(2016) 06 AP CK 0025

In the Andhra Pradesh High Court

Case No : Central Excise Appeal No. 146 of 2015

Commr. of Cus., C. Ex. and Service Tax — APPELLANT

Vs

Dr. Reddy''s Laboratories Ltd. — RESPONDENT

Date of Decision : 24-06-2016

Acts Referred:

Citation : (2016) 341 ELT 580

Hon'ble Judges : Ramesh Ranganathan and M. Satyanarayana Murthy, JJ.

Bench : Division Bench

Advocate : Shri Manmadha Rao, SSC, for the Petitioner; Shri Gunaranjan, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

M. Satyanarayana Murthy, J. - The Commissioner of Customs, Central Excise and Service Tax, Hyderabad-IV Commissionerate preferred this appeal under Section 35G of the Central Excise Act, aggrieved by the order passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Bangalore in Final Order No. 21039/2015, dated 28-4-2015 in Appeal No. E/25509/2013-DB whereby the appeal filed by the respondent - Dr. Reddy''s Laboratories Ltd., was allowed setting aside the order of the Commissioner of Central Excise, Hyderabad-IV, dated 30-10-2012 in Order-in-Original No. 53/2012.

2. M/s. Dr. Reddy''s Laboratories Ltd., have filed two rebate claims with the Office of the Deputy Commissioner of Central Excise and Customs, Hyderabad Rs. Division, Hyderabad for Rs. 21,18,36,117/- in respect of exports of "OLANZAPINE Tablets USP 20mg (in 30s pack/100s pack/500s pack)" made under DEPB scheme and for Rs. 1,75,57,537/- on export of P or P Medicaments. The said claims were received in the Divisional Office on 18-7-2011 and 21-11-2011 respectively. The goods manufactured by the assessee were cleared for export to M/s. Dr. Reddy''s Laboratories Inc., 200, Somerset Corporate BLVD, Floor 7, Birdgewater, New Jersey, USA, their subsidiary unit for a value of Rs. 411,33,22,668/- and Rs. 34,09,23,058/- on payment of duty of Rs.

21,18,36,117/- and Rs. 1,75,57,537/-.

3. During enquiry M/s. Dr. Reddy''s Laboratories Ltd. has furnished the following information :

(a) the cost incurred by them for manufacture of one lakh ''Olanzapine-20mg'' tablets as under :

Cost of one lakh ''Olanzapine-20 mg'' tablets 30s - Rs. 1,28,267/-

Cost of one lakh ''Olanzapine-20 mg'' tablets 100s - Rs. 86,467/-

Cost of one lakh ''Olanzapine-20 mg'' tablets 500s - Rs. 75,199/-

The value adopted by the assessee at the time of clearance from their factory for export was Rs. 3,13,95,000/- per lakh numbers of OLANZAPINE 20mg USP Tablets of 30s/100s/500s pack;

(b) the reasons put forth by the assessee for such huge variation in cost price and sale price of OLANZAPINE 20mg USP Tablets exported are that the product is meant for launching for the first time in the US market; M/s. Dr. Reddy''s Laboratories Ltd. expected to get 180 days of exclusivity to market for this particular product; DRL will be treated as only player other than the innovator, M/s. Eli Lilly in the market; that once the exclusivity period is over, the price is likely to come down when other sellers enter into the market;

(c) the innovator M/s. Eli Lilly, USA fixed the price of their similar product viz., ''Zyprexa-20 mg'' in the US market at $ 33.68 per tablet whereas, the price fixed by the assessee for export was only $ 7.0 per tablet, which is very competitive when compared to the price fixed by the innovator;

(d) the assessee declared that they do not have domestic sale of the subject goods, Olanzapine 20mg in the local market.

4. Based on the above information, the Deputy Commissioner of Customs, Central Excise and Service Tax, Hyderabad Rs. Division, Hyderabad considered the rebate claims filed by M/s. Dr. Reddy''s Laboratories Ltd., as eligible by accepting the assessable value adopted by M/s. Dr. Reddy''s Laboratories Ltd., and accordingly sanctioned an amount of Rs. 21,11,04,089/- in cash and Rs. 1,75,48,551/- in cash and Rs. 8,986/- as credit to their Cenvat credit account in full and final settlement of the rebate claims under Section 11B of the Central Excise Act, 1944 read with Rule 18 of the Central Excise Rules, 2002. Accordingly, cheques bearing No. 642704, dated 30-9-2011 for Rs. 21,11,04,089/- and 642763, dated 13-1-2012 for Rs. 1,75,48,551/- were issued to M/s. Dr. Reddy''s Laboratories Ltd.

5. The orders of rebate were reviewed by the Commissioner, Customs and Central Excise, Hyderabad-IV Commissionerate under Section 35E(2) of the Central Excise Act, 1944 and preferred two appeals before the Commissioner (Appeals-II), Hyderabad on 30-1-2012 on various grounds.

6. The Commissioner (Appeals) vide Order-in-Appeal No. 02/2012(H-IV)(D)CE, dated 20-3-2012 and Order-in-Appeal No. 03/2012(H-IV)(D)CE, dated 28-8-2012 allowed the appeals.

7. Thereupon, two show cause notices were issued dated 3-5-2012 and 5-6-2012 to M/s. Dr. Reddys'' Laboratories Ltd., calling for an explanation as to why an amount of Rs. 21,18,36,117/- and Rs. 1,75,57,537/- being the rebate of duty paid on goods exported, which were sanctioned erroneously, should not be recovered from them along with interest.

8. The said two show cause notices were challenged before the adjudicating authority and they were confirmed by order dated 30-10-2012 by the Adjudicating Commissioner and directed M/s. Dr. Reddy''s Laboratories Ltd., to pay the erroneously sanctioned rebate amount.

9. M/s. Dr. Reddy''s Laboratories Ltd., have filed two revision applications under Section 35EE of the Central Excise Act, before the Joint Secretary (Revision Application), Ministry of Finance, Government of India, New Delhi against the Order-in-Appeal No. 02/2012(H-IV)(D)CE, dated 20-3-2012 and Order-in-Appeal No. 03/2012(H-IV)(D)CE, dated 28-8-2012. The Joint Secretary (Revision Application) while passing an order dated 19-12-2013 in Revision Application Nos. 195/594 and 1700/12-RA opined that the appellate authority while allowing the appeals filed by the department observed that "the original authority should have enquired the market price of impugned goods as the market price of similar/ identical products is less than the rebate claim. However, the Commissioner (Appeals) did not determine the transaction value of the impugned goods. The transaction value of the impugned goods was decided by the Commissioner of Central Excise, Hyderabad-IV vide Order-in-Original No. 53/2012, dated 30-10-2012 and vide the said order, the rebate claims of Rs. 8,91,295/- and Rs. 23,491/- were held admissible. The Commissioner (Appeals) by allowing the department''s appeals implicitly held rebate claims inadmissible in to. However, the said order No. 53/2012, dated 30-10-2012 Commissioner of Central Excise, Hyderabad-IV has already held in his Order-in-Original dated 30-10-2012 that the applicants are eligible for rebate claims of Rs. 8,91,295/- and Rs. 23,491/-. In these cases, Government therefore, modified the impugned Orders-in-Appeal to the extent that rebate claim of Rs. 8,91,295/- and Rs. 23,491/- is admissible to the applicants in these cases."

10. Aggrieved by the said Revision Order, the assessee - M/s. Dr. Reddy''s Laboratories Ltd., filed Writ Petition (Civil) No. 818 of 2014 [2014 (309) E.L.T. 423 (Del.)] before the Delhi High Court and the Delhi High Court vide its order dated 14-8-2014 set aside the orders of the Revision Authority and restored the rebate OIO Nos. 462/2011-Rebate, dated 30-9-2011 and 03/2012-Rebate, dated 13-1-2012 sanctioned cash rebate of Rs. 21,11,04,089/- and Rs. 1,75,57,537/-.

11. The final order No. 21039/2015, dated 28-4-2015 was passed by the CESTAT, Bangalore in appeal No. E/25509/2013-DB filed by M/s. Dr. Reddy''s

Laboratories Ltd., against O-I-O No. 53/2012-Adjn. (Commissioner) CE, dated 30-10-2012, in the light of the above Delhi High Court''s decision and the impugned order raising demand for recovery of the amount was set aside.

12. In the present appeal, the order passed by the CESTAT, South Zonal Bench, Bangalore is challenged on the ground of determination of rebate with reference to Rules 9, 10 and 11 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000.

13. During the course of hearing at the stage of admission, Sri. Dr. K. Manmadha Rao, learned counsel for the appellant, contended that the order of rebate passed by the Commissioner of Customs, Central Excise and Service Tax, Hyderabad Rs. Division, Hyderabad is erroneous and it is liable to be set aside and drawn the attention of this Court to the judgment of the Delhi High Court passed in "Dr. Reddy''s Laboratories Ltd. v. Union of India - 2014 (309) E.L.T. 423 (Del.)".

14. The CESTAT, South Zonal Bench, Bangalore passed order based on the judgment of the Delhi High Court, wherein the order of the Department of Revenue dated Order Nos. 1412-1413-CX, under Section 35EE of the Central Excise Act was set aside while restoring the original rebate order passed by the Deputy Commissioner of Customs, Central Excise and Service Tax, Hyderabad Rs. Division, Hyderabad.

15. Sri. Dr. K. Manmadha Rao, learned counsel for the appellant, did not dispute the order passed by the Delhi High Court and admitted the same in the grounds of appeal itself. At this stage, it is relevant to extract the operative portion in the order of the Delhi Court passed in W.P. (C) No. 818 of 2014 for better appreciation :

"Accordingly, for the above reasons, the order of the Department of Revenue dated 19-12-2013 - Order Nos. 1412-1413-CX, under Section 35EE of the Central Excise Act is hereby set aside, along with any consequential demands raised for recovery of the rebate of excise duty. The Orders-in-Original No. 462/2011-REBATE and No. 3/2012-REBATE, dated 30-9-2011 and 13-1-2012 are accordingly restored. There shall be no order as to costs."

16. Operative portion of the order of the Delhi High Court clearly indicates that the consequential demands raised by the different authorities were set aside while restoring the order passed by the Deputy Commissioner of Customs, Central Excise and Service Tax, Hyderabad Rs. Division, Hyderabad granting rebate vide Order-in-Original No. 462/2011-REBATE, dated 30-9-2011 and Order-in-Original No. 03/2012-REBATE, dated 13-1-2012.

17. The impugned recovery order passed by the Commissioner of Customs and Central Excise, Hyderabad-IV confirming the recovery of erroneously sanctioned rebate was only a consequential order of recovery based on the orders which were challenged before the Delhi High Court. When the Delhi High Court set aside the consequential demands raised for recovery of the rebate of excise duty,

the question of again issuing demand for recovery of Rs. 21,02,12,794/- and Rs. 64,66,041/- does not arise and issue of such demand is in utter disregard of the orders passed by the Delhi High Court.

18. As demands were issued for recovery of allegedly erroneously sanctioned rebate, the CESTAT, South Zonal Bench, Bangalore set aside the same since the Delhi High Court set aside the consequential demands also and held that the issue of such demand is arbitrary and illegal. Even otherwise, if consequential recovery is permitted, on any ground, it amounts to reviewing the order of Delhi High Court. When the order of Delhi High Court attained finality, this Court while exercising the jurisdiction under Section 35G of Central Excise Act, has no option except to confirm the order under challenge.

19. It is clear from the order passed by the CESTAT, South Zonal Bench, Bangalore that in view of the order of the Delhi High Court the demand for recovery of rebate was declared as illegal.

20. The learned counsel for appellant Dr. K. Manmadha Rao did not bring to our notice any other specific ground questioning the order of CESTAT.

21. On an overall consideration of the entire material available on record, we find no ground to set aside the order passed by the CESTAT, South Zonal Bench, Bangalore as the Delhi High Court set aside the order passed for recovery of rebate and consequential demands, while restoring the Orders-in-Original No. 462/2011-REBATE and No. 3/2012-REBATE, dated 30-9-2011 and 13-1-2012. Therefore, we find no error in the order passed by the CESTAT, South Zonal Bench, Bangalore warranting interference by this Court. Hence, the appeal deserves to be dismissed.

22. The appeal is, accordingly, dismissed. No order as to costs. Consequently, miscellaneous petitions, if any, pending shall stand dismissed.