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

Single Member Bench

Court – I

Customs Appeal No. 30501 of 2019
(Arising out of **Order-in-Appeal** No.VIZ-CUSTM-000-APP-017-19-20 dated 31.07.2019 passed by Commissioner (Appeals), Guntur Central Tax & Customs, Visakhapatnam)

M/s Divi's Laboratories Ltd., (Unit-2) .... Appellant
Chippada Village,
Annavaram (Post),
Bheemunipatnam Mandalm,
Visakhapatnam – 531 162.

VERSUS

The Commissioner of Customs, ... Respondent
Customs House,
Port Area,
Visakhapatnam – 530 035.

Appearance

Shri P. Dwarakanath, Consultant for the Appellant.
Shri A V L N Chary, AR for the Respondent.

Coram:

HON'BLE Mrs. RACHNA GUPTA, MEMBER (JUDICIAL)

FINAL ORDER NO. A/30262/2021

Date of Hearing: 02.09.2021
Date of Decision: 23.09.2021

[Order per: Mrs. RACHNA GUPTA]

1. The appellant herein has been importing various goods for their EOU unit under procurement services issued by concerned Central Excise Authorities. The appellant filed various shipping bills and transfer bonds for movement of goods as IPA. Toulene and Methyl Alcohol to their EOU unit Chippada with transfer shortages as were mentioned in the re-warehouse

services received from the Central Excise Authorities. Department, based on those shortages amounting to Rs. 3,82,143/- proposed the same to be recovered from the appellant, vide letter dated 13.04.2015. The said amount was paid by the appellant, however, under protest citing the shortages except for one within the permissible limit of less than 1%. Thereafter the importer filed an application seeking refund of the said duty paid under protest. The said refund application dated 16.04.2018 was initially returned back with the direction to approach the appropriate jurisdictional Commissionerate. When the same was re-submitted, the refund was proposed to be rejected vide Show Cause Notice No. 20/2018-CRS dated 24.08.2018 on the ground that the transfer bonds in which the goods were transferred from Vizag Customs to EOU Bheemli have been closed on 19.01.2014, 12.12.2014, 15.12.2014, 19.01.2015 and 11.02.2015 which was duly intimated to the appellant but was not contested at the appropriate stage. The said proposal based on the said ground was confirmed vide the Order-in-Original No. 102/2018 the appeal thereof has been rejected vide Order-in-Appeal No. 017/19-20 dated 31.07.2019.

2. I have heard Learned Counsel for the Appellant Shri P. Dwarakanath, and Shri A V L N Chary, AR for the Respondent.

3. It is submitted on behalf of the appellant that the amount of Rs. 3,82,143/- as was calculated for the alleged shortage is an amount of differential customs duty on account of said shortage of imported goods. The same was though paid by the appellant but under protest. Superintendent Bheemli Range was duly informed by letter dated 27.05.2015 that there is no requirement of demand of said customs duty. It is submitted that the submissions of appellant should have been considered by the said Superintendent instead the show cause notice was issued in

ignorance of the submissions in the said letter. Learned Counsel also submitted that the refund has been rejected on the ground that closure of transit bonds was not contested by the appellant. It is submitted that infact no communication from bonds department, Visakhapatnam was ever received by the appellant about any order of final assessment or about any speaking order for closing the transfer bonds. The duty otherwise was paid under protest for which appellant is not otherwise liable. The refund has therefore wrongly be rejected. It is alleged that no opportunity of personal hearing was ever given to the appellant at the time of closure of transfer bonds. There is no information as to how the amount of differential duty has been calculated. The order and challenge is alleged to be totally and contrary to the facts. Learned Counsel while laying emphasis on **Mangalore Refinery & Petrochemicals Ltd., Vs C.C., Mangalore [2015 (323) E.L.T. 433 S.C.]** and **Century Yarn Vs Commissioner of Customs, Indore [2016 (331) E.L.T. 111 (Tri.-Del)]** has prayed for the order under challenge to be set aside and appeal to be allowed. Learned Counsel has also impressed upon that differential duty should not have been demanded due to the valid reason of the of the chemical being imported. Reliance been placed upon Circular No. 96/2002-CUS dated 27.12.2002. Order accordingly is prayed to be set aside and prayed to allow the appeal.

4. To rebut these arguments Learned Departmental Representative has submitted that the appellant importer was very much aware of the shortage notices in the quantity of chemical imported by him. It is imposed upon that the alleged violation of principles of natural justice is absolutely wrong as the transfer bonds, procedurally, cannot be closed in the absence of the importer under Section 67 of Customs Act, 1962 is emphasized. It is mentioned that once the closure of transfer bonds has not been contested at

the appropriate stage the amount paid as a differential duty with respect to the said noticed shortage cannot be refunded. Refund has rightly been rejected by Commissioner (Appeals). Present appeal is accordingly prayed to be dismissed.

5. After hearing the parties, the rival contentions and perusing the records it is held as follows:

The Superintendent of Central Excise and Customs, Bheemli Range had issued a procurement certificate No. 203/2014 dated 07.08.2014 to the appellant who admittedly is a 100% EOU. Based on said procurement certificate that the transfer of 112,000 Kgms of Isopropyl Alcohol was allowed in terms of Section 67 of Customs Act, 1962. The said material was cleared from the customs office vide Shipping Bill No. 2645/2014 dated 08.08.2014. A re-warehousing certificated was issued from Superintendent, Customs Bheemli to Superintendent, Bonds vide letter No. 75/2015 dated 11.02.2015 but for 111560 Kgms of Isopropyl Alcohol only as against the shipping bill quantity of 112000 Kgms. As such, the differential duty for the short quantity of 190 Kgms was demanded from the appellant which was deposited by him vide Challan No. 62 dated 04.03.2015. No doubt, the noticed shortage is less than 2% of total quantity on goods released under various shipping bills. The appellant had submitted in response to the show cause notice that the marginal difference in quantity imported and quantity received is attributable to loss in unloading, transit and due to the methods of handling adopted. The goods imported, since were highly volatile in nature were mentioned to be susceptible to evaporation during the course of transit from Visakhapatnam port to the factory which is situated at more than 50 KMs. But the simultaneous perusal of record reveals that this submission of appellant came for the first time, vide the letter of appellant dated 27.03.2015 whereas the first transfer bond got already closed on 19.01.2014 and the last transfer bond among 5 was closed on 11.02.2015. There is no explanation of the appellant about his silence for almost more than one and half year since the closure of first bond of transfer bond and for almost five months from the closure of last transfer bonds. Though the appellant has reflected grievance about violation of principles of natural justice as being not given the opportunity of hearing at the time of closure of transfer bonds but apparently and admittedly the bonds have been closed in terms of Section 67 of Customs Act, 1962. The Section reads as follows:

> Removal of goods from one warehouse to another.—The owner of any warehoused goods may, with the permission of the proper officer, remove them from one warehouse to another, 1[***] subject to such conditions as may be prescribed for the due arrival of the warehoused goods at the warehouse to which removal is permitted.
>
> <u>Regulations 3 and 4 of the Warehoused Goods (Removal) Regulations, 1963</u>
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> Regulation 3 – Conditions for transport of warehoused goods to another town-
>
> Where the goods are to be removed from one warehouse to another in a different town the proper officer may require the person requesting removal to execute a bond in a sum equal to the amount of import duty leviable on such goods and in such form and manner as the proper officer deems fit
>
> Regulation 4 – Terms of the bond to be executed-
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> The terms of the bond shall be that if the person executing the bond produces to the proper officer, within three months or within such extended period as such officer may allow, a certificate issued by the proper officer at the place of destination that the goods have arrived at that place, the bond shall stand discharged, but otherwise an amount equal to the import duty leviable on the goods in respect of which the said certificate is not produced shall stand forfeited

The provision makes it clear that Procedure for submission of transfer bonds and the closure thereof is not possible in the absence of the executor of the bonds who requests removal of the imported goods from one warehouse to another. Hence the allegations of the appellant are observed to be wrong. The intentions of Commissioner (Appeals) in para 5.4 of the order in the challenge are in terms of Circular No. 96/2002 dated 27.12.2002 but are observed to be not applicable to the given circumstances because the Circular refers to the finalisation of the provisional assessments made. Apparently and admittedly present is not the case of provisional and the final assessment since the appellant accepted while executing the transfer bonds the noticed shortage but has failed to explain sufficient cause for the silence to contest the same for almost one and half year, the subsequent refund application is nothing but a after-thought. The noticed shortage is apparently more than 1%. I accordingly, do not find it to be a fit case for refund. Accordingly, I do not find any infirmity in the order passed by Commissioner (Appeals). The order accordingly is upheld. Consequent thereto the appeal is hereby ordered to be dismissed.

(Order pronounced in the open Court on 23.09.2021)

(RACHNA GUPTA)
MEMBER (JUDICIAL)

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