

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD**

Division Bench
Court - I

APPEAL NO: E/863/2009

(Arising out of Order-in-Appeal No: 81/2009(V-I) CE, dated 12.06.2009 passed by
CCE,C&ST (Appeals), Visakhapatnam)

CCE & CC, Visakhapatnam-I

.....Appellant(s)

Vs.

DR. REDDY LABORATORIES LIMITED

.....Respondent(s)

Appearance

Shri M. Chandra Bose, Additional Commissioner/AR for the Appellant.

Shri B. Seshagiri Rao, Advocate for the Respondent.

Coram:

Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)

Hon'ble Mr. P.V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 23.05.2018

Date of Decision: 06.06.2018

FINAL ORDER No: A/30627/2018

[Order per: P. VENKATA SUBBA RAO]

1. The respondents herein are a 100% EOU engaged in manufacture of bulk drugs and drug intermediates. They have cleared their products to domestic tariff area (DTA) availing the exemption under Sl. No. 3 of Notification No. 23/2003-CE dated 31.03.2003. This exemption notification is subject to the condition that the goods are manufactured wholly from the

raw materials produced or manufactured in India. The assessee had procured material like Methyl Iso Butyl Ketone, Hexane, Methanol, Isopropyl Alcohol IP etc. from their sister units or from dealers who had imported the goods and sold to the assessee. Thus, these goods were imported and not domestically manufactured. It is the case of the Revenue that since respondent used material which were imported, and hence are not entitled to the benefit of notification No. 23/2003-CE. Show cause notices were issued to the assessee and the demand was confirmed by the Additional Commissioner in the Order-in-Original No. 43/2008-09. This Order-in-Original was set aside by the Commissioner (Appeals) on an appeal by the assessee on the following grounds:

- (a) The inputs used are consumables and not raw materials and the final products were manufactured wholly from the raw materials produced or manufactured in India.
- (b) The assessee has procured the goods from dealers on payment of duty and they have not imported the goods themselves and hence they have not gained anything compared to the DTA units procuring the same imported inputs on payment of duty.
- (c) The appellants have shown details of imported goods as NIL in the quarterly returns filed to the Development Commissioner as they have themselves not imported the goods and this cannot be held as

suppression of facts. As the appellants are filing the returns with the Central Excise Department regularly and are subject to audit, extended period of limitation cannot be invoked alleging suppression.

2. Department filed this appeal on the following grounds.

- (i) Simply because the originally imported goods are procured by the assessee through a dealer, they cannot become indigenous goods and therefore they continue to be hit by the condition of the notification No. 23/2003-CE that the goods should be produced only from the raw materials produced or manufactured in India. The Commissioner (Appeals) has erred in allowing the concessional rate of benefits to the assessee.
- (ii) The Commissioner (Appeals) has also erred in relying on the Board's circular No. 389/22/98, dated 05.05.1998 which clarified that the benefit of notification No. 8/97 should be allowed even if imported consumables are used. This circular was superseded by Board's circular No. 614/5/2002-CD, dated 31.01.2002. It was clarified in this circular that the benefit of notification No. 8/97 is not allowed even if imported consumables are used.

3. The Department relied upon the case of Ballarpur Industries Limited [1989(43) ELT 804 (S.C)] in which the Apex Court held that the expression “raw material” is not a definite term. In the case of chemical technology, the ingredients used may be (a) of those which may retain their dominant individual identity and character throughout the process and also in the end product and (b) those which, as a result of inter-connection with other chemicals/ingredients, might themselves undergo chemical or qualitative changes and in such altered form find themselves in the end products and (c) those which like catalytic agents while influencing and accelerating the chemical reactions, may themselves remain uninfluenced and unaltered and remain independent of and outside the end product and (d) those which might be burnt up or consumed in the chemical reactions. The respondent on the other hand relied on the judgment of Hon’ble Supreme Court in the case of Vanasthali Textiles Industries Ltd vs. CCE Jaipur [2007(218)ELT 3 (S.C)]. In this case, the exemption notification 8/97-CE was allowed in respect of the goods sold in DTA, even when the consumable was used which is not domestically manufactured. Relying on the judgment of Apex Court in the case of Vanasthali Textiles Industries Limited, Tribunal Mumbai, in the case of Premium Tools Pvt. Ltd. [2017(357)ELT 528 (Tri.-Mumbai)] the Tribunal allowed that the benefit of notification No. 8/97 where important consumables were used.

4. Heard both sides and perused the records.

5. The questions to be decided by us are

- (a) whether the consumables are included in the term raw materials for the purpose of notification No. 8/97-CE, and consequently if goods are cleared to DTA which are manufactured using imported consumables, is the benefit of notification 8/97 available to the assessee?
- (b) whether the goods in question are consumables or raw materials.

6. As far as (a) above is concerned, the issue is no longer *res integra* as the Hon'ble Supreme Court in the case of Vanasthali Textiles Industries Limited (supra) and followed by Tribunal in the case of Premium Tools Pvt. Ltd. (supra) held that the benefit of notification No. 8/97 is available even if the final products are manufactured using imported consumables because the limitation when the notification is only that the goods should be manufactured using raw materials manufactured or produced in India. There is no restriction that the consumables which are used in the manufacture also have to be domestically manufactured. The position is also clear in Board's circular No. 442/8/1999-CX, dated 4.3.1999 (supra) permitting the benefit of notification but the subsequent circular No. 85/2001-CUIS, dated 21.12.2001 (supra) reversed it. However, since the Supreme Court has settled the matter, we find that regardless of the

Board's circulars and the period in which the clearances were made for the goods which are manufactured using imported consumables but domestically manufactured or produced raw materials, the benefit of notification No. 8/97 is available.

7. The next question is whether the goods in question are raw materials or consumables. The show cause notice alleges that these materials Methyl Iso Butyl Ketone, Hexane, Methanol, Isopropyl Alcohol IP are raw materials. The adjudicating authority also held that these are raw materials. The only argument of the assessee before the adjudicating authority is that this should be treated as consumables because they do not find part of their final product and the adjudicating authority disagreed it. The Commissioner (Appeals) observed that these are solvents very much required for process which do not come part of the produce and hence they are consumables. We find nothing in the order of Commissioner (Appeals) that the assessee had produced any evidence to substantiate their claim that these are consumables and not raw materials. During the personal hearing, the Counsel for the respondent assessee was specifically asked to say why their goods should be considered as consumables and not as raw materials and we could not get any satisfactory justification apart from his assertion that they are consumables.

8. In view of above, we are unable to hold that the products in question are indeed consumables. It is well established principle that any exemption

notification should be strictly construed against the person who is claiming it. In this case, it is for the assessee to prove that the goods in question are consumables and not raw material in the process of manufacturing of final products which burden they have not discharged. We, therefore, find that Commissioner (Appeals) has erred in holding that these items as consumables merely on the assertion of the assessee without any basis to substantiate it, as the assessee has not produced any evidence to substantiate that the goods in question are consumables, we hold that the assessee is not entitled to the benefit of the notification and accordingly pass the following order.

9. The Order-in-Appeal No. 81/2009(V-I) CE, dated 12.06.2009 is set aside and appeal is allowed.

(Pronounced in the open Court on 06.06.2018)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)