CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

EXCISE APPEAL NO: 85690 OF 2015

[Arising out of Order-in-Original No: 45/AC/COMMR/Th-II/2014 dated 22nd December 2012 passed by the Commissioner of Central Excise, Thane – II.]

Responsive Industries Ltd
Gut No 114 & 120, Betgaon Village, Mahagaon Road
Boisar (East), Taluka &District -Palghar - 401 501 … ***Appellant***

versus

Commissioner of Central Excise
Thane – II
Navprabhat Chambers Ranade Road Dadar (West)
Mumbai – 400028 ***…Respondent***

WITH

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Rajesh Pandey
Director, Responsive Industries Ltd
Gut No 114 & 120, Betgaon Village, Mahagaon Road
Boisar (East), Taluka &District -Palghar - 401 501 … ***Appellant***

versus

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AND

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[Arising out of Order-in-Original No: 45/AC/COMMR/Th-II/2014 dated 22nd December 2012 passed by the Commissioner of Central Excise, Thane – II.]

Rajendra Khemjibhai Patel
General Manager, Responsive Industries Ltd
Gut No 114 & 120, Betgaon Village, Mahagaon Road
Boisar (East), Taluka &District -Palghar - 401 501 … ***Appellant***

versus

Commissioner of Central Excise
Thane – II
Navprabhat Chambers Ranade Road Dadar (West)
Mumbai – 400028 ***…Respondent***

APPEARANCE:

Shri Prakash Shah, Senior Advocate with Shri Mihir Mehta, Advocate and Shri Yash Prakash, Advocate for the appellants

Shri Rajiv Ranjan, Assistant Commissioner (AR) for the respondent

CORAM:

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

FINAL ORDER NO: 86957-86959/2025

DATE OF HEARING: 30/06/2025
DATE OF DECISION: 29/12/2025

PER: C J MATHEW

A very limited issue is canvassed before us in this appeal of M/s Responsive Industries Ltd, as well as in that of the individuals as responsible functionaries of the appellant-company, against order[1] of Commissioner of Central Excise, Thane-II fastening duty liability of ₹ 1,92,93,952 under section 11A of Central Excise Act, 1944, along with

[1] [order-in-original no. 45/AC/COMMR/Th-II/2014 dated 22nd December 2014]

applicable interest under section 11AA of Central Excise Act, 1944, and imposing penalty of like amount under section 11AC of Central Excise Act, 1944 besides imposing penalty of ₹ 20,00,000 each on the two individual-appellants under rule 26 of Central Excise Rules, 2002.

2. The appellant, an 'export oriented unit (EOU)', holding 'letter of permission (LoP)' from the jurisdictional Development Commissioner and bonded as per the appropriate notification issued under Customs Act, 1962 as well as Central Excise Act, 1944, had been clearing goods, *viz.*, 'coated cotton fabric', 'coated cotton fabric (reject)' and 'polyvinyl chloride (PVC) scrap', from March 2008 to August 2008 to the 'domestic tariff area (DTA)' in accordance with notification no. 23/2003-CE dated 31st March 2003 at the prescribed concessional rate of duty which was objected to by the central excise authorities on the ground that the manufactured goods had been produced from raw materials supplied by another similar unit, *viz.*, M/s Reliance Industries Ltd, on availing of 'deemed export' benefit. The issue came to life when the appellant herein sought coverage under serial no. 3 in place of serial no. 2 of the notification *supra* and, consequentially, refund of ₹1,09,48,114 on 11th March 2008 that was retracted on being intimated about non-entitlement.

3. On this factual matrix, and by placing reliance on the decision of

the Tribunal in *Sarla Performance Fibres Ltd v. Commissioner of Central Excise, Vapi [2010 (253) ELT 203 (Tri-Ahmd)]*, it was held that

> *'9…… has stated that the goods manufactured by an EOU and cleared into DTA would be a case of imports. This is a deeming fiction. The goods cleared by an EOU into DTA would be deemed to be imported into India.*
>
> *10. Once the law is clear, the eligibility to the benefits of serial number 3 of the table to the notification 23/ 2003-CE dated 31.03.2003 was not available to the noticee, since, they had procured raw materials from an EOU, who had imported the goods into India and had availed deemed export benefits.*
>
> *11. The demand made in the notice would succeed on this shot judicial exposition. This is also a case where the reading of the condition of eligibility, which being an exemption, has to be strictly interpreted necessarily, clearly showed that the raw materials were not produced of manufactured in India…….'*

in the impugned order.

4. Before proceeding to evaluate the submissions made by the two sides, the context of the dispute would require us to examine the concept of 'deemed exporter'; it must be made abundantly clear that such expression is not recognized or deployed in Customs Act, 1962 and may find contextual reference only in the Foreign Trade Policy (FTP)[2]. 'Deemed exports' are domestic transactions that, in pursuance of provisions of the same Foreign Trade Policy (FTP), accord

[2] [paragraph 8.3]

acknowledgement of contribution to reduction of 'foreign exchange outflow' through 'import substitution' which, otherwise, would have involved some incentive such as exemption from rates of duty or utilization of 'scrips' on select imports. Such transfers are not in conformity with 'exports' as intended in Customs Act, 1962 and, consequently, not eligible for the benefits which flow therefrom. The details, and particulars, of the privileges of 'deemed exports', in the present instance, are not available in the records and nor did such appear to influence the finding in the impugned order. Suffice it to say, the alleged benefit may have accrued to the 'supplier unit' without, in any way, impacting the liability to duties of central excise devolving on clearance of the goods to the appellant herein.

5. Learned Senior Counsel for appellant drew attention to the provisions of chapter 6 of the Foreign Trade Policy (FTP), 2004-2009 and the related chapter in Handbook of Procedures (HoP), as well as three notifications issued under section 5A of Central Excise Act, 1944 in addition to circular of Central Board of Excise & Customs (CBEC), as the narrative within which the dispute was to be placed and resolved. He submitted that several decisions of the Tribunal, including that relied upon in the impugned order and in *Sarla Performance Fibres Ltd v. Commissioner of Central Excise & Customs [2009 (233) ELT 43 (Bom)]*, in *Kumar Arch Tech Pvt Ltd v. Commissioner of Central Excise, Jaipur-II [2013 (290) ELT 372 (Tri-LB)]* and in *Godrej*

Industries Ltd v. Commissioner of Central Excise & Service Tax, Surat [2016 (338) ELT 435 (Tri-Ahmd)], had held that the appellant was not liable to pay cess many times over. It was also contended that the impugned order had travelled beyond the scope of the notice and in urging that the impugned order could be set aside on that very ground, he relied upon the decision of the Hon'ble Supreme Court in *Commissioner of Central Excise, Nagpur v. Ballarpur Industries Ltd [2007 (215) ELT 489 (SC)]*, in *Commissioner of Customs, Mumbai v. Toyo Engineering India Limited [2006 (201) ELT 513 (SC)]* and in *Commissioner of Central Excise, Bhubaneswar-I v. Champdany Industries Ltd [2009 (241) ELT 481 (SC)]*. It was further contended that the 'supplier unit' was not a 'export oriented unit (EOU)' but a normal manufacturing operation registered under Central Excise Rules, 2002.

6. Learned Authorized Representative took us through the findings in the impugned order which, according to him, are unassailable.

7. The exposition in law, relied upon in the impugned order, is judicial resolution of 'cess' payable upon clearance of goods by 'export oriented unit (EOU)' into the domestic tariff area (DTA) by discharging, under section 3 of Central Excise Act, 1944, liability thereunder at aggregate duties of customs and involving peculiarity of computation that is the reverse of determination if the same goods were imported into India. In the present dispute, duty liability has been

determined consequent upon denial of benefit of notification no. 23/2003-CE dated 31st March 2003, as amended by notification no. 29/2007-CE dated 6th July 2007, (at serial no. 3) for falling foul of appendant condition that impugned goods would have to be manufactured out of raw material procured indigenously. The impugned goods were, admittedly, manufactured from raw materials supplied by M/s Reliance Industries Ltd; an 'export oriented unit (EOU)' may procure by import or from indigenous sources and raw materials from both sources are relieved of respective duty burden – the imported goods in the hands of the 'export oriented unit (EOU)' and indigenously procured goods in the hands of the domestic supplier – and the clearance of finished goods, if not for export, is exempted, as per serial no. 3 of table in the said notification, to the extent of

> *'...excess of amount equal to aggregate duties of excise leviable under Section 3 of the Central Excise Act...on like goods produced or manufactured in India other than in an export oriented unit, if sold in India'*

subject to compliance with condition of the goods being

> *'(i) .....produced or manufactured wholly from the raw materials produced or manufactured in India;*
>
> *(ii) ..... are cleared into Domestic Tariff Area in accordance with sub-paragraphs (a), (b), (d) and (h) of Paragraph 6.8 of the Export and Import Policy; and*
>
> *(iii) ....if manufactured and cleared by the unit other than export oriented undertaking are not wholly exempt from duties*

of Excise or are not chargeable to "NIL" rate of duty'

and we are unable to perceive any stipulation beyond these that were available to the adjudicating authority to fall back on or rendering the decision in *re Sarla Performance Fibres Ltd* to be relevant.

8. There is no evidence on record to support the conviction of the adjudicating authority that the raw materials were obtained from 'export oriented unit (EOU)' and supply against CT3 procedure is due evidence of duty free supply of indigenous raw material to an 'export oriented unit' by a domestic unit. Even if supply had been from 'export oriented unit (EOU)', contextual reference to source stipulated in the conditions *supra* is not to be seen as origin but that the raw materials had not been imported, which no manufacture effected in India can be so designated, and had been sourced without passing through procedures under Customs Act, 1962. There is no doubt that, if transfer had been from 'export oriented unit (EOU)' to 'export oriented unit (EOU)' with the former claiming fulfillment of export obligation thereupon, the receiving unit would have to include the value thereof for enhanced fulfilment of export obligation. That is also not in evidence here. Hence, the foundation of denial of the exemption in excess of excise duty otherwise chargeable on the finished goods is without any evidence whatsoever.

9. The adjudicating authority has contrived, from an observation

contextual to domestic clearance of finished goods by 'export oriented unit (EOU)', to fasten the characteristic of 'non-indigenous' on goods supplied, without benefit of said notification, by a domestic entity and permitted clearance, as 'raw material' to the appellant who was entitled to the benefit of duty free in relevant notification under section 5A of Central Excise Act, 1944.

10. For the purposes of the condition *supra*, the origin does not have to be geographically identified for limiting the liability as per serial no. 3 in the table of the said notification for that is beyond the domain competence of, and legal empowerment vested in, central excise authorities. That duty liability under Central Excise Act, 1944 had been discharged, or particularized exemption availed, on the 'goods' of supplier – soon to be 'raw material' of the 'export oriented unit (EOU)' – suffices contextually. There is no controverting of the facts of such valid clearances.

11. The decision in *re Sarla Performance Fibers Ltd* which made mention of

> *'68. ....For all purposes, goods cleared to DTA from 100% EOU were treated as import but having been located within the country, nature of levy has to be levy on the manufacture. Hence the need for proviso and also explanation as to how the excise duty leviable on these goods have to be determined. Therefore, customs duty payable on imported goods is the measure of excise duty payable on goods cleared by EOU to*

> *DTA and therefore they cannot be treated as goods actually manufactured in India…'*

is not germane to the present dispute which is not about any such claim on the part of the appellant but about the goods, received as 'raw material' from the supplier, being imported or not. The observation *supra* is specific to clearance from 'export oriented unit (EOU)' to 'domestic tariff area (DTA)' whereas the indigenous nature of 'raw materials' is supply by unit in 'domestic tariff area (DTA)' to 'export oriented unit (EOU)' or, at best, by 'export oriented unit (EOU)' to 'export oriented unit (EOU)' which, anyway, is unsubstantiated from the records.

12. Even the other observation in *re Sarla Performance Fibers Ltd* that

> *'75. ….In the case of 100% EOUs, when goods are cleared to 100% EOU it is deemed export; when a 100% EOU imports goods, no customs duty is charged because a 100% EOU is treated as a customs bonded warehouse; when a 100% EOU clears the raw materials imported, it is required to pay the customs duties if the clearance is to domestic tariff area …..The benefits or the liabilities will have to be calculated as per provisions of the relevant and there cannot be a general rule…'*

precludes any drawal therefrom of conclusion that the 'raw materials' are imported merely from discriminatory treatment according to source even when duty is charged as central excise or exempted by notification

under central excise law.

13. It is, thus, clear that the cited judicial determination does not support proposition in the adjudication order that ‘raw materials’ are deemed to be imported. It is also clear that there is no evidence of such ‘raw material’ having been obtained from ‘export oriented unit (EOU)’ or charged to duty in accordance with *proviso* to section 3 of Central Excise Act, 1944 for what it is worth. Consequently, the impugned order is without merit and is set aside to allow the appeals.

(Order pronounced in the open court on 29/12/2025)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*