CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Miscellaneous Application No. 85221 of 2024

In

Excise Appeal No. 87424 of 2015

(Arising out of Order-in-Appeal No. CD/580/Bel/2015 dated 04.06.2015 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone-II)

Sandoz Pvt. Ltd. **.... Appellant**
Plot No. 8-A/2, TTC Industrial Area, Kalwe Block,
Dighe,Navi Mumbai- 400 708.

Versus

Commissioner of Central Goods and Service Tax, Central Excise (Belapur) **.... Respondent**
CGO Complex, CBD Belapur,
Navi Mumbai- 400 614.

And

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CGO Complex, CBD Belapur,
Navi Mumbai- 400 614.

Appearance:

Shri Prakash Shah a/w Shri Mohit Raval, Advocate for the Appellant

Shri Xavier Mascarenhas, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85669/2024

Date of Hearing: 03.07.2024

Date of Decision: 03.07.2024

Per: S.K. MOHANTY

Revenue has filed this miscellaneous application, praying for change of address of the Respondent in the appeal memorandum. It has been contended that in the appeal records, the name and address of the Respondent was mentioned as Commissioner, CGST, Central Excise, (Belapur). Since, upon introduction of the GST law, the CGST office was shifted to Navi Mumbai, such changed address is required to be incorporated in the appeal memorandum. Accordingly, Revenue has prayed for change of address from 'Belapur Office' to "Navi Mumbai Office". Prayer made by Revenue is considered. Accordingly, Registry is directed to change the name and address of the respondent from the present one to 'Commissioner of Central Goods Service Tax & Central Excise, Navi Mumbai Commissionerate, 16th Floor, Satra Plaza, Sector-19D, Palm Beach Road, Vashi, Navi Mumbai-400705' for the purpose of hearing and disposal of appeal by the Tribunal. Miscellaneous application is allowed.

2. Briefly stated, the facts of the case are that the appellant M/s. Sandoz Pvt. Ltd. is a 100% Export Oriented Unit (EOU), engaged in the manufacture and export of the pharmaceutical products, falling under Chapter 30 of Central Excise Tariff Act, 1985. The appellant, being an EOU, is eligible to procure the goods indigenously, without payment of Central Excise duty as provided in paragraph 6.5.1 of the Foreign Trade Policy read with Notification No. 22/2003- C. E. dated 31.03.2003. In the present case, after obtaining the Letter of Permission (LOP) from the office of the Development Commissioner, SEEPZ, the appellant vide its letter dated 25.06.2004 had submitted the requisite list of materials, which were required by them for undertaking the manufacturing activity. Subsequently, on 01.07.2004, an agreement was entered into between the appellant and the Development Commissioner, SEEPZ, Special Economic Zone for obtaining the necessary goods for carrying out the manufacturing activities in the EOU. On the basis of the agreement dated 01.07.2004, the appellant had procured the goods itemized therein,

without payment of Central Excise duty under 'CT 3' certificate. The factory of the appellant was audited by the Central Excise department and during the course of audit, they observed that the appellant had procured SS cupboard, SS lockers, SS cob bench, SS cross over bench, Steel furniture/ parts, Chairs and trolleys ingeniously under 'CT 3' certificate, without payment of Central Excise duty. It was further observed by the audit wing that since those goods were not specified in the Annexure-I to the Notification No. 22/2003- C. Ex dated 31.03.2003, the appellant is not eligible to procure such goods without payment of duty. Accordingly, show cause proceedings were initiated against the appellant, which culminated into the adjudication order dated 26.08.2014, wherein the original authority had confirmed the Central Excise duty demand of Rs.19,08,308/- along with interest and also imposed equal amount of penalty on the appellant under Section 11AC of the Central Excise Act, 1944. On appeal against the said adjudication order dated 26.08.2014, the learned Commissioner (Appeals) vide the impugned order dated 04.06.2015 has upheld confirmation of the adjudged demands and rejected the appeal filed by the appellant. Feeling aggrieved with the impugned order, the appellant has preferred this appeal before the Tribunal.

3. Heard both sides and examined the case records.

4. In exercise of the powers conferred by sub-section (1) of Section 5A of the Central Excise Act, 1944, the Central Government had issued the Notification No. 22/2003- C.E. dated 31.03.2003 in exempting all the goods specified in Annexure-I to the said notification, when brought into EOU in connection with manufacturing and packaging of articles or for production of or packaging or for job work for export of goods or services. The Annexure-I appended to the said notification has described various goods, which can be procured by the EOU without payment of Central Excise duty. In the said Annexure at Sr. No. 28, it has been prescribed that "any other item required in relation to production of export goods with the prior

approval of Board of Approval/Inter-Ministerial Standing Committee", can be procured. As regards the goods required to be used for the intended purpose in the EOU, the appellant had entered into the legal agreement dated 01.07.2004 with the Development Commissioner, SEEPZ in Annexure-I. The said Annexure had approved, the list of goods, which can be considered for grant of exemption. The disputed goods involved in the present appeal were also itemized in such Annexure-I appended to the agreement dated 01.07.2004. Since, the disputed goods in the present case were procured by the appellant for carrying out their EOU activities in the registered factory premises and those goods were duly approved by the BOA/IMSC and considered for exemption by the competent authority i.e. the Development Commissioner, the Central Excise Authority cannot question about the list of items approved by the such competent authorities. Further, the appellant in the present case, had procured the disputed goods without payment of Central Excise duty under the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001. The said Rule *inter alia*, prescribes the modality for procurement of the goods without payment of duty by the EOU. Sub-rule (4) and (5) of Rule 3 in the Rules, 2001 has provided that the EOU shall execute the bond with the Jurisdictional Central Excise authorities and that in the application filed for obtaining the benefit under the said Rules, the same shall be countersigned by the Jurisdictional authorities upon subjective satisfaction that the goods are used for the intended purpose as per the bond executed by the EOU. Since, the appellant had procured the disputed goods without payment of duty in lieu of 'CT 3' certificate, duly countersigned by the Central Excise authorities, having jurisdiction over the factory of the appellant, procurement of such goods, for which specific approval has been accorded by the Competent Authority and the Development Commissioner in the Ministry of Commerce cannot be whittled down. Inasmuch as the appellant had utilized the disputed goods for carrying out its purpose of manufacture and exportation of the final product. Thus, in our considered view, the present issue is fully covered under the Notification No. 22/2003-C.E. dated 31.03.2003.

5. In view of the foregoing discussions, we do not find any merits in the impugned order, insofar as it has upheld confirmation of adjudged demands on the appellant. Therefore, the impugned order is set aside and the appeal is allowed in favour of the appellant.

(Dictated and pronounced in the open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

SM