IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

1-2) C/56628/2013-CU[DB] & C/56629/2013-CU[DB]

(Arising out of Order-in-Original No.53/COMMISSIONER/NOIDA/2012-13 dated 31.12.2012 passed by Commissioner, Customs, Central Excise & Service Tax, Noida.)

1) M/s. Logix Soft Tel Pvt.Ltd.
2) Shri Shakti Nath, Director, M/s. Logix Soft Tel Pvt.Ltd.

…APPELLANT(S)

VERSUS

Commissioner of Customs, Central Excise & Service Tax, Noida

RESPONDENT (S)

APPEARANCE

Shri Nishant Mishra (Advocate) for the Appellant No.1
Shri Mohd. Altaf (Asstt. Commr.) (A.R.) for the Revenue

CORAM:

MRS. ARCHANA WADHWA, HON'BLE MEMBER(JUDICIAL)
SHRI ANIL G. SHAKKARWAR, HON'BLE MEMBER(TECHNICAL)

DATE OF HEARING : 02.08.2018
DATE OF DECISION : 15.11.2018

FINAL ORDER NO.72600-72601/2018

Per ANIL G. SHAKKARWAR :

Above-stated two appeals are directed against common Order-in-Original No.53/COMMISSIONER/NOIDA/2012-13 dated 31.12.2012 passed by Commissioner, Customs, Central Excise & Service Tax, Noida. Therefore they are taken together for disposal.

2. Brief facts of the case are that –

2.1 Appellant was granted approval vide letter dated 30.1.2002 issued by Ministry of Commerce & Industry, for setting up an Industrial

Park, in terms of scheme notified under Section 80IA (4) (iii) of Income Tax Act, 1962. In terms of the approval, Appellant was entitled to use 90% of allocable area for industrial use and 10% of the allocable area for commercial use.

2.2 Appellant entered into an agreement dated 28.5.2002 with Ministry of Information Technology for setting up of infrastructure for Software Technology Park (STP) for development of computer software, under which Appellant was required to provide infrastructure for computer software companies for a period of five (5) years.

2.3 Appellant applied for and was granted Private Customs Bonded Warehouse License NO.10/Cus/STP/N-II/02-03 dated 29.7.2002 under Section 58 of Customs Act, 1962 for warehousing the goods imported, without payment of duty, under Customs Notification No.153/93-Cus dated 13.8.1993. Appellant executed B-17 Bond of Rs.21 Lacs on 29.7.2002 and of Rs.24 Lacs on 6.3.2003, which were accepted by Deputy Commissioner. Both the bonds were for imported goods only and not for indigenously procured goods.

2.4 Appellant was also given permission by Department of Information Technology vide letter dated 7.10.2002 for import of telematic infrastructural equipment's and other items under Customs Notification No.153/93-Cus dated 13.8.1993, for setting up infrastructure facility for STP units under Software Technology Park(STP) Scheme.

2.5 Appellant imported telematic infrastructural goods without payment of duty under Notification No.153/93 dated 13.8.1993 and also procured indigenously manufactured goods, without payment of duty under Notification No.1/93-CE dated 4.1.1995 and Notification No.22/2003-CE dated 31.3.2003, for setting up of infrastructure of STP.

2.6 Pursuant to enquiry made by Superintendent in the year 2006, Appellant submitted charts showing details of imported/indigenous goods procured duty free and also the location in the premises where such goods were installed. Appellant also vide letters dated 7.3.2008 and 26.3.2010 submitted list of STP/100% EOU and non STP/non EOU, using business facility/incubation Centre, located in 10% of the allocated area for commercial purposes.

2.7 Notice to Show Cause dated 5.7.2011 (hereinafter referred to as SCN) was issued under Section 124 of Customs Act alleging that Appellant has violated conditions of exemption notifications under Customs and Central Excise Act, in as much as the imported/indigenous goods, procured duty free, were not used solely for the purpose of manufacture and development of software for export.

2.8 The said SCN proposed to demand and recover amounts of Rs.49,23,375/- towards duty of customs, on goods imported without payment of duty and an amount of Rs.37,85,388/- towards duty of excise, on goods procured indigenously without payment of duty, under Section 12 & 28 of Customs Act and Section 11A of Central Excise act, r/w terms of Bond. SCN also proposed demand of interest u/s 28AB of Customs Act and Section 11AB of Central Excise Act along with imposition of penalty under Section 114A, 117 of Customs Act and Rule 25 of Central Excise Rules, 2002. Personal penalty on the Director under Section 117 of Customs Act and Rule 26(2) of Central Excise Rules, 2002 was also proposed in the SCN.

2.9 Appellant submitted reply to SCN, stating that conditions of exemption notification have not been violated, in as much as goods imported/procured indigenously duty free, have been used for export only.

2.10 SCN was adjudicated vide Order-in-Original No.53/Commissioner/Noida/2012-13 dated 31.12.2012 wherein it has been held that Appellant has violated conditions of exemption notifications. The demands raised were confirmed.

2.11 Order-in-Original further imposed penalty of Rs.87,08,763/- in terms of bond and agreement and under Section 114a, Section 117 of Customs Act and Rule 25 of Central Excise Rules along with personal penalty of Rs.25,00,000/- on Director under Section 117 of Customs Act and Rule 26(2) of Central Excise Rules.

Aggrieved by the said order dated 31.12.2012 both the appellants are before this Tribunal.

3. Heard the ld.Counsel for the appellant, who has submitted that the exemption under Notification No.1/95-CE dated 04.01.1995 incorporated a condition for allowing such exemption that the goods brought were with a condition that they should be used solely for the purpose of export. He has submitted that in the 10% floor area the facilities were utilized for the purposes other than export. However, it is undisputed fact that the said goods were brought in after issue of CT-3 Certificate by the jurisdictional officer of Central Excise after satisfying that the same were required solely for the purpose of export. Therefore the demand of Central Excise duty by denying the exemption under Notification No.1/95 is not sustainable. He has further submitted that the exemption under Notification No.22/2003-CE dated 31.03.2003 was subject to the condition that excisable goods were brought in connection with manufacture or development of software, data entry and conversion, data processing, data analysis, control data management or call centre services for export. He has further submitted that neither in the show cause notice nor in the order under challenge there has been any conclusion that the goods brought by availing exemption under Notification No.22/2003 were not used for export and therefore the demand by denying said Notification No.22/2003-CE is not sustainable. He has further submitted that since most of the goods were used by appellant for specified purposes and only few goods were used by non-STPI users therefore it was the responsibility of Revenue to prove in respect of which goods conditions

of Notifications were violated by the appellant. He further submitted that Revenue has failed to discharge such burden of proof.

4. Heard the ld.AR, who has submitted that the condition of Notification No.153/93-Cus dated 1308.1993 was that the imported goods were used only for the purpose of export of software and it has been established through the proceedings that the said goods were not used only for the purpose of export, but they were also used for commercial purpose as held by original authority.

5. Having considered the submissions of both the sides and on perusal of record and perusal of above stated three Notifications we find that the appellant has used 10% of the floor space for establishing the business facility called incubation centre which was used for commercial purpose and it was not solely used for the purpose of export. We also find that there are no allegations against the appellant that there was no export done by the appellant. We also note that the said Notification No.1/95-CE provides for exemption of Central Excise duty if the goods are brought in for the specified purposes solely for export. We also note that the said Notification provided procedure of issue of CT-3 Certificate by the jurisdictional Central Excise officer. We note that there are no established facts that the goods which were brought in by availing benefit of Notification No.1/95-CE were not used for export. We therefore do not find that part of the impugned order which relates to confirmation of demand, interest and penalty by denying benefit of Notification No.1/1995 to be sustainable. We also find that the exemption from Central Excise duty under Notification

No.22/2003-CE was admissible when the excisable goods were brought in connection with manufacture or development of software for export. We did not find through the proceedings that it has been established that the said goods were not brought in connection with activities related to export. We therefore find that appellants were eligible for benefit of Notification No.22/2003-CE dated 31.03.2003. In view of our said finding we set aside that part of the impugned order through which Central Excise duty was demanded along with interest and penalty by denying benefit of Notification No.22/2003. We further find that the condition of Notification No.153/93-CUS dated 13.08.1993 is that the goods imported by availing benefit of said Notification should be used only for the purpose of export of software. The proceedings below have held that the said imported goods were not used only for the purpose of export of software, but they were also used for purposes other than of export. We therefore find the impugned order sustainable to the extent of Customs duty confirmed by denying benefit of Notification No.153/93-CUS along with interest and equal penalty. Further since the entire issue was related to interpretation of Notifications we do not find personal penalty on the other appellant to be sustainable. In result the appeal succeeds in respect of exemption under Notification No.1/95-CE dated 04.01.1995 and exemption Notification No.22/2003-CE dated 31.03.2003 and personal penalty on the other appellant. The appeal is rejected in respect of demand of Customs duty along with interest and equal penalty in respect of Customs duty confirmed by denying benefit of Notification No.15/93-CUS dated 13.08.1993. Appeal

No.C/56628/2013 is partially allowed and Appeal No.C/56629/2013 is allowed.

(Pronounced in the open Court on 15.11.2018.)

SD/
(ARCHANA WADHWA)
MEMBER (JUDICIAL)

SD/
(ANIL G. SHAKKARWAR)
MEMBER(TECHNICAL)

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