CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 86030 of 2015

(Arising out of Order-in-Original No. BALA/33/TALOJA/RVI/CC/MRSFA/2015 dated 28.01.2015 passed by Commissioner of Central Excise & Customs, Belapur Commissionerate.)

VVF India Ltd. **.... Appellant**
Plot No. V-14, MIDC,
Taloja,
Navi Mumbai-410 208.

Versus

Commissioner of CGST and Central Excise, Belapur **.... Respondent**
1st Floor, C.G.O. Complex,
C.B.D. Belapur,
Navi Mumbai-400 614.

Appearance:

Shri Vishal Agarwal a/w Shri Ramnath Prabhu, Advocates for the Appellant

Shri C.S. Vinod, Auth. 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/87614/2024

Date of Hearing: 25.06.2024
Date of Decision: 25.06.2024

Per: S.K. MOHANTY

The appellants herein, are operating as the 100% Export Oriented Unit (EOU), in terms of the Letter of Permission (LOP) issued by the Development Commissioner, Ministry of Industries, in the Government of India. The appellants operate as the Private Bonded Warehouse under Section 58 of the Customs Act, 1962 for carrying out the manufacturing activity. The appellants are also registered with the Central Excise department for manufacture and export of excisable goods viz., Fatty Alcohol, Fatty Acid and Soap Noodles. They had exported the said goods as well as cleared in the Domestic Tariff Area (DTA), after obtaining permission from the Development

Commissioner. The Foreign Trade Policy (FTP) 2004-09, in paragraph 6.8(a), has permitted an EOU to sell goods upto 50% of FOB value of exports, subject to fulfilment of positive NFE, on payment of concessional duties. During the course of audit of the records, the Customs department had observed that the DTA clearance made by the appellants at concessional rate of duty was more than the maximum permissible limit, provided in Para 6.8(a) of FTP. Thus, it was concluded by the department that there was excess clearance of goods made by the appellants under the concessional rate of duty. On such understanding, the department had initiated show cause proceedings against the appellants, which culminated into the adjudication order dated 28.01.2015 (impugned herein), wherein the Learned Commissioner of Central Excise & Customs, Belapur has confirmed the proposed demands on the appellants. Feeling aggrieved with the impugned order, the appellants have preferred this appeal before the Tribunal.

2. Heard both sides and perused the case records.

3. In support of confirmation of the adjudged demands, the learned adjudicating authority has recorded the findings at Paragraph 13.3 in the impugned order, that in support of the claim that the appellants had un-utilized DTA sale entitlement to the tune of Rs. 62 crores, no documentary evidence was produced and that, in absence of such evidence, the claim of entitlement of un-utilized DTA sale cannot be considered. On the contrary, learned Advocate appearing for the appellants has referred to the reply dated 05.01.2015 filed before the adjudicating authority, pursuant to the show cause notice dated 17.04.2014 issued to them. By referring to the said reply, he has stated that the documentary evidence were submitted before the adjudicating authority, in support of the claim that they had un-utilized DTA sale entitlement to the tune of Rs.62 crores. We have also perused the said reply, annexed to the appeal memorandum at Page 320 and the relevant paragraphs therein, where the appellants had made the statements regarding such entitlement. On reading of the reply to the SCN vis-à-vis the findings recorded in the impugned order, we find that there is inconsistency with regard to the said stand taken

by both sides. Therefore, the matter is required to be remanded back to the original authority for a proper fact finding on the issue regarding un-utilized DTA sale entitlement and the other aspects. The appellants, in this appeal, have also raised the issue of limitation for issuance of the SCN, which was not properly addressed to in the impugned order.

4. In view of above discussions, the impugned order is set aside and the appeal is allowed by way of remand to the original authority for *de novo* adjudication of the matter. It is made clear that this is an open remand and thus, the original authority should consider all the submissions made by the appellant in the reply to the SCN and further submissions, if any, to be made at the time of personal hearing. Needless to say that reasonable opportunity of hearing should be granted to the appellants, before deciding the matter(s) afresh.

5. In the result, the appeal is allowed by way of remand.

(Operative portion of the order pronounced in the open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

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