CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH REGIONAL BENCH AT HYDERABAD
BENCH - DB
COURT - I

Appeal(s) Involved:

E/327-328/2009-DB

E/1169-1170/2012-DB

(Arising out of Order-in-Original No. 15/2008-09 (RS) dated 30/12/200 2/2009(R.S.) dated 12.01.2009 passed by Commissioner of Customs, Central Excise & Service Tax Visakhapatnam)

(Arising out of Order-in-Appeal No. 7/2012 (V-I) dated 16/02/2012, 8/2012 (V-I) CE dated 16/02/2012 passed by Commissioner of Central Excise Customs & Service Tax (Appeals) Visakhapatnam)

M/s Divis Laboratoris Ltd
Hyderabad — Appellant(s)

Versus

Commissioner of Central Excise, and
Customs Visakhapatnam — Respondent(s)

Appearance:

Mr B.V. Kumar, Adv for the Appellant.
Mr Mallikarjuna Reddy A.R. for the Respondent.

CORAM:

HON'BLE Mr. M.V.Ravindran, MEMBER (JUDICIAL)
HON'BLE Mr. P. Venkata Subba Rao, MEMBER (TECHNICAL)

Date of Hearing: 10/01/2019
Date of Decision: 29/01/2019

Final Order No. A/ 30145-30148/ 2019

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[Order per: M.V.Ravindran.]

All these four appeals are disposed of by a common order as the issue pertains to the same assessee and the question of law raised is also the same. The details are as under:-

Appeal No.	Duty demanded
E/327/2009	Rs. 61,48,422/-
E/328/2009	Rs. 52,61,321/-
E/1169/2012	Rs.19,38,572/-
E/1170/2012	Rs. 07,34,631/-

It transpires from the records that during the period in question, June 2006 to July 2008, appellant was functioning as a 100% EOU. In the EOU, appellant was manufacturing Iopamidol which was exported. For the manufacturing activity in the 100% EOU, appellant used to import various raw materials claiming exemption under customs duty as per Notification No. 21/2002-Cus, 22/2003-CE and 52/2003-Cus after executing required B-17 bond. During the period in question, appellant cleared Iopamidol to DTA claiming exemption from central excise duty under Notification No. 04/2006-CE dated 01.03.2006. After investigation, Revenue authorities were of the view that appellant has to pay the customs duty foregone by the department on the inputs which were used for manufacturing of Iopamidol cleared to DTA. Appellant herein after calculations debited the CENVAT register with the amount as customs duty on the inputs consumed in the manufacture of Iopamidol cleared into DTA by claiming exemption. It is the case of the Revenue that appellant cannot utilise the CENVAT credit balance for discharge of Customs duty but should pay the amount in cash with interest. Show-cause notices were issued for demand of the amount in cash along with interest and also for imposing penalties. Appellant contested the show-cause notice on merits as well as on limitation. The adjudicating authority did not agree with the contentions raised and accordingly confirmed the demands.

2. Learned counsel appearing for the appellant draws our attention to the controversy involved and submits that once appellant is liable to pay duty on the inputs used for manufacture of goods cleared to DTA, they can utilise the amount lying in credit in their CENVAT account and there is no legal bar in using the same. Effectively it is his submission that utilisation of CENVAT credit is correct; that the CENVAT credit balance is not disputed and any debits made in CENVAT account is equivalent to discharge of the duty is the law. He would further submit that provisions of Rule 17 of Central Excise Rules 2002 would help them and he need not pay any amount on the inputs which were consumed for manufacturing of goods cleared to DTA in cash. He would submit that decision of the larger Bench in the case of Vikram Ispat Vs CCE Mumbai [2000(120)ELT 800 (Tri-LB)] and the Apex Court in the case of CCE & C Vs Suresh Synthetics [2007(216)ELT 662(S.C)] will apply in its full force in their favour.

3. Learned A.R. after reiterating the findings of the lower authorities submits that Revenue is only demanding the amount of customs duty payable by the appellant in cash and not through debit in CENVAT account. It is his submission that there is no dispute as to the fact that the raw materials imported for consumption in the DTA and the final manufacture is exported as well as cleared locally. It is his submission that they are not demanding the customs duty on the inputs which are consumed for manufacture of final products and subsequently exported.

4. On a careful consideration of the submissions made by both sides, we find that the issue is that whether appellant herein can utilise balance in

CENVAT credit account for discharge of customs duty like basic customs duty, additional customs duty (CVD) and special customs duty on the inputs which have been used for manufacturing finished goods and these finished goods are cleared to DTA claiming exemption.

5. There is no dispute as to the fact that the inputs were imported and customs duty was foregone as the appellant being EOU, that the finished goods are manufactured in the EOU and exported as also cleared locally i.e. into DTA and claiming exemption from payment of duty; that appellant is required to pay customs duty as calculated by the authorities on the inputs consumed for manufacturing of final products which were cleared locally into DTA.

6. In our considered view, the arguments put forth by the learned counsel do not carry their case any further. The provisions of Rule 3(4) of the CENVAT Credit Rules 2004 specifically states that CENVAT credit may be utilised for payment of

(a)Any duty of excise on any final product; or

(b) Any amount equal to CENVAT credit taken on inputs if such inputs are removed as such or after being partially processed; or

(c) An amount equal to the CENVAT credit taken on capital goods if such capital goods are removed as such; or

(d) An amount under sub-rule (2) of Rule 16 of Central Excise Rules, 2002; or

(e) Service tax on any output service;

It can be seen from the relevant portions of the CENVAT credit Rules clearly indicate that the CENVAT credit cannot be utilised for payment of customs duty.

7. In the case in hand, Revenue authorities are correct in demanding the amount of customs duty, in cash, on the raw materials consumed for manufacture of finished goods which are cleared to DTA by claiming exemption. In our view, no provisions in the CENVAT Credit Rules permit the appellant herein to use the balance for discharging the customs duty on the imported goods

8. At the same time, learned counsel was correct in stating that if all the amounts which are due from the appellants if paid in cash, the CENVAT credit which has been debited should be restored. We do find strong force in these contentions. We direct that the appellant should discharge all the customs duty in cash, calculated by the Revenue authorities, on the imported goods consumed in manufacturing of final products cleared to DTA claiming exemption, on that occurrence of event CENVAT credit which has been used for debiting the said amount should be recredited by the jurisdictional authorities.

9. In view of the foregoing we find no reason to interfere in the orders of the lower authorities except for recredit as ordered above. Accordingly, the appeals are disposed of.

(Order pronounced in open court on 29/01/2019)

P. Venkata Subba Rao
MEMBER (TECHNICAL)

M.V.Ravindran
MEMBER (JUDICIAL)

Neela Reddy