CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH
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REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 61004 Of 2018

[Arising out of OIA No. JNK-EXCUS-000-APP-479-480-17-18 dated 28.03.2018 passed by the Commissioner (Appeals) of Central Excise-JAMMU & KASHMIR]

M/s Sudhir Power Ltd. Unit-III : Appellant (s)
(formerly Known As Sudhir Gensects Ltd), epip,kartholi,
sidco Industrial Complex, Bari Brahmana, Jammu and kashmir

Vs

CCE & ST- Jammu and Kashmir : Respondent (s)
OB-32, RAIL HEAD COMPLEX, JAMMU & KASHMIR 180012

APPEARANCE:
Ms. Krati Somani, Advocate for the Appellant
Shri H. S. Brar, Authorised Representative for the Respondent

CORAM : HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)

ORDER No. A/60406 / 2020

Date of Hearing:28.10.2020
Date of Decision:28.10.2020

Per : Mr. Ashok Jindal

The issue involved in the matter is that whether the provisions of Rule 6 (3) of CCR, 2004 is applicable to the facts of this case or not?

2. The brief facts of the case are that the appellant in engaged in the manufacture of DG sets and enclosures which are being sold by the appellant in open market and to various customers against the Duty Credit Scrips issued to them by DGFT under Served From India Scheme (**'SFIS'**) in terms of Chapter 3 of the Foreign Trade Policy 2009-2014 ('**FTP**'). These scrips were issued under Notification No. 34/2006-CE dated 14.06.2006. The appellant cleared the goods during the period April 2012 to January 2016. An audit was
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conducted and it was found that the appellant has cleared DG sets without payment of excise duty under the Status Holder Incentive Scheme by availing the benefit of Notification No. 33/2012-CE dated 09.07.2012 and under SFIS by availing the benefit of Notification dated 14.06.2006. Further, in terms of CBEC Circular No. 973/07/2013-CX dated 04.09.2013, the provisions of Rule 6(3) of the CCR, 2004 are not applicable for the goods cleared by availing the benefit of Notification No. 33/2012-CE dated 09.07.2012. As the Notification No. 34/2006-CE dated 14.06.2006 was not the part of the said circular, therefore, the proceedings were initiated against the appellant for recoveries for the goods cleared by the appellant to the goods cleared to the buyers by availing the benefit of Notification No. 34/2006-CE dated 14.06.2006. Two show cause notices were issued and adjudicated; demands were confirmed alongwith interest and equivalent amount of penalty was imposed. Against the said order, the appellant is before me.

3. The Ld. Counsel for the appellant submits that the appellant submits that SFIS duty credit scrips/licenses were issued by the DGFT as per Chapter 3 of the FTP and Para 3.12.8 of the FTP states that duty credit scrips are permitted to be utilized for payment of excise duty in terms of Department of Revenue Notification for procurement from domestic sources, in respect of items permitted for imports under SFIS Duty Credit Scrip. Thus, SFIS scrips provide an alternate way of paying the duty on goods other than discharging the duty liability in cash or through Cenvat. The Ld. Counsel drew my attention on the decision of this Tribunal in the case of ***M/s Voltamp Transformers Ltd. vs. CCE Vadodara 2011 (9) TMI 648 –***

CESTAT, AHMEDABAD to say that the provisions of Rule 6 (3) of CCR, 2004 are not applicable to the facts of this case and the said decision has been affirmed by the Hon'ble Gujarat High Court reported in – 2013 (296) ELT A16 (Guj). She further submits that the said decision was followed by this Tribunal in the case of ***Commissioner of Central Excise vs. Kirloskar Chillers Pvt. Ltd. – 2017 (9) TMI 694 CESTAT- Mumbai***. She further submitted that the Ld. Commissioner (Appeals) has dismissed their appeal relying on the CBEC Circular No. 973/07/2013-CX dated 04.09.2013 the said circular does not mention the notification is in question and it is the observation of the Ld. Commissioner (Appeals) that as the notification in question has not been mentioned in the Circular, therefore, the benefit of the said circular is not entitled to the appellant. But, the Ld. Commissioner (Appeals) has ignored the decision of the Hon'ble High Court of Gujarat as well as the decision of this Tribunal on the issue. Therefore, the impugned order is to be set-aside.

4. On the other hand, the Ld. AR submits that it is fact on record that the goods has been cleared without payment of duty claiming the benefit of exemption Notification No. 34/2006-CE dated 14.06.2006. Therefore, the provisions of Rule 6 (3) of CCR, 2004 are applicable when the appellant is engaged in dealing the goods duty free as well as dutiable goods. The Ld. AR also relied on the decision of the Hon'ble Apex Court in the case of ***Union of India vs. Ind-Swift Laboratories Ltd. 2011 (228) ELT 3 (S.C.)*** to say that the taxing statute must be interpreted in the light of what is clearly expressed. It is not permissible to import provisions in taxing statute so as to supply any assumed deficiency. He further relied on the decision of

Hon'ble Apex Court in the case of ***CCE Vadodara vs. Dhiren Chemical Industries 2002 (139) ELT 3 (S.C.)*** to say that we have placed on the said phrase, if there are circulars which have been issued by the Central Board of Excise and Customs which place a different interpretation upon the said phrase, the interpretation will be binding upon the Revenue.

5. Heard the parties and considered the submissions.

6. It is a fact on record that the appellant is manufacturing DG sets and enclosures which are dutiable under Chapter 85 of CETA 1985. The appellant is also clearing goods to the buyers under SFIS Scheme duty free in terms of the Notification No. 34/2006-CE dated 14.06.2006. Therefore, the issue before this Tribunal is whether the goods cleared under Notification No. 34/2006-CE dated 14.06.2006 under SFIS Scheme are exempted or not? It is an admitted position by both sides that the goods in question manufactured by the appellant are dutiable under Chapter 85 of the CETA, 1985.

7. A similar issue came up before this Tribunal in the case of ***M/s Voltamp Transformers Ltd. (supra)*** wherein the facts of the case as under:-

> *"2. The relevant facts that arise for consideration are that the appellant herein is a manufacturer of transformers and are availing CENVAT Credit on duty paid of inputs used in the manufacturing of finished products. During the relevant period from May 2007 to November 2007, the appellants cleared various transformers i.e. finished goods by availing benefit of exemption from payment of duty in terms of Notification No.34/2006-CE, dt.14.06.06, as amended by Notification No.41/2006-CE, dt.13.10.06. The said notification grants exemption to the excisable goods from the whole of duty subject to the condition that the buyer has to produce duty free certificate issued under 'Served From India Scheme' (SFIS) as per Para 3.6.4 of Foreign Trade Policy 2006-2007. The appellants cleared the finished goods by debiting the duty amount from the certificate produced by the buyers."*

In the said case this Tribunal observed as under:-

"We have considered the submissions made by both sides and perused the records. There is no dispute that the appellant had cleared the dutiable finished goods by debiting the same under SFIS scheme, buyer of the appellant. There is no dispute as regards correctness of the said certificate and debit made therein. The only dispute is regarding whether such clearances made by the appellant under Notification No.34/2006-CE, as amended, would be considered as exempted clearances and the appellant is required to pay amount equal to 10% of the value of the goods cleared by availing benefit of said notification.

8.1 It can be seen from the above reproduced clarification that the CBEC specifically mentioned the conditions that has to be performed by the jurisdictional Central Excise Officer of the assessees from where goods are cleared under SFIS. The CBEC circular also very specifically clarifies that the original certificate has to be produced before the jurisdictional Central Excise Officer for 'debiting the duties of excise leviable on the goods'. The wordings of notification and subsequent CBEC Circular, would make it clear that the duty liability which has been debited in the SFIS scrip, would amount to discharge of duty liability and not amounting to exemption, as was proposed by Revenue.

9. I find that Hon'ble High Court of Judicature at Madras in the case of Tanfac Industries Ltd. v. CCE (supra) had considered an issue which was identical. In the said case their lordships were considering whether the debits made under DEPB script is equivalent to payment of duty in cash. I find that their Lordship has held as under :

"6. We are here concerned with the question, whether the debits under DEPB is equivalent to payment of duty in cash.
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12. In fact, in that case, there were three bills of entries, only one of them was goods exported under DEEC Scheme and other two were under the DEPB Scheme. The difference drawn by the Supreme Court in the above judgments make it clear that under the DEEC Scheme, the clearance is allowed duty free, whereas under DEPB Scheme, the exporters are issued DEPB scrips which allows them specific amounts to be utilised for payment of Customs duty. Therefore, the importers, who use DEPB scrips, pay duty not by cash but only by way of credit. This is clear from the judgment of the Supreme Court extracted above. Therefore, the goods cleared under DEPB Scheme cannot be treated an exempted goods, but they can only be treated to be duty-paid goods and therefore, the interest is payable as per Section 61(2) of the Act. The debit of any amount under the DEPB Scheme is a mode of payment of duty on the imported goods and cannot be treated as exempted goods, unlike the goods under DEEC Scheme. We are unable to answer the questions raised by the appellant in its favour. Therefore, the civil miscellaneous appeals are dismissed."
11. Accordingly, in view of the foregoing it is held that debits made in SFIS would not amount to exemption from payment of duty. I hold that the impugned order is liable to be set aside and I do so. The impugned order is set aside and the appeal is allowed with consequential relief, if any."

and the said decision has been affirmed by the Hon'ble Gujarat High Court.

8. Further, the similar issue came up before this Tribunal in the case of ***Kirloskar Chillers Pvt. Ltd. (supra),*** this Tribunal has

following the decision in the case of ***M/s Voltamp Transformers Ltd. (supra)*** hold that the goods supplied under Notification No. 34/2006-CE dated 14.06.2006 is not exempted, therefore, the provisions of Rule 6 (3) (b) of CCR, 2004 are not applicable.

9. I further find that these facts are found support from the decision relied upon by the Ld. AR as in the case of***. Ind-Swift Laboratories Ltd. (supra)*** wherein the Hon'ble Apex Court is clarities that *'the taxing statute must be interpreted in the light of what is clearly expressed. It is not permissible to import provisions in taxing statute so as to supply any assumed deficiency'.* It means that the dutiable goods cannot become exempted goods as per the convenience of the revenue. Further, in the case of ***Dhiren Chemical Industries (supra)*** the Hon'ble Apex Court has held that the Circular issued by the CBEC is binding on the Revenue, but, not on the assessee. Moreover, the circular which has been relied by the revenue have no mention of notification in question and the Revenue has presumed that if the notification in question is not part of the Circular No. 973/07/2013-CX dated 04.09.2013 then the provisions of Rule 6 (3) is applicable. The said understanding of the revenue is against the mandate of law as it is based of assumption & presumption. Therefore, it is a clear mis-interpretation of the Revenue by interpreting the CBEC Circular dated 04.09.2013 in contravening of the decision of the Hon'ble Apex Court in the case of ***Ind-Swift Laboratories Ltd. (supra).***

10. In view of the above discussions and observations, I hold that the goods supplied under Notification No. 34/2006-CE dated 14.06.2006 under SFIS Scheme are dutiable and not exempted goods,

therefore, the provisions of Rule 6 (3) of the CCR, 2004 are not applicable to the facts of this case.

11. In view of the above, I hold that as provision of Rule 6 (3) of CCR, 2004 are not applicable to the facts of this case, therefore, the demand is not sustainable. Consequently, no demand of interest and penalty are sustainable. Hence, the impugned order is set-aside and the appeal is allowed with consequential relief, if any.

(Operative part of the order pronounced in the Court)

(Ashok Jindal)
MEMBER (JUDICIAL)

G.Y.