

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO.3

EXCISE APPEAL NO. 10104 OF 2013

(Arising out of 77-COMMR-SURAT-II-2012 dated 23.11.2012 passed by Commissioner of Central Excise-Surat-II)

IPCA LABORATORIES LTD
PLOT NO. 4722, GIDC, AKNLESHWAR
BHARUCH-GUJARAT

.....Appellant

VERSUS

C.C.E. & S.T. SURAT-II
NEW C. Ex. BUILDING...OPP. GANDHI BAUG,
CHOWK BAZAR, SURAT, GUJARAT-395001

....Respondent

APPEARANCE:

Shri Mehul Jiwani, Chartered Accountant appeared for the Appellant
Shri. K.P. Shah, Superintendent (Authorized Representative) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU**

Final Order No. A/ 11345 /2022

DATE OF HEARING: 03.11.2022
DATE OF DECISION: 04.11.2022

RAMESH NAIR

The appellant M/s IPCA Laboratories Ltd. are engaged in manufacture of bulk drugs and intermediates classifiable under Chapter heading 29 of Central Excise Tariff Act. The appellant were registered as 100% EOU and applied for exit from the said EOU status i.e. conversion of 100% EOU to normal DTA Unit on 02.03.2010. Thereafter the appellant had informed the central excise department about the stock of input, input contained in work in process and input contained in finished goods lying with the department as on 31.03.2010. The appellant also worked out the duty payable on inputs lying as such, input contained in work in process and input contained in finished goods and paid the duty. The jurisdictional Superintendent vide letter informed to the appellant that the payment of duty on raw material contained in finished goods is not correct and duty is required to be paid on the finished goods lying on the date of debonding. The appellant paid the differential duty of Rs. 22,55,209/- along with interest and informed the department on 14.05.2010. The authorities after

verification granted no dues certificate dated 17.05.2010 and thereafter Development Commissioner has granted debonding on 06.07.2010. Subsequently, the Superintendent vide letter dated 01.06.2010 informed that even in respect of semi-finished goods and the duty is required to be paid on the value of semi-finished goods under Section 3(1) of Central Excise Act. The appellant vide letter dated 14.06.2010 informed the department the various stages in process of goods and submitted that they are not in fully finished form and not in marketable condition and therefore duty cannot be demanded on work in process. The department not accepting the contention of the appellant had issued the show cause notice alleging that the duty on work in process / semi-finished goods is required to be paid equal to aggregate duty of customs on combined value of raw material i.e. indigenous imported raw material contained in finished goods including the cost of manufacturing of semi-finished goods and thereafter demanding duty of Rs. 55,35,762/-, the Commissioner vide Order-in-Original dated 23.11.2012 confirmed the said demand and imposed penalty of Rs. 23,07,108/- under Section 11AC read with Rule 25 of Central Excise Rules. Being aggrieved by the said order-in-original, the present appeal was filed by the appellant.

2. Shri Mehul Jiwani, learned Chartered Accountant appearing on behalf of the appellant submits that the duty not payable on work in process / semi-finished goods at the time of debonding. He referred to para 6.18 (a) of Foreign Trade Policy 2009-2014 whereby he submits that the customs and excise duties for the purpose of debonding should be paid on the imported and indigenous capital goods, raw materials, components, consumables, spares and finished goods in stock. He submits that as per policy, there is no condition to pay the duty on semi-finished goods/ work in process. He relied upon the following judgements:

- **Tirumala Seung Han Textiles Ltd. 2008 (9) TMI 252 - CESTAT Bang.**

- **Tirumala Seung Han Textiles Ltd. 2016 (3) TMI 1317 – (AP-HC)**
- **Lupin Ltd. 2019 (2) TMI 937 – CESTAT New Delhi**
- **M/s EID Parry India Limited 2018 (8) TMI 1494- CESTAT-Chennai**

2.1 He further submits that the stock lying in work in process are not goods as they are not in marketable condition. He placed reliance on the following judgements:

- **Sonic Electrochem (P) Ltd. 2002 (145) ELT 274 (SC)**
- **Glaxo Smithkline Pharmaceuticals Ltd. 2003 (162) ELT 612 (T-Mum.)**
- **Ambalal Sarabhai Enterprises 1989 (43) ELT 214 (SC)**
- **Gujarat Narmada Valley Fert. Co. Ltd. 2005 (184) ELT 128 (SC)**

2.2 He alternatively submits that duty is paid on the removal of goods. In the present case, the goods was lying in factory and the same was not removed thereby duty should not be demanded. In this support, he placed reliance on the following judgements:

- **Lupin Ltd. 2019 (2) TMI 937 – CESTAT New Delhi**
- **EID Parry India Limited 2018 (8) TMI 1494- CESTAT Chennai**

2.3 He submits that the demand was raised heavily relying on the CBEC Customs Manual Instructions. It is his submission that the demand cannot be made by relying on the CBEC Customs Manual. In the manual, it was clarified that semi-finished goods are finished goods lying in stock at the time of debonding, can be cleared on payment of excise duty equal to aggregate duty on customs payable on similar imported goods.

He submits that the said clarification clearly states that payment of duty on clearance of goods and not simplicitor debonding. He submits that the work in process and semi-finished goods are different and thereby the said clarification will not apply to work in process. The clarification does not get

support from statutory provision or Notification; therefore, the interpretation cannot be made against the assessee. He submits that in case of **Brand David Communication Pvt. Ltd. 2020 (37) GSTL 227 (Tri. Kol.)** it has been held that the duty cannot be demanded based on trade notice or CBIC Instruction or Circular without any statutory provisions. He submits that the show cause notice is vague and it does not specify relevant notification or any statutory provisions based on which demand can be made on semi-finished goods at the time of debonding. He submits that in any event duty has already been discharged and the said work in process goods were subsequently, manufactured and cleared from the factory. He further submits that the department instead of issuing show cause notice, should have informed to the Development Commissioner who should have initiated proceedings as held in the judgment of **Virgo Valves and Controls Pvt. Ltd. 2022 (5) TMI 1302 - CESTAT** and **ABN Granites Ltd. 2001 (133) ELT 483 (Tri. Bang.)**.

2.4 He submits that even if duty is payable, the entire exercise is of Revenue neutral for the reason that if any duty is paid on the intermediate stage, the same is available for cenvat credit and can be utilized for payment of duty when the finished goods is cleared from the factory. He takes support in this regard from the following judgements:

- **Indeous Abs Ltd. 2010 (254) ELT 0628 (Guj. HC)**
- **Coca Cola India Pvt Ltd. 2007 (213) ELT 490 (SC)**
- **SRF Ltd. 2007 (220) ELT 201 (T)**
- **United Phosphorus Ltd. 2007 (210) ELT 45 (Tri. Amd.)**
- **Indian Oil Corp. Ltd. 2010 (262) ELT 751 (SC)**

2.5 He submits that in case of **Stanadyne Amalgamations Pvt. Ltd. 2019 (29) GSTL 605**, it was held by Hon'ble Madras High Court that the credit will be eligible on the duty paid by the assessee upon debonding. Thus, even if the appellant pays the duty, credit would have been available

to the as the said work in process were finally manufactured by the appellant and cleared on payment of duty. Thus, there is Revenue neutral situation.

3. Shri K.P Shah, learned Superintendent (Authorized Representative) reiterates the findings of the impugned order.

4. We have carefully considered the submissions made by both the sides and perused the records. We find that the dispute relates to demand of duty on the semi-finished goods/ work in process goods during the debonding of EOU. We find that as per the details submitted by the appellant which is not in dispute, the semi-finished goods/ work in process was not in fully manufactured form and the same was at different stages of the manufacturing process. The said goods are not marketable as such which were subjected to various other processes to attain the stage of final product, therefore, at the semi-finished stage, where no excisable goods came into existence, the demand of duty at the time of debonding is, in our view, incorrect in law. In any case, these semi-finished goods/ work in process will reach to the stage of final product and the same is liable for duty at the time of clearance from the factory. Therefore, at the intermediate stage when the goods are not fully manufactured, the excise duty was not payable at the time of debonding, particularly when the goods were not cleared from the factory and were in the process of manufacturing. This issue is no longer res integra as the same stand decided by CESTAT Bangalore in the case of **Tirumala Seung Han Textiles Ltd. (supra)** Wherein the following order was passed.

“5.1 In respect of in-process goods, the appellants have argued that there is no authority for demanding duty. As per Para 6.18 of the Foreign Trade Policy 2004-09, an EOU may opt out of the scheme with the approval of the Development Commissioner subject to the payment of Excise Duty. In the policy, only imported and indigenous capital goods, raw materials, components, consumables, spares and finished goods in stock are mentioned. There is no mention about the in-process goods. In the absence of the mention of the in-process goods in the policy, there is no authority for demanding duty on the in-process goods. Hence, we set aside the demand of duty on the in-process goods.”

The above decision of the Tribunal was upheld by dismissing the department's **Central Excise Appeal No. 142 of 2010** by **Hon'ble Andhra Pradesh High Court reported at 2016 (3) TMI 1317 (HC-AP)**

5. Similarly in the case of **Lupin Ltd. (supra)**, this Tribunal on the identical issue held as under:

No duty is payable on WIP/semi-finished goods

*"40. It is well settled that central excise duty is payable on 'excisable goods' as defined under section 2(e) of the Central Excise Act. No central excise duty is payable at intermediate stage. No goods are manufactured or produced at that stage. Appendix 14-I-L of the FTP Handbook of Procedures Vol. 1 outlines the exit from the EOU Scheme. The said appendix lays down the applicable customs and excise duties payable by the unit on imported and indigenous capital goods, raw materials, components, consumables, spares and finished goods. It does not provide for payment of duties on WIP. Obviously and logically so. Therefore, no duties of customs are payable on WIP at the time of debonding. This view has been taken by this Tribunal in **Tirumala Seung Han Textiles Limited Vis CCE 2009 (237) ELT 145.***

41. In light of the above findings, the department appeals are dismissed."

In the case of **EID Parry India Limited (supra)**, this Tribunal taken the same view wherein the following order was passed.

"5. We find that the ratio laid down by the Tribunal in Tirumala Seung Han Textiles Ltd. (supra) relied upon by the lower appellate authority and by the Learned Advocate will apply on all fours to the appeal on hand. The relevant portion of that decision is reproduced as under:-

"5.1 In respect of in-process goods, the appellants have argued that there is no authority for demanding duty. As per Para 6.18 of the Foreign Trade Policy 2004-09, an EOU may opt out of the scheme with the approval of the Development Commissioner subject to the payment of Excise Duty. In the policy, only imported and indigenous capital goods, raw materials, components, consumables, spares and finished goods in stock are mentioned. There is no mention about the in process goods. In the absence of the mention of the in-process goods in the policy, there is no authority for demanding duty on the in-process goods. Hence, we set aside the demand of duty on the in-process goods."

As informed by the Ld. Advocate, the appeal filed by the department against this decision has been dismissed by the Hon'ble High Court of AP.

6. We do not find any new grounds or reasons to deviate from the ratio already laid down in Tirumala Seung Han Textiles Ltd. (supra).

7. In the event, there is no infirmity in the order of the lower appellate authority, for which reason the department appeal is dismissed.

8. The cross-objections filed by the respondent are dismissed as not pressed.”

6. In view of above judgements, the issue has been decided that no duty can be demanded on semi-finished goods/ work in process, lying at the time of debonding of 100% EOU. Following the above decisions, we are of the view that the impugned order is not sustainable. Accordingly, the same is set aside. Appeal is allowed.

(Pronounced in the open court on 04.11.2022)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

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