IN THE CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL

WEST ZONAL BENCH AT MUMBAI

Appeal No. C/324/2009

(Arising out Order-in-Appeal No. 322/2008/MCH/A.C./CRARS/2008 dated 23.12.2008 passed by the Commissioner of Customs (Appeals), Mumbai - I)

For approval and signature:
Hon'ble Shri C J Mathew, Member (Technical)
Hon'ble Shri Dr. Suvendu Kumar Pati, Member (Judicial)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3.	Whether Their Lordships wish to see the fair copy of the Order?	Seen
4.	Whether Order is to be circulated to the Departmental authorities?	Yes

M/s. Zydus Mayne Oncology Pvt. Ltd. — Appellant

Vs.

Commissioner of Customs (Import) Mumbai — Respondent

<u>Appearance:</u>

None for the appellant
Shri S.R. Nair, EO (AR) & Shri B. Kamble, AC (AR) for the respondent

<u>CORAM:</u>
Hon'ble Shri C J Mathew, Member (Technical)
Hon'ble Shri Dr. Suvendu Kumar Pati, Member (Judicial)

Date of hearing : 24-01-2019
Date of decision : 24-01-2019

O R D E R No: **A/85234 / 2019**

Per: C J Mathew

The appellant, M/s Zydus Mayne Oncology Pvt Ltd, seeks relief from the denial of refund of ₹2,41,381/- and ₹16,22,357/- paid against assessment of bills of entry no. 696781/3.8.06 and no. 695059/27.7.06 on goods that are claimed to have been imported for their unit in a 'special economic zone' thus entitling them to exemption thereof. The refund was denied with the finding that privilege of exemption under another law, which should have been claimed before goods were cleared, could not be extended, in the absence of specific provision, retrospectively.

2. We have heard the Learned Authorised Representative and though none appeared for the appellant, we take up the matter for disposal as the dispute lies within a narrow compass.

3. It is seen that the imports were effected after 10th February 2006, when the Special Economic Zones Act, 2005 was brought into force to govern all imports, domestic procurements and export of goods insofar as 'units' in a 'special economic zone' are concerned. Thenceforth, the 'zero rating' of duties on goods procured by 'units' in a 'special economic zone' ceased to be authorised by chapter

XA of Customs Act, 1962 and such entitlement was attributable solely to section 26 of Special Economic Zones Act, 2005. Duties of customs paid on assessment under Customs Act, 1962 had nothing to do with procurement under Special Economic Zones Act, 2005 which is based on the principle of exclusion from the duty liability attached to being ‘outside customs territory.’ To paraphrase a famous articulation, there is no hyphen that links or buckle that binds the two statutes to provide for grant of refund as an accounting consequence.

4. In view of the above, the mutually exclusive statutory provision for exemption under the specific, exclusive and comprehensive scheme of the statute governing supplies to ‘special economic zone’ and clearance for home consumption under Customs Act, 1962, though ultimately utilised in a ‘special economic zone’ does not entitle the appellant for recourse to section 27 of Customs Act, 1962. A separate system of tax neutralisation is available for such contingencies under the statute governing such zones. The appeal is, therefore, dismissed.

(Operative part pronounced in Court)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

(C J Mathew)
Member (Technical)

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