

CVD due at the time of debonding of EOU can be paid by utilising CENVAT credit – CESTAT

26 October 2023



Summary

The Customs, Excise & Service Tax Appellate Tribunal (CESTAT) Ahmedabad Bench has held that the countervailing duty (CVD) payable at the time of debonding an export oriented unit (EOU) can be paid from the accumulated CENVAT credit. The CESTAT drew reliance from the judgement of the Gujarat High Court (HC) in the case of Dishman Pharmaceuticals and Chemicals Private Limited, wherein the HC had permitted the payment of excise duty foregone from the CENVAT credit account. Further, the CESTAT also observed that the appellant had made a detailed declaration before the proper officer regarding the facts of payment of various kinds of dues and utilisation of the CENVAT credit and a no-dues certificate. Therefore, an extended period of limitation could not be invoked, as there was no suppression of facts, misdeclaration or any other contravention with an intention to evade duty.

Facts of the case

- Sun Pharmaceuticals Industries Limited (the appellant), a 100% EOU unit, decided to exit from the 100% EOU scheme during the year 2012-13 and applied for de-bonding of the unit.
- The appellant calculated the dues on the stock of finished goods, imported as well as indigenous raw materials, goods under work-in-progress and capital goods, and paid the requisite customs and central excise duties. The details of the same were duly conveyed to the department as well.
- The appellant submitted the no-dues certificate to the Development Commissioner and was permitted to de-bond the unit.
- Subsequently, the department issued a show cause notice by invoking an extended period, alleging that the appellant had wrongly utilised the CENVAT credit of raw materials and input goods imported towards the payment of countervailing duty. The same was confirmed by the order in original.
- The appellant challenged the impugned order.

CESTAT Ahmedabad observations and order [Customs Appeal No. 10719/2017; Order dated 13 October 2023]

- **CENVAT credit can be utilised for paying CVD at the time of de-bonding:** The CESTAT held that the CVD, which is payable on de-bonding 100% EOU, can be paid by utilising the accumulated CENVAT credit. The CESTAT relied upon the judgement of the Gujarat High Court in the case of Dishman Pharmaceuticals and Chemicals Private Limited, wherein the HC had categorically validated the practice of payment of excise duty foregone by utilising the CENVAT credit instead of cash.
- **Extended period cannot be invoked in the absence of suppression of facts, misdeclaration or contravention with intention to evade duty:** The CESTAT pointed out that the appellant had duly communicated the details of the dues and its payment, including utilisation of the CENVAT credit to the proper officer, and the department, had upon satisfaction, issued a no-dues certificate. Accordingly, there is no suppression of

facts, misdeclaration or violation with the intention to evade duty. Therefore, in the CESTAT's opinion, the demand was barred by limitation. In view of the above, the CESTAT set aside the impugned order.

Our comments

Earlier, the Gujarat HC, in the case of Ralli Engine Ltd., had held that the appellant is permitted to pay the excise duty foregone from the legally availed CENVAT credit account. Upon the payment of excise duty through the CENVAT credit account, the HC had directed the department to issue a 'No Dues Certificate' to the appellant for de-bonding out of the 100% EOU scheme.

Considering there is a lack of clarity on whether the ITC of IGST can be utilised for the payment of the IGST foregone, at the time of debonding this ruling along with the judgement of the Gujarat HC in the case of Dishman Pharmaceuticals, would be relevant precedents in this regard.

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