

**Customs, Excise & Service Tax Appellate Tribunal,
West Zonal Bench : Ahmedabad**

REGIONAL BENCH - COURT NO. 3

Customs Appeal No. 10151 of 2015

(Arising out of OIA-VAD-EXCUS-001-APP-460-14-15 dated 07/10/2014 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-I)

Anjaleem Enterprise P Ltd

13-A, Vedant Villas, Nr, Pratham Vatika,
Off 30 Mtr Gotri Road, Gotri, Vadodara, Gujarat

.....Appellant

VERSUS

C.C.E. & S.T.-Vadodara-i

1st Floor...Central Excise Building, Race Course Circle, Vadodara, Gujarat -390007

.....Respondent

APPEARANCE

Shri J.C Patel, Shri Rahul Gajera & Ms. Shamita Patel, Advocates appeared for the Appellant

Shri Ghanshyam Soni, Joint Commissioner (Authorized Representative) for the Respondent

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

Final Order No. A/ 10709 /2022

DATE OF HEARING: 24.02.2022

DATE OF DECISION: 20.06.2022

RAMESH NAIR

The brief facts of the case are that M/s. Anjaleem Enterprises Pvt. Ltd., Vadodara was a unit engaged in development and export of Software as 100% export oriented unit. The unit availed the benefit of exemption from payment of Customs duty under the provisions of Notification 13/81-Cus., dated 9-8-1981 and imported capital goods. On 22.05.1993 appellant applied for D-Bonding of the 100% EOU and by letter dated 07.07.1994, the department of Industrial Development permitted the Appellant to clear capital goods without payment of duty and to gift the imported capital goods to an educational institution which was eligible to import such goods without payment of duty. The department issued show cause notice dated 06.11.1997 demanding duty on the imported goods. The Appellant on 05.03.1998 applied to the office of Assistant Commissioner of Customs and Central Excise, Vadodara for completion of De-Bonding formalities and for clearance of the goods without payment of duty by way of gift to MS University. The Appellant also filed Ex-Bond Bill of entry dated 23.04.1998 for such duty -free clearance. By order dated 27.04.1998, the Commissioner dropped the said show cause notice dated 06.11.1997 and directed the Assistant Commissioner to consider the Appellant's request for clearance of the goods without payment of duty on merit and in accordance with law.

Pursuant to the said directions, by order dated 29.04.1998 the Assistant Commissioner ordered for payment of duty and interest. Being aggrieved, Appellant filed appeal before the Commissioner (Appeals), who by his order-in-appeal dated 28.08.2000 set aside the order and remanded the matter back to the Assistant Commissioner. In de-novo proceeding, Assistant Commissioner once again vide order dated 19.03.2001 directed payment of duty with interest for clearance of goods to MS University. In appeal filed by Appellant against the said order dated 19.03.2001, the Commissioner (Appeals) by his Order-In-Appeal dated 14.09.2001 upheld the direction to pay duty by filing revised Bill of entry but he set aside the demand of interest. He also directed to work out the duty amount in accordance with law. Against the said Order-In-Appeal dated 14.09.2001 appellant preferred an Appeal to the Tribunal challenging the said order to the extent it upheld the liability to pay duty. The revenue also filed appeal to the Tribunal against the said Order-In-Appeal dated 14.09.2001 to the extent it set aside the demand for interest. While the said two appeals were pending before the Tribunal, the Assistant Commissioner, in pursuance of the direction contained in the Order-In-appeal dated 14.09.2001 passed the order-in-original dated 28.03.2002 and worked out the duty demand amount of Rs. 12,43,033/- by allowing depreciation of value of imported capital goods upto July 1994 when permission for de-bonding was granted by the Ministry of Industry. In Appeal, the said Order-In-Original dated 28.03.2002 was upheld by the Commissioner (Appeals) and appellant thereafter preferred Appeal before the Tribunal. The said three appeals before the tribunal were disposed of by the common order dated 17.10.2006. By the said order tribunal held that duty was payable by the Appellant. However in calculation of duty, the Assistant Commissioner had erred in allowing depreciation only upto July 1994 when permission for de-bonding was granted by the Ministry of Industry and directed that depreciation should be allowed till the date of payment of duty. The Tribunal by said order upheld the setting aside of the interest.

1.2 By applying the depreciation upto the date of payment of duty, vide letter dated 05.07.2008 Appellant submitted before the Deputy Commissioner that duty payable was NIL and that therefore the amount of Rs. 2,00,000/- which had been deposited by the Appellant be refunded to the Appellant. The Assistant Commissioner vide order dated 28.04.2014 held that duty of Rs. 12,43,033/- as had already been computed by order dated 28.03.2002. Accordingly he rejected the Appellant's claim for refund of said

amount of Rs. 2,00,000 and directed that Appellant to pay the balance amount of Rs. 10,43,033/-. Being aggrieved, Appellant filed appeal before the Commissioner (Appeals), who vide Order-In-Appeal dated 07.10.2014 rejected the appellant's appeal. Therefore, the appellant filed the present appeal.

2. Shri J.C Patel, Learned Counsel along with Shri Rahul Gajera & Ms. Shamita Patel, Advocates appearing on behalf of the appellant. Shri J.C Patel submits that both the lower authorities have failed to implement this Hon'ble Tribunal order dated 17.10.2006 which had set aside the restricting of period of depreciation upto 07.07.1994 and which had directed that depreciation must be allowed right upto the date of payment of duty on the goods which were still in the bonded warehouse.

2.1 He also submits that the Ld. Commissioner (Appeals) has wrongly proceeded on the basis that the Appellant had not filed any reply before the adjudicating authority and that therefore the ground raised before him was additional evidence, which cannot be permitted in view of Rule 5 of Central Excise (Appeals) Rules 2001. He has clearly disregarded the letter dated 05.07.2008 of Appellant by which appellant had submitted that when depreciation is allowed upto date of payment of duty as directed by the Tribunal, the value would be NIL and therefore duty payable is NIL. That apart, the ground raised before the Commissioner (Appeals) was as per the Tribunal order dated 17.10.2006, which had attained finality and which the Assistant Commissioner and Commissioner (Appeals) were bound to implement.

2.2 Without prejudice, he also submits that in any event, the Assistant Commissioner has wrongly applied the rates of depreciation provided in Board's letter dated 15.04.1987 as modified by letter dated 05.06.1992. The said rates were further modified /enhanced by following the circulars of the Board, which were in force at the time when the goods were to be cleared and duty was to be paid.

- Circular No. 27/98-Cus dated 21.04.1998
- Circular No. 49/2000-Cus dated 22.05.2000
- Circular No. 29/2003-Cus dated 03.04.2003
- Circular No. 14/2004-Cus dated 13.02.2004

2.3 He further submits that tribunal by the following Judgments held that the rate of depreciation in force at the time of clearance of the goods shall apply.

- Baglan Taluka Grape Growers Co-op Soc. Ltd. Vs. CCE -2019(369)ELT 1162
- Shriram Grape Growers Co-Op Soc Ltd. Vs. CCE -2018(364)ELT 420
- Fontasey Engineering Exports Pvt. Ltd. Vs. CCE 2020(371)ELT 586
- I-Flex Solution Ltd. Vs. CC- 2005 (184) ELT 259.

3 Shri Ghanshyam Soni, Joint Commissioner (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. We heard both sides and perused the record. On a careful consideration, we have to place on record our disapproval of the action of both the Lower authorities in not following the directions of the Tribunal. Both the authorities have clearly violated the terms of remand order of the Tribunal. The matter was remanded back by Tribunal with the direction as under :

"8. As regards the period for which depreciation is to be allowed, in the light of the Tribunal's order in Commissioner of Customs & Central Excise, Vadodara v. Solitaire Machine Tools Pvt. Ltd. - [2003 \(152\) E.L.T. 384](#) we hold that depreciation shall be allowed up to the date of payment of duty as per the language of the explanation to Notification 13/81 itself, and rejecting the contention of the Revenue that depreciation shall be allowed only till the date of application for de-bonding. We therefore hold that the period of depreciation should extend up to the date of payment of duty - the importers have not cleared the goods which are still in the bonded warehouse. We therefore set aside the impugned order and allow the Appeal No. C/830/2003."

It is on record that, vide Order-In-Original dated 28.03.2002 Ld. Lower Adjudicating authority held that deprecation was allowed only upto the date of permission for de-bonding which has been categorically held to be incorrect by the tribunal in its above remand order. Clearly, lower authorities are not following the directions given by Tribunal. Therefore, the impugned order is not sustainable in law. As per the above tribunal's clear observation, the adjudicating authority is bound to allow the depreciation upto the date of payment of duty. As per the submission made by the Appellant that if the

depreciation is considered upto the date of payment then duty comes to Nil. There is no rebuttal to this fact. Hence the demand is not sustainable.

5. Accordingly, we set aside impugned order and allow the appeal with consequential relief, if any arise, in accordance with law.

(Pronounced in the open court on 20.06.2022)

RAMESH NAIR
MEMBER (JUDICIAL)

RAJU
MEMBER (TECHNICAL)

Geeta