CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD
Division Bench
Court - I

Appeal No.	Appellant(s)	Respondent(s)	Order-in-Original No.
C/382/2009	CC, Visakhapatnam	Emergy Pharma Pvt Ltd	7/2009 (RS), dt.27.02.2009 passed by CCCE, Visakhapatnam
E/461/2009	CCE & CC, Visakhapatnam-I	Emergy Pharma Pvt Ltd	-do-
E/1166/2009	Emergy Pharma Pvt Ltd	CCE & CC, Visakhapatnam-I	-do-

Appearance:

Shri B. Guna Ranjan, Superintendent/AR for the department.

Shri N. V. Ramana, Advocate for the Assessee.

Coram:

HON'BLE Mr. M.V.Ravindran, MEMBER (JUDICIAL)

HON'BLE Mr. P. Venkata Subba Rao, MEMBER (TECHNICAL)

Date of Hearing: 02.08.2018
Date of Decision: 02.08.2018

FINAL ORDER No. A/30827-30829/2018

[Order per: M.V.Ravindran.]

1. Appeal Nos. C/382/2009, E/461 & 1166/2009 are directed against the same Order-in-Original. Hence, they are disposed of by common order.

2. Heard both sides and perused the records.

3. The relevant facts that arise for consideration after filtering out the unnecessary details are, the assessee herein had registered himself as an EOU (Export Oriented Unit) and during the period 1994-97, procured capital goods and inputs (both indigenous and imported) without payment of duty.

Due to the reasons of market volatility, the unit could not achieve the committed export proceedings. The DGFT Authorities suo moto de-bonded the unit (as stated by the learned counsel, in 2002). Subsequently, the revenue issued show cause notice dated 10.11.2003 demanding the duty foregone by them on the imported and indigenous capital goods as well as inputs. The adjudicating authority in the first ground of litigation, confirmed the demands so raised and the impugned order was set aside by the Tribunal by Final Order dated 22.05.2008 and remitted the matter back to the adjudicating authority to reconsider the issue afresh. The adjudicating authority in the impugned order in all these 3 appeals has in deference to the direction of the Tribunal, taken on the adjudication proceedings and passed the impugned order. Appellant/Assessee is aggrieved by the order of confirmation of demand of the duty liability on the capital goods and the interest thereof on the ground that the adjudicating authority has not considered the Board Circular which directs that the depreciation on the capital goods should be allowed till the payment of duty and in the case in hand, they have not paid the duty. It is the case of the department that while calculating value for depreciation, the adjudicating authority has erred in taking value for such calculation in the case of inputs it is his submission that before de-bonding, the assessee had procured many inputs on which demand has not been confirmed just before the closure of the unit.

4. After considering the submissions made, we find that as regards the submissions made by the learned counsel for the appellant/assessee we do find merits in the same. It is on record that the appellant had procured the capital goods indigenously as well as imported the same for the purpose of installing the same in the EOU; the said capital goods were used for

manufacturing activity and due to economical unviability, the unit got closed. The adjudicating authority in the impugned order has recorded that the capital goods were used from 1995-97. If that be so, we agree with the learned counsel's submissions that Board Circular No.14/2004 dated 13.02.2004 will be applicable in the case in hand for the relevant period and the depreciation needs to be allowed till the payment of duty. It is an admitted fact that payment of duty has not yet been done. We find that the Tribunal in the case of CC & CE, Vadodara Vs Solitaire Machine Tools (P) Ltd [2003 (152) ELT 384 (Tri.-Mum.)], Anjaleem Enterprises Pvt Ltd Vs CCE & C, Vadodara [2007 (210) ELT 204 (Tri.-Ahmd.)] and Premiere Granites Vs CCE, Tirupati [2007 (210) ELT 200 (Tri.-Bang.)] considered the same/identical set of facts and held that depreciation needs to be allowed till the customs duty is discharged. In the case in hand since the duty liability has not been discharged, no demand can be raised on the appellant. Holding such, we allow the appeal of the assessee.

5. As regards the revenue's appeal, one of the appeals seeks for confirmation of the demand of the duty foregone on the inputs. We find from the adjudicating authority's order that she has appropriated an amount of Rs.3,96,141/- towards the duty liability on the inputs which were procured but not properly utilized for the purpose of export of the goods. On a specific query from the Bench as to what the exact amount of the duty liability on the inputs that needs to be confirmed, we find that appeal memoranda of the revenue is not specifying as to what the exact amount that needs to be confirmed from the assessee. In the absence of any such details in the grounds of appeal, we are unable to consider the revenue's appeal. Revenue's appeal stands rejected on the inputs.

6. As regards revenue's appeal on capital goods, since we have decided the assessee's appeal on merits itself, no demand of duty liability arises on capital goods on which duty liability has not yet been discharged. Nothing survives in the appeal of revenue and accordingly, the appeal filed by the revenue on capital goods also stands rejected.

7. All the appeals are disposed of as indicated herein above.

(Dictated and pronounced in the open Court)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)

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