
(2023) 06 CESTAT CK 0035

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No.13912 Of 2013

Sun Pharmaceuticals Industries Ltd

APPELLANT

Vs

C.C.E. & S.T.-Surat- II

RESPONDENT

Date of Decision : 23-06-2023

Acts Referred:

Central Excise Rules, 2002 — Rule 25, 26
Customs Act, 1962 — Section 28(1), 58, 65
Central Excise Act, 1944 — Section 11A, 11A(1), 11AB, 11AA
Customs Act, 1962 — Section 28AB, 111(J), 111(O), 112, 112(ii), 112(a), 112(b)(ii),
114A, 117

Citation : (2023) 06 CESTAT CK 0035

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

Bench : Division Bench

Advocate : A B Nawal Consultant, G. Kirupanandan, Vinay Kansara

Final Decision : Allowed

Judgement

C L Mahar, Member (T)

1. The brief facts of the matter are that the appellant M/s. Sun Pharmaceuticals Industries Ltd. a 100% EOU located at Plot No. 24/2, GIDC Industrial Estate, GIDC, Panoli is engaged in the manufacture of bulk drugs falling under chapter no. 29 of Central Excise Tariff Act, 1985. The appellant are holding ware housing license under Section 58 and Section 65 of the Customs Act, 1962. The appellant are registered as 100% Export Oriented Unit with the Development Commissioner KFTZ Gandhidham. The unit procures imported raw materials as well as indigenous raw material under 100% EOU Scheme without payment of Customs, Central Excise duty for manufacture of finished goods and for exporting the same as per the export-import policy.

2. It has been submitted by the appellant that they wanted to get 'Theobromine' manufactured on job work basis from other manufacturers as they did not possess required facility in their manufacturing unit. Accordingly, the appellant

made a request to Deputy Commissioner of Division-III, Ankleshwar via Superintendent of the concerned Range for permission to allow the manufacturing of 'Theobromine' from M/s. Heartwell Life Science. It was duly declared by the appellant that M/s. Heartwell Life Science, a job worker is located at Plot No. A/1,7304, GIDC Estate, Ankleshwar. The appellant gave all the required details regarding job work vide their letter dated 04.11.2009 and 02.01.2010 they also enclosed consent letter of M/s. Heartwell Life Science. Considering the request of the appellant M/s. Sun Pharmaceuticals Industries Ltd., the Deputy Commissioner, Central Excise & Customs Div-III, Ankleshwar granted permission to remove the required raw materials for job work to M/s. Heartwell Life Science located at Plot No. A/1, 7304, GIDC Estate, Ankleshwar subject to fulfillment of conditions laid down under Exim policy and subject to compliance of conditions of Board Circulars issued for monitoring the job work process. The copy of the permission was also forwarded to the concerned Range Officer with an instruction that the jurisdictional range office need to check the existence and production capacity of the job worker and also to check whether there is any misuse of the permission such as diversion of duty free imported goods to the domestic market at the end of job worker. The range officer visited the premises of declared job worker namely M/s. Heartwell Life Science located at Plot No. A/1, 7304, GIDC Estate, Ankleshwar and to his surprise even though there was no unit in the name of M/s. Heartwell Life Sciences in the existence at the given address for which job work permission has been granted by the Deputy Commissioner regarding non-existence of job worker M/s. Heartwell Life Sciences at the declared address. The Range Superintendent accordingly informed the Deputy Commissioner. After necessary investigations a show cause notice dated 02.08.2010 came to be issued whereunder, it has been alleged that the appellant M/s. Sun Pharmaceuticals Industries Ltd. has violated the conditions of the permission granted to them vide the permission letter of the Assistant Commissioner dated 07.01.2010 and thereby, they have violated the conditions of exemption notification as well as export import policy.

2.1 The penal provision against M/s. Heartwell Life Science have also been invoked for making misdeclaration. The penal provisions against Shri Pankaj Mehta, partner of M/s. Heartwell Life Science and Shri Ajay Modi, authorized signatory of the appellant M/s. Sun Pharmaceuticals Industries Pvt. Ltd. have also been invoked as per the provisions of the Customs Act, 1962 as well as Central Excise Act. The matter has been adjudicated by the Joint Commissioner vide his order dated 08.07.2011, the said order is reproduced below:-

29.1 I order to recover from the notice the Customs duty amounting to Rs. 2,29,234/- (Rupees Two Lakh Twenty Nine Thousand Two Hundred Thirty Four Only) leviable on imported duty free goods under proviso to Section 28(1) of Customs Act, 1962 and to recover the Central Excise duty of Rs.1,78,793/- (rupees One Lakh Seventy Eight Thousand Seven Hundred Ninty Three Only) leviable on indigenous duty free goods proviso to Section 11A(1) of Central Excise Act, 1944, and

29.2 I order to confiscate the seized imported/indigenous raw materials, procured duty free valued at Rs.35,30,250/- under Section 111(J) & (O) of the Customs Act, 1962 read with Rule 25 of the Central Excise Rules, 2002. Since the goods are not available as the same were released with requisite security, therefore in lieu of confiscation I impose the redemption fine equivalent to total duty amount of Rs.4,08,027/- (Rupees Four Lakh Eight Thousand Twenty Seven Only) under Section 111 (J) & (O) of the Customs Act, 1962 and Rule 25 of Central Excise Rules 2002 respectively on the noticee, and

29.3 I Impose the penalty of Rs.2,29,234/- (Rupees Two Lakh Twenty Nine Thousand Two Hundred Thirty Four Only) on the noticee under Section 112 (a) & (b) (ii) Section 114A of Customs Act, 1962 of the Custom Act, 1962 (for violating the conditions of Notification No.52/2003-Cus dated 31.03.2003 being the offence as described under Section 112 of the Act Ibid), and

29.4 I Impose the penalty of Rs.1,78,793/- (for violating the conditions of Notification No. 22/2003-C.E. dated 31.03.2003) on the noticee under Rule 25 of Central Excise Rules 2002 read with Section 11A of Central Excise Act 1944, and

29.5 I order to recover from the noticee the Interest at appropriate rate under Section 28AB of Customs Act, 1962 under Section 11AB/11AA of Central Excise Act, 1944 and in term of B-17 Bond furnished by the noticee, and

29.6 I impose the penalty of Rs.2,29,234/- (Rupees Two Lakh Twenty Nine Thousand Two Hundred Thirty Four Only) on M/s Heartwell Life Science under Section 112 (ii) of Customs Act 1962 Section 114A of Customs Act, 1962 (for violating the conditions of Notification No.52/2003-Cus dated 31.03.2003 being the offence as described under Section 112 of the Act ibid).

29.7 I Impose the penalty of Rs.1,78,793/- (for violating the conditions of Notification No. 22/2003-C.E. dated 31.03.2003) on M/s Heartwell Life Science under Rule 25 of Central Excise Rules 2002 read with Section 11A of Central Excise Act 1944, and

29.8 I impose penalty of Rs. 75,000/- on Shri Pankaj Mehta, Partner of M/s. Heartwell Life Science under Section 112 (a) (b) (i) read with Section 117 of Customs Act 1962 & under Rule 26 of Centre: Excise Rules 2002, and

29.9 I Impose penalty of Rs. 75,000/- on Shri Ajay Modi (Authorised Signatory of the noticee) under Section 112 (a) (b) (ii) read with Section 117 of Customs Act 1962 & under Rule 26 of Central Excise Rules 2002, and

29.10 I impose penalty of Rs. 75,000/- on Shri G.B. Patel, Factory Head of the noticee under Section 112 112 (a) (b) (II) read with Section 117 of Customs Act 1962 & under Rule 26 of Central Excise Rules 2002, and

30. This order is Issued without prejudice to any other action that may be taken against M/s. Sun Pharmaceuticals Industries Ltd., (100%EOU) Plot No.24/2 GIDC Panoll, Taluka Ankleshwar, Dist. Bharuch and against M/s. Heartwell Life Science,

M- 11, Empire Estate Building, Ring Road Surat, under Customs Act 1962, Central Excise Act, 1944 and the Rules framed thereunder or any other law for the time being in force.

2.2 The appellants have challenged the Order-in-Original before the learned Commissioner (Appeals) who vide his order dated 19.08.2013 has upheld the findings of the Order-In-Original.

3. The learned advocate appearing on behalf of the appellant have contended that the Commissioner (Appeals) has failed to provide a speaking order as he did not accept any of the submissions made by the appellants at the time of adjudication of the matter.

3.1 It has been submitted by the learned advocate that they did not know that the duty free imported material cleared by them to M/s. Heartwell Life Sciences has been diverted to any other manufacturing unit. They at all the times have been under impression that M/s. Heartwell Life Sciences have manufactured the intermediate product namely 'Theobromine' at the given address which was A/1, 7304, GIDC Estate, Ankleshwar. It was further emphasized that they have no intention to divert the duty free raw materials to any other premises with an intention to evade payment of duty. It has forcefully been argued by the appellants that raw materials were put to the intended use and there has been no misuse or diversion of the same in the domestic market. The learned Advocate admitted that if there has been some lapses in the present case it was all on the part of the job worker and not on the part of M/s. Sun Pharmaceuticals Industries Ltd. It was further stressed that the wrong declaration of address of manufacturing premises on the part of M/s. Heartwell Life Sciences did not result in any evasion or violation of any regulation. The learned advocate has also cited the case of M/s. ADINATH TEXTILES LTD. reported under 2019 (366) ELT 1053 (Tri.-Chandigarh).

4. We have also heard the learned Departmental representative who has reiterates the findings of the impugned orders.

4.1 We have heard both the sides. We are of the view that with an objective to encourage exports, the Government of India has imposed lot of faith and has allowed import and acquisition of the raw materials duty free for use of the same in the manufacture of export products. The relevant notification No. 52/2003-Cus dated 31st March 2003 allowed import and acquisition of raw material without payment of any duty subject to certain undertakings and paper formalities. In this case, we find that the appellant has violated the faith imposed in them in as much as they did not even bother to check whether the job worker declared by them for manufacture of intermediate product exist at the time declared manufacturing unit or not. It also shows the carelessness on the part of the manufacturer in failing to ensure as that the duty free import or acquired are being sent to the right place which have been declared by them for manufacture of the intermediate products.

4.2 The declared job worker M/s. Heartwell Life Sciences was fully aware that the duty free raw materials sent by the appellant M/s. Sun Pharmaceuticals Industries Ltd. to them were not being put to the process at the declared address. If there was any difficulty in getting the duty free imported raw materials processed for the purpose of manufacture of intermediate products at the given address at plot no. A/1, 7304, GIDC Estate, Ankleshwar. They had enough time to come clean and inform the authorities that goods are being taken to M/s. Hemdeep Organics Pvt. Ltd. explaining the difficulties being faced by them to process the same on the declared address. We feel that it is only after the department under took certain investigations that violation of the statutory declarations given by the principal manufacturer a 100% EOU namely M/s. Sun Pharmaceuticals Industries Limited came to notice.

4.3 We feel that there have been some procedural lapses in this matter however, the impugned order-in-original has confirmed duty and imposed redemption fine as well as penalties under various sections of Customs and Central Excise Acts. From the findings given in the impugned order, no discussion has been made as to the effect whether the duty free imported raw materials which were supplied to the job worker who did not exist at the given address, were received back after the processing or not. We are of the view that duty, redemption fine and penal action can be confirmed only if it is established that duty paid on raw material which was sent to the job workers have not been received by the 100% EOU of the appellant.

5. Since the impugned orders are silent on this aspect, we feel that matter need to be re-adjudicated keeping in mind above observations and accordingly, we allow the appeals by way of remand to the Adjudicating Authority.