CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH
COURT No. I

Excise Appeal No. 1276 of 2011

(Arising out of Order-in-Appeal No. PI/RKS/76/2011 dated 11.05.2011 passed by Commissioner of Central Excise (Appeals), Pune-I)

M/s. Centaur Pharmaceuticals P Ltd **Appellant**
(EOU), P-4, Phase-II,
TBT Park, Hinjewadi,
Tal. Mulshi, Pune 411 057.

Vs.

Commissioner of Central Excise, Pune-I **Respondent**
ICE House,
41-A, Sasson Road,
Opp. Wadia College,
Pune 411 001.

Appearance:

Shri Neerav Mainkar, Advocate for the Appellant
Shri Sanjay Hasija, Authorised Representative for the Respondent

CORAM:

Hon'ble Dr. D.M. Misra, Member (Judicial)
Hon'ble Mr. Sanjiv Srivastava, Member (Technical)

FINAL ORDER NO. **A/86456/2019**

Date of Hearing: 22.08.2019
Date of Decision: 22.08.2019

PER: DR. D.M. MISRA

This is an appeal filed against order-in-appeal No. PI/RKS/76/2011 dated 11.05.2011 passed by Commissioner of Central Excise (Appeals), Pune-I.

2. Briefly stated the facts of the case are that during the period March 2008 to March 2009, the appellant, a 100% EOU, cleared their finished products in Domestic Tariff Area (DTA) as advance DTA sales in accordance with para 6.8(k) of the Foreign Trade Policy, 2004-09 claiming

concessional rate of duty in terms of serial No.3 of Notification No.23/2003-CE dated 31.03.2003. Alleging that the concessional rate of duty is applicable only to clearances made under sub-para (a), (d), (e) and (g) of para 6.8 of the Foreign Trade Policy, therefore, the clearances by the appellant during the said period claiming exemption under Notification No.23/2003 resulted into short payment of duty of Rs.30,34,769/-; consequently, two show cause notices were issued for recovery of the said amount along with interest and proposal for penalty. On adjudication, the demand was confirmed with interest and penalty. Aggrieved by the said order, they filed appeal before the learned Commissioner (Appeals) who, in turn, rejected their appeal. Hence, the present appeal.

3. At the outset, learned Advocate, Shri Neerav Mainkar, for the appellant submits that the appellant had paid the differential duty along with interest and in the present appeal, they do not dispute the duty liability and interest. It is his contention that imposition of penalty under Section 11AC of the Central Excise Act, 1944 is unwarranted inasmuch as by proper interpretation of the Foreign Trade Policy, they have availed the benefit of the notification. It is his contention that in sub-para (a) of para 6.8 of the Policy, entitlement of 50% of FOB value of exports for the unit which are exported or expected to be exported from the unit. Further, they have submitted that while allowing permission for advance DTA sale, in his letter dated 13.06.2008, the Development Commissioner has mentioned that the sale would be governed by the provisions laid down under para 6.8(a) of the Foreign Trade Policy, 2004-09. Later, on 2nd March 2009, while giving clarification regarding DTA sale, in response to appellant's letter dated 16.01.2009, the Development Commissioner has informed that they are entitled to discharge concessional rate of duty on the advance DTA

sales. It is his contention that, therefore, the appellant had cleared the goods in DTA availing concessional rate of duty under exemption Notification No.23/2003-CE dated 31.03.2003. Further, he has submitted that no facts have been suppressed on their part nor any facts misdeclared in availing the benefit of the said notification. Consequently, imposition of penalty equivalent to the differential duty is bad in law and liable to be set aside.

4. Learned AR for the Revenue reiterated the findings of the learned Commissioner (Appeals). He has submitted that the issue on merit is no more *res integra* being covered by the judgment of this Tribunal in the case of *Bony Polymers (P) Ltd. vs. CCE, Delhi-III – 2016 (343) ELT 288 (Tri.-Del.)*. He has fairly submitted that the show cause notices were issued for the normal period of limitation.

5. We have carefully considered the submissions advanced by both sides. We find that the learned Advocate for the appellant has not disputed the case on merit. Also, the issue of admissibility of exemption Notification No.23/2003-CE dated 31.03.2003 for advance DTA sale has been settled by this Tribunal in *Bony Polymers (P) Ltd.*'s case (supra). The only dispute that is raised by the learned Advocate for the appellant is imposition of penalty. We find that the appellant had availed concessional rate of duty for clearances against permission for advance DTA sale issued by the Development Commissioner. In the said letter, it has been mentioned that the sale would be governed by para 6.8(a) of the Foreign Trade Policy, 2004-09. Also, the appellant while effecting clearances after availing the benefit of the said notification clearly recorded the clearances in their statutory records and no fact was suppressed, misdeclared or misstated by the appellant. In these circumstances,

imposition of penalty under Section 11AC of the Central Excise Act, 1944 equivalent to the differential duty, in our opinion, is unwarranted.

6. In the result, imposition of penalty under Section 11AC of the Central Excise Act, 1944 is set aside and the impugned order is modified accordingly. Appeal is partly allowed to the said extent.

(Pronounced in the open court)

(Dr. D.M.Misra)
Member (Judicial)

(Sanjiv Srivastava)
Member (Technical)

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