(2021) 05 CESTAT CK 0009

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 85677 Of 2015, 86393 Of 2016, 86033 of 2019

M/s. Axiom Cordages Ltd. APPELLANT

Vs

Commissioner of Central Excise, Thane II RESPONDENT

Date of Decision : 19-05-2021

Acts Referred:

Central Excise Act, 1944 — Section 6(1)(b)
Central Excise Rules 1944 — Rule 57F(4)

Citation : (2021) 05 CESTAT CK 0009

Hon'ble Judges : S. K. Mohanty, J;P. Anjani kumar, Technical Member

Bench : Division Bench

Advocate : Nisha Bineesh, Nitin Ranjan

Final Decision : Allowed

Judgement

Appeal No,Period Covered,OIO/OIA No,Duty involved,,

E/85677/2015,4/2009 to 12/2013,"46/AC/COMMR/ThII/2014

dated 22.12.2014.",Â Rs.13.40Cr,,

E/86383/2016,01/2014 to 07/2015,"13-14/SJB/COMMR/ThII-

2016 dt.16.03.2016",Â Rs.3.06 Cr,,

E/86033/2019,08/2015,"NA/GST/AIII/MUM/283/18-

19 dated 6.12.2018.",Â Rs.0.02 Cr,,

mainly out of yarn received from the DTA unit against CT-3 Certificate.,,,,,

4.1. She submits that the contention of Revenue that a literal interpretation of the second clause, when read in its entirety, requires that for different",,,,,

specific products, the DTA sales of EOUs should be compared to the export of that particular product when calculating the 90% limit, subject to an",,,,, overall 50% limit for the combined sales of all the products and that the requirement of similarity of products from the first proviso cannot be imported,,,,,

to the second one, where it is not present, is baseless and uncalled for; accepting the contention that â??for different specific products, the DTA sales",,,,,

of EOUs should be compared to the export of that specific/particular product when calculating the 90% Limitâ? will be a total deviation from,,,,,

Paragraph 6.8 (a) of FTP, which clearly stipulates that â??units which are manufacturing and exporting more than one product can sell any of these",,,,,

products into DTA up to 90% of FOB value of export of the specific products, subject to the condition that total DTA sale does not exceed the overall",,,,,

entitlement of 50% of FOB value of exports; revenueâ??s contention/ interpretation of paragraph 6.8(a) is absolutely incorrect; it is the misconception,,,,,

of law by the department that (i) for different specific products, the DTA sales of EDUs should be compared to the export of that specific/[particular",,,,,

product when calculating the 90% limit; (ii) the value of the DTA sales for each particular product manufactured must not exceed 90 % of the value,,,,,

of the Exported Goods. The Audit statement that the DTA Clearance of Twisted Yarn was more than 90% of the export of the same was only,,,,,

amplified by the department; she submits that misconceived provisions of Law would defeat the very purpose and intent of legislation.,,,,,

4.2. The Appellants are manufacturing HDPE/LDPE/PP ROPES & Twisted Yarns; Export of Ropes was larger than the Twisted Yarns; Appellant,,,,,

cleared Twisted Yarns to DTA within 90% of the FOB value of the exports of goods as per Para 6.8 (a) of FTP; Appellant has cleared twisted Yarn,,,,,

which is well within the prescribed limit of 90% of 50% of the total entitlement; this submission was put forward by the Appellant from the very first,,,,,

stage of reply to the departmentâ??s audit objection itself. Submitting on the illustration given by the department, she submits that If 100 is the FOB",,,,,

value of exports, then 50% of the same can be cleared to DTA; if the FOB value of export of two products is 100, then they can clear any of the",,,,,

products up to 90% of the FOB value of Export of specific products; here the Department failed to calculate the total value of the exports of specific,,,,,

goods; instead they calculated value of export of yarn alone and alleged that Appellant has cleared to DTA is in excess of the value of export of,,,,,

Twisted yarn which is not correct; Revenue ought to have calculated value of export (value of Twisted yarn and Ropes). She submits that Tribunal in,,,,,

the case of Abi Show tech India 2013(294) ELT 313(Tri-Chennai) and final order 2019 (366) ELT 1048 (Tri-Chennai), wherein the appellant exported",,,,,

some quantity of bearing housing and large quantity of precision automotive components; the value of DTA clearance of Bearing housing machine,,,,,

was more than that of precision automotive components; Tribunal held that it was no violation of policy; similar were findings in the case of,,,,,

Consolidated Coin (2013 (2) TMI 416); ironically revenue relies upon the case saying that the Appellant therein cleared in DTA Bearing Housing only;,,,,,

this is not correct argument; the Orders in Original were passed relying upon the Stay Order passed in favour of revenue in the case of Abi (supra),",,,,,

but the case was finally decided in favour of the Assesse by the Honâ??ble Tribunal.,,,,,

5. Learned Authorised Representative (AR), for the department submits that Para 6.8 of the FTP imposes two distinct conditions on the DTA sales",,,,,

by an EOU; First Condition is that the value of the DTA sales must not exceed 50% of the value of the Exported Goods and also that the DTA goods,,,,,

and the exported goods must be similar; Second Condition is that the value of the DTA sales for each particular product manufactured must not,,,,,

exceed 90% of the value of the Exported Goods; appellant has contravened the second condition as can be clearly seen from the CAG Audit Memo,,,,,

dated 21.05.2013. It has been held in the case of Hindustan Granites Vs UOI [2007 (211) E.L.T. 3 (S.C.) that DTA clearances are not an integral,,,,,

part of the EOUs and are exemptions to the obligation of exports; Central Government is within its powers to strictly define the terms of such,,,,,

exemptions such as DTA. He submits that Apex Court in the case of M/s Dilip Kumar And Co 2018-TIOL-302-SC-CUS-CB held that exemption,,,,,

notification needs to be strictly interpreted; a Literal interpretation of the second clause makes it clear that for different specific products, the DTA",,,,,

sales of EOUs should be compared to the exports of that particular product when calculating the 90% Limit, subject to an overall 50% Limit; Second",,,,,

Proviso tries to negate an attempt to reach this limit by large amount of export of any one product; if the argument that DTA sales of each of the,,,,,

products can be up to 90 % of entitlement, it would give rise to absurdity of entitlement being more than 100 % of FOB of exports.",,,,, 5.1. Learned Authorised Representative (AR), further submits that the Appellant have taken the argument that Twisted yarn are similar to Rope for",,,,,

the first time before CESTAT and not before the Lower authorities. Order-in-original clearly states that the Twisted Yarn has been made mostly from,,,,,

inputs purchased from Domestic Tariff Areas (DTA) locally under the CT-3 while the Ropes are produced from duty-free imported yarn. Hence,",,,,,

Prima facie that the factual premise of the appellant argument cannot be substantiated; the products are entirely different; While Twisted Yarn is,,,,,

classified under the heading of 54041200, Nylon Rope is classified under the heading of 56074900; they are subject to different Basic Customs Duty",,,,,

of 10% and 5% respectively; the appellant has accepted this classification and has not challenged it; hence the argument made by the Appellate,,,,,

should held to be Non Est.,,,,,

5.2. Referring to the cases relied upon by the appellant, Learned Authorised Representative (AR) submits that the same are not relevant as the issue",,,,,

discussed was different therein; it was the grant refund of MODVAT credit on â?? similar â??products used in the manufacture of the final output in,,,,,

the case of Madras Aluminium Co. Ltd 2000 (126) ELT 1064); similarâ?? goods under Rule 57F (4) of Central Excise Rules was under,,,,,

consideration in Telco Ltd 1998(97) ELT 439 (T)and Falma Laboratory1999(105) ELT 658(T); provisions of Section 6 (1) (b) of the Central Excise,,,,,

Act and Central Excise Valuation Rules 1975 were discussed in in Ranbaxy Laboratories Ltd1997(92) ELT 400(T)); reference is to Central Excise,,,,,

Notification No. 2/95C.E and export of similar goods was discussed in Kathyayani Exports 2003(156) ELT 497(T), Hindustan Motors 1996(87)ELT",,,,,

216(T)and Muthoot Apt Ceramics 2004(168) ELT 186.,,,,,

5.3. He submits that the issue in Wood Craft Products Ltd 1995 (77) ELT 23 (SC) was classification of Plywood-Black Board; in Pasupati Spinning,,,,,

and Weaving Mills Ltd 2004(178) ELT, the issue was demand of Additional Duty of Excise on goods cleared from an EOU; in Meghmani Industries",,,,,

Ltd. 2010 (261) ELT 411 (Tri-Ahmd) and Abi Turnamatics vs CGST, Chennai, 2019(366)ELT 1048 (Tri-Chennal), the issue was about the similarity",,,,,

of the Export Product with the one cleared in DTA . This is the first requirement of the Para 6.8 (a) of the FTP which is not the contention in this,,,,,

appeal.,,,,,

5.4. Adverting to the appellants reliance on cases with reference to Both First and Second Condition given in Para 6.8(a) of FTP, Learned AR",,,,,

submits that in the case of M/s Abi Showatech India ltd vs CGST, Chennai [2019-Tiol-1246-CESTAT-Mad], the discussion was about Bearing",,,,,

Housing and Turbo Charges and it was held that (in Para 6.2) that the clearances of Bearing Housing in DTA was actually 90% of the FOB value of,,,,,

the exports; the case affirms and does not negate the requirement of EOUs having more than one product exported, to have a limit of 90% of the",,,,,

Exports for DTA sales for each of the specific products with respect to the Exports of that specific product; In the case of Consolidated Coin Pvt. Ltd,,,,,

[2013 (2) TMI 416], Tribunal was concerned as to whether Copper Alloy Coins and Copper Zinc Nickel Strips were similar products for the purposes",,,,,

of similarity of DTA clearances and Exports; it was held in Para 3 that the DTA clearances of coin blanks can be up to 90% of the FOB value of the,,,,,

clearances of the coin blanks as the total value of the DTA clearances is within the DTA entitlement of 50% of total FOB; department's view that the,,,,,

DTA clearances of coin blanks must be in the same proportion in which the coin blanks are exported is not correct.,,,,,

5.5. Replying to the submissions on invocation of extended period, Learned AR submits that as a Star Export House, the appellants do not need prior",,,,,

permission for DTA sales as per the circular No 12/2005-Cus dated 04.03.2005; moreover, they were under Self- Sealing procedure; Jurisdictional",,,,,

Authorities became aware of the contravention of the policy when the records of the Appellant were subject to CAG Audit. He submits that the,,,,,

declaration given to the Development Commissioner, only stated that the Appellants were going to make DTA sales subject to the overall limit of 50%",,,,,

of Exports; it does not state the breakup of particular products; it was implicit that the Appellants adheres to the requirement of DTA sale of each,,,,,

particular product; monthly returns filled do not give the proper picture to the authorities. He submits that they are bound by the B-17 Bond, for",,,,,

Â Rs.70 Cr, executed by them; it was held in M/s Bell Match Company [2019-TIOL-1117-HC-MAD-CUS] that when the assessee had not followed",,,,,

the requirements given in the Letter of Permission(LoP), extended period would be applicable; it was held in M/s Samsaa Rubber And Polymers Pvt",,,,,

Ltd [2019-TIOL-2617- CESTAT-HYD], that a wrong classification of product by the assessee denotes suppression; in M/s K. I. International [2012",,,,,

(2) ECS (126) (Tri-Chen)], it was held that fraud does not go with justice.",,,,,

5.6. Lastly, learned AR submits that exports are the main area of focus for EOUs and sales to DTA are a concession provided and the upper limit of",,,,,

DTA Sales of 90% of Exports for Particular products have to be strictly followed; it was held in M/s ABI Showatech India Ltd (supra) that the,,,,,

Provisions of Para 6.8(a) of the Foreign Trade Policy have to be strictly followed; in the case of M/s Dilip Kumar And Company And Ors (supra), the",,,,,

Apex Court has held that Exemption Provisions have to be interpreted strictly as per their plain language; in the case of M/s Consolidated Coin Pvt.,,,,,

Ltd (supra) it was held that the entitlement of 90% would be applicable even when the products were classified under same Heading of 7409 but as,,,,,

they were commercially different, their DTA sales limit of 90% would apply to each product separately; it was held in the case Hindustan Granites",,,,,

(supra) that DTA clearances are not an integral part of the EOUs and hence the Central Government is within its powers to strictly define the terms,,,,,

of such exemptions such as DTA.,,,,,

6. Heard both sides and perused the records of the case. Brief issues that require consideration, in the case, are as to whether the appellant has",,,,,

violated the provisions of foreign trade policy 2009-14 as contained in paragraph 6.8 ibid thus making them ineligible for the concessional rate of duty,,,,,

as contained in notification No. 23/2003 CE dated 31.03.2003 and as to whether the department is justified in invoking extended period for the duty,,,,,

demand. We find that the appellants have based their submissions mainly contending that the items manufactured, exported and cleared in DTA by",,,,,

them are similar; the department has misread the provisions of Policy in finding that DTA sales limit of 90% would apply to each product separately,",,,,,

whereas the word used is products.,,,,,

7. We find that a plain reading of the Paragraph 6.8 (a) of FTP (2019-14) would be beneficial. The paragraph reads as,,,,,

â??Units other than gems and jewellery units may sell goods up to 50% of FOB value of exports, subject to the fulfilment of positive NFE",,,,,

on payment of concessional duties. Within entitlement of DTA sale, units may sell in DTA, its products similar to goods which are exported or",,,,,

expected to be exported from units. However, units which are manufacturing and exporting more than one product can sell any of these",,,,, products into DTA, up to 90% of FOB of export of the specific products, subject to the condition that total DTA Sale does not exceed the",,,,,

overall entitlement 50% of FOB value of exports for the unit, as stipulated above.â??",,,,,

8. Learned Counsel for the appellant submits that the purpose of FTP and the notifications issued is to promote export and to grant benefits in the form,,,,,

of concessional rate of duties. The interpretation, as attempted by the department, in this case defeats the very purpose of the FTP and Notification.",,,,,

She also submits that as per paragraph 6.8 of FTP, products similar to goods which are exported or expected to be exported can be cleared in the",,,,,

DTA; even the standard input output norms (SION) for each goods exported is specified under a product group specified therein; ropes and twisted,,,,,

yarns fall under the product group â??textile productâ??; they are made from common raw materials. Therefore, these goods are similar for the",,,,,

purposes of paragraph 6.8. The concept of similar or dissimilar goods cannot be applied to the instant case; twisted yarns are further processed to,,,,,

obtain ropes since ropes are nothing but bunch of twisted yarns inter-twined into each other, the concept of similar goods cannot be applied; the policy",,,,,

nowhere specifies that two specific goods can be similar only when such goods are commercially interchangeable; as a matter of fact, the impugned",,,,,

goods are commercially interchangeable as both are similar to each other in composition, and character and use and the only difference is of the",,,,,

strength.,,,,,

9. Department relies heavily on the definition of similar goods given in Para 3 circular 7/2006-Cus dated 13.01.2006 F. No. 305/69/2005- FTT (Part,,,,,

IV). The said circular says.,,,,,

Â â??3. The paragraph 6.8 (a) of the FTP provides that EOU/EHTP/STP may sell goods up to 50% of FOB value of exports in DTA on,,,,,

payment of concessional duty subject to fulfilment of positive NFE. It also provides that within the entitlement of DTA sale, the unit has to",,,,,

sell in DTA its products similar to the goods, which are exported or expected to be exported. There has been doubt as to what constitutes",,,,,

â??similar goodsâ?. Further, when the units are not required to take any permission for DTA sale under paragraph 6.39.9, it is felt",,,,,

necessary to provide definition of â??similar goodsâ? to bring clarity and uniformity. Therefore, it has been decided that the definition of",,,,,

â??similar goods? would be based on the definition of similar goods as provided in the Customs Valuation (Determination of Price of,,,,,

Imported Goods) Rules, 1988. The term â??similar goodsâ? means â??goods which is although not alike in all respects, have like",,,,,

characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable with,,,,,

the goods which have been exported or expected to be exported having regard to the quality, reputation and the existence of trade mark",,,,,

and produced in the same unit by the same person who produced the export goodsâ?. The Boardâ??s Circular No. 85/95 dated 26-7-95,,,,,

issued in this regard stands rescinded.â??,,,,,

10. We find that the issue of similar goods came for discussion before various courts and tribunals. Coming to the question of similarity of goods,",,,,,

exported by the appellant, the appellants claim that as per the ratio of the decision of Tribunal in the case Meghmani Industries (supra) which was",,,,,

followed by the Tribunal in Consolidated Coins Co (supra), similarity does not mean being identical. We find that Tribunal in the case of Madras",,,,,

Aluminium Co. Ltd. (supra) held that the words similar cannot be restricted to mean â??sameâ? or â??identicalâ?; instead when wider meaning is,,,,,

given to the words â??similarâ? it will encompass the goods broadly falling within the same class or category. We also find that in the case of,,,,,

Hindustan Motors (supra), Tribunal held that the word â??similarâ? needs to be given a wider meaning beyond the concept of headings /sub-headings",,,,,

of the Tariff. By applying this logic, the Tribunal concluded that motor vehicle chassis are similar to motor vehicles. In the case of TELCO (supra)",,,,,

Tribunal has held that cars falling under heading 8703 and light commercial vehicles/ heavy commercial vehicles falling under 8704 are similar goods.,,,,,

In the instant case, as submitted by the appellant, both products manufactured and exported by them are manufactured out of HDPE/LDPE/PPE",,,,,

granules; have same characteristics and are placed under same product group â??textile productsâ?, as per standard input output norms (SION)..",,,,,

Therefore, following the ratio of the judgment cited above, we find that twisted yarn and rope fall under same category of goods. It is also pertinent to",,,,,

note that the permission/ Green Card given by the Development Commissioner vide SEEPZ/EOU/Broad banding/12/2002-03 /2037mentions both the,,,,,

products HDPE/PP/NYLON ROPE/YARN, Twisted yarn of HDPE/PP/NYLON. It can be seen that the products exported by the appellant are",,,,,

separated with the symbol â??/ (or)â??. The learned counsel for the appellants submit that Twisted Yarn and Rope are similar goods; Rope is nothing,,,,,

but bunch of twisted yarns; yarns are thus intermediate goods; FOB value of Ropes Exported should be counted for the DTA entitlement of Ropes or,,,,,

Yarns; the products manufactured by the Appellant (Twisted Yarn and Ropes) are similar products; they are similar in the quality, character and",,,,,

appearance; rope is nothing but intertwined twisted yarn; strength is based on the number of twisted yarn intertwined; otherwise quality is the same;,,,,,

characteristics like melting point (180Deg C); floating in water; elasticity; water resistance; corrosive ness; exposure to UV Rays, Acid, chemical etc",,,,,

are same; there could be difference in thickness, colour based on dye used and strength; it is common knowledge that rope is a thick yarn and yarn is",,,,,

a thin rope; depending on the use they are interchangeable. We find that Honâ?? ble Apex Court in the case of Woodcraft Products Ltd 1995(77),,,,,

ELT 23 (SC) held that the word similar is expansive and not restrictive like same and that the definition available in the Customs Act cannot be used in,,,,,

respect of Notification issued under other enactment.,,,,,

11. We find that tribunal in the case of Meghamani Industries 2010 (261) E.L.T. 411 (Tri. â?" Ahmd), held as follows.",,,,,

4. We have considered the submissions made by both the sides. Applicability of extended period in our opinion is not sustainable in this case,,,,,

when the appellant has submitted returns which would show exemption notification availed by them, it cannot be said that there was any",,,,,

suppression or mis-declaration once the details of exemption Notification is given. Central Excise officer who is receiving the returns would,,,,,

be able to check up whether the clearances by the appellants were in terms of the notification or not. Since the condition of the Notification,,,,,

are known to the officer as well as the appellants. When all available information is submitted, if the departmental officers choose not to",,,,,

take any action under the Notification, unless the department is able to show that in the return or in the declaration made by the appellants",,,,,

there were any omissions or commissions which would have prevented, the officer to find out the correct case, extended period cannot be",,,,,

invoked. In this case no evidence has been brought out to show that return/ documents declarations were incomplete or facts were,,,,,

suppressed or misdeclared in the order. Further, it was also submitted that invoices need not have been given by the appellant and if given",,,,,

the departmental officer need not have to verify. In any case, we find that mention of the notification number in the return and giving",,,,,

quantum of the clearances would be sufficient for the purpose of department. Therefore, the extended period cannot be invoked and",,,,,

demand if upheld would be limited to one year from the date of show cause notice. Therefore, we consider it a fit case for waiver of pre-",,,,,

deposit. Further, we also find that two Supreme Court decisions and a Tribunal decision have been cited before Commissioner but there is",,,,,

no finding in respect of these decisions. Commissioner simply observed that the facts of each case are different from this case and therefore,",,,,,

the case law is not relevant. In this case what was required to be considered was whether the definition of â??similar goodsâ? available in,,,,,

Customs Valuation Rules can be applied to the facts of the case. Basically the issue involved appears to be covered by the decisions cited by,,,,,

the learned advocate. The facts were not relevant but ratio of the decision as regards words â??similarâ?? was to be considered. Therefore,,,,,

these decisions are applicable. Ratio of these decisions is that definition available in the Customs Act cannot be used in respect of,,,,,

Notification issued under another enactment. In such cases common parlance or dictionary meaning has to be applied. Therefore, we find",,,,,

this issue has not been dealt with properly by the Commissioner. We could have considered this issue here in the Tribunal but for the fact,,,,,

that there is no examination of the goods in question which have been cleared in the DTA in terms of definition of similarity. In our opinion,",,,,,

in such cases, there has to be examination in respect of each product to show that this product is not similar to the one exported and why",,,,,

benefit of notification is not available to this particular product. In the absence of clear finding in respect of each product, we consider the",,,,,

order would be incomplete. As already observed by us in respect of dyes, there seems to be clarity in view of the fact that demand shown",,,,, under the heading VAT dyes would give an impression that department has accepted that VAT dyes, OBA and solvent dyes form distinct",,,,,

categories. There is no finding as regards agro-chemicals which are similar and if they are not similar why they are not similar.,,,,,

Commissioner has to consider all these facts and give finding on the issues. Therefore, we remand the matter to the Original Adjudicating",,,,,

Authority, who shall consider in respect of each item the eligibility in DTA and also which meaning of â??similar goodsâ? to be adopted.",,,,,

We have already held that extended period cannot be applied. Appellants are to be given proper opportunity to present their case before,,,,,

the final decision is taken.,,,,,

12.Â Â Â Â Â Â Though in the above case, the above case is in respect of stay, the view of the tribunal has been made categorically clear on the",,,,,

issue of similarity of goods and admissibility of extended period of limitation. Tribunal in the case of Hindustan Lever Ltd. 2011 (268) ELT 252 (Tri-,,,,,

Chennai) has opined that fresh mushrooms and processed mushrooms even though classifiable under separate chapter headings belong to the same,,,,,

class of goods and both are similar. In view of the above discussion, the permission letter given by the development commissioner, grouping of both the",,,,,

items under one category under SION and the case law cited, we find that the appellantâ??s contention on the similarity of goods exported/ sold in",,,,,

DTA merits acceptance and we uphold the same. Consequentially, the demands raised by the revenue are not sustainable and are liable to be set",,,,,

aside.,,,,,

13. We find that the Revenue has relied upon the illustration given in the Circular no. 12/2008-Cus dated 24.07.2008 â?" F.N. DGEP/FTP/13/2008-,,,,,

EOU & G&J â?" PARA 8 for calculating the eligibility of DTA sale where more than one products are manufactured, exported and cleared in DTA",,,,,

by EOUs. Relevant para of the circular is reproduced as below.,,,,,

â??8. Flexibility for DTA sale for the units manufacturing and exporting multiple products Under the EOU scheme, a unit is permitted to sell",,,,,

up to 50% the goods which are 'similar' to the goods exported or expected to be exported at concessional rate of duty. 'Similar' goods have,,,,,

been defined in Board's circular No. 07/2006-Cus dated 13.01.2006 as goods which although not alike in all respects, have like",,,,,

characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable. The,,,,,

quality of the goods, reputation and the existence of a trade mark are among the factors to be considered in determining whether goods are",,,,,

similar. The above restriction posed difficulty to units which are manufacturing multiple products as they can only sell the specific goods in,,,,,

DTA up to 50% of value of export of that specific product. In order to obviate this difficulty, flexibility is provided by allowing DTA sale of",,,,,

a specific product up to 75% of the FOB value of export of the specific product within the overall total entitlement of 50% of total FOB,,,,,

value of exports which can be cleared at concessional rate of duties. Accordingly, para 6.8 (a) of FTP has been amended suitably. To",,,,,

exemplify, if a unit manufactures products 'A' and 'B' and exports product 'A' worth Rs 10 lakh and product 'B' worth Rs 15 lakhs, the unit",,,,,

was earlier allowed to sell goods worth of Rs 12.5 lakh (i.e 50% of the FOB value of exports of Rs 25 lakhs) into the DTA. Within this,,,,,

entitlement, the unit could sell into DTA products in proportion to the value of export of individual products i.e. for product 'A' worth Rs 5",,,,,

lakhs and for product 'B' worth Rs 7.5 lakhs. In terms of amendment now carried out in para 6.8 (a) of FTP, the unit would be able to sell",,,,,

into DTA, the product 'A' up to a value of Rs 7.5 lakhs or product 'B' upto a value of Rs 11.25 lakhs provided the total value of sale by the",,,,,

unit (of A&B together) into DTA under concessional duty rate does not exceed Rs 12.5 lakhs.â??,,,,,

14. The appellant submits that the learned Commissioner has reproduced the paragraph of the policy in a wrongful manner; the impugned order,,,,,

conveniently uses the word â??specific productâ?? instead ofâ?? specific productsâ??; correct word used in the policy is â??productsâ??; change,,,,,

of word from â??productsâ?? to â??productâ?? resulted in wrongful interpretation of the entire provisions; simple and plain reading of the provision,,,,,

reveals that those EOU units which are engaged in manufacturing and exporting more than one product, can sell any of these products into DTA up to",,,,,

90% of the total FOB value of all the goods exported by the appellants; in other words, if an EOU is engaged in manufacturing more than one product,",,,,, the DTA entitlement limit for each of the product will be 90% of the total Export made subject to overall limit of 50%. The appellants argue that,,,,,

Notification 23/3003â?"CE dated 31.03.2003 provides that exemption shall be availed if the goods are cleared to the domestic tariff area in,,,,,

accordance with sub paragraphs (a), (b), (d) and (h) of paragraph 6.8 of export and import policy; the notification requires that Deputy/Assistant",,,,,

Commissioner of Customs/Central Excise should be satisfied with the eligibility of the clearance of the said goods; Development commissioner is,,,,,

competent authority to decide on as to whether the goods are eligible for clearance in DTA and as to the DTA entitlement; the appellant have been,,,,,

regularly submitting copies of intimations given to the Development Commissioner; no objections have been ever raised by either the Development,,,,,

Commissioner or the Deputy Commissioner of Central Excise in this regard; At no point of time, it has been disputed by the competent authority that",,,,,

ropes and twisted yarn manufactured and exported or cleared in DTA are not similar goods and that ropes cannot be sold in DTA in excess of the,,,,,

proportion of their exports. it is well settled law that once the competent authority i.e. Deputy Commissioner grants permission for DTA clearance, CE",,,,,

authorities are precluded from questioning its validity; Condition no. 2(ii) (a) provides that goods to be cleared into DTA are similar to the products,,,,,

exported or expected to be exported; all the goods manufactured by the EOU, as mentioned in the LOP are meant to be exported; there is not",,,,,

stipulation that only those products which are similar to the products exported alone should be cleared within the DTA; if it were so, the expression",,,,,

â??expected to be exportedâ?? would be redundant.,,,,,

15. We find that coordinate benches of the Tribunal in a series of decisions held that the appellants contention is correct and that in terms of the Para,,,,,

6.8 of FTP, in respect of the units which are manufacturing more than one item, goods whose exports are less can be cleared more in the DTA",,,,,

subject to the overall limitation of 50 % of the FOB of export performance. Chennai Bench of the Tribunal in the case of M/s ABI Showatech India,,,,,

Ltd 2019-TIOL-1246-CESTAT-Mad held that,,,,,

6.2. â??Thus it can be seen that within entitlement of DTA sale, units may sell in DTA, its products similar to goods which are exported or",,,,, expected to be exported from units. The description of goods in the green card does not differentiate or specify goods on the basis of,,,,,

customs tariff. It merely treats them belonging to a class. Bearing machines are considered by department as part of turbo charger which,,,,,

are parts of automobile, then precision automotive components also being part of automobiles should fall in the same class, since they are",,,,,

engaged in manufacture and export of various part of automobile as stated in the green card. Further, as per the table given in paragraph",,,,,

2 above, the appellant has cleared in DTA bearing housing only. Precision automotive competent was not cleared in DTA. In paragraph 6.8",,,,,

what is stated is that when more than one product is exported such unit can clear in DTA up to 90% of value of such specified goods,,,,,

provided the total DTA sale does not exceed 50% FOB value of exports of the unit. The appellant have sold 90% FOB of value of export of,,,,,

bearing housing in DTA and has not exceeded 50% of FOB value of the unit since there is no DTA sale of precision automotive component.,,,,,

The condition is therefore fully satisfied. The denial of concessional rate of duty as per the notification is unjustified. The demand raised,,,,,

cannot sustain and requires to be set aside, which we hereby do. The impugned order is set aside and the appeal is allowed with",,,,,

consequential relief if any.,,,,,

16. In the case of ABI Turnamatics 2019 (366) ELT 1048 (Tri-Chennai) it was held that,,,,,

5.5 In the first place, we find that the Tribunal in the case of Meghmani Industries Ltd has addressed the very controversy in respect of the",,,,,

definition of similar goods for exemption under notification no. 23/2003-CE. The tribunal in the decision after referring to the judgement of,,,,,

the Honâ??ble Supreme Court in the case of Woodcraft Products Ltd. 1995 (77) ELT 23 (SC) and the Tribunal in Telco 2000 (126) ELT,,,,,

1102 (Tri) noted that the definition available in the Customs Act cannot be used in respect of notifications issued under another enactment;,,,,,

then in such cases common parlance or dictionary meaning is to be applied. Secondly, we find from the green card dated 31.03.2006 issued",,,,,

by the Development Commissioner MEPZ and subsequently also further revised by the MEPZ/SEZ that the main products that was,,,,, manufactured /exported to be turbo charger components. There is no doubt that the appellant had exported bearing housing whereas the,,,,,

goods to be cleared into DTA seeking benefit of notification no. 23/2003 was turbo wheel assembly. While the adjudicating authority has,,,,,

been at pains to cite the difference in characteristic and function of these two items, the fact remains that both of them are components of",,,,,

turbo charger and hence would surely fall under the broad banded term â??turbo charger componentsâ?? which is the export product as,,,,,

per the EOU / green card issued to be appellant by the Development Commissioner. Hence, when the permission granted to the appellant",,,,,

has not listed any specific components of a turbo charger but instead has only indicated as export product of 12,50,000 nos. of turbo",,,,,

charger component which was even subsequently enhanced to 32,00,000 nos. of turbo charger components, the appellant cannot then be",,,,,

said to have caused the breach of the conditions. Both bearing housing and turbine wheel are surely component parts of turbo charger, the",,,,,

fact which has been admitted by the adjudicating authority in para 12 of the impugned order. If, on the other hand, the permission granted",,,,,

by the Development Commissioner to the EOU was only for bearing housing, in that event, the clearance of turbine wheel which is part",,,,,

distinct from bearing housing would have come under the scanner. But when the permission is generic and only states â??turbo charger,,,,,

componentsâ? the condition of the impugned notification gets satisfied so long as the parts that they exported and the parts cleared into,,,,,

DTA are both like components of turbine charger.,,,,,

17.Â Â Â Â Â Â In the case of Consolidated Coin Company Pvt. Ltd. 2013 â?"TIOL-139-CESTAT-DELHI Tribunal held that as regards the third,,,,,

point of dispute since hte items exported by the appellant the â??copper alloys coins blanks and copper zinc nickel stripâ? are the similar products,",,,,,

both falling under heading 7409 and since the DTA Clearances are within the overall entitlement of 50% of the FOB value of the exports, in",,,,,

accordance with the provisions of para 6.8(a) of the FTP the DTA clearances of any one of these products can be made up to 90% of the FOB value,,,,,

of the export. The DTA Sales of coper alloy coin blanks are well within 90% of their clearances. In view of this, the third objection of the department",,,,, also does not appear to be valid and as such the duty demand of Â Rs.83, 23,000/- does not appear to be sustainable.",,,,,

18. In terms of paragraph 6.8(a) of the FTP units which are manufacturing and exporting more than one product can sell any of these products into,,,,,

DTA up to 90% of FOB value of export of the specific products, subject to the condition that total DTA sale does not exceed the overall entitlement",,,,,

of 50% of FOB value of exports for the unit as stipulated. A plain reading of the provisions of policy gives understanding that within entitlement of,,,,,

DTA sale, the units may sell in DTA, its products similar to goods which are exported or expected to be exported from units and in case they are",,,,,

manufacturing and exporting more than one product, they can sell in DTA any of this products subject to limitation of 90% of FOB value of export of",,,,,

the specific products. However, this is subject to overall entitlement of 50% of FOB value of exports. The policy is clear in saying that the units may",,,,,

sell â??anyâ? of these products into DTA and subject to 90% of export value of export of the specific â??products.â? In our understanding, a plain",,,,,

meaning of words is that any of the products manufactured or exported can be sold in DTA. The only restriction that appears to be that the value of,,,,,

DTA clearances of any of the products should not exceed 90% of FOB value of export of the specific products. The catch here seems to be on the,,,,,

word â??productsâ? whereas the policy mentions the same to be specified products. The department wants to read the same down as â??product.â?,,,,,

As seen above, Tribunal has taken a categorical stand on the interpretation of this provision in the case of measure ABI Showatech India, ABI",,,,,

Turnamatics and M/s Consolidated Coin (all supra), in favour of the appellants. IN the case of ABI Showatech the export value of bearing housing",,,,,

machines was only about 25 thousands, whereas value of DTA clearances was about 7crores. The same was held to be valid.",,,,,

19. We find that EOUs are given a facility to clear the goods in DTA, as a reward for the exports made by them subject to the fulfilment of positive",,,,,

NFE. It may so happen that EOU unit manufacturing more than one product may not be able to export all the products in the same proportion; the,,,,,

overseas market may not have demand for all the products manufactured by them. Understandably, EOU cannot be expected to throw away or",,,,,

destroy the product or sell in DTA at a higher rate of duty resulting in financial loss. We find that, under these circumstances, a provision has been",,,,, built in to the FTP, provision has been made to enable the manufacturer to sell such goods in DTA. The Limitation of 90% of FOB of the products",,,,,

appears to have put to ensure that there is export of all the products manufactured and to ensure that a product which is not at all exported is not,,,,,

cleared in DTA. We find that, as the EOU scheme is based on value of clearances, once export obligation is fulfilled, the manufacturer cannot be",,,,,

constrained to clear particular products in DTA in proportion to the export of the specific product. This appears to be the understanding of the tribunal,,,,,

in the series of judgments cited above. Moreover, the facts and circumstances of the instant case being similar to that of the cases cited above, we",,,,,

Â Bearing Housing Machined (parts of Turbo

Charger)",,,Precision automotive components,,

FOB Value

O f exports (

Rs.)","Value of DTA

clearances","DTA

clearances as

a% of FOB

value of

exports","FOB value of

exports","Value of DTA

clearances","DTA

clearances as

% of FOB

value of

exports

25135,"7,03,86,720",280035%,209052935,Nil,---

(Pronounced in Court on 19.05.2021),,,,,

