

**2010-TIOL-494-CESTAT-AHM**

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
WEST ZONAL BENCH, AHMEDABAD  
COURT NO.II**

**Appeal No.E/746 of 2009**

Arising out of the Order-in-Appeal No.KKS/520/Daman/2008 Dated : 30.12.2008  
Passed by the Commissioner (Appeals), C.Ex. & Cus., Daman Vapi

**Date of Decision : 10.11.2009**

**M/s ZYDUS MAYNE ONCOLOGY PVT LTD**

**Vs**

**COMMISSIONER, C EXCISE & CUSTOMS, VAPI**

**Appellant Rep by:** Shri J C Patel, Adv.

**Respondent Rep by:** Shri Sameer Chitkara, SDR

**CORAM :** B S V Murthy, Member(T)

**Central Excise – SEZ Unit – Refund of duty on inputs – SEZ status to be accorded from date of application, not date of approval; eligible for refund even if the unit is not in SEZ:** The objectives of setting SEZ unit is to promote exports and the Government gives refund on the duty paid on inputs in respect of goods notified not only in respect of SEZ unit but also in respect of domestic units. SEZ unit can obtain goods without payment of duty but in the absence of status as SEZ approved unit they could not have got the same and hence they have obtained goods on payment of duty. Therefore, even if the refund is not strictly admissible on the ground that procedure was not followed, it is required to examine whether appellants were eligible in the normal course for the refund if the goods have been exported. The refund claim has been blindly rejected only after examining with respect to SEZ Act and procedure prescribed by the Government. In the absence of any findings that goods have not been exported and in cases where goods have been exported, refund of duty paid on inputs is not admissible or was not admissible, the rejection of refund claim is not in order.

**ORDER NO.A/2252/WZB/AHD/2009**

**Per : B S V Murthy :**

Appellants are manufacturing pharmaceutical products had applied for approval as a Special Economic Zone (SEZ for short) Unit vide their application dated 29.9.2006 to Kandla, SEZ Development Commissioner and Kandla SEZ notified on 28.9.2006. The Development Commissioner had approved the unit vide letter dated 27.10.2006. However, before the approval as SEZ unit, appellants had procured some excisable goods on payment of duty amounting to Rs. 87,403/- in respect of which they filed refund claim on 19.9.2007. The refund claim has been rejected by the lower authorities on the ground that the appellants obtained approval as SEZ unit only on 27.10.2006 and they were eligible for procuring duty free goods thereafter.

2. Shri J.C. Patel, learned advocate on behalf of the appellants submits that there is no dispute nor there is finding that resultant goods have not been exported. He relies on the decision of the Hon'ble Supreme Court in the case of *M.P.V. & Engineering - 2003 (153) ELT 485 (Supreme Court)* to support his contention that the benefit as SEZ unit is

available to the appellants with effect from the date on which application was made before the competent authority and not from the date when such approval was given. On the other hand learned SDR submits that in the absence of specific provisions in the law and as rightly observed by lower authorities, such benefit cannot be extended.

3. I have considered the submissions made by both the sides. Learned Commissioner (Appeals) has rejected the claim of the appellants with the following observations :-

*"3..... However, I have considered their submissions and have examined the matter. It is a fact that the appellant had procured the impugned excisable goods on payment of duty on 07/10.6.2006 that is before grant of approval to them for setting up a SEZ unit for authorized operations. Unless they are in possession of this Letter of Approval, exemption and benefits provided under Section 26 of Special Economic Zones Act 2005 or Rule 27 of the Special Economic Zones Rules 2006, would not be applicable. The appellant obtained LOA as a SEZ unit only on 27.10.2006 and as such they were not eligible to procure duty free goods from indigenous DTA unit any they have rightly paid the duty. As they were not approved as a SEZ unit on 7/10.6.2006, they also could not have followed CBEC Circular No. 27/2006-Cus. Dated 27.12.2006 and Rule 30 of Special Economic Zone Rules 2006 under which procedure for procurement of goods from DTA to SEZ unit have been prescribed. Duty was rightly paid on the date of removal of the goods by the DTA suppliers and refund of the same is not admissible under Rule 18 of the Central Excise Rules, 2002. There are therefore, no reasons to interfere with the impugned order in original."*

4. I find considerable force in the arguments advanced by learned advocate that the date of effect is to be from the date of application, in the cases like this. As pointed out by the learned advocate in the case of SSI Units, even when the unit is recognized as SSI and certificate is issued by the State Governments sometime after lapse of more than six months, benefit is extended from the date of application made by the unit. In any case, if the unit is not recognized as an SSI unit or not approved as SSI Unit, the department has remedy of recovering the additional duty and in this case, by not granting the refund. The objectives of setting SEZ unit is to promote exports and the Government gives refund on the duty paid on inputs in respect of goods notified not only in respect of SEZ unit but also in respect of domestic units. SEZ unit can obtain goods without payment of duty but in the absence of status as SEZ approved unit they could not have got the same and hence they have obtained goods on payment of duty. Therefore, even if the refund is not strictly admissible on the ground that procedure was not followed, it is required to examine whether appellants were eligible in the normal course for the refund if the goods have been exported. The refund claim has been blindly rejected only after examining with respect to SEZ Act and procedure prescribed by the Government. In the absence of any findings that goods have not been exported and in cases where goods have been exported, refund of duty paid on inputs is not admissible or was not admissible, the rejection of refund claim is not in order. Further, the decision of the Hon'ble Supreme Court cited by the learned advocate is very much applicable and therefore, on this ground itself appeal has to be allowed, since goods have been received after application has been made but before approval and therefore, refund has to be granted. Accordingly, appeal is allowed with consequential relief to the appellants.

(Pronounced in the Court in 10.11.2009)

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