
(2023) 09 CESTAT CK 0035

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 10326 Of 2022

M/S. Intas Pharmaceuticals Limited

APPELLANT

Vs

Commissioner Of Customs, Ahmedabad

RESPONDENT

Date of Decision : 19-09-2023

Acts Referred:

Customs (Import Of Goods At Concessional Rate Of Duty) Rules, 2017 — Rule 3, 3(e)
Customs Act, 1962 — Section 2(26), 28
Central Excise Act, 1944 — Section 2(f)

Citation : (2023) 09 CESTAT CK 0035

Hon'ble Judges : Somesh Arora, Member (J); C.L. Mahar, Member (T)

Bench : Division Bench

Advocate : Willingdon Christian, Rajesh R. Kurup

Final Decision : Allowed

Judgement

Somesh Arora, Member (J)

1. The issue involved is whether the appellant can be ousted from the eligibility for benefit of Notification No.50/2017-cus dated 30.7.2017 solely because the (duty-free) goods imported by him were used in the factory of loan licensee, i.e. M/s Tuton Pharma, Ahmedabad, and not the appellant's own factory.

2. The Appellant had imported Lactulose for use in the manufacture of Lactulose Solutions (LOOZ)/ Lactulose Oral Powder (LOOZ SPRINKLES) under 33 Bills of Entry, during the period from 15.09.2017 to 25.03.2019. There is no dispute that as per the requirement of the subject Notification No. 50/2017-Cus, the Appellant had executed necessary Bonds with supporting Bank Guarantees, showing M/s Tuton as manufacturer, and followed meticulously the procedure prescribed under the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017. The Department's objection for denying the benefit of the exemption Notification is that the said manufacturing activity was carried out not at the Appellant's factory but at the premises of M/s Tuton Pharma, GIDC, Ahmedabad and, therefore, the Appellant, as an importer, is not the

manufacturer. Very significantly, the said premises of M/s Tuton Pharma was duly declared in the Bonds and also duly registered as "additional place of business" Appellant in terms of the CGST Act, 2017.

3. Shri Willingdon Christian, learned Advocate appearing for the appellant submits that neither the subject Notification nor the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 make it mandatory that the use of the imported goods should be at the importer's own factory. In other words, once the importer has utilized the imported goods for the specified purpose, the benefit of the exemption cannot be denied, even if the process has taken place in the factory of loan licensee/job worker. There is no dispute that the imported goods were used on behalf of the Appellant in the factory of loan licensee which is the Appellant's additional place of business duly so registered under GST law. The ownership of the goods remained with the Appellant, i.e. importer right from the time of import of goods up to the use thereof in the final product for the prescribed end use. The condition of end use also stands fully complied with. The fundamental objective of the Notification for use of duty free imported bulk drug in the manufacture of the prescribed medicine stands fulfilled.

4. Learned advocate further submits that neither the subject Notification nor the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 prescribe any mandatory condition for use of imported goods in the importer's own factory. There is nothing in the exemption Notification or the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017, to prohibit an importer from sending imported goods to a loan or a job worker for processing or manufacture of the intended final product. On the contrary, as per the definition of "actual user" in Para 9.03 of the Foreign Trade Policy 2015-20, an "actual user" is a person who utilizes imported goods for manufacturing in his own industrial unit or manufacturing for his own use in another unit including a jobbing unit, which has a definitive postal address. At this juncture, it is pertinent to add that the loan licensee/ jobbing unit in this case, viz. M/s Tuton Pharmaceutical, which is at the address at Plot No.85, GIDC, Naroda, Ahmedabad, having GSTIN No.24AAAF8598A1Z4, has been specifically mentioned in the Bond, demonstrating its definitive postal address as required in terms of the definition of "actual user". The said place also happens to be the Appellant's additional place of Business under Appellants GST Registration certificate.

5. Learned advocate submits that in fact, the word "importer" is defined in Section 2(26) of the Customs Act, 1962 as under :-

(26) "importer", in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes any owner or any person holding himself out to be the importer.

On the other hand, the rule making authority, knowing fully well about the definition of importer having been given in the Customs Act, 1962 has chosen to define separately a "manufacturer" vide clause (e) of Rule 3 of IGCR Rules, 2017

reading as under :-

"Rule 3(e): "manufacture" means the processing of raw material or inputs in any manner that results in emergence of a new product having a distinct name, character and use and the term "manufacturer" shall be construed accordingly."

Thus, the subject Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 being part of the subject Notification provides for separate connotations for the words "importer" and "manufacturer" respectively.

6. Apart from the above, among the particulars to be furnished to the Deputy Commissioner, one of the information in clause (i) is "the name and address of the manufacturer". Thus, it is obvious that the importer will also require to furnish particulars of the name and address of the manufacturer apart from his own name as importer.

7. In support of the above submissions, the Appellant relied upon the following judgments:

(a) 1990 (50) ELT 210 (Guj.) Indica Laboratories Pvt. Ltd.

(b) 2017 (357) ELT 464 (T) FDC Ltd. vs. CCE

(C) 2017 (358) ELT 990 (T) Finolex Cables Ltd. vs. CC

D) 2019 (370) ELT 1637 (T) Torrent Pharmaceuticals Ltd. vs. CCE

8. Learned Advocate contended that the following judgments relied upon by the Department in the following cases are based on the specific use of words "his factory" in the erstwhile Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996. Hence, the said judgments will not apply to the facts of the present case:

a) 2015 (318) ELT 545 (SC) CCE vs. Cosme Farma Laboratories Ltd.

b) 2018 (360) ELT 555 (T) CCE vs. Ferring Pharmaceuticals Pvt. Ltd.

c) 2003 (153) ELT 627 (T) Panacea Biotec Limited vs. CC

9. The subject Notification stipulates execution of a bond with Bank Guarantee for the use of the imported goods for the specified purpose. The Appellant had clearly indicated name and address of M/s Tuton's factory as manufacturer (loan licensee). The bonds were accepted and permission was granted on that basis for availment of the exemption benefit. In that view of the matter, the Department cannot take a completely contrary view and deny the benefit. In this context, reliance is placed on the judgment of the Hon'ble Tribunal in case of CCE Vs. JCT Electronics Ltd. reported in 2010 (261) ELT 267 (T)

10. The Show Cause Notice dated 23.9.2020 covering the period from 15.09.2017 to 25.03.2019 is also partly time barred. The Appellants have given all the relevant details about their intention to get the goods manufactured by M/

s Tuton Pharma. They are also executed Bonds on that basis and the Department had permitted use of the goods at M/s Tuton. There is nothing to indicate any willful suppression of facts or mis-statement or fraud, etc. Hence, longer limitation period will not apply under Section 28 of the Customs Act, 1962.

11. Shri Rajesh R. Kurup, learned Superintendent (AR) relied upon the findings in the impugned order.

12. Considered the rival submissions. We find that matter stand largely covered by the decision in the case of FDC Limited vs. CCE, Belapur reported in 2017 (357) ELT 464 (Tri. Mumbai) which is in relation to job-work under Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996 only and in which the following determination was made by the bench;

"4. We have carefully considered the submissions made by both sides and perused the records. The issue in dispute lies in a narrow compass that imported goods under exemption notification carrying condition of end use. Under Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996 whether goods can be used in the importer's own factory or also can be used in the job worker factory. There is no dispute the goods were used on behalf of the appellant in their loan licensee (job work factory) on behalf of the appellant only. The ownership of goods remained with the appellant right from import of the goods up to the use in the final product. In this position, in our view the imported goods used for the specified purpose, the condition of end use stands complied with. The whole objective of the duty free imported bulk drug is that it should be used in the manufacture of life saving drugs or medicine. In our view, if this condition is fulfilled while the ownership of the goods is with appellant, it can be said condition of the end use is satisfied. This issue has come up in the case of Tamil Trading Corporation Ltd. (supra), wherein the Tribunal has passed the following order :

"We have gone through the records of the case carefully. The Customs Notification No. 21/2002-Cus. provides concessional rate of duty for imported Crude Palm Oil for the manufacture of refined oil. Condition 5 of the Notification stipulates that the importer follows the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996. Before the introduction of the above Rules in 1996, each Notification was having end-use condition and the importer was normally required to produce the end-use certificate. However, the above rules were framed as an improvement over the earlier procedure. The above Rules are applicable to an importer who intends to avail of the benefit of an exemption Notification and where the benefit of such exemption is dependent upon the use of imported goods covered by the Notification for the manufacture of any excisable commodity. As per Rule 3 a manufacturer intending to avail the benefit of the exemption notification shall obtain a Registration from the Assistant Commissioner of Central Excise having jurisdiction over his factory. Lower

authorities have done their job by a very literal interpretation of Rule 3. Their argument is that the Rule 3 uses the expression "his factory". In other words the lower authorities interpret that the importer should own a factory and he has to use the imported material only in his factory. Otherwise, the importer would not be entitled for the concessional assessment under the above Notification. If the importer uses the imported goods in a factory belonging to some other person he would not be entitled for the concessional assessment. The Tribunal's decision in the Panacea Bio-tech Ltd. case relied on by the Commissioner has broadly followed the above line of argument. In our view, the above approach is not at all in consonance with the philosophy of liberalisation and globalisation embraced by the Government of India in all its policies relating to Customs, Excise and Foreign Trade as revealed in a plethora of policy documents, legislation, and procedures. In the Exim Policy actual user includes a person who utilises the imported goods for his own use in another unit including a jobbing unit. Gujarat High Court in the case law cited by the Id. Advocate has clearly spelt out that for excise purposes manufacturer includes a person who gets his goods manufactured from the facilities owned by another person. The Board's Circular dated 6-2-2002 enables a manufacturer to send duty free goods received to another manufacturer having registration for carrying of repairs/re-conditioning, etc. In the above said Circular the Board has clarified that the goods received duty free can be removed to another eligible manufacturer under the Central Excise (Removal of Goods under the Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001. However, the recipient manufacturer would require Registration under Rule 3 of the said Rules. In our view, denial of Registration under Rule 3 of the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996 to the importer on the ground that he does not have own a factory in which the imported goods are to be used is very much against the Exim Policy, Board's Circular and the Hon'ble Gujarat High Court interpretation of manufacturer under Section 2(f) of the Central Excise Act, 1944. There is nothing strange or illegal in a person utilising the manufacturing facilities of another. In order to be a manufacturer one need not own a factory. The practice of more than one manufacturer using a factory is recognised as can be seen in the SSI Notification with regard to clubbing of clearances. The expression "his factory" should be interpreted to mean the factory where the importer wants to utilise the imported goods in terms of the Notification. The Department cannot insist on ownership of the factory and deny registration for the purposes of the Notification. The Tribunal, in the case of Commissioner of Central Excise, Bangalore v. Electronic Research Ltd. cited by the Id. Advocate, has held that literal meaning of statute should be abandoned if it leads to unjustified results. In that case, goods imported under concessional rate of duty for use in one factory were transferred to the factory of the importer at another place under certain circumstances. The Commissioner (Appeals) decided in favour of the importer. Revenue came in appeal before the Tribunal. The Tribunal held that the importer was entitled to exemption as neither the Rules nor the Notifications itself prohibited such transfer. The above decision was held in the context of the

Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996. The ratio of the above decision is applicable to the present case also. The fact that Chennai Commissionerate has permitted Registration in respect of the importer who does not own the factory where the imported Crude Palm Oil is utilised is also supporting the appellants' case. Hence we allow the appeal with consequential relief, if any."

5. In the case of G.R. International (supra) the Tribunal held that following common law principle that what is done by duly constituted agent will be treated as having done by the principal and thus the condition as to manufacturer set out in Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996 will include the premises of loan licensee. The appellant's case is squarely covered by the aforesaid two decisions. As per the above discussion and decisions of the Tribunal cited (supra), we are of the considered view that even though the factory is of the loan licensee but use is on behalf the appellant therefore there is no violation of condition of the Customs Rules, 1996. Since we are deciding the appeal on above discussion and merits of the case, we need not to address other issues raised by the learned Counsel. We therefore set aside the impugned order and allow the appeal."

13. So far as the decision cited by learned AR are concerned, we find that in CCE, Goa vs. Cosme Farma Lab Limited reported in 2015 (318) ELT 545 (SC), the question was different and the dispute related to whether the 'manufacturer' or 'principal' who is owner and manufacturer in the given facts and circumstances of the matter. Further, in the case of CCE, Belapur vs. Ferring Pharmaceuticals Pvt. Limited – 2018 (360) ELT 555 (Tri. Mumbai), the single Member Bench in the facts of the case, held that loan licensee to be treated as manufacturer and further in the facts of the issue the cancellation of registration as manufacturer was required. We find that the judgment in the matter FDC Limited vs. CCE, Belapur reproduced above more directly deals with the issue in hand and deserves to be followed in the facts of the instant matter.

14. In view of forgoing, we are inclined to accept the appeal. Accordingly, the appeal is allowed with consequential relief.