CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 85261 OF 2020

[Arising out of Order-in-Appeal No: 1372 (CRC-SAD-II)/2019 (JNCH)/Appeal-II) dated 4th October 2019 passed by the Commissioner of Customs (Appeals), Mumbai – II.]

Huntsman International (India) Pvt.Ltd.
Lighthall, 'B'Wing, Saki Vihar Road,
Andheri (East), Mumbai 400 072 …***Appellant***

versus

Commissioner of Customs(NS-III)
JNCH, Nhava-Sheva, Uran, Raigad, Maharashtra ***…Respondent***

APPEARANCE:

None for the appellant

Shri D S Mann, Deputy Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)

FINAL ORDER NO: 85602 /2024

DATE OF HEARING:	16/04/2024
DATE OF DECISION:	16/04/2024

The dispute in the appeal has its roots in recovery of ₹4,43,973/-, due as 'special additional duty (SAD)' of customs on imports that was discharged by debit of 'scrips' under the export promotion schemes in Foreign Trade Policy (FTP) for which refund, on fulfillment of conditions in notification no. 102/2007-Cus dated 14th September 2007, was allowed but held to be ineligible to the extent not paid in cash.

2. Narrating the backdrop, Learned Authorized Representative, submitted that, in accordance with said notification, exemption from 'special additional duty (SAD)' of customs is to be availed through the refund route on conclusion of sale of imported goods in the domestic market and discharge of liability of tax on such sale. It was also submitted that the duty liability discharged in cash had been refunded and the rejected portion of the claim pertained to discharge of liability by debit of 'scrips' issued under schemes in the Foreign Trade Policy (FTP) scheme.

3. None appeared for appellant and, from the records, it is apparent that the appellant was not represented in the past too. Considering the narrow compass within which it can be disposed off, the appeal is taken up for such with the assistance of Learned Authorized Representative. It is seen that an identical dispute decided by the Tribunal, in *M/s Jindal Export Limited v. Commissioner of Customs (EP), Nhava Sheva [2017 (349) ELT 139 (Tri-Mumbai),* had held that.

> *'4. It appears from the records that the duty claimed to have been paid in excess was in effect a was debit in the passbook*

> *under a scheme in the Foreign Trade Policy (FTP). The said scheme made operational by grant of exemption in terms of Notification No. 104/95. Availment of an exemption notification which institutionalises a procedure of debit for its operational functioning cannot be considered to be a payment of duty and the consequence of the setting aside of the order of the First Appellate Authority would not render the appellant eligible for a refund. At best, the appellant can claim a restoration of the amount of credit that had been utilised in excess towards grant of exemption of duty foregone which now is superfluity as the pass book schemeis no longer in vogue and any restoration of credit would not of benefit to the appellant. No relief shall accrue to the appellant in any circumstance. There is, thus, no justification for interference with the order of the lower authorities who have rejected the claim for refund.'*

4. It is, thus, clear that debit of 'scrips' does not suffice for discharge of liability of 'special additional duty (SAD)' under Customs Tariff Act, 1975; in such circumstances, eligibility for refund would arise only upon discharge of liability without recourse to 'scrips' and upon claim after sale of the goods. Thus, while the sales, which is not controverted, entitles them to refund, such refund is to be limited to that which was validly paid as duty. As far as 'scrips' are concerned, only restoration could have been sought which is not an issue in this appeal. The reliance placed by the appellant on the decision of the Hon'ble High Court of Delhi in *Allen Diesels India Pvt Ltd v. Union of India [2016 (334) ELT 624 (Del.)]* does not come to their assistance as 'public notice' no. 06/RE/2013/2009-14 dated 18th April 2013, issued by Director General of Foreign Trade Policy

(DGFT), debarring recourse to ‘scrips’ for discharge of duties on the particular import, was not relevant to facts that were pleaded therein.

5. In view of the facts set out above, appeal, seeking monetization of value of ‘scrips’, debited at the time of import, as dismissed.

(Dictated and Pronounced in Open Court)

(C J MATHEW)
Member (Technical)

**/as*