Tiger Steel Engineering Vs Union Of India Thr The Joint Secretary And Ors

Court: Bombay High Court

Date of Decision: Nov. 29, 2024

Acts Referred: Special Economic Zone Act, 2005 â€" Section 2(m), 2(m)(ii), 26(1)(d), 51, 51(1), 53(1)
Special Economic Zone Rules, 2005 â€" Rule 30(1)

Hon'ble Judges: M. S. Sonak, J; Jitendra Jain, J

Bench: Division Bench

Advocate: H.G.Dharmadhikari, Lalita S. Phadke, J.B.Mishra, Sangeeta Yadav

Final Decision: Disposed Of

Judgement

1. All three matters relate to the common issue of whether, for the purpose of refund of Cenvat Credit under the Cenvat Credit Rules, 2004 supply of

goods treated as Ã¢â‚¬Å“exportÃ¢â‚¬ under the The Special Economic Zones Act of 2005 (SEZ Act) can also be treated as export for the purposes of the

Cenvat Credit Rules and Central Excise Rules, 2002.

2. In Writ Petition No. 2469 of 2010, the petitioner has challenged the order in appeal dated 20 September 2010 and 27 September 2010 and Order-in-

Original dated 11 October 2010 passed by respondent Nos.3 and 4 therein respectively. Similarly, in Writ Petition No. 9075 of 2010, the petitioner has

challenged the Order-in-Original dated 18 August 2010 and order in appeal dated 18 August 2010 passed by the respondent Nos. 2 and 3 respectively.

In Central Excise Appeal No. 140 of 2010, challenging the order of the Tribunal dated 8 July 2010, the petitioner/appellantÃ¢â‚¬â„¢s appeal was admitted

on the following questions of law;

(A) Whether supplies to Special Economic Zone (SEZ) (to developer or the unit) constitute Ã¢â‚¬Å“exportÃ¢â‚¬ for the purpose of Rule 5 of the Cenvat Credit Rules,

2004?

(B) Whether the definition of the word Ã¢â‚¬Å“exportÃ¢â‚¬â€‹ appearing in section 2(m) of the Special Economic Zone Act, 2005 applies to Rule 5 of the Cenvat Rules?

(C) Whether in the absence of definition of the word Ã¢â‚¬Å“exportÃ¢â‚¬ in the said Act or the Cenvat Rules, the word Ã¢â‚¬Å“exportÃ¢â‚¬ appearing in Rule 5 of the Cenvat

Rules covers only physical exports outside the territory of India or also covers, supplies from Domestic Tariff Area (DTA) to SEZ which is deemed to be a territory

outside India under Section 53 of the SEZ Act?

3. Since the issues involved in all the three matters are identical, we propose to dispose of the same by common order.

4. Counsel for the petitioner/appellant and the respondent agreed that post the filing of the above matters, Central Board of Excise and Customs have

issued a Circular No.1001/8/2015-CX.8 dated 28 April 2015 wherein it is clarified that for the purposes of Rule 18 of the Cenvat Rules, 2002 and for

refund of accumulated Cenvat Credit under Rule 5 of the Cenvat Credit Rules 2004, the supply treated as Ã¢â‚¬Å“exportÃ¢â‚¬ under the SEZ Act would be

treated as Ã¢â‚¬Å“exportÃ¢â‚¬ for the purposes of the Said Rules. This circular was issued on apprehension expressed by the trade as to whether the

benefits under the Cenvat Credit Rules and Cenvat Excise Rules would be available to the supply treated as export under the SEZ Act. For the sake

of convenience the said circular is re-produced as under:

SEZ Rebate of duty on goods cleared from DTA to SEZ

Clarification

Circular No. 1001/8/2015-CX.8, dated 28-4-2015

F.No. 267/18/2015-CX. 8

Government of India

Ministry of Finance (Department of Revenue)

Central Board of Excise & Customs, New Delhi

Subject: Clarification on rebate of duty on goods cleared from DTA to SEZ - Regarding.

Kind attention is invited to Notifications No. 6/2015-C.E. (N.T.) and 8/2015-C.E.

(N.T.), both dated 1-3-2015, vide which the meaning of export has been elaborated in both Rule 5 of Cenvat Credit Rules, 2004 and Rule 18 of Central Excise

Rules, 2002. Post these amendments, apprehensions have been expressed by the trade as to whether the following benefits would be available after these

amendments:

i. Benefit of rebate of duty on goods cleared from DTA to SEZ.

ii. Refund of accumulated CENVAT credit when goods are cleared from DTA to SEZ.

2. It is seen that:

i. Section 2(m)(ii) of the SEZ Act, 2005 defines export to, inter alia, mean ""supplying goods, or providing services, from the Domestic Tariff Area to a Unit or

Developer"".

ii. Section 26(1)(d) of SEZ Act, 2005 mentions that subject to the provisions of the sub-section (2), every Developer and entrepreneur shall be entitled to

drawback or such other benefits as may be admissible from time to time on goods brought or services provided from the Domestic Tariff Area into Special

Economic Zone or Unit or services provided in a Special Economic Zone or Unit by the service providers located outside India to carry on the authorized

operations by the Developer or entrepreneur.

iii. Section 51(1) of the SEZ Act mandates that ""The Provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any

other law for the time being in force or in any instrument having effect by virtue of any law other than this Act"".

iv. Section 53(1) of the SEZ Act mentions that ""A Special Economic Zone shall, on and from the appointed day, be deemed to be a territory outside the customs

territory of India for the purposes of undertaking the authorized operations"".

V.Rule 30(1) of the SEZ Rules, 2006 reads as under -

The Domestic Tariff Area supplier supplying goods to a Unit or Developer shall clear the goods, as in the case of exports, either under bond or as duty paid

goods under claim of rebate on the cover of ARE-1 referred to in Notification Number 42/2001-Central Excise (N.T.), dated the 26th June, 2001 in quintuplicate

bearing running serial number beginning from the first day of the financial year"".

3. It can thus be seen that according to the SEZ Act, supply of goods from DTA to the SEZ constitutes export. Further, as per Section 51 of the SEZ Act, the

provisions of the SEZ Act shall have over riding effect over provisions of any other law in case of any Inconsistency. Section 53 of the SEZ Act makes an SEZ a

territory outside the customs territory of India. It is in line of these provisions that Rule 30(1) of the SEZ Rules, 2006 provides that the DTA supplier supplying

goods to the SEZ shall clear the goods either under bond or as duty paid goods under claim of rebate on the cover of ARE-1

4. It was in view of these provisions that the DGEP vide Circulars No. 29/2006- Customs, dated 27-12-2006 [2007 (207) E.L.T. (T35)] and No. 6/2010, dated 19-

3-2010 [2010 (251) Î•. Î•. Î¤. (Î¤44)] clarified that rebate under rule 18 of the Central Excise Rules, 2002 is admissible for supply of goods made from DTA to SEZ.

The position as explained in there circulars does not change after amendments made vide Notification No. 6/2015- C.E. (N.T.) and 8/2015-C.E. (N.T.) both dated

1-3-2015, since the definition of export, already given in Rule 18 of Central Excise Rules, 2002 has only been made more explicit by incorporating the definition

of export as given in the Customs Act, 1962. Since SEZ is deemed to be outside the Customs territory of India, any licit clearances of goods to an SEZ from the DTA

will continue to be export and therefore be entitled to the benefit of rebate under Rule 18 of CER, 2002 and of refund of accumulated CENVAT credit under rule 5

of CCR, 2004, as the case may be.

5. Any difficulty in the implementation of this circular may be brought to the notice of the Board. Hindi version will follow.

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5. Mr. Dharmadhikari, learned counsel for the petitioner/appellant also relied upon various decisions in support of his contentions. Mr. Mishra learned

counsel for the respondent has relied upon the decision in the case of Ã¢â‚¬ËœEssar Steel Limited Vs. Union of IndiaÃ¢â‚¬â„¢2010(249) ELT 3 (Guj.) .

However, both parties agree that on remand concerned authorities can examine these case laws.

6. After having considered the rival contentions and by consent of the parties, in our view since the orders under challenge were passed prior to 2015,

the original adjudicating and the appellate authorities did not have the benefit of the circular dated 28 April 2015, wherein it is clarified that, rebate of

duty on goods cleared from Domestic Tariff Area to SEZ would be treated as export for the purposes of Cenvat Credit Rules and Central Excise

Rules. Therefore, in the interest of justice and by consent of both the parties we remand the matter back to the Appellate Authority to decide the issue

afresh after considering the Circular dated 28 April 2015 and all the decisions which the parties wishes to rely upon.

7. In view of the above, we pass the following order:

(I) Order in Writ Petition No.2469 Of 2010 - The petition is allowed in terms of prayer clause (a) which reads as under :

(a) That this HonÃ¢â‚¬â„¢ble Court be pleased to issue a Writ of Certiorari, or a Writ in the nature of Certiorari to quash and set aside both the impugned Orders

dated 20th September 2010 (Exhibit-H1 hereto) and 27th September 2010 (Exhibit-H2 hereto) passed by the 3rd Respondent and Order dated 11.10.2010

(Exhibit-C3 hereto) passed by the 4th respondent.

(b) The matters are remanded back to the respondent Nos.3 and 4 for afresh adjudication in terms of our above observation.

(II) Order in Writ Petition No.9075 of 2010 - The petition is allowed in terms of prayer clause (a) which reads as under :

(a) That this HonÃ¢â‚¬â„¢ble Court be pleased to issue a Writ of Certiorari, or a Writ in the nature of Certiorari to quash and set aside both the impugned Orders

dated 18th August 2010 (Exhibit-J hereto) passed by the 2nd Respondent and also the impugned order dated 18th August 2010 (Exhibit-K) passed by the 3rd

respondent.

(b) The matters are remanded back to the respondent Nos.2 and 3 for afresh adjudication in terms of our above observation.

(III) Order in Central Excise Appeal No.140 of 2010 Ã¢â‚¬" The order passed by the Tribunal dated 8 July 2010 is quashed and the appeal is restored to the file of the

tribunal to decide the same afresh.

8. The concerned authorities to pass a reasoned orders after giving opportunity of personal hearing. All the parties contentions are left open.

9. Writ petitions and Appeal disposed of in above terms. No order as to cost.