CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH

Excise Appeal No. 795 Of 2012

(Arising out of Order-in-Original No. Belapur/71-72/Bel-II/R-IV/SLM/COMMR.2011-12/BEL dated 29.02.2012 passed by the Commissioner of Central Excise, Belapur)

M/s. BR Steel Products Pvt. Ltd. **.....Appellant**
Plot no. C-39, MIDC,
Pawane, TTC Indl. Area
Turbhe Mahape Road,
Navi Mumbai

Vs.

Commissioner of Central Excise , **.....Respondent**
1st Floor, CGO Complex CBD Belapur
Navi Mumbai

APPEARANCE:

Ms Mansi Patil, Advocate for the appellant
Shri Nitin Ranjan, (AR) for the respondent

CORAM:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon'ble Mr. P. Anjani Kumar, Member (Technical)

FINAL ORDER No: A/86392 / 2021

DATE OF HEARING : 07.04.2021
DATE OF PRONOUNCEMENT : 19.05.2021

PER: P. ANJANI KUMAR

M/s BR Steels Products Pvt Ltd, the appellants are an EOU engaged in the manufacture and export of 'Ceramic Colours/Pigments, falling under CETA 32071040. The appellants have cleared goods in DTA in terms of Para 6.8 of FTP and availing exemption contained under Notification No. 23/2003-CE dated 31.03.2003. It was alleged by the Department that the items cleared in DTA by the appellants were not similar to the goods exported and there was violation of the provisions of Para 6.8 of FTP and thus the exemption contained in the notification cited above was wrongly availed. Accordingly, two Show cause notices, V/Adj(SCN)15-25/ Commr/2010-11/ Bel dated 14-12-2010, covering the period December 05 -February 2010 and V/Adj(SCN)15-155/Commr / 2010-11/ Bel dated 08-03-2011, covering the period March 2010 to January 201, were issued to the appellants seeking to recover the duty forgone on such clearances; extended period was invoked for the period December 05-February 2010; Both the SCNs came to be adjudicated vide Belapur/71-72/ Bel-II/R-IV/ SLM/COMMR/2011-12/Bel dated 29-07-2012. The appellants are before us challenging this order.

2. The learned Counsel for the appellants submits that the appellants obtained necessary permission from the Development Commissioner for export and clearance in DTA; the manufacturing activities are similar for the goods either exported or cleared in DTA; the only difference between the goods cleared for exports is that they are more in concentrate form when compared to the goods cleared in DTA; consequentially, the goods exported are costlier than the goods cleared in DTA.

2.1. Learned Counsel submits that there may be some differences in some technical parameters and quality as per the requirement of the user or customer; for that reason, it cannot be held that goods are not similar & paragraph 6.8 of FTP is not violated; in the commercial parlance, ceramic colours in diluted form and ceramic colours in concentrated form are known, understood and traded as ceramic colours only.

2.2. Learned Counsel further submits that the expression "similar goods" does not mean "identical goods"; it only means corresponding to or resembling in many respects somewhat like or having a general likeness and falling in the very same class; the term "similar" has a very wide connotation and not restricted as per the ratio of various judgments; when the development Commissioner has permitted to manufacture and export all types of ceramic colours and type of ceramic colours can be cleared into DTA, Central Excise department lacks the jurisdiction to question the correctness thereof. He relies upon the following cases.

(i). Vishrut Inds. Vs CCE New Delhi 2001 (130) ELT 225 (t-Del)
(ii). Nat Steel Equipment Pvt Ltd. 1988 (34) ELT 8 (SC)
(iii). Cadilla Healthcare Ltd Vs CCE 2008 224 ELT 108 (T- Ahmd)
(iv). Banyan Chemicals Ltd Vs Vadodara I 2009 (236) ELT 298 (T-Ahmd)
(v). Woodcraft Products 1995 (77) ELT 23 (SC)
(vi). Hindustan Lever Ltd. 2011 (268) ELT 252 (T)

(vii). Meghmani Industries 2010 (261) ELT 411 (T)
(viii). VXL Instruments 2005 (187) ELT 224 (T)
(ix). Futura Polymers 2008 (221) ELT 272 (T)
(x). Falma Laboratories (1999 (105) ELT 658 (T)
(xi). Telco Ltd. 1997 (73) ECR 301 (T)
(xii). Ranbaxy Laboratories 1997 (92) ELT 400 (T)
(xiii). Novopan Inds. 2007 (209) ELT 161 (T)

2.3. Learned Counsel for the appellants submits also that the department has issued a Show Cause Notice for the subsequent period Feb 2011 to Jan 2012; Learned Commissioner vide Order-in-Original no. Belapur/51/BEL II/Range V/Commr/KA/12-13 dated 31.12.2012 has squarely decided the issue in their favour; Commissioner found that on testing samples, of goods exported as well as cleared in DTA, were found to be similar goods on examination.; hence, the benefit of notification no. 23/2003-CE dated 31.03.2003; the said order has not been challenged by the department and therefore the same should apply for the instant case also as the facts are identical.

2.5. Learned Counsel for the appellants submits also that the appellants have obtained necessary permission from the Development Commissioner; have been clearing the goods for export as well as DTA and have been submitting ER-2 returns regularly to the Jurisdictional Central Excise authorities. Under the circumstances, the extended period cannot be invoked as held in

(i). Oswal Overseas vs. CCE 2009 (240) ELT 544 (T-Del)
(ii). Hindustan Heavy Chemicals v. CCE 2009 (240) ELT 14 (Cal)

(iii). CCE vs. KPTCL 2010 (250) ELT 572 (T-Bang.)

3. Learned Authorised Representative for the department reiterates the findings of Order-In-Original.

4. Heard both sides and perused the records of the case. The issues before us to be decided are as to whether the ceramic colours cleared by the appellants for export as well as DTA are similar; whether benefit of notification cited above can be extended to the impugned goods and whether extended period can be invoked in the instant case.

5. We find that the appellants are manufacturing, exporting and selling in DTA, Ceramic colours. The department says that the items are dissimilar in properties and characteristics; value of goods sold in DTA is very much lower than that of exported goods and therefore the items are similar and therefore, the clearances in DTA are in violation of the Para 6.8 of the Policy and consequentially, the benefit of Notification No 23/2003-CE is not available. The appellants, on the other hand, submit that they obtained necessary permission from the Development Commissioner for export and clearance in DTA; the manufacturing activities are similar for the goods either exported or cleared in DTA; the only difference between the goods cleared for exports is that they are more in concentrate form when compared to the goods cleared in DTA; consequentially, the goods exported are costlier than the goods cleared in DTA; there may be some differences in some technical parameters and quality as per the requirement of the user or customer; for that reason, it cannot be held that goods are not similar & conditions of Paragraph 6.8 of FTP are violated; in the commercial parlance, ceramic colours in diluted form and ceramic colours in concentrated form are known, understood and traded as ceramic colours only.

6. We find that the department relies on the definition of "similar goods" given in Para 3 circular 7/2006-Cus dated 13.01.2006 F. No. 305/69/2005- FTT (Part IV). The said circular says.

> *"3. The paragraph 6.8 (a) of the FTP provides that EOU/EHTP/STP may sell goods up to 50% of FOB value of exports in DTA on payment of concessional duty subject to fulfilment of positive NFE. It also provides that within the entitlement of DTA sale, the unit has to sell in DTA its products similar to the goods, which are exported or expected to be exported. There has been doubt as to what constitutes "similar goods". Further, when the units are not required to take any permission for DTA sale under paragraph 6.39.9, it is felt necessary to provide definition of "similar goods" to bring clarity and uniformity. Therefore, it has been decided that the definition of "similar goods" would be based on the definition of similar goods as provided in the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988. The term "similar goods"*

means "goods which is although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable with the goods which have been exported or expected to be exported having regard to the quality, reputation and the existence of trade mark and produced in the same unit by the same person who produced the export goods". The Board's Circular No. 85/95 dated 26-7-95 issued in this regard stands rescinded."

7. We find that the issue of similar goods came for discussion before various Courts and Tribunals. Coming to the question of similarity of goods, exported by the appellant, the appellants relied on the ratio of various decisions of Courts and Tribunal. We find that Hon'ble Supreme Court in the case of *Nat Steel Equipment Pvt. Ltd.* have held that

"5. It is manifest that the equipment were electrical appliances. There was no dispute on that. It is also clear that these are normally used in household and similar appliances used in hotels etc. The expression "similar" is a significant expression. It does not mean "identical" but it means corresponding to/resembling to in many respects; somewhat like; or having a general likeness. The statute does not contemplate that the goods classified under the words of "similar description" shall be

in all respects the same. If it did, these words would be unnecessary. These were intended to embrace goods but not identical with those goods. If the item for similar appliances which are normally used in the household, these will be taxable under tariff item 33C."

8. We also find that Supreme Court in the case of *Woodcraft Product* (supra) held as follows –

'17. The meaning of the significant words and description of the wood products as intermediate materials meant for manufacture of final products clearly indicate that "laminated wood" means a wood product prepared by placing layer on layer and "block board" is a plywood board with a core of wood. Any plywood board with a core of wood in which there are layers, one above the other, is therefore, laminated wood similar to plywood or veneered panels. It is "similar laminated wood" including the heading "plywood veneered panels and similar laminated wood" similarity with, and not identity with the plywood or veneered panels is required. In Nat Steel Equipment Pvt. Ltd. Vs. CCE 1998 (34) ELT 8 (SC) while considering the meaning of the word "similar" in a tariff item, in a similar context, it was stated thus "The expression "similar" is a significant expression. It does not mean "identical" but it means corresponding to resembling to in many respects; somewhat like; or

having a general likeness. The statute does not contemplate that the goods classed under the words of "similar description" shall be in all respects the same. If it did, these words would be unnecessary. These were intended to embrace goods but not identical with those goods. ..." This test is satisfied. Thus, the meaning given to the expression "similar laminated wood" in the HSN is not any special meaning thereof but the general meaning as understood internationally in the field of "Forestry and Wood Production".'

9. We also find that Tribunal in the case of *Meghmani Industries (supra)* which was followed by the Tribunal in *Consolidated Coins Co. [2013 (2) TMI 416*], held that similarity does not mean being identical. We find that Tribunal in the case of *Madras Aluminium Co. Ltd.* (supra) held that the words "similar" cannot be restricted to mean "same" or "identical"; instead when wider meaning is given to the words "similar" it will encompass the goods broadly falling within the same class or category. We also find that in the case of Hindustan Motors (supra), Tribunal held that the word "similar" needs to be given a wider meaning beyond the concept of headings /sub-headings of the Tariff. By applying this logic, the Tribunal concluded that motor vehicle chassis are similar to motor vehicles. In the case of TELCO (supra), Tribunal has held that cars falling under heading 8703 and light commercial vehicles/ heavy commercial vehicles falling under 8704 are similar goods. We find that Tribunal in the case of *Hindustan Lever Ltd.* 2011 (268) ELT 252 (Tri-Chennai) has opined that fresh mushrooms and processed mushrooms even though classifiable under separate chapter headings belong to the same class of goods and both are similar.

10. In view of the above, we find that the judgments have given wider meaning to the word 'Similar'. It would mean similar, same class of or same kind of goods. In the instant case, the goods exported and the goods cleared are described as ceramic colours. In view of the ratio of the various judgements cited above, there is not even an iota of doubt in our minds, the goods cleared by the appellant in DTA are nothing but the goods which are similar to the goods exported well within the meaning assigned to the same in paragraph 6.8 of FTP. It has been demonstrated that the manufacturing activity is same for both type of colours. The similarity of the goods is established beyond reasonable doubt by the test report got conducted on the impugned goods for the subsequent period and relied upon, as is evident from the Order-in-Original, dated 31.12.2012 (adjudicating the SCN issued for the period Feb 2011 to Jan 2012). We find that facts of the case here are in a narrower compass compared to the cases discussed as above, the difference in goods only being that of concentrated or diluted. Both of them are named ceramic colours only. Test reports indicated that they have similar composition as rightly held by the Learned Commissioner for the subsequent period. Therefore, there is no doubt that the goods exported and the goods cleared by the appellants are similar in terms of Para 6.8 of FTP. Moreover, the fact that Development Commissioner has issued permission is not denied. We hold that in view of the judgement in *Novapan Industries (Supra), t*he Order-In-Original should hold good for the earlier period also. It is pertinent to note that the department did not bring forth any change in the circumstances or the quality of the goods exported and cleared in DTA by the appellant. We find that the department has wrongly tried to differentiate between the goods on the basis of physical characteristics or the price of the same. In view of the ratio of the cases discussed above, similarity of goods being not in doubt, the difference in value is inconsequential. We hold that the goods are 'Similar'.

11. Coming to the issue of limitation, the appellant have submitted that they have obtained necessary permission from the Development Commissioner and have been clearing the goods for export as well as DTA and have been submitting ER-2 returns regularly to the Jurisdictional Central Excise authorities; under the circumstances, the extended period cannot be invoked. We find that the department alleges that though the appellant have submitted ER-2 returns regularly but have never disclosed the correct name, grade, quality and composition of the said goods cleared in DTA. We find that this argument is not tenable. The permission given by the Development Commissioner would certainly indicate the products which are to be exported and cleared in DTA. When the description is ceramic colours, in both export as well as DTA clearance documents, the department was within their rights to call for clarification from the Development Commissioner or the appellants so as to satisfy themselves. This having not been done, it is not open for the department to invoke extended period, alleging that the appellants have suppressed some information, after considerable lapse of time. No suppression, leave alone intent evade duty has been established. Going by the ratio of the cases cited by the appellants and the facts of the case, we hold that extended period cannot be invoked in this case. However, as we held the goods cleared in DTA by the appellants in DTA are similar to those exported and that there are no violations provisions of either paragraph 6.8 of FTP or Central Excise notification 23/2003, the appeal survives on merits. Therefore, the issue of limitation will be inconsequential.

12. In view of the above appeal is allowed with consequential relief, if any, as per law.

(Pronounced in Court on 19.05.2021)

(S.K. Mohanty)
Member (Judicial)

(P. Anjani Kumar)
Member (Technical)

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