2014 (301) E.L.T. 649 (Tri. - Del.)

IN THE CESTAT, PRINCIPAL BENCH, NEW DELHI

Ms. Archana Wadhwa, Member (J) and Shri Rakesh Kumar, Member (T)

JUBILANT LIFE SCIENCES LTD.

Versus

COMMISSIONER OF C. EX., MEERUT-II

Final Order No. A/57742/2013-EX(DB), dated 5-9-2013 in Appeal No. E/4003/2012-EX(DB)

Export Oriented Unit, 100% EOU - Debonding - Duty liability on finished goods meant for export - Debonding subject to payment of Customs and Excise duty on imported or indigenous capital goods, raw materials, components, consumables, spares and finished goods lying in stock - *HELD :* There was no removal of goods into DTA before final debonding order and the goods exported under advance authorization claim - During intervening period between the date of no objection certificate by Central Excise authorities and date of issue of final debonding order by development Commissioner, EOU can export finished goods under advance authorization and no Excise duty chargeable as they were not cleared into DTA. *[paras 6, 7]*

Export Oriented Unit, 100% EOU - Debonding - In terms of note (ii) to Appendix 14-I-L, unit must be continued to be treated as EOU/EHTP/STP until date of final exit order. *[para 7]*

Refund - Eligibility - Export Oriented Unit, 100% EOU - Debonding - During intervening period between the date of no objection certificate by Central Excise authorities and date of issue of final debonding order by development Commissioner, EOU can export finished goods under advance authorization and no Excise duty chargeable as they were not cleared into DTA - Impugned order rejecting refund claim not sustainable. *[para 7]*

Appeal allowed

CASES CITED

Bajaj Foods Ltd. v. Commissioner — 2012 (280) E.L.T. 281 (Tribunal) — *Relied on*..... [Paras 3, 7]
Solitaire Machine Tools Pvt. Ltd. v. Commissioner — 2003 (152) E.L.T. 384 (Tribunal) — *Relied on* [Paras 3, 7]
Sterlite Optical Technologies Ltd. v. Commissioner — 2011 (270) E.L.T. 266 (Tribunal) — *Referred* [Para 3]

REPRESENTED BY : Shri Devinder Sharma, Advocate, for the Appellant.
Shri U.K. Srivastava, DR, for the Respondent.

[Order per : Rakesh Kumar, Member (T)]. - The facts leading to this appeal are, in brief, as under :-

1.1 The appellant are a 100% EOU engaged in the manufacture and export of excisable goods *viz.* Pyridine, Pyridine ACS, Beta Picoline and other chemicals falling under Chapter 29 of the Central Excise Tariff. They started operations as 100% EOU in March, 2007. On 25-3-2011 on their application, the Development Commissioner granted in principle approval for debonding. Final debonding was to be allowed after payment of customs duly on imported inputs and capital goods and central excise duty on indigenous inputs, capital goods and finished goods lying in stock. The duty payable was calculated by the appellant and they sent duty calculation chart to the jurisdictional central excise authorities. On the instructions of the central excise authorities, the appellant in addition to payment of duty on capital goods and inputs also paid duty of Rs. 29,17,195/- on the stock of inputs lying with them as on 25-3-2011, even though according to the appellant, the same were marked for export and in respect of the same, no duty was payable. According to the appellant, only the duty of Rs. 6,31,360/- was payable on the inputs contained in the finished goods lying in stock as on 25-3-2011. However, after payment of duty as approved by the central excise authorities, the appellant were granted a no objection certificate by the Asstt. Commissioner, Central Excise on 28-4-2011. The appellant were issued debonding orders by the Development Commissioner on 11-6-2011. However, before this, the appellant on 30-4-2010 and 16-4-2011, had exported the finished goods lying with them in respect of which on the instructions of the central excise authorities, they had paid duty of Rs. 29,17,195/-. The appellant, thereafter, filed a refund claim in respect of the difference between the duty of Rs. 29,17,195/- paid by them on the finished goods lying with them at the time of stock taking on 30-3-2011 and Rs. 6,31,360/-, which was the duty chargeable on the inputs contained the finished goods lying in stock and which according to the appellant was payable. Thus, the refund claim filed by the appellant was for Rs. 22,85,835/-. The refund claim was rejected by the jurisdictional Asstt. Commissioner *vide* Order-in-Original dated 29-6-2012 on the ground that in terms of para (a) of Appendix 14-1-L of Hand Book of Procedure (Vol. I) of Foreign Trade Policy 2009-2014, the appellant are liable to pay the duty on the finished goods lying in stock at the time of in principle debonding order and that the duty would be payable in terms of the proviso to Section 3(1) of the Central Excise Act, 1944 and not-under Section 3 (1) *ibid.* The Asstt. Commissioner, therefore, held that the duty has been correctly paid by the appellant and as such, their

refund claim is without any justification.

1.2 On appeal being filed to the Commissioner (Appeals), the above order of the Asstt. Commissioner was upheld *vide* Order-in-Appeal dated 18-9-2012 against which this appeal has been filed.

2. Heard both the sides.

3. Shri Devinder Sharma, Consultant, ld. Counsel for the appellant, pleaded that in this case in-principle approval for debonding had been granted by the Development Commissioner on 25-3-2011 which was followed by the physical stock taking on 31-3-2011 of raw material goods and finished goods in respect of which the duty is to be paid, that as on 31-3-2011, there was certain stock of finished products lying with the appellant which was meant for export and which had been manufactured out of duty free inputs, that though no duty was payable in respect of stock of finished goods meant for export, on instructions of the Central Excise Authorities, the appellant paid the duty of Rs. 29,17,195/- on this stock of finished goods, though the duty liability of the appellant was only Rs. 6,31,360/- in respect of inputs contained in the finished goods, that on payment of duty on the capital goods and finished goods as per directions of the central excise authorities, a no objection certificate was issued by the Asstt. Commissioner on 28-4-2011, that thereafter, final debonding letter was issued by the Development Commissioner on 10-6-2011, but before this, the finished goods, in respect of which duty of Rs. 29,17,195/- had been paid, had been exported out of India in terms of B-17 bond on 30-4-2011 and 16-5-2011, that these exports were under advance authorization scheme in accordance with the provisions of Foreign Trade Policy, that in terms of Foreign Trade Policy between the date of issue of no dues certificate by the Central Excise Authorities and final debonding by the Development Commissioner, the unit shall not be entitled to claim any duty exemption for procurement of capital goods or inputs, but, during this period, the unit can claim advance authorization/DEPB/duty draw back benefit by export of the goods, that in view of this, no duty was chargeable on the finished goods except for the duty of Rs. 6,31,360/- payable on the inputs contained in the finished goods exported out of India, that the department's reliance on para (a) of the Appendix 14-1-L of the Hand Book of Procedure of the Foreign Trade Policy is totally wrong, as in terms of Note-(ii) to Appendix 14-I-L, the 100% EOU would continue to be treated as EOU/EHTP/STP unit till the date of final exit order or issue of fresh LOP under the new scheme in cases of conversion from one scheme to the other and subject to monitoring of the stipulated obligations under the relevant scheme, keeping in view the Note (ii) to Appendix-14-I-L of the Hand Book of Procedure, the Tribunal in the case of *Sterlite Optical Technologies Ltd.* v. *CC & CE, Aurangabad* reported in 2011 (270) E.L.T. 266 (Tribunal-Mumbai) (para-8) has observed that a 100% EOU has to be treated as EOU till the date of final debonding order issued by the Development Commissioner and only after this date, it could function as normal DTA unit, that same view has been taken by the Tribunal in the case of *Bajaj Foods Ltd.* v. *Commissioner of Central Excise, Ahmedabad* reported in 2012 (280) E.L.T. 281 (Tribunal-Ahmd.), that the Tribunal in the case of *CCE, Vadodara* v. *Solitaire Machine Tools Pvt. Ltd.* reported in 2003 (152) E.L.T. 384 (para-6) has held that the goods lying in stock at the time of debonding are liable to duty only at the point of time of removal of those goods from the place of manufacture and demand of duty prior to clearance is premature, that since in this case, at the time of stock taking on 31-3-2011 the good were lying in stock and had not been cleared, the duty cannot be demanded when the goods subsequently had been exported out of India before the final debonding order under advance authorization scheme which is permitted in terms of para 6.18 (e) of the Foreign Trade Policy and that in view of this, the impugned order rejecting the refund claim is not sustainable.

4. Shri U.K. Srivastava, ld. Departmental Representative, defended the impugned order by reiterating the findings of the Commissioner (Appeals). He emphasized that in terms of para (a) of the Appendix 14-I-L of the Hand Book of Procedure of the Foreign Trade Policy 2009-2014 applicable Customs and excise duty are required to be paid on the imported and indigenous capital goods, raw materials, components, consumables, spares and finished goods in stock with 100% EOU, that when the units switched over from the 100% status to DTA status and the entire stock stood transferred to the DTA unit, the same would have to be treated as clearance to the DTA and the duty on the finished goods would be attracted, which would be payable in terms of the proviso to Section 3(1) of Central Excise Act. He, therefore, pleaded that there is no infirmity in the impugned order.

5. We have considered the submissions from both the sides and perused the records.

6. The appellant's unit, on the basis of their application for debonding, had been granted in-principle approval for debonding by the Development Commissioner's letter dated 25-3-2011. The debonding was subject to the payment of customs and excise duty as applicable on the stock of import and indigenous capital goods, raw materials, components, consumables and spares and finished goods in stock. The quantum of duty payable is to be approved by the jurisdictional central excise officers. The stock taking of the inputs, capital goods and finished goods was done on 31-3-2011 and at that time, there was some stock of finished goods involving duty of Rs. 29,17,195/- as calculated in terms of the proviso to Section 3(1) of the Central Excise Act. Though according to the appellant, the stock of finished goods was meant for export and was to be exported shortly and hence, no duty was chargeable, according to the central excise authorities, the duly was leviable before debonding and accordingly, the appellant paid this amount of duty even though according to them only the duly of Rs. 6,31,361/- was chargeable on the inputs contained in the finished goods. The goods were exported under bond on 30-4-2011 and 16-5-2011 under claim for advance authorization. The final debonding order was issued by the Development Commissioner on 11-6-2011. The point of dispute is as to whether the appellant are eligible for refund claim of Rs. 22,85,835/- (Rs. 29,17,195/- minus Rs. 6,31,360/-). In this regard according to para (a) of Appendix 14-I-L prior to final debonding, applicable customs and excise duty are required to be paid on the imported or indigenous raw materials, components, consumables, spares and finished goods in stock and that the unit is also allowed to dispose of the raw materials, components, consumables, etc., against duty free licence and can also export the capital goods, raw materials/components, etc. In this case, before final debonding, there was stock of finished goods involving duty of Rs. 29,17,195/- and all these finished goods had been exported out of India prior to the final debonding order. The export was under claim for advance authorization. According to the department after in-principle approval for debonding but before the final debonding order, the stock of finished goods would be deemed to have been cleared into DTA and would be liable to duty in terms of proviso to Section 3(1) of the Central Excise Act. However, on the other hand, the appellant's plea is that there was no clearance of the goods and unless and until the goods are cleared no duty can be charged.

7. On going through the provisions, of Appendix 14-I-L, we find that in terms of Note-(ii) to this Appendix, a 100% EOU

must be continued to be treated as EOU/EHTP/STP unit till the date of final exit order. Based on this note, the Tribunal in the cases of *Solitaire Machine Tools Pvt. Ltd.* (supra) and *Bajaj Foods Ltd.* (supra) has held that a unit would continue to be treated as EOU unit till the date of final exit order and would be subject to monitoring of the stipulated obligations under the relevant schemes. The Tribunal in the case of *Solitare Machine Tools P. Ltd.* (supra) has held that the goods lying in stock at the time of debonding would be liable to duty only at point of time of removal of those goods from place of manufacture. In this case, admittedly, there was no removal of goods into DTA from EOU and before the final debonding order the goods had been exported out of India under advance authorization claim. In terms of para 6.18 (e) of the Foreign Trade Policy, while between the date of issue of no dues certificate by the Customs and Central Excise Authorities and the date of final debonding order by the Development Commissioner, the EOU unit shall not be entitled to claim any duty exemption for procurement of capital goods or inputs, the unit can claim advance authorization/DEPB/duty draw back. Thus, during the intervening period between the date of no objection certificate by the Central Excise Authorities and the date of issue of final debonding order by the Development Commissioner, an EOU can export the finished goods under claim for advance authorization/DEPB/duty draw back and that no excise duty can be charged in respect of such goods as the same have not been cleared into DTA. In view of this, the impugned order rejecting the refund claim is not sustainable. The same is set aside. The appeal is allowed.

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