CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

EXCISE APPEAL No. 86272 of 2015

[Arising out of Order-in-Appeal No. CD/132/RGD/2015 dated 20.01.2015 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone-II, Mumbai]

Cipla Limited **.... Appellants**
L.D. Building, Mehra Industrial Estate
Asha Usha Compound, L.B.S. Marg
Vikhroli (West), Mumbai – 400079.

VERSUS

Commissioner of CGST & Central Excise **.... Respondent**
Raigad Commissionerate
Plot No.1, Sector-17, Khandeshwar, New Panvel
Navi Mumbai – 410206.

APPEARANCE:

Shri. Rajesh Ostwal, Advocate for the Appellants

Shri P.K. Acharya, 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/86652/2024

Date of Hearing: 28.06.2024

Date of Decision: 28.10.2024

PER: M.M. PARTHIBAN

This appeal has been filed by M/s Cipla Limited, Mumbai (herein referred to as 'the appellants' for short) against Order-in-Appeal No. CD/132/RGD/2015 dated 20.01.2015 (referred to, as 'the impugned order') passed by the Commissioner of Central Excise (Appeals), Mumbai Zone-II, Mumbai.

2.1 The facts of the case, leading to this appeal, are summarised herein below:

2.2 The appellants herein is a 100% Export Oriented Unit (EOU) and, *interalia,* are engaged in the manufacture and export of excisable goods viz., bulk drugs falling under Chapter 29 and medicaments and formulations falling under Chapter 30 of the Central Excise Tariff Act, 1985 (CETA) and for the purpose of compliance with the Central Excise laws are registered with jurisdictional Central Excise authorities holding Registration Certificate No. AAACC145013XM013. They have been filing periodical Central Excise returns as a manufacturer of excisable goods. The appellants also avail CENVAT credit of the duty paid on the inputs/ capital goods under the provisions of CENVAT Credit Rules, 2004 (CCR).

2.3 The appellants being a 100% EOU procured duty free inputs and capital goods by availing duty exemption in terms of Notifications No.22/2003-CE and No. 52/2013-Customs, both dated 31.03.2003, as amended. Some of the inputs, imported as well as indigenous, were procured on payment of duty upon which CENVAT credit was availed under the provisions of CCR. The CENVAT credit so availed, was utilized by the appellants for payment of duty on finished goods and removal of inputs and capital goods as such into Domestic Tariff Area (DTA). During the period October, 2007 to April, 2009, the appellants have cleared certain inputs, which have been earlier procured without payment of duty against CT-3 certificate, into DTA by debiting the duty payable thereon from the CENVAT credit account. The Department had objected for such utilization of the CENVAT credit on the ground that it is in violation of the legal provisions under Rule 3(4) of CCR and that there is no provision for utilizing CENVAT credit for payment of customs duty, and brought the same to the notice of the appellant vide letter No. C. Ex./PTL-III/Misc/CIPLA/Ras/08-09/205 dated 05.05.2009 and sought certain details for taking further action by them. The appellants had informed the Department that they had deposited duty of Rs.26,43,567/- and interest of Rs.1,47,677/- in cash vide GAR-7 challans dated 05.06.2009 with respect to removal of the imported inputs as such to DTA; and with respect to indigenously procured inputs duty free, cleared as such into DTA, they are paying the duty through CENVAT credit account. Since, the appellants are not entitled for utilization of the CENVAT credit towards payment of duty in terms of Rule 3(4) of CCR and such clearances were effected by the appellants without the knowledge of the Department, show cause proceedings were initiated by the Department in issue of Show Cause

Notice (SCN) dated 30.08.2012 proposing for demand of duty of Rs.21,80,828/- along with interest for the clearances during the period October, 2007 to April, 2009, under the proviso to sub-section (1) of Section 11A/11A(4) of the Central Excise Act, 1944 besides proposing for confiscation of the impugned goods and for imposition of penalty under Section 11AC ibid read with Rules 15, 25 of Central Excise Rules, 2000. In adjudication of the above SCN, the original authority had confirmed the proposals made in the SCN. Being aggrieved with the said order of the original authority, the appellants had preferred an appeal before the Commissioner (Appeals). In the first appellate proceedings, learned Commissioner (Appeals) upheld the order of the original authority and rejected the appeal filed by the appellants. Feeling aggrieved with the impugned order dated 20.01.2015, the appellants have filed this appeal before the Tribunal.

3.1 Learned Advocate submitted that the appellants have correctly discharged the central excise duty leviable on the inputs removed as such into DTA, in terms of Rule 17 of Central Excise Rules, 2002 governing removal of goods by 100% EOU. In this regard, he submitted that the phrase 'any goods' used in the said Rule 17 allows them for utilising the CENVAT credit on removal of inputs as such which had been procured duty free. He further stated that the issue in dispute has already been decided in favour of the appellants in the following cases:

(i) Commissioner of C. Ex. & Customs, Visakhapatnam Vs. Matrix Laboratories Ltd. – 2012 (281) E.L.T. 569;

(ii) CC&CE, Hyderabad-IV Vs. Hetero Labs Ltd. – 2017 (5) TMI 1338 – CESTAT Hyderabad;

(iii) Matrix Laboratories Ltd. and Mylan Laboratories Ltd. Vs. Commissioner of Central Excise, Medchal GST – 2023 (6) TMI 458 - CESTAT Hyderabad.

3.2 With respect to the impugned order, learned Advocate stated that it did not take into consideration that central excise duty was already paid once by the debiting the CENVAT credit account and the confirmation of the demand would lead to a situation of double taxation and the same goods.

3.3 Learned Advocate further submitted all facts were within the knowledge of the Department and every clearance of duty-free inputs into DTA was made after obtaining specific approval of the jurisdictional Central

Excise Officers. Further, he stated that in the periodical returns filed before the Department, all the relevant details of such clearances have also been mentioned and therefore he claimed that confirmation of the adjudged demands by invoking the extended period is not legally sustainable.

4. Learned Authorised Representative (AR) reiterated the findings made by the Commissioner (Appeals) in the impugned order and submitted that in view of the specific provisions for utilization of CENVAT credit provided under Rules 3(4) of the CCR, the debit of CENVAT credit account for payment of duty on inputs procured through CT-3 certificates at the time of its clearance as such, is not permissible. Accordingly, he submitted that the impugned order is sustainable in law and prayed for rejection of the appeal filed by the appellants.

5. We have heard both sides and perused the records of the case. We also gone through the additional submissions made in the form of paper books by both the sides.

6. The short issues for consideration before the Tribunal in this case are,-

> (i) whether the CENVAT credit can be utilized for payment of duty, in respect of inputs procured duty free, when the same are cleared as such, by a 100% EOU into DTA or utilization of CENVAT credit is not permissible in such situation, in terms of Rule 3(4) of CENVAT Credit Rules, 2004 read with Section 3 of the Central Excise Act, 1944? ;
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> (ii) whether the demand of duty by invoking the extended period, confiscation of goods, imposition of redemption fine and penalty imposed on the appellants are legally sustainable or not?

7. In order to address the above issues of CENVAT credit, we would like to refer the relevant legal provisions contained in CENVAT Credit Rules, 2004 (CCR), Central Excise Rules, 2002 and Central Excise Act, 1944which are extracted and given below.

CENVAT credit Rules, 2004.

> ***"Rule 3. (1)*** *A manufacturer or producer of final products or a provider of output service shall be allowed to take credit (hereinafter referred to as the CENVAT credit) of—*
> *(i) the duty of excise specified in the First Schedule to the Excise Tariff Act, leviable under the Excise Act;*
> *…..*
> *paid on—*

(i) any input or capital goods received in the factory of manufacture of final product or premises of the provider of output service on or after the 10th day of September, 2004; and
(ii) any input service received by the manufacturer of final product or by the provider of output services…

(4) The CENVAT credit may be utilized for payment of
(a) any duty of excise on any final product; or
(b) an amount equal to CENVAT credit taken on inputs if such inputs are removed as such or after being partially processed; or
(c) an amount equal to the CENVAT credit taken on capital goods if such capital goods are removed as such; or
(d) an amount under sub rule (2) of rule 16 of Central Excise Rules, 2002; or
(e) service tax on any output service:…."

Central Excise Act, 1944

"Section 3. Duty specified in the Fourth Schedule to be levied*.— (1) There shall be levied and collected in such manner as may be prescribed a duty of excise to be called the Central Value Added Tax (CENVAT) on all excisable goods (excluding goods produced or manufactured in special economic zones) which are produced or manufactured in India as, and at the rates, set forth in the Fourth Schedule:*

Provided that the duty of excise which shall be levied and collected on any excisable goods which are produced or manufactured by a hundred per cent 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 (52 of 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)….."

Central Excise Rules, 2002

*"**Rule 17**. **Removal of goods by a Hundred per cent. RULE Export-Oriented Undertaking for Domestic Tariff Area.** — Where any goods are removed from a hundred (1) per cent. export-oriented undertaking to domestic tariff area, such removal shall be made under an invoice by following the procedure specified in rule 11, and the duty leviable on such goods shall be paid by utilizing the CENVAT credit or by crediting the duty payable to the account of the Central Government in the manner specified in rule 8…"*

8.1 On plain reading of the above legal provisions, it transpires clearance of goods into India/DTA by a 100% EOU is subject to payment of central excise duty under Section 3 of the Central Excise

Act, 1944. Thus, the procedure relating to removal of the goods from 100% EOU have been prescribed in Rule 17 of Central Excise Rules, 2002. However, the procedure relating to CENVAT credit, including the provisions for taking ofCENVAT credit and its utilisation thereof have been provided inCENVAT Credit Rules, 2004 and such rules will have the legal force for deciding matters relating to CENVAT credit. In this regard, Rule 3 of CCR provide that CENVAT credit can be taken with respect to the duty paid on inputs, capital goods and service tax paid or input service. The phrases, 'capital goods', 'final products', 'input', 'inputs service', 'output service' have been defined to refer distinct type of goods/services. Sub-rule (4) to Rule 3 of CCR provide for utilisation of CENVAT credit for the following viz., (i) for payment of duty of excise on any final product; (ii) payment of an amount equal to CENVAT credit taken on inputs, if such inputs are removed as such or after the same being partially processed. In the present factual matrix of the case, since the inputs are being procured duty free under CT-3 certificate, there is no possibility firstly, for taking CENVAT credit on the inputs, when received in the 100% EOU unit of the appellant; which upon removal as such, from the 100% EOU unit to DTA, could not have been paid with an amount equivalent to such CENVAT credit. Therefore, we are of the considered opinion, that the provisions of Rule 3(4) of CCR does not permit the CENVAT credit taken on duty paid input and such credit lying in the appellants' aggregated CENVAT credit account, to be utilised for payment of an amount equivalent to CENVAT credit on non-duty paid input (procured duty free under CT-3 certificate), when removed as such by a 100% EOU unit.

8.2 The facts are not in dispute that the SCN was issued on 30.08.2012 covering the period from October, 2007 to April, 2009 by invoking extended period on the ground that the appellants have done this act of clearances without the knowledge of the Department. On the other hand, the appellants have submitted individual application providing the details of the specific input along with its description; quantity of input received in the 100% EOU unit and quantity to be cleared, as such; and the jurisdictional Assistant Commissioner, Rasayani Central Excise Division have given permission for clearance of inputs as such, upon payment of applicable duties in terms of para 6.15 of Foreign Trade Policy. On perusal of the various permission letters granted by the Department to the appellants, we find that these cover the entire period of dispute, from June, 2008 to April, 2009. In view of the above evidences, where the jurisdictional central excise authorities are not only aware of the clearances of inputs as such being made by the appellants, but have given specific permission for such removal, then it cannot be stated that the Department is unaware of such clearances and therefore any SCN issued for demand of duty by invoking extended period is not legally sustainable.

8.3 In this regard, we find that the Hon'ble Supreme Court in the case of *Commissioner of Central Excise, Mumbai Vs. Blue Star Ltd.* - 2015 (318) E,L.T. 11 (S.C.) have held that extended period is not invokable in the case of goods cleared through CT-3 procedure by 100% EOU unit. The relevant paragraphs of the said judgement is extracted and given below:

> ***"5**. The respondent took the matter in appeal before the Customs, Excise & Gold (Control) Appellate Tribunal (hereinafter referred to as 'CEGAT'). The CEGAT affirmed the order on merit but has accepted the contention of the respondent insofar as issue of limitation is concerned and allowed the appeal of the respondent thereby quashing the show cause notice and demand as time-barred. The Tribunal has noted that there was in fact a disclosure of the aforesaid fact in CT(3) certificate which was submitted by the respondent to the Department. It is noted that no clearance could have taken place without the knowledge of the officer as to the ultimate destination of the goods and the fact that they were cleared without payment of duty in terms of the exemption notification which was specified in the application. On that basis, the Tribunal has held that proviso to Section 11(A)(1) of the Act will not get attracted and thus, the show cause notice was beyond the period limitation as specified under Section 11(A)(1) of the Act.*
>
> ***6**. Going through the material on record, we find that the Tribunal is justified in taking the aforesaid view. Thus, there is no merit in this appeal and the same, accordingly, stands dismissed."*

8.4 Further, it is found that the SCN was issued on 30.08.2012, after two years and four months from the relevant date applicable for the clearances made during the period ending April, 2009. In the absence of any strong grounds or evidences for sustaining the confirmation of duty demand invoking the extended period, as discussed in the preceding paragraphs 8.2 and 8.2, the demand confirmed under the extended period is not sustainable. Further, we find it is not even be possible for sustaining the demand of duty for the normal period, as in the present case, the SCN have not been issued within the permitted period one year from the relevant date for covering the normal period of demand.

8.5 In the present factual matrix of the case, since the inputs have been cleared as such from the 100% EOU unit to DTA, in terms of Section 3 ibid, applicable duties of central excise are required to be paid on such goods. As the appellants had discharged such duty payable on these goods, by debiting from their CENVAT credit account, which is also available for taking further CENVAT credit by the buyer, no further duty payment is required to be made through PLA/cash. Further, since the adjudged demands are liable to be set aside on the ground of non-sustainability of extended period of limitation, and that normal period of demand is not covered in the SCN, there is no fresh duty payment involved for such goods.

9. In view of the foregoing discussions and analysis, we do not find any merits in the impugned order passed by the learned Commissioner (Appeals) as it does not stand the scrutiny of law. Therefore, by setting aside the impugned order dated 20.01.2015, the appeal is allowed in favour of the appellants.

10. In the result, the impugned order dated 20.01.2015 is set aside and the appeal is allowed in favour of the appellants.

(Order pronounced in the open court on 28.10.2024)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

Sinha