IN THE CUSTOMS, EXCISE AND SERVECE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH, MUMBAI

Appeal No. C/85257/2013

Arising out of Order-in-Appeal No: 1004/ MCH/AC(Drawback)/2012, Dated: 14.12.2012
Passed by the Commissioner of Customs (Appeals), Mumbai.

Date of Hearing: 14.02.2019
Date of Decision: 14.02.2019

HINDUSTAN PETROLEUM CORPORATION LTD

Vs

COMMISSIONER OF CUSTOMS (EXPORTS)
MUMBAI

Appellant Rep by: Ms Padmavati Patil, Adv.
Respondent Rep by: Shri R Kumar, Assistant Commissioner AR

CORAM: C J Mathew, Member (T)
Ajay Sharma, Member (J)

Cus - Drawback of duty paid on importation is admissible on re-export of the imported goods - On import of goods, total duty paid was Rs.86,39,036/- - Eligibility to drawback of 98% of the duties of Customs paid at the time of import is not in dispute - having released a part of the claim, limited to the basic customs duty, the factum of export is also not in doubt - legality of withholding the additional duties of Customs amounting to Rs.47,07,366/- that had been discharged at the time of import is the sole issue remaining for resolution - The duties of Customs for the purpose of this dispute is the aggregate of the basic Customs duty and the additional duty of Customs and as Section 74 of the Customs Act, 1962 is applicable to the whole of the duties put together, it was improper on the part of the lower authorities to disaggregate this - Although the appellant had availed CENVAT credit on entry of the capital goods into their premises, factum of exports would disentitle them from such availment ab initio - as the credit has been reversed, it cannot be deemed to have been retained by the appellant at all - It would also appear that the provisions of CCR, 2004 pertinent to officers of Central Excise & Service Tax has been drawn upon by the officers of Customs without authority to do so, for denying claim of drawback - there is, therefore, no justification for withholding of the prescribed percentage of drawback at 98% of the additional duty of Customs as held by the lower authorities - order set aside & appeal allowed with consequential relief: CESTAT [para 4, 5, 6]

Appeal allowed

FINAL ORDER NO. A/85478/2019

Per: C J Mathew:

This appeal of M/s Hindustan Petroleum Corporation Ltd pertains to the import of 'spares for oil field equipment' against bill of entry no. 568063/12.09.2006 that, having been exported thereafter, was eligible for drawback of duties of customs under section 74 of Customs Act, 1962, read with Re-Export of Imported Goods (Drawback of Customs Duties) Rules, 1995, and claim filed on 14th February 2007. Though, the claim had been initially rejected by the original authority on ground of delay beyond that specified in law, the first appellate authority remanded the matter back to the original auth rity directing condonation of delay. In remand proceedings, the original authority limited the eligibility of drawback to 98% of Rs. 39,31,670/- and sanctioned Rs. 38,53,037/-. The remaining amount, paid as additional duties of customs amounting to Rs. 47,07,366/-, was held to be ineligible as CENVAT credit of this amount was likely to be availed by the appellant and, thereby, constituted discharge of duties of central excise, which was not includible for processing under section 74 of Customs Act, 1962.

2. We have heard Learned Counsel for appellant and Learned Authorised Representative.

3. Eligibility to drawback of 98% of the duties of customs paid at the time of import is not in dispute. Having released a part of the claim, limited to the basic customs duty, the factum of export is also not in doubt and the sole issue remaining for resolution is the legality of withholding of additional duties of customs, amounting to Rs.47,07,366/-, that had been discharged at the time of import. Doubtlessly, the importer is entitled to avail CENVAT credit of additional duties under CENVAT Credit Rules, 2004 which, in this context was available in two tranches prescribed for capital goods. It is also not in dispute that CENVAT credit so availed had been reversed. The sole ground for rejection by original authority, and upheld in order-in-appeal no. 1004/MCH/AC(Drawback)/2012 dated 14th December 2012 of Commissioner of Customs (Appeals), New Custom House, Mumbai, is that:

'11. As per the provisions of Section 74 of the Customs Act, 1962, the drawback of duty paid on importation is admissible on re-export of the imported goods. In the instant case, the exporter had paid 86,39,036.00 vide TR6 challan no.20380401 dated 13.05.2005 on importation of the goods under bill of entry no.568063 dated 12.05.2005. Qut of the duty so paid, they took Cenvat credit of 47,07,366.00 in their Cenvat credit account. Thus, the duty paid on importation remains after taking Cenvat credit only 39,31,670.00. The reversal of the Cenvat credit which was equal to the CVD, will not change the position for the reason that the amount reversed/paid after clearance of the Capital Goods was Central Excise duty and nowhere the CENVAT Credit Rules, 2004 allows utilization of the credit for payment of CVD or any Customs duty other than the duties of excise specified in the rules. Therefore, the amount of credit so* reversed*/paid is not considered for calculating the drawback

amount on re-export of the Oilfield Equipments. In other words, the drawback is allowed on the duty amounting to 39,31,670.00 only as the exporter took credit of the rest of the amount and utilized the same for payment of duty on the clearance of goods from their refinery.'

4. It would appear that the provisions of CENVAT Credit Rules, 2004, pertinent to officers of central excise and service tax, has been drawn upon by officers of customs, without authority to do so, for denying claim of drawback. CENVAT credit is a facility that enables the discharge of duty of excise on excisable goods out of common pool and the availment of such credit is, by no stretch of law or procedure or imagination, a discharge of excise duty liability; in fact, the availment arises from, in this instance, from the discharge of additional duties of customs. Under section 74 of Customs Act, 1962, the eligibility is to the extent of 98% of 'any duty has been paid on importation'. As per section 2(15) of Customs Act, 1962

" 'duty' means a duty of customs leviable under this Act;"

5. Levy of duties of customs flows from section 12 of Customs Act, 1962, which prescribes that duties of customs shall be levied at such rates as may be specified in Customs Tariff Act, 1975. Section 3 of Customs Tariff Act, 1975 holds that articles imported into India shall also be liable to additional duty equal to the excise duty for the time being leviable on a like article. Therefore, the duties of customs, for the purpose of this dispute, is the aggregate of the basic customs duty and the additional duty of customs and as section 74 of Customs Act, 1962 is thus applicable to the whole of this duty put together, it was improper on the part of lower authorities to disaggregate this. Furthermore, though the appellant had availed CENVAT credit on entry of the capital goods into the premises of the appellant, factum of exports would disentitle them from such availment ab initio. It is in pursuance of such disallowance that the credit so availed was reversed. It may not, therefore, be deemed to have been retained by the appellant at all.

6. Accordingly, there is no justification for withholding of the prescribed percentage of drawback at 98% of the additional duty of customs as held by the two lower authorities. We, therefore, allow the appeal with consequential relief.

(Pronounced in Court)