CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 85591 of 2015

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

Maneesh Export (EOU) **.... Appellant**
Plot No.D-16/7, TTC Industrial Area,
Turbhe, Navi Mumbai-

Versus

Commissioner of CGST and Central Excise, Belapur **.... Respondent**
1st Floor, CGO Complex,
CBD Belapur, Navi Mumbai- 400 614.

And

Excise Appeal No. 85628 of 2015

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

Satish J Khalap **.... Appellant**
(G.M. Administration of Maneesh Pharmaceuticals Ltd)
Plot No.D-16/7, TTC Industrial Area,
Turbhe, Navi Mumbai-

Versus

Commissioner of CGST and Central Excise, Belapur **.... Respondent**
1st Floor, CGO Complex,
CBD Belapur, Navi Mumbai- 400 614.

With

Excise Appeal No. 85629 of 2015

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

Vinay R Sapte **.... Appellant**
(M.D. of Maneesh Pharmaceuticals Ltd)
Plot No.D-16/7, TTC Industrial Area,
Turbhe, Navi Mumbai-

Versus

Commissioner of CGST and Central Excise, Belapur **.... Respondent**
1st Floor, CGO Complex,
CBD Belapur, Navi Mumbai- 400 614.

Appearance:

Shri Prakash Shah, Advocate for the Appellant

Shri C.S. Vinod, 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/87433-87435/2024

Date of Hearing: 28.11.2024
Date of Decision: 28.11.2024

Per: S.K. MOHANTY

Briefly stated, the facts of the case are that the appellants M/s. Maneesh Exports is an 100% Export Oriented Unit (EOU), engaged *inter alia,* in the manufacture of P & P Medicaments, falling under Chapter 30 of the Central Excise Tariff Act, 1985. Apart from exporting the said goods outside the country, the appellants also sell the same within the Domestic Tariff Area (DTA). For clearance of goods in the DTA, the appellants had determined the Basic Customs Duty (BCD) amount on the basis of transaction value defined under Section 14 of the Customs Act, 1962. The additional duty of Customs (CVD) component is also determined on the basis of Section 3 of the Central Excise Act, 1944 based on Maximum Retail Price (MRP) less the permissible abatement value. The valuation method adopted by the appellants for payment of duties on clearance of the goods in the DTA was objected to by the department. According to the department, since the statutory MRP less abatement price of the goods was available, the appellants should have paid the BCD amount on MRP less abatement price. On the basis of such understanding, the department had initiated show cause proceedings against the appellants, seeking for payment of the differential duty amount. Show cause proceedings were also initiated against the other appellants, seeking for imposition of penalties. The matter arising out of the show cause notices were adjudicated vide the impugned order dated 16.12.2014, wherein the learned Commissioner of Central Excise and Customs, Belapur, has confirmed Central Excise duty demand of Rs.3,81,11,301/- on the appellants along with interest and also imposed equal amount of penalty on the appellants M/s Maneesh Exports and penalties of Rs. 50 Lakhs and

Rs. 25 Lakhs on the other appellants Shri Vinay R. Sapte and Shri Satish J. Khalap respectively. Feeling aggrieved with the impugned order dated 16.12.2014, the appellants have preferred these appeals before the Tribunal.

2. We find that the issue arising out of the present dispute is no more *res integra*, in view of the Final Order No. A/85379/2024 dated 05.04.2024 passed by this Tribunal, in the case of the appellants themselves, for the period January 2013 to December 2013. The appeal filed by the appellants was allowed by the Tribunal by relying upon the judgment of Hon'ble Supreme Court, in the case of Commissioner of Central Excise, Nagpur Vs. Morarjee Brembana Ltd. 2015 (318) ELT 600 (S.C.). The relevant paragraphs recorded by the Tribunal in the order dated 05.04.2024 are extracted herein below:

> *"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."

3. Further, we also find that for the subsequent periods, the learned Commissioner (Appeals), vide the Order-in-Appeals dated 04.01.2016 and 13.09.2021 had allowed the appeals filed against the adjudication orders passed by the original authority, wherein adjudged demands were confirmed on the appellants. It has also been confirmed by the learned AR for revenue, that no appeals have been preferred by Revenue against the said orders passed by the learned Commissioner (Appeals). Thus, the said orders have attained finality and the Revenue cannot take a contrary stand, which has been taken in the present order appealed against.

4. In view of the fact that the issue involved in the present dispute is no more open for any debate, we are of the view that different interpretation cannot be placed to decide the appeals differently. Therefore, the impugned order passed by the learned adjudicating authority is set aside and the appeals are allowed in favour of the appellants.

(Dictated and pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

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