

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT NO. III

CUSTOMS APPEAL No. 40106 of 2013

(Arising out of Order-in- Original No. 37/2012 dt. 25.10.2012 passed by Commissioner of Central Excise, Chennai-II)

M/s. DCM Hyundai Ltd.,
Polivakkam Village,
Thiruvallur – 602 002.

: Appellant

VERSUS

The Commissioner of GST & Central Excise,
Chennai Outer Commissionerate,
Newry Towers, No.2054, I Block, II Avenue,
12th Main Road, Anna Nagar,
Chennai- 600 0040

: Respondent

APPEARANCE:

Shri J. Shankarraman, Advocate
For the Appellant

Smt. K. Komathi, Additional Commissioner (A.R)
For the Respondent

CORAM:

HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 40062 / 2023

DATE OF HEARING: 15.02.2023

DATE OF DECISION: 20.02.2023

Per: Ms. SULEKHA BEEVI C.S.

Brief facts are that the appellant earlier was a 100% EOU and De-Bonded as per Ex-Bond Bill of Entry dated 30.03.2007. They are engaged in the manufacture and export of 'Marine Freight Container' falling under chapter sub-heading No. 8609 of CETA,1985.

2. The appellant had applied for De-Bonding of the unit into DTA vide letter dt. 29.11.2006 and paid appropriate duties on the capital goods, imported raw materials, finished stock, indigenous capital goods lying as stock. It was noticed that certain raw materials were lying in stock beyond the warehousing period of three years as prescribed under Section 61 of the Customs Act, 1962. The appellant paid duty on raw materials lying in stock to the tune of Rs. 40,89,232/- along with duties on other items. The department was of the view that the duty paid on raw materials warehoused beyond the period of three years was liable to interest under Section 61 (2) (i) of Customs Act, 1962 at the rate of 15% per annum as per Notification No. 28/2002- Cus. (NT) dated 13.05.2002.

3. On 23.07.2007, the appellant filed an application to the Chief Commissioner of Central Excise, Chennai with a request for waiver of interest on the warehoused goods at the time of De-Bonding. The request was denied vide letter dated 14.08.2008. Accordingly, SCN dated 13.10.2008 was issued to the appellant under Section 28 of the Custom Act, 1962 proposing to demand an amount of Rs.10,88,557/- as interest and also proposing to impose penalty under Section 117 of the Act *ibid*.

4. After due process of law, the Commissioner confirmed the demand of interest and also imposed penalty of Rs. 1 lakh under

Section 117 of Customs Act, 1962. Aggrieved by this order, the appellant is now before the Tribunal.

5. The Ld. Counsel Sh. J. Shankarraman appeared and argued for the appellant. The Ld. Counsel submitted that on 27.08.1993, the LOP to operate as 100% EoU was issued to appellant to manufacture and export 'Marine Freight Containers'. They commenced operation in December 1994 and fulfilled the stipulated export obligation cast on them from time to time till August 2006. The appellant had been issued 'In Principle No objection' to exit from EOU status. Appellant had paid all appropriate duties and a 'No dues Certificate' was issued to them on 17.04.2007. However, there was an oral request from the jurisdictional officer to pay interest or seek waiver of the same on the duties pertaining to the imported raw material which remained in warehouse beyond the initial ware housing period of three years.

6. The appellant vide letter dated 23.05.2007 requested for waiver of interest. The Jurisdictional Range officer vide letter dated 28.08.2008 informed that the Chief Commissioner has not acceded to the request for waiver of interest. The appellant requested copy of the order vide their letter dated 29.09.2008. In the meantime, the SCN was issued on 13.10.2008. The appellant sent representation to CBIC dated 30.01.2009 on the issue of demand of interest, and also alleging that the SCN is time barred. The appellant did not receive any reply.

7. The Ld. Counsel put forward mainly two contentions to assail the demand of interest. Firstly, that in terms of para 4 of CBEC Circular No. 10/2006 dated 14.10.2006 it is directed that no interest should be demanded on goods imported by 100% EOU. The circular is intended to take a liberal view as to the demand of interest. The second contention raised is that the SCN is time barred. As per Section 28 of Customs Act, 1962, as it stood during the relevant period, the SCN for demand of interest has to be issued within six months of the relevant date. The date of Ex-Bond Bill of Entry is 30.03.2007 and the appellant then had paid entire duties including duty on warehoused raw materials. However, the SCN is issued only on 13.10.2008 which is beyond prescribed time of six months. The Ld. Counsel drew support from the decision of the Tribunal in the case of *Commissioner of Customs, Madras Vs Electronic Research Ltd.* – 2000 (123) ELT 751 (Tri) and *Collector of Customs Madras Vs TVS Whirl Pool Ltd.* - 1996 (86) ELT 144 (Tri). He prayed that the appeal way be allowed.

8. The Ld. A.R Ms. K. Komathi appeared and argued for the department. She submitted that at the time of request for debonding the appellant was informed about the requirement to pay interest on the duty paid in regard to stock of raw material stock lying in warehouse beyond the period of three years. The appellant filed an undertaking dated 16.08.2007 offering as Lien their Land & Building & Capital goods till such time the request for waiver is considered by the Chief Commissioner. The request for waiver of

interest was rejected on 28.08.2008. The SCN was issued on 13.10.2008 after passing the order of rejection and therefore is within the time limit. She asserted that the appellant is liable to pay the interest on the duty paid on stock of raw materials warehoused beyond the period of 3 years. The Ld. A.R requested that the appeal may be dismissed.

9. Heard Both sides.

10. The issue to be decided is whether the appellant is liable to pay interest on the duty paid on the stock of raw material warehoused beyond the period of three years or whether the SCN is time barred.

11. The Board Circular dated 14.02.2006 relied by the Ld. Counsel reads as under:

“2. A need was felt in the Board to combine all these instructions into one consolidated circular on the aforesaid matter to ensure uniformity to consider the request for waiver of interest on customs duty on any warehoused goods u/s 61 not the Customs Act, 1962. Accordingly, in supersession of these previous guidelines and circulars on the aforesaid matter, the instructions have been consolidated in this Circular.

... ..

4. The guidelines where the interest would generally be waived have been framed keeping in mind the fact that for certain specified categories of imports such as ship stores and others, the import duty is finally not payable. In certain other cases, it was considered that in view of the production programme or nature of activity of the importers such as Ship Building Industry, Power Generating Project, the imported goods have to be generally retained for a longer period of time. Charging of interest would escalate the costs unnecessarily. essence the guidelines cover the following cases. This would however be subject to the individual merits of case :-

- (i) Goods supplied as ship stores/aircraft stores
- (ii) Goods supplied to diplomats
- (iii) Goods used in the units operating under scheme manufacture-in-bond
- (iv) Goods imported by 100% EOUS**
- (v) Goods warehoused and sold through duty free shops
- (vi) Machinery, equipment and raw materials imported for building and fitment to ships
- (vii) Petroleum products
- (vii) Plant and Machinery imported for projects
- (ix) Machinery, equipment and raw-materials imported for manufacture and installation of power generation units
- (X) Goods imported under OGL and warehoused for subsequent clearance against valid advance licenses/import-Export Pass Book Scheme or any similar scheme
- (xi) Goods imported in bulk by canalizing agencies/public sector trading or services and warehouse for subsequent release for export production
- (xii) Imports under EPCG Scheme
- (xiii) Import of Capital Goods by Public Sector Undertakings.

[Emphasis supplied]

12. It has to be noted that the said circular intends to give some solace to a 100% EOU by waiving the liability of interest. The Chief Commissioner has however rejected this request of the appellant.

13. Be that as it may, the SCN has been issued under Section 28 of the Customs Act, 1962. The said section is noticed as under :

“SECTION 28 Notice for payment of duties, interest etc.- (1) When any duty has not been levied or has been short-levied or erroneously refunded, or when any interest payable has not been paid, part paid or erroneously refunded, the proper officer may, -

(a) in the case of any import made by any individual for his personal use or by Government or by any educational, research or charitable institution or hospital, within one year;

(b) in any other case, within six months, from the relevant date, serve notice on the person chargeable with the duty or interest which has not been levied or charged or which has been so short-levied or part paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice:

Provided that where any duty has not been levied or has been short-levied or the interest has not been charged or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts by the importer or the exporter or the agent or employee of the importer or exporter, the provisions of this sub-section shall have effect as if for the words "one year" and "six months", the words "five years" were substituted."

14. It is clear from the above provision that the SCN has to be issued within a period of six months. The impugned raw materials were imported between 1995 and 2003. The SCN is dated 13.10.2008. The duty having been paid on the date of De-Bonding the relevant date to compute the demand would therefore be the date of debonding ie., 31.03.2007. The Ld. AR has submitted that as the appellant had filed a request for waiver, and also an undertaking; the date of rejection of the request for waiver has to be considered as the relevant date. The said contention cannot be accepted for the reason that Section 28 does not provide for extension of time based on an undertaking filed by assessee. The section does not speak of any extension of time based on a request for waiver. Further the request for waiver is filed as per the Board Circular. Circulars, though binding on the Department, is not so on the Tribunal. We have no hesitation to hold that the SCN is time barred.

15. The Tribunal in the case of *Commissioner of Customs, Madras Vs Electronic Research Ltd.* (supra) held that in absence of any limitation period for demanding interest in respect of Customs duty payable in term of Section 61(3) of Customs Act, in the case of warehoused goods, the limitation period would be the period prescribed in Section 28 of the Act *ibid*. The Tribunal relied on the judgment in the case of *TVS Whirlpool Ltd* (Supra).

16. After appreciating the facts, evidence and the decisions as above, we are of the view that the demand of interest cannot sustain as the SCN is time barred.

17. In the result, the impugned order is set aside. The appeal is allowed with consequential reliefs, if any.

(Order pronounced in the open court on **20.02.2023**)

Sd/-
(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)