CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH
COURT No. 5

Excise Appeal No. 86022 of 2015

(Arising out of Order-in-Original No. Belapur/34/Bel-I/R-IV/Commr/SFA/2014-15 dated 30.01.2015 passed by the Commissioner of Central Excise, Belapur)

M/s. Maneesh Export **Appellant**
Plot No. D-16/7,
TTC Industrial Area, Turbhe,
Navi Mumbai

Vs.

Commissioner of CGST & CE, Belapur **Respondent**
1st floor, CGO Complex, CBD Belapur,
Navi Mumbai 400 614.

Appearance:

Shri Prakash Shah, Advocate, for the Appellant
Shri Rajeev Ranjan, Assistant Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

Date of Hearing: 01.03.2024
Date of Decision: 05.04.2024

FINAL ORDER NO. 85379/2024

PER: ANIL G. SHAKKARWAR

Brief facts of the case are that the appellant is a 100% Export Oriented Unit (EOU) and is engaged in the manufacture of P & P medicaments falling under Chapter 30 of First Schedule to Central Excise Tariff Act, 1985. The obligation on the appellant was to export all the goods manufactured by them. However, policy allowed them to clear certain percentage of goods into domestic tariff area on payment of central excise duty chargeable under first proviso to sub-section (1) of Section 3 of Central Excise Act, 1944, provided the appellant acquired permission from competent authority for such domestic clearance. During the period from January 2013 to December 2013, appellant cleared the goods manufactured by them into domestic tariff area and took into consideration the value for the purpose of assessment equal to the FOB (Free on Board) value of like goods exported. It appeared to Revenue that the goods manufactured by the appellant were covered under notification issued under Section 4A of Central Excise Act, 1944 and, therefore, for the assessment of basic customs duty chargeable on goods manufactured in 100% EOU the value should have been MRP minus abatement. Therefore, the appellant was issued with a show cause notice dated 07.02.2014 demanding differential central excise duty of Rs.50,80,293/- which was worked out by taking difference between 5% basic customs duty calculated for individual invoice on the basis of value arrived at MRP minus abatement and basic customs duty arrived at by the appellant by taking the value into consideration equal to FOB value of like goods exported. On contest, the show cause notice was adjudicated through impugned order-in-original. Central excise duty demanded was confirmed and equal penalty was imposed. Aggrieved by the said order, appellant is before this Tribunal.

2. Heard the learned counsel for the appellant. Learned counsel for the appellant has submitted that in respect of the goods manufactured by a 100% EOU and cleared in domestic tariff area, excise duty is charged under the proviso to sub-section (1) of Section 3 of Central Excise Act, 1944 which provides for levy of central excise duty equal to aggregate of duties of customs which could be leviable under Customs Act, 1962 on like goods produced or manufactured outside India if imported into India. He further submitted that the said provision has specified that for such assessment, value shall be determined in accordance with the provisions of Customs Act, 1962 and Customs Tariff Act, 1975. He has further submitted that basic customs duty is charged under Customs Act, 1962 and duty which is commonly called CVD is charged under Customs Tariff Act, 1975. He has further submitted that there is no dispute on CVD paid by the appellant. The dispute is in respect of component of basic customs duty and as per the provisions of the Act, basic customs duty is calculated on the basis of the value arrived at as provided under Section 14 of Customs Act, 1962. He has further submitted that Section 14 of Customs Act, 1962 does not provide for determination of value as provided by

Section 4A of Central Excise Act, 1944 and, therefore, the impugned order is bad in law and not sustainable.

2.1 Learned counsel for the appellant has relied on ruling by Hon'ble Supreme Court in the case of CCE, Nagpur vs. Morarjee Brembana Ltd. reported at 2015 (318) ELT 600 (SC). He has particularly relied on Hon'ble Supreme Court's ruling recorded in para 9 and 10 of the said judgment and submitted that under para 10 of the said ruling, Hon'ble Supreme Court has very clearly held that the value for charging basic customs duty shall be determined in accordance with the provision of Customs Act, 1962.

3. Heard the learned AR for Revenue. Learned AR has submitted that basic customs duty has to be determined on transaction value arrived under Section 14 of Customs Act, 1962 and that in the present case, transaction value was invoice value and, therefore, ascertaining the value on the basis of FOB value of like goods being exported by the appellant was not warranted and, therefore, the demand raised by Revenue was appropriate.

4. We have carefully gone through the record of the case and submissions made. We note that the appellant is a 100% Export Oriented Unit. Appellant was allowed clearance under domestic tariff area, i.e. within the territory of India. For the sake of ready reference, we reproduce the relevant provisions of Section 3 of Central Excise Act, 1944 as below:-

*"**3. Duties specified in the First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 to be levied***

(1) ……..

(a) ………

(b) ……..

"PROVIDED that the duties of excise which shall be levied and collected on any excisable goods which are produced or manufactured,-

(i) xxx

(ii) by a 100% export-oriented undertaking and brought to any other place in India, shall be an amount equal to the aggregate of the duties of customs which would be leviable under the Customs Act, 1962 or any other law for the time being in force, on like goods produced or manufactured outside India if imported into India, and where the said duties of customs are chargeable by reference to their value; the value of such excisable goods shall, notwithstanding anything contained in any other provision of this Act, be determined in accordance with the provisions of the Customs Act, 1962 and the Customs Tariff Act, 1975 (51 of 1975).

Explanation 1: Where in respect of any such like goods, any duty of customs leviable for the time being in force is leviable at different rates, then, such duty shall, for the purposes of this proviso, be deemed to be leviable at the highest of those rates.

Explanation 2: In this proviso,-

(i) xxx

(ii) "hundred per cent export-oriented undertaking" means an undertaking which has been approved as a hundred per cent export-oriented undertaking by the Board appointed in this behalf by the Central Government in exercise of the powers conferred by section 14 of the Industries (Development and Regulation) Act, 1951 (65 of 1951), and the rules made under that Act."

On plain reading of the above charging section, it is very clear that for arriving at total central excise duty payable on the goods manufactured by 100% EOU and allowed to be cleared in domestic tariff area, the customs duty leviable under Customs Act, 1962 if the same is charged at *ad valorem* rate, then the value of the goods has necessarily to be arrived at in accordance with the provisions of Section 14 of Customs Act, 1962. The said provision of the Act has been made very clear by Hon'ble Supreme Court in the case of CCE, Nagpur vs. Morarjee Brembana Ltd. (supra) through paragraphs 9 and 10 of the said ruling. For the sake of ready reference, we reproduce paragraphs 9 and 10 of the said ruling as below:-

"9. Mr. Radhakrishnan has, however questioned the aforesaid view of the Tribunal and argued that since the respondent is hundred per cent export oriented unit, any sale or clearance of cotton fabric by the respondent to DTA should be treated as transaction sale and therefore Rule 4 would be applicable. However, this argument has to be rejected in view of proviso to Section 3 of the Central Excise Act, 1944 which reads as under:

> *"Section 3. Duties specified in the [Schedule to the Central Excise Tariff Act, 1985] to be levied.-(1) There shall be levied and collected in such manner as may be prescribed duties of excise on all excisable goods other than salt which are produced or manufactured in India and a duty on salt manufactured in, or imported by land into, any part of India as, and at the rates, set forth in the Schedule to the Central Excise Tariff Act, 1985:*
>
> *Provided that the duties of excise which shall be levied and collected on any excisable goods which are produced or manufactured,--*
>
> *(i) In a free trade zone and brought to any other place in India; or*
>
> *(ii) By a hundred per cent export-oriented undertaking and allowed to be sold in India; Shall be an amount equal to the aggregate of the duties of customs which would be leviable under section 12 of the Customs Act, 1962 (52 of 1962), on like goods produced or manufactured outside India if imported into India, and where the said duties of customs are chargeable by reference to their value; the value of such excisable goods shall, notwithstanding anything contained in any other provision of this Act, be determined in accordance with the provisions of the Customs act, 1962 (52 of 1962) and the Customs Tariff Act, 1975 (51 of 1975)."*

10. As is clear from the bare reading of the aforesaid proviso, in those cases where excisable goods are produced or manufactured by hundred per cent export oriented undertaking are allowed to be sold in India, the duty of excise has to be the amount equal to the aggregate of the duties of customs which *would be leviable under Section 12 of the Customs Act, on like goods produced or manufactured outside India if imported into India and where the said duties of custom are chargeable by reference to their value, the value of such excisable goods shall be determined, in accordance with the provisions of the Customs Act and Customs Tariff Act, 1975."*

It is, therefore, very clear that basic customs duty is to be ascertained taking the value into consideration where the value is determined in accordance with the provisions of Section 14 of Customs Act, 1962. On perusal of the show cause notice, we noted that for the purpose of demanding differential duty, basic customs duty was calculated by Revenue on the basis of MRP value minus abatement. We note that under Section 14 of Customs Act, 1962, there is no provision for arriving at value on the basis of the provisions of Section 4A of Central Excise Act, 1944 such as MRP minus abatement as adopted by Revenue. We also do not accept the contention of learned AR who has submitted that the transaction value was indeed the invoice value for determination of basic customs duty for the reason that invoice value was not taken into consideration by Revenue for arriving at differential duty for demand of differential central excise duty, but Revenue had adopted MRP minus abatement formula for arriving at the value for charging basic customs duty. We, therefore, do not find the said show cause notice to be sustainable.

5. As a result, we set aside the impugned order and allow the appeal.

(Order pronounced in the open court on 05.04.2024)

(Anil G. Shakkarwar)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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