CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD

REGIONAL BENCH

Customs Appeal No. 3561 of 2012

(Arising out of Order-in-Original No.08/2012-Adjn(Cus) (Commr) dated 10.10.2012 passed by Commissioner of Customs & Central Excise Hyderabad)

M/s Natco Pharma Ltd **...Appellant**
Natco House, Road No. 2,
Banjara Hills,
Hyderabad-500 033

Verses

Commissioner of Central Excise **...Respondent**
Hyderabad-II
Kendriya Shulk Bhavan, LB Stadium Road,
Basheerbag,
Hyderabad-500004

APPEARANCE:
Mr Ch Sumanth Adv. for the appellant
Mr A. Rangadham, A.R. for the Respondent

CORAM:
HON'BLE MR ANIL CHOUDHARY MEMBER(JUDICIAL)
HON'BLE MR A.K. JYOTISHI, MEMBER(TECHNICAL)

FINAL ORDER NO. 30378/2023

Date of Hearing: 31.10.2023
Date of Decision:31.10.2023

PER ANIL CHOUDHARY

The issue involved in this appeal is whether the imposition of redemption fine under Section 125 and further imposition of penalty under Section 114 (iii) of the Act is justified in the facts of the case.

2. The brief facts are - M/s Natco Pharma Ltd herein after referred to as the appellant, is a manufacturer and exporter of drugs falling under CET Chapter 29 and 30. The appellant made certain exports during the period July 2006 to June 2010 and claimed DPB benefit. The SCN was issued with the allegation that the appellant had wrongly claimed higher DEPB benefit. However, even prior to the issuance of the SCN, the appellant has paid the amount towards excess DEPB credit along with interest on 30.12.2011. Further, the SCN dated 27.01.2012 was issued proposing

penalty and confiscation of the exported goods during the relevant period. The said SCN was adjudicated and impugned O-I-O dated 10/10/2012 was passed confirming the recovery of excess DEPB credit along with interest and the amount paid by the appellant prior to the issuance of the SCN was also appropriated. Further redemption fine of Rs 10,00,000/- under section 125 of the Customs Act was imposed since the goods were exported and were not available for confiscation along with penalty of Rs 20,00,000/- under Section 114(iii) of the Customs Act.

3. Being aggrieved, the appellant is before this Tribunal. Learned Counsel for the Appellant, *inter alia,* urges that it is a case of bonafide error in the nature of clerical error in the office of the appellant in filling in the forms for DEPB credit. No case is made out of any malafide or deliberate claim of credit to which the appellant was not entitled. He further points out that prior to the issuance of show-cause notice, on being so pointed out by the Revenue, the appellant admitted their error and had also deposited the differential amount of excess credit availed of Rs 61,56,9343/- along with interest of Rs 16,67,219/- vide TR-6 Challan dated 30/12/2011. The appellant also informed the said deposit to the Joint Director General of Foreign Trade, Hyderabad vide letter dated 02/01/2012. A copy of the same is also marked to the Superintendent of Customs SIIB Hyderabad-II. In the said letter appellant had also mentioned to accept the TR-6 challan and requested for closure of the issue.

4. Thereafter, show-cause notice dated 27/01/2012 was issued, wherein it is alleged that there is shortfall in the payment of interest of Rs 1,37,139/- as the appellant had calculated the interest for the whole period at the rate of 15%, whereas the rate of interest had been increased to Rs 18% with effect from 01/04/2011. Thus, for the period 01/04/2011 to 30/12/2011 differential interest payable was calculated at Rs 1,37,139/- The appellant, without disputing the calculation of interest, further deposited the same wide TR-6 challan dated 11/02/2012 and also mentioned the same in the reply to

the show-cause notice. The appellant also mentions that under the facts and circumstances, no show-cause notice should have been issued in terms of Section 28(2) as the appellant has not disputed and have already paid the said amount with interest.

5. Learned advocate for the appellant, further points out that it is admittedly a case of some shortfall in the payment of interest, for which the applicable provision is Section 28(3)of the Act which provides that where the proper officer is of the opinion that the amount paid under clause (b) of sub-section (1) falls short of the amount actually payable, then he shall proceed to issue the notice as provided in clause A of Section 28(1) in respect of such amount which falls short of the amount actually payable. Further such period of limitation of show-cause notice shall be computed from the date of receipt of information under sub-section (2).

6. Accordingly, learned counsel submits that the show-cause notice is fully mis-conceived and the impugned order is required to be set aside. Evidently, there is no violation or concealment made out, attracting the provisions of Section 28(4) of the Customs Act. Accordingly, he prays for allowing the appeal with consequential benefit.

7. Learned AR for the Revenue relies on the impugned order.

8. Having considered the rival contentions, we find that in the spirit of Section 28(2), the appellant had deposited the differential duty along with interest under Clause (b) of Section 28 (1) and also informed the proper officers i.e. Joint Director General, DGFT, and Superintendent of Customs (SIIB) vide letter dated 02.01.2012 of such payment in writing requesting the closure of the issue. It is an admitted fact that SIIB of Customs had investigated and proposed SCN. In fact, the TR-6 is counter-signed by Superintendent (SIIB) in token that it has to be deposited with CAO, Customs & Central Excise Hyderabad-II. Further, TR-6 refers to the file number of SIIB from which the matter was being dealt. Thus the proper

officer was fully aware of the payments as well as request for closure of issue before the issue of show-cause notice.

9. In such admitted facts, the proper officer was required not to serve any notice or show-cause notice under clause (a) of Section 28(1). At the best, a notice would have been given to deposit the shortfall in the calculation of interest, which could have served the purpose. We further find that the show-cause notice is also hit by the provisions of Section 28(3) of the Customs Act, which provided for issue of notice only for the amount which falls short of the amount payable. There is no ground for invoking Section 28(4) in view of nature of error which resulted in excess claim and not appearing to be a deliberate attempt to avail excess credit.

10. In view of the aforementioned findings and observations, we allow the appeal and set aside the impugned order, save and except the deposit of differential amount of DEPB credit of Rs. 61,56,934/- and interest of Rs 16,67,219/- and Rs 1,37,139/- and differential interest paid before adjudication as part of closure request. Appellant shall be entitled to consequential benefits in accordance with law, if any.

(Operative Portion of the order pronounced
in open court on conclusion of the hearing)

(ANIL CHOUDHARY)
MEMBER(JUDICIAL)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

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