

***In The Customs, Excise & Service Tax Appellate Tribunal  
West Zonal Bench At Ahmedabad***

**Appeal No. E/11185,12091/2016-DB  
Appeal No. E/10162,10458,12185/2018-DB**

- [Arising out of OIO-AND-EXCUS-000-COM-017-15-16 dated 08/03/2016 passed by Commissioner of Central Excise, Customs and Service Tax-ANAND]  
[Arising out of OIA-VAD-EXCUS-003-APP-231-2016-17 dated 18/07/2016 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-I]  
[Arising out of OIA-VAD-EXCUS-003-APP-175-2017-18 dated 03/07/2017 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I]  
[Arising out of OIA-VAD-EXCUS-001-APP-305-2017-18 dated 11/08/2017 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I]  
[Arising out of OIA-VAD-EXCUS-001-APP-089-2018-19 dated 21/05/2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I]

M/s Shri Ambica Polymer Pvt. Ltd

Appellant

Vs

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

Respondent

**Represented by:**

For Appellant: Shri S.R. Dixit (Advocate)  
For Respondent: Shri K. J. Kinariwala (AR)

**CORAM:**

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

Date of Hearing: 03.01.2019  
Date of decision: 15.03.2019

**Final Order No. A/ 10529-10533 /2019**

***Per: Ramesh Nair***

The fact of the case is that the Appellant is a 100% EOU. They were procuring goods from other 100% EOUs as well as SEZ units during the material period. The finished goods produced were exported as well as cleared in DTA. While removing goods in DTA, the Appellant had availed the benefit of Sr. No.3 to Notification No. 23/2003-CE dated 31.03.2003. Periodic demands were raised seeking to deny such concessional rate benefit, on the ground that when raw materials were procured from 100% EOU / SEZ units, the same amounts to "imports" for the purpose of procurement of goods by the Appellant and hence, ineligible for such benefit of Sr. No.3 to Notification No. 23/2003-CE dated 31.03.2003. The following appeals have been filed on this ground:

Sr. No	Appeal No.	Period Involved	SCN date	OIA No. & Date	Inputs procured from	Amount of Duty Rs.
1	E/12091/2016	21.09.06 to 20.03.10	02.09.2011	VAD-EXCUS003-APP-231-2016-17 dated 18.07.16	SEZ, EOU and DTA units	10,71,187/-
2	E/10162/2018	2006-07 to 2009-10	02.09.2011	VAD-EXCUS003-APP-175-2017-18 dated 03.07.17	SEZ, EOU and DTA units	10,71,187/-
3	E/11185/2016	2010-11 to 2014-15	10.04.2015	AND-EXCUS000-COM-017-15-16 dated 24.02.16	Only SEZ	59,66,121/-
4	E/10458/2018	1.10.15 to 1.08.16	07.12.2016	VAD-EXCUS001-APP-305-2017-18 dated. 11.08.17	Only SEZ	9,09,834/-
5	E/12185/2018	01.09.16 to 30.06.17	07.11.2017	VAD-EXCUS001-APP-089-2018-19 dated. 31.05.18	Only SEZ	6,54,611.79/-

2. As regards Sr. No.1 and 2 above, the very same period and demand is involved, however, two separate appeals have been filed since in earlier round of litigation, the matter was remanded by the first appellate authority against which appeal No. E/12091/2016 was filed, however after re-adjudication, the matter once again travelled upto the CESTAT in form of appeal No. E/10162/2018.

3. We have heard Shri Saurabh Dixit, Ld. Counsel for the appellant and Shri. K.J. Kinariwala Ld. Assistant Commissioner (AR) for the Revenue who reiterated the findings of the Commissioner (Appeals). We find that in so far as issue of receipt of raw materials from other 100% EOUs is concerned, an identical issue on hand stands decided by this court in the case of Phthalo Colours & Chemicals India Ltd. vide its Final Order No. A/12537/2018 dt.5.11.18, wherein the demand had been treated as time-barred, considering the complex interpretational issue as

well as CT-3/Procurement Certificates obtained and ER2 returns filed from time to time, which shows there is no suppression involved in the matter. That similar compliances were made by the Appellant just as in the case of Phthalo Colours (supra) and therefore in so far as the appeals involving receipt of inputs from other 100% EOUs are concerned, the same are allowed on the ground that the demand is time-barred.

4. As regards appeal No. E/12185/2018, we find that the first Appellate authority did not condone a minor delay of in filing the appeal. We find that there were sufficient reasons for the delay which ought to have been condoned. We therefore condone such delay and remand this appeal to first Appellate authority to decide the same in line with the outcome of the other appeals in the present order.

5. As regards raw materials received from SEZ units, it was argued at length by the Appellant that procurements from SEZ units are not excluded for claiming benefit of Sr. No.3 to Notification No.23/03-CE. We find merit in the submission that the definition of the terms "import" and "export" in Customs Act, 1962, SEZ Act, 2005 as well as FT (D & R) Act, 1992 clearly show that only the goods physically brought from outside India will be treated as imported goods. Since SEZ is located within India only, it cannot be assumed to be foreign territory. Even the deeming fiction created under Notification No.23/03-CE limits its scope to goods received from other 100% EOUs as well as certain deemed exports supplies under para 8.3(a) and (b) of the FTP. Such deeming fiction does not cover goods received from SEZ at all. That despite defining the term "DTA" in Notification No. 23/03-CE (Sr. No.3), the condition No.3 states that in order to claim benefit of concessional rate under Sr. No.3, "wholly from raw materials produced or manufactured in India". The condition does not state that "wholly from raw materials produced or manufactured in DTA", and such meaning therefore cannot be artificially assigned by

revenue authorities. That the Hon'ble Gujarat High Court in the case of Gujarat Essar Steel Ltd 2010 (249) E.L.T. 3(Guj.) at Paras 41.1.2 to 41.1.4, 41.3.4, after having considered the issue at great length, held that SEZ is also a territory within India only and goods supplied to SEZ cannot be said to be exported out of India. Such view was also upheld by Hon'ble Apex court as reported at 2010(255) E.L.T. A115 (SC). A similar view was taken by the Hon'ble Andhra Pradesh High Court in the case of Tirupati Udyog Ltd 2011 (272) E.L.T. 209 (AP) more particularly at Paras 16, 21, 26 and thereof. The Hon'ble Karnataka High Court in the case of Wipro GE Healthcare Pvt. Ltd 2017 (356) E.L.T. 380 (Kar) dealt with this issue and held that goods produced/manufactured in another EOU/SEZ has to be treated as manufactured in India only and the recipient 100% EOU is eligible to claim cash refund of CST. That similar view was taken by the Hon'ble Calcutta High Court in the case of Mittal Technopat Pvt. Ltd 2017 (355) E.L.T. 3 (Cal) as also by the jurisdictional high court of Gujarat in the case of Asahi Songwon Colours Ltd 2017 (356) E.L.T. 532 (Guj). Following the ratio laid down by higher forums, since goods produced and supplied by SEZ unit to the Appellant are to be treated as produced in India only, the condition No.3 to Notification No. 23/03-CE can be said to be fulfilled in such circumstances. We thus set aside the impugned order and allow all the appeals with consequential reliefs, if any, except appeal No. E/12185/2018 which is remanded to the Ld. Commissioner (Appeals).

*(Pronounced in the open court on 15.03.2019)*

**(Raju)**  
**Member (Technical)**

**(Ramesh Nair)**  
**Member (Judicial)**

Seema