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

Division Bench - Court No. – I

Excise Appeal No. 30912 of 2016

(Arising out of **Order-in-Appeal** No.GUN-EXCUS-000-APP-29-16-17, dated 30.06.2016 passed by Commissioner of Customs, Central Excise and Service Tax, Vizag)

M/s Wanbury Ltd., .. **APPELLANT**
(previously M/s Doctor Organic Ltd.,)
K.Illindalaparru, Iragavaram (Mandal),
West Godavari District,
Andhra Pradesh – 534 217.

VERSUS

The Commissioner of Central Tax, Guntur Commissionerate .. **RESPONDENT**
P.B.Bo. 331, C.R.Building,
Kannavari Thota, Guntur,
Andhra Pradesh – 522 004.

AND

Excise Appeal No. 30916 of 2016

(Arising out of **Order-in-Appeal** No.GUN-EXCUS-000-APP-44-16-17, dated 30.06.2016 passed by Commissioner of Customs, Central Excise and Service Tax, Vizag)

M/s Wanbury Ltd., .. **APPELLANT**
(previously M/s Doctor Organic Ltd.,)
K.Illindalaparru, Iragavaram (Mandal),
West Godavari District,
Andhra Pradesh – 534 217.

VERSUS

The Commissioner of Central Tax, Guntur Commissionerate .. **RESPONDENT**
P.B.Bo. 331, C.R.Building,
Kannavari Thota, Guntur,
Andhra Pradesh – 522 004.

Appearance

Shri P. Venkatprasad, Chartered Accountant for the Appellant.
Shri A. Rangadham, Superintendent for the Respondent.

Coram: **Hon’ble Mr. P.V. SUBBA RAO, MEMBER (TECHNICAL)**
Hon’ble Mr. P. DINESHA, MEMBER (JUDICIAL)

FINAL ORDER No. A/31478-31479/2020

Date of Hearing:09.12.2020
Date of Decision:09.12.2020

[ORDER PER: P.V. SUBBA RAO]

1. These two appeals involve the same issue and hence are being disposed of together. Heard both sides and perused the records. The Appellant manufactures various organic and inorganic chemicals including Tramadol Hydrochloride during the manufacture of which an intermediate

excisable product namely Tramadol Nitrate emerges. Intermediate products which are manufactured by any factory are exempted from payment of duty if the final product is chargeable to duty and not otherwise. The relevant exemption notification is 67/95 which reads as follows:

Notification: 67/95-CE dated 16-Mar-1995

Capital goods and inputs captively consumed within the factory of production

In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excises and Salt Act, 1944 (1 0f 1944), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts –

(i)Capital goods as defined in rule 57Q of the Central Excise Rules, 1944 manufactured in a factory and used within the factory of production;

(ii)goods specified in column (2) of the Table hereto annexed (hereinafter referred to as "inputs") manufactured in a factory and used within the factory of production in or in relation to manufacture of final products specified in column (3) of the said Table;

from the whole of the duty of excise leviable thereon which is specified in the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) :

Provided that nothing contained in this notification shall apply to inputs used in or in relation to the manufacture of final products (other than those cleared either to a unit in a Free Trade Zone or to a 100% Export Oriented Undertaking or to a unit in an Electronic Hardware Technology Park or to a unit in a Software Technology Parks), which are exempt from the whole of duty of excise leviable thereon or are chargeable to 'Nil' rate of duty.

Explanation.- For the purposes of this notification 'inputs' does not include –

(i)packaging materials in respect of which any exemption to the extent of the duty of excise payable on the value of the packaging materials is being availed of for packaging any final products;

(ii)packaging materials or containers, the cost of which is not included in the assessable value of the final products under section 4 of the Central Excises and Salt Act, 1944(1 of 1944).

TABLE

S.No.	Description of inputs	Description of final products
(1)	(2)	(3)
1.	All goods falling within the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), other than the following, namely, - (i)goods classifiable under any heading of Chapter 24 of the Schedule to the said Act; (ii) goods classifiable under heading Nos. 36.05 or 37.06 of the Schedule to the said Act; (iii)goods classifiable under sub-heading Nos. 2710.11, 2710.12, 2710.13 or 2710.19 (except Natural gasoline liquid) of the Schedule to the said Act; (iv)high speed diesel oil classifiable under heading No. 27.10 of the Schedule to the said Act.	All goods falling within the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), other than the following, namely,- (i)goods classifiable under any heading of Chapter 24 of the Schedule to the said Act; (ii)goods classifiable under heading Nos. 36.05 or 37.06 of the Schedule to the said Act; (iii)woven fabrics classifiable under Chapter 52 or Chapter 54 or Chapter 55 of the Schedule to the said Act.

[Notification NO. 67/95-C.E., dated 16-3-1995]

2. The Appellant cleared the final product namely Tramadol Hydrochloride to units located in Special Economic Zone (SEZ) without payment of duty. The Department proposed to deny them the benefit of exemption Notification No. 67/95-CE on the intermediate product Tramadol Nitrate on the ground that the supplies to SEZ (which are not charged to excise duty) are not covered by the exception to proviso to Notification No. 67/95. Therefore, the exemption is not available. Accordingly, show cause notices were issued and demands have been confirmed along with interest and penalties have been imposed. On appeal the First Appellate Authority upheld the orders of the lower authority.

3. Learned Chartered Accountant submits that the question to be decided in these appeals is "whether intermediate product gets exempted under Notification No. 67/95-CE dated 16.03.1995 when the final product is manufactured and cleared to SEZ units without payment of central excise duty." He submits that this issue is no longer res integra and it has been decided that exemption is available in the following cases:

a. Madras Cements Vs C.C.E & S.Tax, Guntur [2019-TIOL-516-CESTAT-HYD]
b. Andhra Sugars Limited Vs C.C.E & S.Tax, Guntur [2017 (347) E.L.T. 288 (Tri-HYD)]
c. Ultratech Cement Ltd., Vs CCE & ST, Thiruchirapalli [2016 (343) E.L.T. 164 (Tri-Chennai)]
d. Trichy Distillers and Chemicals Limited Vs C.C.E, Trichy [2018-TIOl-993-CESTAT-MAD]

He further submits that consequent upon the orders of the Tribunal, CBIC has also issued Instruction No. 96/85/2015-CX.I dated 07.12.2015. This circular communicated various decisions taken in the Chief Commissioners' Conference for compliance by all forums. The relevant portion for this case is as follows:

B13 - Hyderabad Zone - Scope of exemption- admissibility to intermediate goods used in the manufacture of cement supplied to SEZ units:

Issue: Notification No. 67/95-CE dated 16-03-1995 provides duty exemption to captively consumed inputs in the manufacture of dutiable final products. Exception to this notification is that this duty exemption is not applicable, if the final products are exempted from duty payment or attract nil rate of duty. An exception to this exception is when clearance of final products is made to a unit in Free Trade Zone (FTZ), a 100 % EOU and a unit in Hardware Technology Park or Software Technology Park. Thus, when final products are supplied to FTZ, EOU etc intermediate products continue to be exempted. Now, FTZ scheme does not exist and existing EPZ/FTZ have been notified as SEZ. The issue is whether the benefit of exemption to the intermediate product is available when final products are supplied to the SEZ. The issue has been discussed in the past tariff conference also but no final view was taken. Show Cause Notices have been issued in the zone on the subject.

Discussion & Decision The conference after discussion noted that the issue has been decided by the Tribunal in case of M/s Ultratech Cement and other manufacturers [2015-TIOL-2110-CESTAT-Mad] where the Tribunal decided that benefit of exemption to intermediate products is available when the final products are supplied to SEZ. Hon'ble Tribunal noted that during the relevant period of dispute, no FTZ was in operation and therefore no clearance could be made to FTZ as this was a period after the enactment of SEZ Act on 10.02.2006. Once the SEZ Act came into effect from 10.02.2006, all the units functioning as FTZ were declared as SEZ units. notification no. 4/2003-CE, dated 30.03.2003 was issued to convert various FTZs into SEZs. Further, as per the Notes explaining clauses of the Finance Bill, 2007 (clause 106), after enactment of SEZ Act, FTZs have become redundant and hence it sought to amend subsection (1) of Section 3 of the Central Excise Act. By virtue of the above amendment, the word FTZ was omitted and substituted with the word SEZ in section 3 of the Central Excise Act, 1944. **Consequently, tribunal concluded that now the expression FTZ in the notification no. 67/95-C.E. needs to be read as SEZ and the benefit of exemption extended to the intermediate goods when final goods are supplied to SEZ. Conference accepted this view and concluded that benefit of exemption should be extended to the intermediate goods when final goods are supplied to SEZ. Conference also recommended to the Board that notification no 67/95-C.E. should be amended to avoid litigation on the issue.**

4. He would, therefore, submit that the issue has been settled by various Benches of the Tribunal and also been accepted by the CBIC. Therefore their appeals may be allowed.

5. Learned DR reiterated the findings of the lower authority. However, he admits that the CBIC has issued the above instruction in favour of the assessee.

6. In view of the above, we find that the issue is no longer res integra and it is settled by various decisions of this Tribunal and also accepted by the CBIC that benefit of exemption Notification No. 67/95-CE is available to the intermediate products when the final product is supplied to SEZ units

without payment of duty. Accordingly, the appeals are allowed and the impugned orders are set aside with consequential reliefs, if any.

(Operative part of this order was pronounced in court
on conclusion of the hearing)

(P. VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(P. DINESHA)
MEMBER (JUDICIAL)

Jaya