

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

PRINCIPAL BENCH – COURT NO. IV

**CUSTOMS MISCELLANEOUS APPLICATION NO. 50619 of 2021
(on behalf of the appellant)**

in

CUSTOMS Appeal No. 50959 OF 2020

(Arising out of Order in Original No. 07/2020-Comm dated 22.05.2020 passed
by Commissioner of Customs, Customs Commissionerate, Jaipur)

M/s. Vaibhav Global Ltd.

E-68, EPIP, RIICO Industrial Area,
Sitapur, Sanganer, Jaipur

...Appellant

Versus

**Commissioner of Customs,
Customs Commissionerate, Jaipur**

Jaipur

....Respondent

APPEARANCE:

Mr. Rajesh Chibber, Advocate for the appellant

Mr. Ishwar Charan, Authorised Representative for the Respondent

CORAM : HON'BLE Ms. RACHNA GUPTA, MEMBER (JUDICIAL)

Date of Hearing/Decision: **18.04.2022**

FINAL ORDER No. 50369/2022

RACHNA GUPTA

2. Present appeal has been filed to assail the order in original no. 07/2020 dated 22.5.2020. The facts in brief relevant to the present adjudication are as follows:

That the appellant is an importer, a 100% EOU. Appellant filed Bills of Entry for clearances for re-import of goods having assembly value of Rs.9,95,98,022/- exported earlier on consignment basis as per the shipping bill details in the respective bill of entry. The aforesaid bills were filled under EOU scheme of notification no. 52/2003-Customs dated 31.3.2003. The appellant also claimed simultaneous exemption under notification no. 95/2017-Cus dated 30.6.2017. Department formed an opinion that

the exemptions as claimed are inadmissible to the appellant for the want of the procedure under notification no. 59/2017 as stands amended vide notification no. 68/2017 dated 30.6.2017. The Department was also of the opinion that the exemption is not available to the appellant for the reason that the goods re-exported were not the manufactured goods of the appellant. With these observations the show cause notice no. 6646 dated 22.10.2019 was served upon the appellant. Proposing denial of exemption from Customs duty and integrated tax as was claimed by the appellant in terms of aforesaid notifications and proposing duty demand of Rs. 58,83,112/- along with demand of Rs.4,23,904/- with interest. Penalties were also proposed to be imposed upon the appellant. The said proposal has been confirmed vide order under challenge except that the demand for Rs.47,38,334/- was dropped. Still being aggrieved the appellant is before this Tribunal.

3. I have heard Shri Rajiv Chibber, learned Advocate for the appellant and Shri Ishwar Charan, Authorised Representative for the respondent.

4. It is submitted by the learned Counsel for the appellant that the appellant had initially exported the goods (jewellery items). The said goods were however returned and were imported back. It is submitted that after conducting the processes as that of cleaning and repacking that the said goods were re-exported by the appellant claiming exemption from the applicable duties in terms of notification no. 52/2003 dated 31.3.2003 as amended vide notification no. 68/2017 dated 30.6.2017. The said exemption was

available for appellant being a 100% EOU and as such they were eligible to procure goods without payment of duty subject to the condition that the same are used for the export of goods. It is submitted that there is no dispute that the said condition had been complied with. The demand in question as proposed against the appellant has been confirmed on two accounts:

- i) Alleging non compliance of the procedure mentioned in the requisite notification.
- ii) The goods which were re-exported were not the manufactured goods to which the impugned exemption was available.

5. It is submitted that the notification no. 52/2003 since the year 2003 till the year 2017 was not requiring the procedure as has been alleged to not to have been followed by the appellant i.e. the compliance of Rule 5 of Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017. The said Rule has been incorporated only vide notification no. 68 w.e.f. 30.06.2017. It is submitted that the amendment was so proximate in time that it was not in the notice of the appellant. Hence, non compliance was not at all intentional. It is further submitted that otherwise also the compliance of the procedure under the said rule was not so crucial so as to deny the substantial benefit of duty exemption to the appellant. Learned Counsel has laid emphasis on the decision in the case of **Mangalore Chemicals & Fertilizers Ltd. vs Deputy Commissioner reported as 1991 (55) ELT 437 (SC)** and in the

case of **Transformers & Electricals Kerala Ltd. vs Collr of Cus. Cochin reported as 1995 (78) 682 (Tribunal).**

6. With respect to another reason for denying the benefit to the appellant i.e. the requirement of goods to be manufactured, Learned Counsel has submitted that Department has wrongly considered the goods to not to be manufactured by the appellant. It is submitted that while replying show cause notice appellant has specifically mentioned that the items which were imported by the appellant (post initial export) were got unpacked, clean and repacked before those were re-exported by the appellant. It is impressed upon that activity of repacking amounts to manufacture. Reliance has been placed upon own circular no. 489/55/99-CEX dated 13.10.1999 wherein expression manufacture is held to have very wide connotation to include processes as that of packing. It is submitted that the adjudicating authority has committed an error while ignoring the said circular. Reliance has been placed upon the decision in the case of **Bala Handlooms Exports Co. Ltd. vs. Commissioner of C.Ex, Chennai reported as 2008 (223) ELT 100 (Tri-Chennai)** and in the case of **Keva Fragrances P. Ltd. vs. CCE Mumbai reported as 2015 (325) ELT 903 (Tri-Mum).**

7. Both the grounds as have been made the basis by the adjudicating authority to confirm the demand in question against the appellant are therefore mentioned to be the wrong findings. The order under challenge is accordingly prayed to be set aside and appeal is prayed to be allowed.

8. While rebutting the submissions, learned DR has laid emphasis upon the findings in para 4 and 5 of the order under challenge. It is submitted that there is no denial for the non compliance of the procedure mentioned in the notification based whereupon the exemption has been claimed by the appellant. Learned DR has impressed upon the well settled position of the law about strict compliance of the condition of the exemption notification. Decision of the Hon'ble Apex Court in the matter of **Indian Aluminium Company Ltd. vs Thane Municipal Corporation reported as 1991 (55) ELT 454 SC** and the decision in the case of **M/s. Eagle Flask Industries Ltd. vs Commissioner reported as 2004 (171) ELT 296 SC** has been impressed upon wherein it was mentioned that strict compliance with the conditions of exemption notification is a sine qua non for the exemption claim. Finally submitting that since the appellant has not strictly complied with the terms of exemption notification, the benefit of exemption cannot be made available to the appellant by stretching the word of the said notification or by adding words to the said notification. With these submissions it is mentioned that there is no error committed by the adjudicating authority. No infirmity is apparent in the order under challenge. Appeal is accordingly prayed to be dismissed.

9. After hearing the rival contentions and perusing the records it is observed and held as follows:

The moot question to be adjudicated herein is:

i) Whether the appellant was eligible for exemption from duty while clearance of re-imported goods despite that the procedure as incorporated in notification no. 52/2003 w.e.f. 30.6.2017 under which said exemption was claimed was not followed by the appellant.

ii) Whether the condition that the goods to be re-exported have to be the manufactured goods has been fulfilled by the appellant.

10. With respect to first point of adjudication, it is foremost necessary to look into the procedure which was to be complied with by the appellant under notification no. 42/2003 as amended vide notification no. 68/2017. Condition no. 2 of the said notification has come into effect from 30.06.2017 which require the compliance of Rule 5 of Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017. The same reads as follows:

"The importer who intends to avail the benefit of an exemption notification shall provide information –

11. (a) in duplicate, to the Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service, the estimated quantity and value of the goods to be imported, particulars of the exemption notification applicable on such import and the port of import in respect of a particular consignment for a period not exceeding one year; and

12. (b) in one set, to the Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs at the Custom Station of importation.

13. (2) The importer who intends to avail the benefit of an exemption notification shall submit a continuity bond with such surety or security as deemed appropriate by the Deputy

Commissioner of Customs or Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service, with an undertaking to pay the amount equal to the difference between the duty leviable on inputs but for the exemption and that already paid, if any, at the time of importation, along with interest, at the rate fixed by notification issued under section 28AA of the Act, for the period starting from the date of importation of the goods on which the exemption was availed and ending with the date of actual payment of the entire amount of the difference of duty that he is liable to pay.

(3) The Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service, shall forward one copy of information received from the importer to the Deputy Commissioner of Customs, or as the case may be, Assistant Commissioner of Customs at the Custom Station of importation.

(4) On receipt of the copy of the information under clause (b) of sub-rule (1), the Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs at the Custom Station of importation shall allow the benefit of the exemption notification to the importer who intends to avail the benefit of exemption notification.

14. The perusal thereof shows that the procedure required under the said rule was the submission of the application in a prescribed format accompanied with certain other documents as that of continuity bond with the surety or security. This perusal makes it clear that the condition in Rule 5 / condition no. 2 of the impugned notification were purely procedural. The rule is absolutely silent to highlight that the non compliance of the said procedure irrespective it was a condition precedent but would have caused any major inconvenience to the Department. No doubt, there has been the

adjudications, by Hon'ble Apex Court, as relied upon by the learned DR and have also been mentioned in the order under challenge that the notifications extending exemptions must be given strict interpretation but the concept of interpretation of statute has also been clarified by the Hon'ble Apex Court itself in the case of **Mangalore Chemicals & Fertilizers Ltd. (Supra)** wherein it has been held that whenever there has been a condition precedent for seeking condition or a refund the distinction has to be made between a procedural condition of a technical nature and a substantive condition. The Hon'ble Apex Court while creating distinction in both kind of procedural conditions has held that non observance of the condition of a technical nature is always condonable. However, the non compliance of substantive condition is not as it may likely to facilitate commission of fraud and introduce administrative inconveniences. In the present case, there is nothing brought on record by the Department as to what administrative inconvenience would have been caused to the Department. There is no denial to the fact that the adoption of the impugned procedure was very much recent introduction at the relevant time of impugned bill of entries. The said condition was not required to be followed since the year 2003 till the year 2017. There is nothing on record to show that the exemption as claimed, irrespective in the absence of the said procedure, there is any element of fraud has been committed by the appellant. In such circumstances, it cannot be ruled out that the non observance of the impugned condition was mere lack of knowledge of the

amendment as was introduced vide notification no. 68/2017 that too in June 2017 (the impugned bill of entries are of year November 2017 to January 2018).

15. I am of the opinion that the procedural condition of Rule 5 of the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 were not at all the substantive condition but was merely a technical condition. Apparently the benefit of exemption from customs duty to a 100% EOU is a substantive benefit. Such substantive benefit cannot be denied for want of the compliance of technical procedural conditions. Hon'ble Apex Court in another case itself titled as **UOI vs. M/s. Woodpapers Ltd. reported as 1991 JT (1) 151** held as follows:

"Truly speaking liberal and strict construction of an exemption provision are to be invoked at different stages of interpreting it. When the question is whether a subject falls in the notification or in the exemption clause then it being in nature of exception is to be construed strictly and against the subject but once ambiguity or doubt about applicability is lifted and the subject falls in the notification then full play should be given to it and it calls for a wider and liberal construction"

16. Keeping in view the said decision, I hereby am of the opinion that the denial of exemption to the appellant is absolutely wrong. The adjudicating authority has failed to observe that the substantive benefit has been disallowed to the appellant on mere technical grounds. The said findings are therefore not sustainable in the eyes of the above discussed law. The order under challenge is liable to be set aside on this score.

17. Coming to the another point of adjudication it is observed that there is no denial for the appellant to be a 100% EOU nor for the fact that the goods in question were initially exported by appellant, which for some reason, have been returned back. It is apparent from the record that the appellant while replying to the show cause notice as well as making submission in defence before the adjudicating authority below has specifically mentioned that the goods in question after being imported were stored in 100% Export Oriented Unit and after processing such as cleaning and re-packing that the goods were re-exported. It is submitted that this particular activity satisfies the compliance of all the condition of notification no. 52/2003 read with notification no. 45/2017. As impressed upon by the learned Counsel, the circular no. 489/55/99 dated 13.10.1999 is perused. This circular is admittedly in force. The perusal thereof reveals that the Board has clarified as follows:

"For the purpose of Rules 12 and 13, the expression "Manufacture" has very wide connotation. It includes blending, packaging or any other operation. Even if a process do not conform to manufacture under the provisions of Central Excise Act, for the purposes of export benefits, the wider connotation has to be applied. Thus the process of blending, packing etc. are well covered under Rule 12(1)(b). One problem which comes into the way is that the Notification No. 42/94-C.E. (N.T.), dated 22-9-1994 provides for procurement of goods directly from the factory of manufacture and the open market procurement is allowed only where goods are in original packed condition and the invoices are issued in terms of Rule 57GG (by Registered dealers). In case of tea, condition relating to open market purchase cannot be fulfilled. This condition of

Notification 42/94, ibid, can be relaxed under the powers conferred by proviso to Rule 12 (1) to allow rebate of the specific duty on tea.”

18. This Tribunal in the case of **CCE vs Western Electronics reported as 2000 (116) ELT 181 (Tri)** while relying upon the similar circular as mentioned above has held that packing of the goods into different packs amounts to manufacture and while exporting such goods, the activity of packing / repacking entitles the EOU to claim exemption from the customs duty while exporting such repacked goods. Tribunal Chennai also in the case of **Bala Handlooms (Supra)** held that though the activities like unpacking, labelling, stacking and repacking do not amount to manufacture under section 2F of the Central Excise Act 1944 but in terms of Board's own circular the word manufacture has been a wider connotation to include activity as that of packing, repacking, etc. to amount to manufacture atleast for the purpose of extending the exemption benefits to the 100% EOU while exporting such goods. Tribunal Mumbai also in **Keva Fragrances (supra)** has held that activity of repacking amounts to manufacture even under EXIM policy. As already held above there is no denial nor it is the case of the Department that the goods in question were not repacked by the appellant before exporting goods in question were not repacked by the appellant by exporting those goods again. As discussed above, the packing activity amounts to manufacture, it is held that the second condition of the impugned exemption notification that the goods have to be manufactured goods also stands complied with by the appellant. Adjudicating authority is

held to have committed an error by holding the repackaged goods as non manufactured goods. The order under challenge to that extent is also liable to be set aside. In view of the entire discussion above, the order hereby is set aside. Consequent thereto the Miscellaneous application praying for amendment of Appeal Memo also stands disposed off and appeal stands allowed.

(Order dictated and pronounced in the open court)

(RACHNA GUPTA)
MEMBER (JUDICIAL)

Bhanu