Grant Thornton

#GTBharat
SHAPING VIBRANT INDIA

Customs duty is applicable on goods supplied back as is from SEZ unit to DTA, being a reimport for DTA – CESTAT

14 December 2023

Summary

The Customs, Excise and Service Tax Appellate Tribunal (CESTAT), New Delhi bench has held that customs duty is applicable on the goods supplied back from the Special Economic Zone (SEZ) unit to Domestic Tariff Area (DTA) without any manufacturing activity undertaken on such goods in the SEZ. The CESTAT noted that Section 30 of the Special Economic Zone Act, 2005 (SEZ Act) specifically provides that clearance of goods from SEZ to DTA will be on payment of customs and other duties.

Furthermore, the CESTAT stated that Rule 48(3) of the Special Economic Zone Rules, 2006 (SEZ Rules) makes it clear that goods initially procured from DTA, by an SEZ unit, if cleared back to DTA without processing, such goods will be treated as reimported goods. It is a reimport for the DTA purchaser who is procuring the goods from the deemed foreign territory of SEZ and such DTA purchaser is required to file the Bill of Entry. The SEZ unit will not become reimporter and thereby, be eligible to claim exemption or refund. Accordingly, the CESTAT dismissed the appeal and remanded the matter for examination of exemption pertaining to reimport availed by the appellant.

Facts of the case

- M/s. Lupin Limited ('the appellant') is a SEZ unit, which manufactures and exports pharmaceutical products.
- The appellant had imported certain input goods from DTA unit, which remained unutilised. Therefore, the appellant supplied such goods back to DTA after paying duty.
- The appellant paid the custom duty under protest.
- Therefore, the appellant filed a refund application on the ground that supply of goods from SEZ unit to DTA qualifies as reimport without engaging in any manufacturing activity and will be exempt from custom duties as per Rule 48(3) of SEZ Rules.
- A show cause notice was issued and adjudicated denying the refund, holding that refund is not admissible under the SEZ Act read with the Customs Act, 1962.
- Subsequently, the appellant appealed against the original order, but the Commissioner (Appeals) again rejected the same.
- Therefore, aggrieved by the same, the appellant has filed the present appeal before the CESTAT.
- The appellant also contended that the authorities had not correctly provided the benefit of the exemption under Notification No. 45/2017- Customs dated 30 June 2017.

Issue before the Tribunal:

- Whether the goods removed from SEZ to DTA (initially procured from DTA) are chargeable to customs duties in terms of Section 30 of SEZ Act read with Rule 47 of SEZ Rules?

CESTAT New Delhi observations and judgement [Customs Appeal No. 54694 of 2023-SM dated 29 November 2023]

- **Custom duty is leviable on clearance of goods from SEZ unit to DTA:** The CESTAT observed that Section 30 of the SEZ Act provides that custom duties are

leviable on clearance of goods from SEZ unit to DTA. The CESTAT also relied on the judgement in the case of Roxul Rockwood Insulation India Pvt. Ltd. and Nokia India Sales Pvt. Ltd. wherein it was held that 'if any goods are to be removed from a SEZ to the DTA, they will be chargeable to duties of customs, including anti-dumping, countervailing, and safeguard duties.' Therefore, CESTAT held that goods cleared from an SEZ unit to DTA attract custom duties.

- **Settled position under law that rules are being made to supplement the Act and not to supplant the Act:** The CESTAT held that the appellant's argument that BCD would not be leviable on the reimport of goods is not valid because it is a well-settled position under law that the rules cannot go contrary to the substantive provisions of the Act. Furthermore, to substantiate its view, the CESTAT relied on the judgement of the Apex Court in the case of J.K. industries Ltd., wherein a similar stance was taken.
- **Settled position under law that, in cases when language is unambiguous and explicit, one cannot resort to a different interpretation:** The CESTAT relied on the judgement of the Apex Court in the case of Kalyan Roller Flour Mills Private Limited and Shri Vile Parle Kelvani Mandal & Ors. It was clarified that 'once the provisions of an enactment are simple and there is no ambiguity there is no scope for interpretation.' Therefore, the CESTAT observed that there is no ambiguity under the SEZ laws.
- **Concept of reimportation regarding transfer of goods from SEZ to DTA:** The CESTAT opined that the appellant's interpretation of rules was fundamentally incorrect because the appellant ignored the provision of Rule 47 of the SEZ Rules. Rule 48(3) and Rule 47 of the SEZ Rules must be interpreted together and not separately. The CESTAT emphasised that Rule 48(3) of SEZ Rules does not offer blanket exemption from leviability of tax.
- **Appeal dismissed and issue pertaining to the eligibility of exemption remanded back:** The CESTAT examined the invoices submitted by the appellant and held that the appellate authority has not rightly examined the issue of exemption benefit under the notification(supra). Therefore, the CESTAT dismissed the appeal and remanded the matter for examination of benefit of exemption.

Our comments

Section 53 declares a SEZ to be a territory outside the customs territory of India for the purpose of undertaking authorised operations. Furthermore, Rule 48 of the SEZ Rules inter-alia states that where goods procured from DTA by a unit are supplied back to the DTA, as it is or without substantial processing, such goods shall be treated as reimported goods and will be subject to such procedure and conditions as applicable in the case of normal reimport of goods from outside India. Therefore, the CESTAT held that, in the present case, custom duty is leviable on goods reimported from SEZ unit to the DTA.

The decision is likely to open a pandora's box for other assessees with similar transactions and is expected to come under the Revenue's scanner.

However, it is interesting to note that under the GST law, the Tamil Nadu Authority for Advance Rulings (AAR), in the case of the Bank of Nova Scotia, has held that the applicant is not liable to pay IGST at the time of removal of goods from the FTWZ/SEZ to DTA, in addition to the duties payable under the Customs Tariff Act, 1975, on the removal of goods from the FTWZ/SEZ unit.

Contact us

Scan the QR code to view our office addresses

www.grantthornton.in

For more information or for any queries, write to us at **GTBharat@in.gt.com**

Follow us @GrantThorntonIN