CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH

Excise Appeal No. 1779 of 2010

(Arising out of Order-in-Appeal No. YDB 409 & 410/RGD/2010 dated 21.07.2010 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone II)

Commissioner of Central Excise, Raigad **…..Appellant**
Utpad Shulk Bhavan,
Plot no. 1, Sector-17,
Khandeswar, Navi Mumbai

Vs.

Cipla Ltd. **…..Respondent**
Plot no. A-42, MIDC,
Patalganga Indl. Estate,
PO Rasayani, Raigad

With

Excise Appeal No. 1780 of 2010

(Arising out of Order-in-Appeal No. YDB 409 & 410/RGD/2010 dated 21.07.2010 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone II)

Commissioner of Central Excise, Raigad **…..Appellant**
Utpad Shulk Bhavan,
Plot no. 1, Sector-17,
Khandeswar, Navi Mumbai

Vs.

Jeevan Chandrakant Patil **…..Respondent**
55B/21, Brindavan Soc.,
Thane

APPEARANCE:

Shri Ajay Kumar, ADC (Authorised Representative) for the appellant

Shri Rajesh Ostwal, Advocate for the respondent

CORAM: **Hon'ble Mr C J Mathew, Member (Technical)**
Hon'ble Mr Ajay Sharma, Member (Judicial)

FINAL ORDER No: A/86043-86044/2019

DATE OF HEARING : 01.01.2019
DATE OF DECISION : 01.01.2019

PER: C J MATHEW

The issue in this appeal of Revenue against order-in-appeal no. YDB 409 & 410/RGD/2010 dated 21st July 2010 of Commissioner of Central Excise (Appeals), Mumbai Zone II is the setting aside of the order of original authority confirming the levy of special additional duty on clearances effected by the respondent.

2. M/s Cipla Ltd, 100% export oriented unit, effected from their manufacturing facility to their own units at Bangalore and Pune from October 2007 onwards on which they had been availing the benefit of exemption notification no. 23/03-CE dated 31st March 2003. Furthermore, in accord with notification no. 19/2006-Cus dated 1st March 2006, special additional duties intended to countervail tax on sales, levied and collected by the state governments, was payable at 4%. Proceedings were initiated against the respondent for failing to discharge the liability of special additional duties of ₹2334674/- for the period from October 2007 to November 2008. The first appellate authority, relying upon the exemption, agreed with appellant therein

that all clearances effected by 100% export oriented unit to the domestic tariff area was not liable to any duty other than the prescribed percentage of basic custom duty to set aside the demand confirmed in the order of the original authority. According to Learned Authorised Representative, the notification relied upon by the first appellate authority does not cover special additional duty of customs as the table at sl.no. 2 applies only to such as are leviable to duty under section 4(3) of the Customs Tariff Act, 1975 in its entirety. It is the contention of Learned Authorised Representative that the exemption from special additional duty granted to imports are equally applicable to export oriented units but only to the extent that such goods are leviable to tax by the state governments. According to him, the stock transfer effected by the respondent from its 100% export oriented unit to its own units elsewhere does not amount to sale and is, therefore, not covered by the exclusion for levy of special additional duty. Learned Counsel for respondent contends that the issue stands settled by various decisions of the Tribunal in *Micro Inks v. Commissioner of Central Excise & Service tax, Daman [2014 (303) ELT 99 (Tri-Ahmd)]*, *VVF Ltd v. Commissioner of Central Excise, Belapur [2014 (312) ELT 116 (Tri-Mumbai)]*, *VVF Ltd v. Commissioner of Central Excise, Belapur [2015 (315) ELT 303 (Tri-Mumbai)]*, *Jindal Saw Ltd v. Commissioner of Central Excise, Ahmedabad-I [2016 (334) ELT 172 Tri-Ahmd)]* and *John Deere*

Equipment Pvt Ltd v. Commissioner of Central Excise, Pune III [2016 (344) ELT 488 (Tri-Mum)].

3. Having heard both sides and perused the records, we find that issue is no longer *res integra*. As has been explained in *re John Deere Equipment Pvt Ltd*

> *'11. The scheme of countervailing the VAT with the special additional duty under the Customs Tariff Act, 1975 also provides an exemption through the refund route for importers who place their imports into the market as such. That is an essential element to avoid double taxation. While the intent of countervailing is to ensure that imports are not placed in advantage vis-a-vis indigenous goods, the equity inherent in such countervailing will cease if the similar goods of EOUs are subject to special additional duty without recourse to the refund mechanism available to countervailed imports. The refund under Notification No. 102/2007-Cus., dated 14th September, 2007 is administered by Customs authorities who collect the special additional duty on imported goods. Imported goods do not come within the ambit of VAT statutes of States and will not be leviable to VAT if used by the importer; countervailing being necessary in that specific type of transaction, ascertainment of non-use by the importer is a prerequisite for refund of tax. Produce of EOUs are, by its transaction within the taxable territory of the States, directly under the control and assessment of the commercial tax department of the states. Therefore, the exemption under Central Excise Act, 1944 supra operates without the need for a procedure corresponding to that performed in relation to import goods. The attempt in all three impugned orders to predicate the exemption on ascertainment of discharge of*

VAT liability is contrary to the exemption notification itself and also contrary to the constitutional scheme of taxation. That the goods are liable to VAT is sufficient to exempt it from the ambit of the countervailing tax entailed upon import of like goods. The demand for special additional duty is, therefore, in excess of jurisdiction and untenable.'

4. The purpose of levy of special additional duty is to countervail imports with a standard rate of duty approximating to the lowest tax on sale of goods within the country. There is, however, an exemption which is accorded to imported goods to the extent that tax at a rate, not less than that prescribed under notification no. 19/2006-Cus dated 1st March 2006, is liable to be discharged as sales tax/VAT. It is in the discharge of that liability that entitlement to exemption is accorded even though the refund is granted, in accordance with the special procedure, only after such discharge. The exemption accorded to export oriented unit, and others similarly situated, are intended to eliminate the intrusion of tax in commercial activity and to the extent that such units otherwise subject to special additional duty are under the control of the central excise authorities and unlike importers, are eligible from exemption notification no. 23/03-CE dated 31st March 2003 which applies to all levies. In the present instance, it is not the case of Revenue that the goods cleared from 100% export oriented unit are exempted or not liable to sales tax/VAT. The postponement of inevitable tax does not, in any way, impact upon the eligibility to exemption.

5. In line with the consistent stand taken by the Tribunal on the exemption available on payment of special additional duties on clearances effected to the domestic tariff area, the appeal of Revenue is dismissed.

(Operative part pronounced in Court)

(C J Mathew)
Member (Technical)

(Ajay Sharma)
Member (Judicial)

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