

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
MUMBAI**

REGIONAL BENCH - COURT NO. I

EXCISE APPEAL No. 86002 of 2015

(Arising out of Order-in-Original No. GOA-EXCUS-000-COM-009-14-15 dated 30.01.2015 passed by Commissioner of Central Excise & Service Tax, Goa.)

Pentair Water India Private Limited

L-52-55, Verna Industrial Estate
Phase-II, Verna, Salcete
Goa - 403 722.

.....Appellants

VERSUS

Commissioner of Central Excise & Service Tax

Goa Commissionerate
ICE House, EDC Complex
Patto Plaza, Panaji
Goa - 403 001.

.....Respondent

WITH

EXCISE APPEAL No. 85204 of 2017

(Arising out of Order-in-Original No. GOA-EXCUS-000-COM-012-16-17 dated 04.11.2016 passed by Commissioner of Central Excise & Service Tax, Goa.)

Pentair Water India Private Limited

L-52-55, Verna Industrial Estate
Phase-II, Verna, Salcete
Goa - 403 722.

.....Appellants

VERSUS

Commissioner of Central Excise & Service Tax

Goa Commissionerate
ICE House, EDC Complex
Patto Plaza, Panaji
Goa - 403 001.

.....Respondent

APPEARANCE:

Shri T. Vishwanathan a/w Shri Akhilesh Kangsia & Ms. Madhura Khandekar, Advocates for the Appellants

Shri Hemant Kumar Tantia, Authorized Representative for the Respondent

AND

EXCISE APPEAL No. 86105 of 2015

(Arising out of Order-in-Original No. GOA-EXCUS-000-COM-012-16-17 dated 04.11.2016 passed by Commissioner of Central Excise & Service Tax, Goa.)

Commissioner of Central Excise & Service Tax

Goa Commissionerate
ICE House, EDC Complex
Patto Plaza, Panaji
Goa - 403 001.

.....Appellant

VERSUS

Pentair Water India Private Limited

L-52-55, Verna Industrial Estate
Phase-II, Verna, Salcete
Goa - 403 722.

.....RespondentsAPPEARANCE:

Shri Hemant Kumar Tantia, Authorized Representative for the Appellant

Shri T. Vishwanathan a/w Shri Akhilesh Kangsia & Ms. Madhura Khandekar, Advocates for the Respondents

CORAM:**HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)****HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)****FINAL ORDER NO. A/86696-86698/2025**

DATE OF HEARING: 01.05.2025
DATE OF DECISION: 23.10.2025

PER : M.M. PARTHIBAN

These appeals bearing No. E/86002/2015 and E/85204/2017 have been filed by M/s Pentair Water India Private Limited, Goa (herein after, referred to as 'the appellants'), assailing Order-in-Original No. GOA-EXCUS-000-COM-009-14-15 dated 30.01.2015 and GOA-EXCUS-000-COM-012-16-17 dated 04.11.2016, respectively (herein after, referred together as 'the impugned orders') passed by Commissioner of Central Excise & Service Tax, Goa.

1.2 The appeal bearing No. E/86105/2015 has been filed by Revenue assailing the Order-in-Original No. GOA-EXCUS-000-COM-009-14-15 dated 30.01.2015, on the grounds that the demand of duty was not confirmed in terms of Section 11A(5)/11A(4) of the Central Excise Act, 1944 as proposed in the Show Cause Notice stating the specific grounds for invoking extended period and that the learned Commissioner had not imposed penalty on the appellants under Section 11AC *ibid*.

2.1 On going through the averments made in all these appeals, we are of the view that the appeals preferred by the appellants assessee and the Revenue is arising from common issues dealt with in both the orders-in-original / impugned orders covering the demand of duty, interest and penalty for the period 2008-2012 (March, 2008 to December, 2012) issued vide Show Cause Notices (SCNs) dated 21.11.2012 and 11.01.2013 adjudicated vide the impugned order dated 30.01.2015 and for the period 01.01.2012 to 30.09.2015 (January, 2012 to September,

2015) issued vide revised SCN dated 26.05.2016 adjudicated by the impugned order dated 04.11.2016. Thus, we are of the view that these appeals can be considered together for hearing in the interest of justice. Therefore, with the consent of both the parties, all the three appeals are being taken up for consideration and for final disposal herein.

2.2 Briefly stated, the facts of the case are that the appellants herein is a 100% Export Oriented Unit (EOU), *inter alia*, engaged in the manufacture and export of 'components for industrial water treatment/water filtration plant' classifiable under Chapter 84 of the Central Excise Tariff Act, 1985. They also holding Customs Bonded Warehouse License No.1/2023 dated 30.06.2003 issued by the jurisdictional Deputy Commissioner of Central Excise, Panaji division, Goa in respect of the EOU operations under bond. The appellants are also clearing the excisable goods in the Domestic Tariff Area (DTA) in terms of the notifications issued by the Ministry of Finance and the Foreign Trade Policy (FTP) issued by the Ministry of Commerce. For this purpose, they are duly registered with jurisdictional Central Excise department with Registration No. AABCS 8856LXM001.

2.3 In respect of the final products manufactured and cleared by the appellants viz., centrifugal pumps, code line vessels/ code line vessels with membrane, filter valve assembly, FRO vessel tanks, HRO membrane, pool/water filter, RO system, UV system, water softener system, water filter system, Melt blown line, hydranautics systems, cabinets etc., the Department had interpreted that these are components required for water treatment/water purification plant for industrial and domestic applications; and thus proposed for revising the classification of the above goods under Customs/Central Excise Tariff Item (CTI) 8421 9900, from the classification adopted by the appellants under CTI 8421 2190/8421 9900/8481 8030, except for centrifugal pumps for correctly classification was adopted by the appellants under CTI 8413 7010. Further, due to difference in specification and configuration of the components/parts of the water purification/filtration system, it was also interpreted that these cannot be interchanged or substituted. Therefore, the Department concluded that these are not 'similar goods' in terms of Circular No. 12/2008-Customs dated 24.07.2008 issued by the Central Board of Excise and Customs. In terms of Para 6.8(a) of the FTP, 100% EOU is entitled to clear the goods in DTA, provided such products are similar

goods which are exported or expected to be exported subject to overall ceiling of 50% of FOB value of exports and subject to fulfilment of positive NFE, payment of concessional Central Excise duty as specified vide Notification No.23/2003-C.E. dated 31.03.2003. Further, EOU unit manufacturing and exporting more than one product can sell those products into DTA, up to 75%/90% of FOB value of export of specific products, subject to the aforesaid overall ceiling limit of 50% of FOB value of total exports. However, as the components/parts manufactured by the appellants are not similar goods, they have contravened the FTP in clearance of such goods to the DTA by availing the concessional rate of Excise duty under Notification No. 12/2012-C.E. dated 17.03.2012 (Sr. No. 239/240) to which they are not eligible and therefore, the Department had demanded the differential duty involved in such DTA clearances by invoking extended period of limitation, besides imposition of penalty on the appellants. Various SCNs issued in this regard were adjudicated by the learned Commissioner vide the impugned orders dated 30.01.2015 and dated 04.11.2016. Being aggrieved with the impugned orders, the appellants assessee have filed these appeals before the Tribunal. Revenue has also filed an appeal against the dropping of part of the demand and for non-imposition of penalty on the appellants.

3.1 Learned Counsel for the appellants submitted that the appellants have been granted Letter of Permission (LoP) from 2003 onwards and the relevant LoP dated 15.03.2013 issued by the Development Commissioner, Ministry of Commerce is for manufacture and export of (i) components for industrial water treatment plant/apparatus, (pressure vessels), spares or components for industrial water treatment plant/pressure vessel (apparatus), components/ apparatus/ equipment/ systems for water filtration, water purification, water treatment/handling for industrial/ domestic (home/commercial application); (ii) metal enclosures, cabinets, metal panels for cabinets/ components. He also stated that the appellants had achieved positive Net Foreign Exchange (NFE) during the disputed period; all the products manufactured by them or used for water filtration or purification and therefore, he claimed that these are similar goods and given the condition applicable for DTA clearances as per Para 6.8(a) is up to 50% of FOB value of exports, for availment of concessional duty. Thus, he stated that the Appellants have complied with the conditions of Notification No. 23/2003-C.E. dated 31.03.2003 and Para 6.8(a) of FTP.

3.2 Learned Advocate further stated that the competent authority for implementation of FTP being the Development Commissioner, had not raised any objection and have, on the other hand, had renewed their LoP from time to time vide LoP letters dated 25.02.2013 and 12.08.2018, which indicate that they have complied with all the provisions of FTP. Development Commissioner is the competent authority to decide whether goods are eligible for clearance in DTA in terms of FTP. He also stated that the condition for grant of concessional excise duty vide Notification No. 23/2003-C.E. dated 31.03.2003 to the effect that DTA clearances shall not exceed 50% of FOB value of exports, have also been duly fulfilled by the appellants.

3.3 He further stated that all facts regarding DTA clearances were known to the Department as such details were filed in the form of ER-2 returns; the appellants' EOU unit was audited by the Department upto October, 2008, by CERA audit upto March, 2012 and by Customs Receipt Audit for the year 2013. Therefore, he stated that there are no grounds alleging any suppression, misrepresentation of facts etc. for demand of differential duty invoking extended period of time. On the above basis, he submitted that the demands confirmed in the impugned orders be set aside.

3.4 Learned Advocate stated that in respect of clearance of goods made by appellants to DTA, they had complied with all the laws and regulations laid down under Customs statute as well as FTP. In support of their stand, they relied upon the following decisions:

(i) Steel Equipment Private Ltd. Vs. Collector of Central Excise - 1988 (34) E.L.T. 8 (S.C.)

(ii) Abi Turnamatics Vs. Commissioner of GST & Central Excise - 2019 (366) E.L.T. 1048 (Tri. - Chennai)

(iii) Abi Showatech India Ltd. Vs. Commissioner of GST & Central Excise - 2019 (2) TMI 1186 - CESTAT Chennai

(iv) Axiom Cordages Limited Vs. Commissioner of Central Excise, Thane-II - 2021 (5) TMI 665 - CESTAT Mumbai affirmed by the Hon'ble Supreme Court

4. Learned Authorized Representative (AR) appearing for Revenue, reiterated the findings made by the Commissioner in the impugned

orders. He further stated that since the appellants had not correctly mentioned the manufacture and clearance details in the period returns submitted to the Department, the wrong classification adopted by the appellants was not known to the Department. It is only on account of investigation conducted by DRI, the evasion of duty, by misuse of duty concessions have come to the fore. Therefore, learned AR submitted that the appeal filed by the Department against dropping of the proposal for demand of duty for part period and non-imposition of penalty in the impugned order may be allowed.

5. Heard both sides and perused the records of the case. We have also perused the additional written submissions presented in the form of paper book for this case.

6. The issues involved in these appeals are as follows:

(i) to determine whether the DTA clearance of excisable goods made by the appellants is in violation of Para 6.8(a) of the Foreign Trade Policy or not?

(ii) whether the revised classification of the excisable goods arrived at Tariff Item 8421 9900 of the Central Excise Tariff Act, 1985 in the impugned orders are legally sustainable or not?

(iii) whether the differential duty demands confirmed in the impugned orders including penalty is sustainable or otherwise?

7. In order to address the above issues relating to Foreign Trade Policy, classification of excisable goods, we would like to refer the relevant legal provisions contained in Central Excise Act, 1944 for levy of Central Excise duty on 100% EOUs and Foreign Trade Policy. The disputed period in the case is from January, 2008 to September, 2015.

Central Excise Act, 1944

Valuation of excisable goods for purposes of charging of duty of excise.

"Section 3. Duties specified in First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 to be levied. -

*(1) There shall be levied and collected in such manner as may be prescribed,-
(a) a duty of excise, to be called the Central Value Added Tax (CENVAT) on all excisable goods (excluding goods produced or manufactured in special economic zones) which are produced or manufactured in India as, and at the rates, set forth in Schedule I to the Central Excise Tariff Act, 1985;.....*

Provided that the duties of excise which shall be levied and collected on any excisable goods which are produced or manufactured,--

(i) xxx

(ii) by a 100% export – oriented undertaking and brought to any other place in India,

shall be an amount equal to the aggregate of the duties of customs which would be leviable under the Customs Act, 1962 or any other law for the time being in force, on like goods produced or manufactured outside India if imported into India, and where the said duties of customs are chargeable by reference to their value; the value of such excisable goods shall, notwithstanding anything contained in any other provision of this Act, be determined in accordance with the provisions of the Customs Act, 1962 and the Customs Tariff Act, 1975 (51 of 1975).....”

Foreign Trade Policy 2009 - 2014

"CHAPTER-6 EXPORT ORIENTED UNITS (EOUs), ELECTRONICS HARDWARE TECHNOLOGY PARKS (EHTPs), SOFTWARE TECHNOLOGY PARKS (STPs) AND BIO-TECHNOLOGY PARKS (BTPs).

Eligibility

6.1 Units undertaking to export their entire production of goods and services (except permissible sales in DTA), may be set up under the Export Oriented Unit (EOU) Scheme, Electronics Hardware Technology Park (EHTP) Scheme, Software Technology Park (STP) Scheme or Bio-Technology Park (BTP) Scheme for manufacture of goods, including repair, re-making, reconditioning, reengineering and rendering of services. Trading units are not covered under these schemes.

6.8 DTA Sale of Finished Products/Rejects/Waste/Scrap/Remnants and by-products

Entire production of EOU / EHTP / STP / BTP units shall be exported subject to following:

(a) Units, other than gems and jewellery units, may sell goods upto 50% of FOB value of exports, subject to fulfilment of positive NFE, on payment of concessional duties. Within entitlement of DTA sale, unit may sell in DTA, its products similar to goods which are exported or expected to be exported from units. However, units which are manufacturing and exporting more than one product can sell any of these products into DTA, upto 90% of FOB value of export of the specific products, subject to the condition that total DTA sale does not exceed the overall entitlement of 50% of FOB value of exports for the unit, as stipulated above. No DTA sale at concessional duty shall be permissible in respect of motor cars, alcoholic liquors, books, tea (except instant tea), pepper & pepper products, marble and such other items as may be notified from time to time. Such DTA sale shall also not be permissible to units engaged in activities of packaging / labeling / segregation / refrigeration/ compacting / micronisation / pulverization / granulation / conversion of monohydrate form of chemical to anhydrous form or vice-versa. Sales made to a unit in SEZ shall also be taken into account for purpose of arriving at FOB value of export by EOU provided payment for such sales are made from Foreign Exchange Account of SEZ unit. Sale to DTA would also be subject to mandatory requirement of registration of pharmaceutical products (including bulk drugs). An amount equal to Anti Dumping duty under section 9A of the Customs Tariff Act, 1975 leviable at the time of import, shall be payable on the goods used for the purpose of manufacture or processing of the goods cleared into DTA from the unit.....”

Central Excise Tariff Act, 1985*First Schedule***"SECTION XVI**

MACHINERY AND MECHANICAL APPLIANCES; ELECTRICAL EQUIPMENT; PARTS THEREOF; SOUND RECORDERS AND REPRODUCERS, TELEVISION IMAGE AND SOUND RECORDERS AND REPRODUCERS; AND PARTS AND ACCESSORIES OF SUCH ARTICLES

NOTES

1. *This Section does not cover :*

(a) transmission or conveyor belts or belting, of plastics of Chapter 39, or of vulcanised rubber (heading 4010), or other articles of a kind used in machinery or mechanical or electrical appliances or for other technical uses, of vulcanised rubber other than hard rubber (heading 4016);...

2. *Subject to Note 1 to this Section, Note 1 to Chapter 84 and to Note 1 to Chapter 85, parts of machines (not being parts of the articles of heading 8484, 8544, 8545, 8546 or 8547) are to be classified according to the following rules :*

(a) parts which are goods included in any of the headings of Chapter 84 or 85 (other than headings 8409, 8431, 8448, 8466, 8473, 8487, 8503, 8522, 8529, 8538 and 8548) are in all cases to be classified in their respective headings;

(b) other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of heading 8479 or 8543) are to be classified with the machines of that kind or in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate. However, parts which are equally suitable for use principally with the goods of headings 8517 and 8525 to 8528 are to be classified in heading 8517;

(c) all other parts are to be classified in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate or, failing that, in heading 8487 or 8548.

3. *Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function.*

4. *Where a machine (including a combination of machines) consists of individual components (whether separate or interconnected by piping, by transmission devices, by electric cables or by other devices) intended to contribute together to a clearly defined function covered by one of the headings in Chapter 84 or Chapter 85, then the whole falls to be classified in the heading appropriate to that function.*

5. *For the purposes of these Notes, the expression "machine" means any machine, machinery, plant, equipment, apparatus or appliance cited in the headings of Chapter 84 or 85.....*

CHAPTER 84

Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof

NOTES

1. This Section does not cover :.....

2. Subject to the operation of Note 3 to Section XVI and subject to Note 9 to this Chapter, a machine or appliance which answers to a description in one or more of the headings 8401 to 8424, or heading 8486 and at the same time to a description in one or other of the headings 8425 to 8480 is to be classified under the appropriate heading of the headings 8401 to 8424 or under the heading 8486, as the case may be, and not under the headings 8425 to 8480.....

"Tariff Item	Description of goods
(1)	(2)
8421	CENTRIFUGES, INCLUDING CENTRIFUGAL DRYERS; FILTERING OR PURIFYING MACHINERY AND APPARATUS, FOR LIQUIDS OR GASES
8421	- <i>Centrifuges, including centrifugal dryers:</i>
8421 11 00	-- Cream separators
8421 12 00	-- Clothes-dryers
8421 19	-- <i>Other:</i>
8421 19 10	--- Bowl centrifuges
8421 19 20	--- Basket centrifuges
8421 19 30	--- Continuous automatic centrifuges
8421 19 40	--- Self cleaning centrifuges
8421 19 50	--- Decanter centrifuges horizontal bowl
8421 19 60	--- Screw conveyor centrifuges
	--- <i>Other :</i>
8421 19 91	---- For chemical industries
8421 19 99	---- Other
	- <i>Filtering or purifying machinery and apparatus for liquids:</i>
8421 21	-- <i>For filtering or purifying water :</i>
8421 21 10	--- Ion exchanger plant or apparatus
8421 21 20	--- Household type filters
8421 21 90	--- Other
8421 22 00	-- For filtering or purifying beverages other than water
8421 23 00	-- Oil or petrol-filters for internal combustion engines
8421 29 00	-- Other
	- <i>Filtering or purifying machinery and apparatus for gases:</i>
8421 31 00	-- Intake air filters for internal combustion engines
8421 39	-- <i>Other:</i>
8421 39 10	--- Air separators to be employed in the processing, smelting or refining of minerals, ores or metals; air strippers
8421 39 20	--- Air purifiers or cleaners
8421 39 90	--- Other
	- <i>Parts:</i>
8421 91 00	-- Of centrifuges, including centrifugal dryers
8421 99 00	-- Other"

8.1 On plain reading of the above legal provisions under the Central Excise Act, 1944, it transpires that in respect of domestic tariff area clearances of excisable goods by a 100% EOU, the levy of excise duty shall be determined as though it is the aggregate of customs duties that are leviable on like goods, when the goods are removed from EOU/bonded area into the DTA. Classification of the excisable goods are based on the Schedule to the Central Excise Tariff as given under the Central Excise Tariff Act, 1985. Central Excise classification had initially followed Six-digit classification code until 2003 and was broadly based upon HSN (Harmonized System of Nomenclature) classification. However, there were a number of differences with HSN classification and as such the 6-digit classification was not totally aligned with HSN, on the basis of which Customs Tariff has been designed. Eight-digit HSN based Commodities Classification Code was adopted for the purpose of levy of Customs duty with effect from 01.02.2003. Same eight-digit Code was also adopted by DGFT for FTP/EXIM Policy and by DGCIS for compilation of trade statistics. In such background, the Central Government thought it is desirable to adopt a common commodity classification code for all trade related transactions so as to avoid disputes and facilitate smooth flow of trade. Accordingly, for the purpose of eight-digit classification code for levy of Central Excise duty also, Central Excise Tariff (Amendment) Act, 2004 was brought into force with effect from 28th February 2005. Therefore, it can be seen that classification of goods for the purposes of Central Excise duty, Customs duty and for compliance with Foreign Trade Policy follow a common code. Therefore, if the issue of classification of goods under dispute are examined firstly, then it would logically lead to determination of other issues under dispute viz., eligibility to concessional duty under the relevant notifications issued by the Ministry of Finance and compliance with the provisions relating to EOU under the FTP.

8.2 In this regard, we find that as per the legal provisions of the Central Excise Tariff Act of 1985, for legal purposes, the classification of goods shall be determined according to the terms of the headings of the tariff and any relative Section notes or Chapter notes. We also find upon careful reading of the various tariff entries of heading 8421 as given

above, we find that the following categories of goods are covered under its scope:

(i) goods covered under sub-heading 8421 10/tariff items from 8421 1100 to 8421 1999 relates to various types of 'centrifuges', which is not relevant for the products under dispute;

(ii) goods covered under sub-heading 8421 20/tariff items from 8421 2110 to 8421 2900 relates to various types of 'filtering or purifying machinery and apparatus for liquids'. Further, industrial type and house hold type filtering or purifying machinery for water is specifically covered under tariff items 8421 2110, 8421 2190 and 8421 2120, respectively.

(iii) All types of 'filtering or purifying machinery and apparatus for gases' are covered under sub-heading 8421 30/tariff items from 8421 3110 to 8421 3990;

(iv) parts of 'centrifuges' are covered under the scope of tariff item 8421 9100 and parts of other machinery and apparatus are covered under tariff item 8421 9900.

8.3 From the facts on record it clearly transpires that the classification of items under dispute are code line vessels/ code line vessels with membrane, filter valve assembly, FRO vessel tanks, HRO membrane, pool/water filter, RO system, UV system, water softener system, water filter system, Melt blown line, hydranautics systems, cabinets etc., The classification of centrifugal pumps is not under dispute. In the impugned order, above goods are proposed to be classified under CTI 8421 9900 as 'parts'; whereas the appellants assessee had claimed classification of such goods under CTI 8421 2190. On plain reading of the tariff items as elaborated above, it clearly transpires that CTI 8421 9900 covers only 'parts'; whereas the scope of CTI 8421 2190 specifically cover 'filtering or purifying machinery and apparatus for water, which are other than household type' excluding 'Ion exchanger plant or apparatus' covered under CTI 8421 2110. Household type filters for water are specifically covered under CTI 8421 2120. From the above discussion, we are of the *prima facie* view that in terms of headings the goods under dispute are appropriately classifiable under CTI 8421 2190.

8.4 Further, in terms of Section Note 5 to Section XVI the expression "machine" means any machine, machinery, plant, equipment, apparatus or appliance cited in the headings of Chapter 84 or 85. As per Section Note 2 read with Section Notes 3 and 4, other than 'parts' which by themselves are goods mentioned in particular sub-heading/tariff item of

chapter 84 or 85, all other parts, which are suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading 8421, then such parts are required to be classified with the machines of that kind. Therefore, the findings of the learned Commissioner in classifying the various items under dispute as parts in residuary heading of tariff item CTI 8421 9900 is not supported by the principles of classification under the General Interpretative Rules of the Tariff. Further, for legal purposes, the classification of goods shall be determined only according to the terms of the headings of the tariff and any relative Section notes or Chapter notes. For these reasons also, we find that appropriate classification of the goods under dispute are only under CTI 8421 2190 and not under CTI 8421 9900.

8.5 In terms of the notification No.23/2003-C.E. dated 31.03.2003, all goods produced or manufactured in an export oriented undertaking/EOU is exempt from payment of duty of excise that is equal to the aggregate of duties of customs leviable on like goods. The condition is that such clearance of the excisable goods in DTA shall be in accordance with the paragraph 6.8(a) of FTP policy. Further, in terms of notification No.12/2012-C.E. dated 17.03.2012, 'water filtration or purification equipment' classified under sub-heading 8421 21 are extended with concessional excise duty, whereas the 'parts' classifiable under tariff item 8421 9900 are not provided with any such exemption. Since, we have held the classification of goods under tariff item CTI 8421 2190, such concessional rate of excise duty is rightly eligible for the appellants.

8.6 On plain reading of the Paragraph 6.8 (a) of FTP (2019-14) it provides that "Units other than gems and jewellery units may sell goods up to 50% of FOB value of exports, subject to the fulfilment of positive NFE on payment of concessional duties. Within entitlement of DTA sale, units may sell in DTA, its products similar to goods which are exported or expected to be exported from units. However, units which are manufacturing and exporting more than one product can sell any of these products into DTA, up to 90% of FOB of export of the specific products, subject to the condition that total DTA sale does not exceed the overall entitlement 50% of FOB value of exports for the unit, as stipulated above." In the legal provision governing the levy of excise duty under Section 3 of the Central Excise Act, 1944 duty leviable on 'like' goods imported into India is mentioned. However, in CBIC Circular No. 7/2006-

Customs dated 13.01.2006, it is stated that the definition of 'similar goods' would be based on the definition of similar goods as provided in the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988. The term 'similar goods' means goods which is although not alike in all respects, have like characteristics and like constituent materials which enable them to perform the same functions and to be commercially interchangeable with the goods which have been exported or expected to be exported having regard to the quality, reputation and the existence of trade mark and produced in the same unit by the same person who produced the export goods. Since CTI 8421 2190 covers all types of 'filtering or purifying machinery and apparatus for water', other than household type, it is not feasible to treat the goods covered under single CTI as other than 'similar goods'. Further, even if we consider by usage of such goods, these are used for purifying or filtering water and therefore, this condition of 'similar goods' is also fulfilled by the goods under dispute in the present case. Moreover, it is not the case of revenue that the total DTA clearances have exceeded the overall 50% value of exports. Therefore, we find that the clearance of excisable goods to DTA are eligible to be considered for extending the exemption under No.23/2003-C.E. dated 31.03.2003.

8.7 We find that the issue of similar goods had been examined by various Hon'ble High Courts and Tribunal in a number of cases. In the case of *Abi Turnamatics* (supra) the Co-ordinate Bench of the Tribunal have held that for interpretation of the term 'similar goods' in respect of DTA clearances from EOU, the common parlance meaning has to be adopted and not the one suggested by the department in the CBIC circular. The relevant paragraph of the said order is extracted and given below:

"5.5 *In the first place, we find that the Tribunal in the case of Meghmani Industries Ltd. (supra) has addressed the very controversy in respect of the definition of 'similar goods' for exemption under Notification 23/2003-C.E. The Tribunal in the decision after referring to the judgment of the Hon'ble Supreme Court in Wood Craft Products Ltd. - 1995 (77) E.L.T. 23 (S.C.) and of the Tribunal in TELCO - 2000 (126) E.L.T. 1102 (Tribunal) noted that the definitional available in the Customs Act cannot be used in respect of notifications issued under another enactment; that in such cases common parlance or dictionary meaning is to be applied."*

8.8 In the case of *Axiom Cordages Ltd.* (supra), the Co-ordinate Bench of the Tribunal vide Final Order No. A/86338-86340/2021 dated 19.05.2021 had elaborately dealt with various case laws on the issues under dispute in a similar case and had extended the benefit of similar goods and exemption applicable to EOUs in respect of DTA clearances. The relevant paragraphs of the said order is given below:

"15. We find that coordinate benches of the Tribunal in a series of decisions held that the appellants contention is correct and that in terms of the Para 6.8 of FTP, in respect of the units which are manufacturing more than one item, goods whose exports are less can be cleared more in the DTA subject to the overall limitation of 50% of the FOB of export performance. Chennai Bench of the Tribunal in the case of M/s ABI Showatech India Ltd 2019-TIOL-1246-CESTAT-Mad held that

"6.2. Thus it can be seen that within entitlement of DTA sale, units may sell in DTA, its products similar to goods which are exported or expected to be exported from units. The description of goods in the green card does not differentiate or specify goods on the basis of customs tariff. It merely treats them belonging to a class. Bearing machines are considered by department as part of turbo charger which are parts of automobile, then precision automotive components also being part of automobiles should fall in the same class, since they are engaged in manufacture and export of various part of automobile as stated in the green card. Further, as per the table given in paragraph 2 above, the appellant has cleared in DTA bearing housing only. Precision automotive competent was not cleared in DTA. In paragraph 6.8 what is stated is that when more than one product is exported such unit can clear in DTA up to 90% of value of such specified goods provided the total DTA sale does not exceed 50% FOB value of exports of the unit. The appellant have sold 90% FOB of value of export of bearing housing in DTA and has not exceeded 50% of FOB value of the unit since there is no DTA sale of precision automotive component. The condition is therefore fully satisfied. The denial of concessional rate of duty as per the notification is unjustified. The demand raised cannot sustain and requires to be set aside, which we hereby do. The impugned order is set aside and the appeal is allowed with consequential relief if any."

16. In the case of *ABI Turnamatics 2019 (366) ELT 1048 (Tri-Chennai)* it was held that

"5.5 In the first place, we find that the Tribunal in the case of Meghmani Industries Ltd has addressed the very controversy in respect of the definition of similar goods for exemption under notification no. 23/2003-CE. The tribunal in the decision after referring to the judgement of the Hon'ble Supreme Court in the case of Woodcraft Products Ltd. 1995 (77) ELT 23 (SC) and the Tribunal in Telco 2000 (126) ELT 1102 (Tri) noted that the definition available in the Customs Act cannot be used in respect of notifications issued under another enactment; then in such cases common parlance or dictionary meaning is to be applied. Secondly, we find from the green card dated 31.03.2006 issued by the Development Commissioner MEPZ and subsequently also further revised by the MEPZ/SEZ that the main products that was manufactured /exported to be turbo charger components. There is no doubt that the appellant had exported bearing housing whereas the goods to be cleared into DTA seeking benefit of notification no. 23/2003 was turbo wheel assembly. While the adjudicating authority has been at pains to cite the difference in characteristic and function of these two items, the fact remains that both of them are

components of turbo charger and hence would surely fall under the broad banded term "turbo charger components" which is the export product as per the EOU / green card issued to be appellant by the Development Commissioner. Hence, when the permission granted to the appellant has not listed any specific components of a turbo charger but instead has only indicated as export product of 12,50,000 nos. of turbo charger component which was even subsequently enhanced to 32,00,000 nos. of turbo charger components, the appellant cannot then be said to have caused the breach of the conditions. Both bearing housing and turbine wheel are surely component parts of turbo charger, the fact which has been admitted by the adjudicating authority in para 12 of the impugned order. If, on the other hand, the permission granted by the Development Commissioner to the EOU was only for bearing housing, in that event, the clearance of turbine wheel which is part distinct from bearing housing would have come under the scanner. But when the permission is generic and only states "turbo charger components" the condition of the impugned notification gets satisfied so long as the parts that they exported and the parts cleared into DTA are both like components of turbine charger."

17. In the case of Consolidated Coin Company Pvt. Ltd. 2013 – TIOL-139-CESTAT-DELHI Tribunal held that as regards the third point of dispute since the items exported by the appellant the "copper alloys coins blanks and copper zinc nickel strip" are the similar products, both falling under heading 7409 and since the DTA Clearances are within the overall entitlement of 50% of the FOB value of the exports, in accordance with the provisions of para 6.8(a) of the FTP the DTA clearances of any one of these products can be made up to 90% of the FOB value of the export. The DTA Sales of copper alloy coin blanks are well within 90% of their clearances. In view of this, the third objection of the department also does not appear to be valid and as such the duty demand of Rs.83,23,000/- does not appear to be sustainable.

18. In terms of paragraph 6.8(a) of the FTP units which are manufacturing and exporting more than one product can sell any of these products into DTA up to 90% of FOB value of export of the specific products, subject to the condition that total DTA sale does not exceed the overall entitlement of 50% of FOB value of exports for the unit as stipulated. A plain reading of the provisions of policy gives understanding that within entitlement of DTA sale, the units may sell in DTA, its products similar to goods which are exported or expected to be exported from units and in case they are manufacturing and exporting more than one product, they can sell in DTA any of this products subject to limitation of 90% of FOB value of export of the specific products. However, this is subject to overall entitlement of 50% of FOB value of exports. The policy is clear in saying that the units may sell "any" of these products into DTA and subject to 90% of export value of export of the specific "products." In our understanding, a plain meaning of words is that any of the products manufactured or exported can be sold in DTA. The only restriction that appears to be that the value of DTA clearances of any of the products should not exceed 90% of FOB value of export of the specific products. The catch here seems to be on the word "products" whereas the policy mentions the same to be specified products. The department wants to read the same down as "product." As seen above, Tribunal has taken a categorical stand on the interpretation of this provision in the case of measure ABI Showatech India, ABI Turnamatics and M/s Consolidated Coin (all supra), in favour of the appellants. IN the

case of ABI Showatech the export value of bearing housing machines was only about 25 thousands, whereas value of DTA clearances was about 7crores. The same was held to be valid.

19. We find that EOUs are given a facility to clear the goods in DTA, as a reward for the exports made by them subject to the fulfilment of positive NFE. It may so happen that EOU unit manufacturing more than one product may not be able to export all the products in the same proportion; the overseas market may not have demand for all the products manufactured by them. Understandably, EOU cannot be expected to throw away or destroy the product or sell in DTA at a higher rate of duty resulting in financial loss. We find that, under these circumstances, a provision has been built in to the FTP, provision has been made to enable the manufacturer to sell such goods in DTA. The Limitation of 90% of FOB of the products appears to have put to ensure that there is export of all the products manufactured and to ensure that a product which is not at all exported is not cleared in DTA. We find that, as the EOU scheme is based on value of clearances, once export obligation is fulfilled, the manufacturer cannot be constrained to clear particular products in DTA in proportion to the export of the specific product. This appears to be the understanding of the tribunal in the series of judgments cited above. Moreover, the facts and circumstances of the instant case being similar to that of the cases cited above, we find that the goods cleared in DTA are to be held to be similar to those exported and that the 90% entitlement should be seen from the value of exported specific products and not a single product. By following the ratio of the cases, we find that the DTA clearances of the appellants are in order.

20. Coming to the third submission of the appellants that the substantial portion of the demand is time barred, we find that Development Commissioner has given permission or has been regularly intimated about the DTA clearances; similar intimations and returns have also been submitted to the jurisdiction Custom/CE authorities. The clearances in DTA were going on from 2009 onwards. CERA audit of the unit has taken place and note was issued on 21.05.2013. The authorities' i.e either the development Commissioner or the Deputy/Assistant commissioner of Customs/Central Excise has never raised any red flag about the entitlement of DTA Clearances by the appellants. The revenue authorities also have accepted the clearances before the conduct of audit. It gives an understanding that the department was in agreement with the procedures followed by the appellant. As the appellants were regularly submitting intimations to the Development Commissioner and Jurisdictional Central Excise authorities, it is not open to the department to invoke the extended period of limitation. Revenue sought to enforce the conditions of B-17 Bond. However, the Bond is given in respect of imports or duty free DTA procurements by the appellants. It would no way cover the duty liability if any on the DTA clearances. It is not the case of the department that the demand is of duty of Customs or duty of excise foregone on the raw material imported/procured by the appellants.

21. Moreover, the Revenue has alleged violation of the condition of the notification 23/2003 dated 31.03.2003. The notification refers to the provision of the FTP policy. Development Commissioner who is the

implementing authority of the policy has not objected to the clearances made by the appellants in DTA. Under the circumstances, it is to be held that revenue has gone beyond their authority in interpreting the provisions of FTP, following the decision of Delhi High Court in *Great ship (India) Ltd.* 2016 (338) ELT 545 (Del), where in it was held that 33. There is merit in the contention of the petitioner that in the event of conflict of views between two ministries of the Central Government, the view taken by the ministry that is primarily responsible for the policy in question, which in this case is the FTP, should prevail. The SFIS was introduced by the Ministry of Commerce and its instrumentality, i.e., the DGFT has been statutorily entrusted with the final word on the interpretation of the FTP. The letter dated 6th September, 2013 from the Commerce Secretary to the Revenue Secretary is instructive. It refers to Circular No. 837/14/2006, dated 3rd November, 2006 issued by the C.B.E.&C. under the Ministry of Finance which acknowledged that payment of customs duty could be made by using the duty credit scrips. In particular it was pointed out that the expression "duty free credit scrip" had been used incorrectly and that the correct phrase should have been "duty credit scrips". It was suggested that the "insistence by C.B.E. & C. that goods imported by use of SFIS scrip may not be alienated unconditionally, even after three years of import, can be attributable to this inadvertent choice of words." Importantly it was pointed out that "the scrip itself is a benefit that has been 'earned'". This also answers the misconception of the DoR that customs duty can only be paid in cash, and that use of duty credit scrips is only 'revenue foregone'. The position has been explained by the Madras High Court in *Tanfac Industries Ltd.* (supra), where it was held that the goods cleared by using DEPB scrips for payment of duty should be treated as duty payable goods and not as duty exempted goods.

22. In view of the above discussion and following the ratio of cases of *Meghmani Dyes & Intermediates Ltd* 2013 (288) ELT 514 (Guj); *Emcure Pharmaceuticals Ltd* 2014 (307) ELT 180 (Tri.-Mum.) and *Surya Life Science Limited* 2019 (368) ELT 148 (Tri.-Ahmd.), extended period cannot be invoked under the circumstances. On this count substantial portion of the demand should go away. However, as we already held that the DTA clearances of the appellants are in order, the appeals succeed on merits, the issue of limitation will not have any bearing on the outcome.

23. Interestingly, the counsel for the appellants as well as the Id. AR have relied upon the same cases i.e. *Measures ABI Showatech India Ltd.* (supra) while the appellant rely on the same stating that clearance in DTA was mostly of bearing housing only whereas exports were mainly of precision automotive component. The department relies on the same saying that the appellant in that case have fulfilled the conditions of Para 6.8 of FTP and the DTA clearances were less than sold 90% of FOB value of specific product within the overall limit 50% of FOB value. However, ongoing through the case law it appears that the department's contention is incorrect. Tribunal has held categorically that even though the value product (bearing Housing) cleared in DTA was more than 90 percent of the value of FOB value of export of the same, the DTA clearances were in order. The figures of export and DTA clearances in that case are as follows. It can be seen that in the instant case, DTA clearances of Bearing Housing Machined were 280035% of the FOB value. Even then Tribunal

held that the clearances are in order in view of the provisions of FTP. In the instant case during the period 2009-10 to 2013-14 (up to December 2013), exports of twisted yarn were Rs.66, 68,303/- and DTA clearances were of value Rs.470,37,94,080/- thus DTA clearances were 70,205% of the same. It can be seen that facts of the case are identical. Tribunal also held that Bearing Housing and Precision components were similar goods. In the instant case as per above discussion we held that Twisted yarn and Ropes are under the same category of goods under SION and can be held to be similar goods in the broader sense of the word. Therefore, we find that the case is in no way in favour of the Revenue. Learned Authorised Representative for the Revenue, countering the cases cited by the appellants to explain the similarity of nature of goods, submitted that the issues discussed therein are different. While we agree with this contention we hold that the cases can be relied as far as the understanding of similar goods is concerned. Therefore, we find that the contentions of Revenue are not acceptable and the ratio of the cases cited is valid to arrive at the conclusion that the impugned goods are similar in nature. Learned Authorised Representative for the Revenue further sought to rely on the case of Shri Dilip Kumar and others. We are of the considered opinion that the issue doesn't pertain to interpretation of a Notification but interpretation of Provisions of the Policy. As discussed above, the implementing authority, the Development Commissioner has not raised any objection on the DTA sales made by the Appellant. Therefore, we hold that the ratio of cases is to be applied if the facts of the case are comparable and that a strenuous stretching of facts is not permissible. Moreover, in the instant case there is no allegation that export obligation has not been fulfilled and positive NFE was not achieved. A close look at the scheme of the EOU, gives an understanding that the scheme places on reliance of the value of exports and not the quantities. Therefore, we find that positive NFE being achieved, the appellants are within their rights to avail the facility of DTA clearance in terms of Para 6.8 of FTP.

24. In view of the above, the appeals are allowed with consequential relief, if any, as per Law."

8.9 We further find that the Civil Appeal No(s). 1308-1310 of 2012 filed by the Department against the above order of the Tribunal in the case of *Axiom Cordages Ltd.* was dismissed by the Hon'ble Supreme Court in its judgement dated 25.02.2022 by upholding the said Final Order dated 19.05.2021 of the Tribunal.

9. On the basis of foregoing discussions and analysis, and the judgements delivered by the Hon'ble Supreme Court and the Tribunal, we are of the considered view that the dispute is no more open for any debate and the impugned order treating the DTA clearances made by the appellants EOU unit as ineligible for concessional duty under the notifications dated 31.03.2003 and 17.03.2012 for determination of excise duty, reclassification of disputed goods does not stand the scrutiny

of law. Thus, we are of the view that the impugned orders dated 30.01.2015 and 04.11.2016 in confirmation of the adjudged demands is not legally sustainable. Consequently appeal filed by Revenue for non-imposition of penalty and re-determination of duty demands is liable to be dismissed.

10. In the result, the impugned orders are set aside, and the appeals are allowed in favour of the appellants with consequential benefits as per law. Appeal filed by the Revenue is dismissed.

(Order pronounced in the open court on 23.10.2025)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)