in DTA. Learned Counsel further relies on the ruling of coordinate Bench of this Tribunal in the case of Fateh Granites Ltd. vs. CCE, Jaipur-II- Excise Appeal No. 1909/2011-EX(SM) dated 11.12.2013 wherein it has been held as under:-

“2. As regards the procedural violations, I find that admittedly the appellant was a 100% EOU and as such, could not have been registered under Central Excise Rules. The Tribunal in the case of CCE, Jaipur-II vs. Stainless India Ltd. -2008 (222) ELT 2010 (Tri. Del.) has held that the allegation by the Revenue that proper procedure was not followed cannot stand in the light of fact that final product was exported. The said decision of the Tribunal stand upheld by the Hon’ble Rajasthan High court, when the appeals filed by the Revenue was rejected as reported as Union of India vs. Stainless India Ltd. -2011 (273) ELT 46 (Raj.).

3. To the same effect is another decision of the Tribunal in the case of Alpha garments vs. CCE, New Delhi -1996 (86) ELT 600 (Tri.)”

3. The appellant also relies on the ruling of Division Bench this Tribunal in the case of M/s Vishnu Art & Craft Excise Appeal No. 60133/2013 being Final Order No. 52891-52892/2018 dated 08.08.2018 wherein under similar facts and circumstances after the debonding, duty was demanded on the stock as per RG-I register on the date of debonding. M/s Vishnu Art & Craft has claimed that goods have been exported prior to issue of final debonding order. This Tribunal held that under the undisputed fact that export of goods have already taken place prior to the final order of debonding. Hence, the duty cannot be demanded again. Accordingly, he prays for allowing the appeal with consequential benefits.

4. Learned Authorised Representative for the Revenue relies on the impugned order.

5. Having considered the rival contentions, I find that admittedly the appellant have exported 448 units of handicraft on 30.07.2015, within a week after the date of debonding being 27.07.2015 when only 153 units were lying in stock. Thus, the refund claim have been rejected on presumptions and assumptions that such 153 units may not have been included in the exported units as there has been further production of 448 units on 28-29.07.2015. Such presumption is drawn without any adverse finding or any adverse material on record. In this view of the matter, it is held that the appellant have exported 153 units lying in stock on the date of debonding. Accordingly, the impugned order is set aside. It is held that the appellant is entitled to refund of the duty of Rs.7,22,290/-.

Accordingly, I direct the Adjudicating Authority to refund this amount alongwith interest from 18.08.2016 till the date of refund @ 12% p.a. as held by Division Bench of this Tribunal in **Parle Agro (P) Ltd. vs. Commissioner –CGST-2021-TIOL-306-CESTAT-All.**

6. The appeal is allowed by setting aside the impugned order with consequential benefits to the appellant in accordance with law.

(Pronounced on 01.07.2021).

(Anil Choudhary)
Member (Judicial)

Pant