CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

EXCISE APPEAL NO: 89248 OF 2013

[Arising out of Order-in-Original No: 01/CUS/2013 dated 18th July 2013 passed by the Commissioner of Central Excise, Customs and Service Tax, Nashik.]

International Knitting Ltd
187 Dadisheth Agiary Lane, Mumbai - 400001 … ***Appellant***

versus

Commissioner of Central Excise, Customs & Service Tax
Kendriya Rajaswa Bhavan, Annex Bldg,
RG Gadkari Chowk, Old Agra Road, Nashik - 422002 ***…Respondent***

WITH

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APPEARANCE:

Shri Sunil Nawandhar, Advocate for the appellants

Shri Xavier Mascarenhas, Superintendent (AR) for the respondent

CORAM:

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

FINAL ORDER NO: 85790-85793/2025

DATE OF HEARING: 01/10/2024
DATE OF DECISION: 01/04/2025

PER: C J MATHEW

M/s International Knitting Ltd is before us, challenging order[1] of Commissioner of Central Excise, Customs and Service Tax, Nashik, which has confirmed liability, of ₹ 70,15,891 as duties of customs and of ₹ 10,42,874 as duties of central excise, under section 72 of Customs Act, 1962 read with rule 96 of Central Excise Rules, 1944, along with applicable interest thereon, while imposing penalty of ₹ 10,50,000 under several provisions of Customs Act, 1962 and Central Excise Rules, 1944 besides imposing fine of ₹ 21,00,000 for redemption of goods confiscated under Customs Act, 1962 and Central Excise Rules, 1944, on the ground that fastening of recovery and detriments are not in conformity with the directions in order[2] of the Tribunal disposing off their appeal in the first round of litigation.

2. Briefly, the appellant was operating as a holder of 'letter of permission (LoP)', under '100% export oriented unit (EOU)' scheme of the Foreign Trade Policy (FTP), dated 23rd November 1994 of the jurisdictional Development Commissioner but, having had to abandon production in March 1999 owing to labour unrest, shortly after installation of imported, as well as domestic procurement of, capital goods and raw materials, with achievement of export turnover only to the extent of ₹ 166.39 lakhs against commitment of ₹553.42 lakhs during this period, was required to repay the privileges as set out in the

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[1] [order-in-original no. 01/CUS/2013 dated 18th July 2013]
[2] [final order no. A/299-301/2012/WZB/CSTB/c-I dated 28th March 2012]

scheme. The warehousing licence issued on 30th March 1995 under section 58 of Customs Act, 1962, as well as for manufacture under section 65 of Customs Act, 1962, and valid till 31st March 2001 enabled import of the impugned goods under notification[3] and indigenous procurement of goods in terms of notification[4] designed for implementation of the scheme.

3. The dispute arose on the capital goods, raw materials and finished goods lying in stock when proceedings were initiated, for recovery of duty and for confiscation of goods as well as for imposition of other detriments, against the appellant herein by show cause notice dated 29th August 2006. The then adjudicating authority had confirmed the proposal in the show cause notice to demand duties of customs amounting to ₹ 1,77,22,464 and duties of central excise amounting to ₹ 10,42,874 besides fastening other detriments.

4. We have heard Learned Counsel for the appellant and Learned Authorized Representative.

5. The remand by the Tribunal *supra* directed that

> *(a) The date of lapsing of the LOP and the warehouse licence (i.e. 31.03.2001) should be taken as a date of deemed removal of the goods as per the Apex Court judgment in the Kesoram Rayon case, we agree with the said contentions.*

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[3] [no. 13/1981-Cus dated 9th February 1981]
[4] [no.1/1995-CE dated 4th January 1995]

Therefore, the relevant date for determination of the rate of duty and Customs valuation in respect of imported capital goods would be the rate prevailing on the date of deemed removal, which is 31-3-2001 in the instant case. Coming to the issue of depreciation, inasmuch as the appellants have put to use the capital goods at least for part of the period, they are eligible for depreciation and, accordingly, the Customs duty is liable to be demanded on the imported capital goods on the depreciated value as provided for in Board's Circular No. 14/2004 dated 13-2-2004 and at the rate prevailing on 31-3-2001.

(b) For the imported raw materials, lying unutilized in the warehouse on the deemed date of removal, the appellants are liable to pay customs duty at the rate prevailing on the date of deemed removal but on original value of imported raw materials.

(c) For the indigenously procured capital goods and raw materials lying unutilized, the unit should pay the excise duty forgone at the time of procurement of these goods.

(d) As there is a default in payment of duty, interest liability has to be discharged under provisions of Section 61(2) of CA, 1962.

(e) All goods imported or otherwise are liable for confiscation under Section 111(o) of the Customs Act and C.Ex. Rules, 2002. Even if these are not available for confiscation, redemption fine in lieu of confiscation is to be imposed.

(f) The other penal consequences i.e. fine and penalty, on account of non-fulfillment of export obligation will automatically follow.

(g) In the instant case, the duty demand has to be recomputed. The case is being remanded back for re-computation of duty. The assessee has to pay interest in terms of section 61(2) of Customs Act, 1962. Other Consequences, namely, fine and penalty, on account of non fulfillment of export obligation would automatically follow but their quantum will depend on amount of duty demanded.'

6. Thereafter, in accordance with the directions of the Tribunal, the matter was taken up for *denovo* adjudication and, while noting the directions therein, it was determined that

'8.1 …….

(i) the rates of duty as mentioned in the yellow bills of entry (Warehousing BOE) show duty at full rate. No benefit of any notification was claimed by the assessee when the capital goods were initially imported and in-bonded. I also find that the issue regarding rate of duty in respect of these items was not discussed in finding portion by the CESTAT in its order dated 28.03.2012 . Since the present order is required to be decided in light of the CESTAT's order, prudence demands that I address the issues exactly as per the guidelines provided by the hon. CESTAT. Hence, it is but obvious that any endeavor on my part now to allow benefit of the notification would amount to re-assessment of the goods which is beyond the mandate and scope of the impugned CESTAT order.

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Hence, I find that the benefit of Notification No. 17/2001-Cus shall not be available to the assessee and accordingly the applicable rates of duty would be the tariff rates as applicable

> *on the relevant date and the said rates are required to be applied while calculating the customs duty*
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> *………. I find that although the assessee pleaded that the benefit should accrue to them in view of the ratio contained in the said decisions, the CESTAT has not passed any order in this regard in impugned remand order. As the present issue has been taken for decision only in view of the guidelines and directions provided in the CESTAT's order dtd 28.3.2012, any deviation at this juncture to consider their plea would tantamount to traversing beyond the mandate provided by the CESTAT in the said order.'*

by determining the duty liability at standard rates of duty and, on the ground that the Tribunal had not decided on the plea of the appellant for eligibility to depreciation, did not go beyond the abatement permitted in terms of circular[5] of Central Board of Excise and Customs (CBEC). Thereupon, the duty liability and detriments in the impugned order were crystalized.

7. The directions of the Tribunal were abundantly clear insofar as the relevant date for rate of duty, as well as valuation, is concerned. The adjudicating authority, instead, chose to place weightage upon the rate of duty declared in the warehousing bills filed by the appellant for bonding of the impugned goods. The directions of the Tribunal were consistent with chapter IX of Customs Act, 1962, inasmuch as the appellant had been operating a manufacturing facility, as provided for

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[5] [no. 14/2004-CE dated 13th February 2004]

in section 65 of Customs Act, 1962 and as required for availing the benefits under the scheme of the Foreign Trade Policy (FTP) as well as the corresponding notification under section 25 of Customs Act, 1962, and with

> *'15. Date for determination of rate of duty and tariff valuation of imported goods.*
>
> *(1) .....*
>
> *(b) in the case of goods cleared from a warehouse under section 68, on the date on which a bill of entry for home consumption in respect of such goods is presented under that section; '*

of Customs Act, 1962 as the legal authority. As far as the benefit of depreciation on capital goods is concerned, there is no dispute that the unit had been operational between 1997 and 1999. Depreciation is a factor of time and not proportionate to production or fulfilment of the export obligation. Consequently, the appellant was entitled to the depreciation as was permissible in circular[6] of Central Board of Excise and Customs (CBEC). It is, however, abundantly clear that the impugned order has misapplied the stated directions of the Tribunal. Liability of the appellant to duty, as applicable, is not an issue in dispute; the computation continues to be. In the circumstances, it would be appropriate for the impugned order to be set aside and the matter remanded to the adjudicating authority for a fresh decision in compliance with the directions of the Tribunal on the

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[6] [no. 14/2004-CE dated 13th February 2004]

former occasion which are consistent with the provisions of Customs Act, 1962.

8. The appeals are, thus, allowed by way of remand.

(Order pronounced in the open court on 01/04/2025)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*