

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad**

REGIONAL BENCH- COURT NO. 1

Excise Appeal No. 12185 of 2019-DB

(Arising out of OIO-VAD-EXCUS-002-COM-007-19-20 dated 26/06/2019 passed by the Commissioner of CGST & Central Excise -Vadodara-II)

Sun Pharmaceuticals Industries Ltd

..... Appellant

Plot No. 24/2, GIDC Industrial Estate,
Phase-iv, Panoli, Tal: Ankleshwar
Bharuch, Gujarat

VERSUS

**Commissioner of CGST &
Central Excise-Vadodara-II**

.....Respondent

1st Floor... Room No.101,
New Central Excise Building,
Vadodara, Gujarat- 390023

APPEARANCE:

Shri Ashok B Naval, Chartered Accountant for the Appellant
Shri R K Agarwal, Superintendent (AR) for the Respondent

CORAM:

HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)

HON'BLE MR. SATENDRA VIKRAM SINGH, MEMBER (TECHNICAL)

Final Order No. 11445/2025

DATE OF HEARING: 28.08.2025
DATE OF DECISION: 26.12.2025

SATENDRA VIKRAM SINGH

M/s Sun Pharmaceuticals Industries Ltd, Bharuch (100% EOU) (Appellant) are manufacturing Bulk Drugs under Chapter 29 of the Central Excise Tariff Act, 1985. They were working under 100% EOU scheme till 28.02.2014. While auditing of their records, Central Excise officers noticed that during the period from April 2011 to February 2014, the appellant had cleared/sold multiple products in Domestic Tariff Area (DTA) at concessional rate of duty in terms of Notification No. 23/2003-CE dated 31.03.2003, some of which were never exported while in some cases, products cleared in DTA were more than 90% of the FOB value of export of the said product.

1.1 After examining their reply, department found that the appellant had improperly availed the benefit of above notification and therefore, they were issued a show cause notice on 10.03.2017 proposing recovery of short paid central excise duty of Rs. 3,90,82,282/- on excess DTA clearances, under Section 11A(4) along with applicable interest and penalty under Section 11AC(1)(c) of the Central Excise Act, 1944. In adjudication proceedings, the Commissioner, CGST and Central Excise, Vadodara-II vide impugned order dated 26.06.2019 confirmed the above Central Excise duty demand along with interest and imposed a penalty equal to 50% of the duty amount under the proposed Section. Aggrieved with this order, the appellant filed appeal before this Tribunal.

2. In their appeal, appellants have taken the following grounds: -

(i) The main allegations of the department are: -

- a) Some of the products sold in DTA were more than 90% of the FOB value of export of that product.
- b) DTA clearance of dis-similar products at concessional duty rate.
- c) Some of the products were sold only in DTA on a concessional duty rate and were never exported.

(ii) The benefit of concessional rate of duty, in terms of Notification 23/2003-CE dated 31.03.2003 is available even in respect of similar goods. The goods exported by the appellant and the goods cleared in DTA are similar. Further, deemed exports are also to be treated as physical export while calculating DTA sale entitlement. There is no relevance if any product cleared in DTA is more than 90% of FOB value of export of that specific product if overall DTA sale entitlement is not exceeded. The demand is hit by limitation and interest and penalty is not recoverable from them.

(iii) In terms of above notification, read with para 6.8 (a) of Foreign Trade Policy, 2009-14, EOU can clear goods in DTA upto 50% of FOB

value of the goods exported or expected to be exported. Units which are manufacturing and exporting more than one product can clear any of these products into DTA, upto 90% of FOB value of export of the specific products. FOB value has to be taken by adding both physical as well as deemed export of the specific products.

(iv) The goods cleared by them in DTA sales and those exported are similar. Learned Commissioner has erred in distinguishing the goods based on the trade name of the products rather than their application which is only basis for deciding similar goods. In terms of LOP granted to them by the Development Commissioner, they are permitted to manufacture a) Bulk Drugs- API and b) Bulk Drugs Intermediates.

(v) "Similar goods" have been defined in the Custom Valuation (import of goods) Rules, 2007 and the same definition has been referred to in the Foreign Trade Policy. The department has failed to appreciate their submissions on this point and wrongly confirmed the duty without giving any reasons as to why Bulk Drugs and their Intermediates having similar therapeutic use, cannot be considered as similar products.

(vi) As per Rule 2(f) of the Customs Valuation (import of goods) Rules, 2007, "Similar goods" are defined as under:-

"(1) "Similar goods" means imported goods-

(i) Which although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable with the goods being valued having regard to the quality, reputation and the existence of trade mark;

(ii) produced in the country in which the goods being valued were produced; and

produced by the same person who produced the goods being valued, or where no such goods are available, goods produced by a different person,

but shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods. "

(vii) Vide circular No. 85/95-Cus dated 26.07.1995, CBEC had clarified and issued guidelines to check similarity of goods. However, this circular has since been rescinded by issue of circular No. 07/2006-Cus dated 13.01.2006 which also elaborates on "Similar goods" as under:-

"paragraph 6.8 (a) of the FTP provides that EOU/EHTP/STP may sell goods upto 50% of FOB value of exports in DTA on payment of concessional duty subject to fulfilment of positive NFE. It also provides that within the entitlement of DTA sale, the unit has to sell in DTA its products similar to the goods, which are exported or expected to be exported. There has been doubt as to what constitutes 'similar goods". Further, when the units are not required to take any permission for DTA sale under paragraph 6.39.9, it is felt necessary to provide definition of "similar goods" to bring clarity and uniformity. Therefore, it has been decided 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 component 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". The Board's Circular No. 85/95 dated 26-7-95 issued in this regard stands rescinded."

(viii) The department has neither considered the value of deemed exports nor the guidelines provided under Appendix-14-I-H, with reference to DTA sales entitlement within three years of the accrual of entitlement. If deemed export value is added in the total FOB value, they had not made any excess clearance in DTA. It has been held by Hon'ble Gujarat High Court in case of Shilpa Copper Wire Industries 2011 (269) E.L.T. 17 (Guj.) that deemed exports are to be treated as

physical export while calculating DTA sales entitlements. Similar ruling was given by CESTAT Ahmedabad in the case of Shree Rohini Enterprises Vs. Commissioner of Central Excise, Surat-I at 2017 (346) E.L.T. 461 (Tri. - Ahmd.) which was also affirmed by Hon'ble Supreme Court as reported 2017 (346) ELT A137 (SC). In following cases also, it is held that value of deemed exports are to be included for calculating DTA sales entitlement :-

- CCE, Visakhapatnam Vs Sri Saritha Synthetics & Industries Pvt. Ltd. 2016 (335) E.L.T. 688 (Tri. Bang)
- Commr. of C. EX. & Cus., Surat Versus Mudra Markein Pvt. Ltd. 2015 (323) E.L.T. 154 (Tri. - Ahmd.)
- Commissioner of C. EX. & Cus., Surat Versus Amitex Silk Mills P. Ltd. 2007 (216) E.L.T. 589 (Tri. - Ahmd.)
- Commr. of Central Excise Versus Shilpa Copper Wire Industries 2011 (269) E.E.T. 17 (Guj.)
- Amitex Silk Mills Pvt. Ltd. Versus Commissioner of Central Excise, Surat-I 2006 (194) ELT 344 (Tri.- Del.)
- Commissioner Versus Metflow Cast Pvt. Ltd. 2016 (331) E.L.T. 355 (Guj.)
- Commissioner Versus Metflow Cast Pvt. Ltd. 2016 (331) E.L.T. 355 (Guj.)
- Nandan Synthetics Pvt. Ltd. Versus Commissioner Of C. EX. & S.T., Daman 2015 (315) E.L.T. 454 (Tri. - Ahmd.)

(ix) They are eligible for quarterly DTA sale entitlement. Learned Adjudicating authority has calculated DTA entitlement without considering carried forward entitlement of the last quarter.

(x) The show cause notice was issued on 10.03.2017 alleging suppression of facts for demanding duty for the period from April 2011

to February 2014 which is beyond the normal period of two years alleging suppression of fact. Extended period of limitation is not invocable in their case as they have been regularly filing ER-2 returns, quarterly and annual performance report as well as filing intimation letters to the Development Commissioner before each DTA clearance. He relied on the decision of Hon'ble Gujart High Court in the case of Commissioner Vs. Meghmani Dyes & Intermediates Ltd.2013 (288) E.L.T. 514 (Guj.), wherein, it has been held that when information was provided in prescribed format, then department cannot ask for more information and allege suppression. They also rely on the following decisions:-

- Commissioner of C EX, Pune- Vs. Emcure Pharmaceuticals Ltd 2014 (307) ELT. 180 (Tri Mumbai)
- Commissioner of C. EX., Noida Versus Accurate Chemical Industries 20 14 (310) E.L.T. 441 (All.)
- Accurate Chemicals Industries VS. Commr. of C. EX., Noida, 2014 (300) E.LT. 451 (Tri. Del.),
- Commissioner of Central Excise, Jalandhar Versus Royal Enterprises 2016 (337) E.L.T. 482 (S.C.)
- Commissioner of Cus., C. EX. & S.T., Indore Versus ZYG Pharma Pvt. Ltd. 2017 (358) E.L.T. 101 (M.P.)
- Collector of Central Excise Versus Chemphar Drugs & Liniments 1989 (40) E.L.T. 276 (S.C.)

(xi) Penalty is not imposable on them in this case as they have not made any contravention of nature specified in Section 11AC of the Central Excise Act, 1994. They rely on the following decisions:-

- Hindustan Steel V/S State of Orissa reported 1978 ELT (J.159)
- Akbar Badruddin Jivani V/S Collector of Customes, Bombay" AIR 1990 (SC) 1579

- Mnglam cement ltd. V/S CCE, Jaipur - 2004 (163) ELT 177 (Tri-Del)
- Whiteline Chemicals VS Commissioner of C. EX, Surat- 2008 (229) E.LT. 95 (Tri. Ahmd.)
- Rosavar Steels Ltd. VS Commissioner of C. EX., Coimbatore 2011 (268) E.L.T. 280 (Tri. - Chennai)
- Prem Fabricators Vs Commissioner of C. EX., Ahmedabad-II; 2010 (250) E.LT. 260 (Tri. - Ahmd.)
- Shree Gobinddeo Glass Works Ltd. Versus Commissioner of C. EX., Kolkata-11 2008 (223) E.LT. 476 (Tri. - Kolkata)
- Jeevan Diesels And Electricals Ltd. Versus Commr. of C. EX. Puducherry 2019 (365) E.L.T. 397 (Mad.)
- VVF Limited Versus Commissioner of Central excise, Belapur 2011 (267) E.L.T. 134 (Tri. - Mumbai)
- Commissioner of Central Excise, Kol. IV Versus Kusum Products Ltd. 2012 (283) E.L.T. 433 (Tri. – Kolkata)

In view of the above, they prayed to allow their appeal by setting aside the impugned order.

3. During hearing, learned Counsel explained the entire scheme including DTA entitlement and the provisions of Notification 23/2003 to impress that they have not breached any of the conditions of Foreign Trade Policy or the related notifications issued by CBIC. A wrong case has been made against them for demanding differential duty which is not payable if FOB value of Deemed exports is added to FOB value of physical exports for determining DTA sales entitlement and their carried forward DTA sales entitlement is also allowed. The goods cleared in DTA are similar to goods exported by them and therefore, if all these factors are considered, no differential duty demand remains against them. He also mentions that extended period is not

invokable in this case as they have been filing regular returns with the department. He also submitted following case laws to support his case and prayed to allow their appeal :-

- Commissioner of Central Excise, Bangaluru Vs. Global Green Company Ltd – 2022 (381) ELT 639 (Kar.)
- B. R. Steel Products Pvt Ltd Vs. Commissioner of C. Ex., Navi Mumbai- 2021 (378) ELT 356 (Tri.-Mumbai)
- ABI Turnamatics Vs. Commissioner of GST & C. Ex., Chennai- 2019 (366) ELT 1048 (Tri.- Chennai)

4. Learned AR on the other hand reiterated the findings of the Commissioner and submitted that the Adjudicating Authority has clearly held that the goods sold/cleared by the appellant in DTA are not similar to what has been exported by them and thus, he has rightly concluded that the appellant has violated the conditions of FTP and the related Notifications. To cite few examples of similar goods, he draws our attention to page 90 of the appeal memorandum where the appellant has claimed that the product “**Carisoprodol**” and “**Tizanidine HCL**” are shown as Muscle Relaxant. As per him, if both are compared, they are not commercially interchangeable and to support his say, he produces the following table:-

What is Carisoprodol	What is Tizanidine
<p>Carisoprodol is a muscle relaxer that blocks pain sensations between the nerves and the brain.</p> <p>Carisoprodol is used together with rest and physical therapy to treat skeletal muscle conditions such as pain or injury.</p>	<p>Tizanidine is a short-acting muscle relaxer. It works by blocking nerve impulses (pain sensations) that are sent to your brain.</p> <p>Tizanidine is used to treat spasticity by temporarily relaxing muscle tone.</p>

<p>Carisoprodol should only be used for short periods (up to two or three weeks) because there is no evidence of its effectiveness in long term use and most skeletal muscle injuries are generally of short duration. Carisoprodol is considered a controlled substance in the United States.</p> <p>Prescribed for Nocturnal Leg Cramps, Muscle Spasm.</p> <p>Carisoprodol may also be used for purposes not listed in this comparison guide.</p>	<p>Tizanidine may also be used for purposes not listed in this medication guide.</p>
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4.1 It is also his say that a bunch of similar goods having a particular therapeutic value cannot be considered '**similar**' to another bunch of similar goods having a particular therapeutic value. For example, medicines which are antidepressants cannot be said to be similar to medicines which are anticancer.

He therefore, pleads that the appellant has not produced any data or details to establish how their products have been termed as "similar goods".

4.2 On other points raised by the Learned counsel, he states that the commissioner in his impugned order justified invocation of extended period and non-inclusion of FOB value of deemed exports in the FOB value of physical exports. He also justifies Annexure A1 giving details of goods cleared in DTA only and the same were never exported by the appellant which is a clear violation of FTP and concessional notifications.

5. We have heard the rival submissions. We find that the main issues in this case are:

- a) Whether FOB value of deemed exports is liable to be added to physical exports for determining DTA sales entitlement?
- b) Whether goods can be sold/cleared in DTA by more than 90% of the FOB value of export of a particular product?
- c) Whether goods sold by the appellant in DTA are similar to those exported by him or, are there any goods which were only cleared in DTA?
- d) Whether extended period is rightly invoked for in the case demanding duty for the larger period?

5.1 We find that the appellant has claimed and also supported by various case laws that FOB value of deemed exports should be included in FOB value of physical exports for determining the DTA sales entitlement. We have gone into various case laws and find that the contention of the appellant is correct. In the case of M/s Shree Rohini Enterprises Vs Commissioner of Central Excise, Surat-I, this tribunal vide order reported at 2017(346)E.L.T.(461 held that the value of deemed export is also to be taken into account for determining 50% of the FOB value which will be permitted to be sold to domestic market. This order has also been affirmed by Hon'ble Supreme Court as reported vide 2017(346)ELT A-136(SC). Similar finding was given by Hon'ble Supreme Court in the case of Virlon Textile Mills Limited Vs Commissioner of Central Excise, Mumbai reported at 2007(211) ELT 357(SC) and again in the case of Union of India Vs Arvind Cotspin reported at 2022(382) ELT 735(SC). In the later case, the issue was whether Development Commissioner could have reviewed its decision dated 26.11.1999, of allowing DTA sale by calculating entitlement upon consideration of both physical Exports and deemed exports, after more than four years on 05/05/2004, on the ground that Appendix 42 of the Hand Book of Procedure had been amended to include **physical exports** for DTA entitlement. Hon'ble Court in para 10 observed as under:-

10." In view of the above position of law emanating from para 9.9(b) of the EXIM Policy as stood at the relevant time and the decision of this Court in Virlon Textile (Supra), the very basis of the Show Cause Notice in this matter to the respondent seeking to question the permission granted after about ten years when it had already been operated and executed, cannot be countenanced. For this reason alone, this appeal was required to be dismissed."

Therefore, this issue needs relook by the learned Adjudicating Authority and he may re-check with the office of the Development Commissioner regarding the practice adopted by them as per EXIM Policy as stood at the relevant time, before determining whether the appellant has exceeded DTA sales beyond their entitlement to demand differential duty under Notification No. 23/2003-CE dated 31.03.2003.

5.2 It is also the claim of the appellant that if DTA sales are within the overall limit of 50% of the FOB value, then there is no bar in clearing any specific product by more than 90% of the FOB value export of that product. During arguments, learned Counsel was asked to produce authority for making this claim but he could not produce any such guidelines/ Authority. The relevant provisions of Foreign Trade Policy pertaining to DTA sales entitlement on FOB (para 6.08 (a) & (k)) are as under:-

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

(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.

(k) In case of new EOUs, advance DTA sale will be allowed not exceeding 50% of its estimated exports for the first year, except pharmaceutical units where this will be based on its estimated exports for the first two years."

We find that there is a limit on DTA sale of any specific product not more than 90% of the FOB value of export of that particular product subject to not exceeding overall DTA sales entitlement of 50% of FOB value of exports. In fact, wastes, and by products etc if intended to be cleared in DTA, are also to remain within the overall limit of 50% of the FOB value of exports. We therefore, are not convinced with the arguments of the appellant and accordingly, remit this matter to the learned Adjudicating authority to see if this limit has been breached in respect of DTA sales of any specific product. In case, this condition has been breached in respect of any specific product, the appellant shall be liable to pay excise duty as per the relevant provisions.

5.3 It is also the claim of the appellant that the department has wrongly alleged dis-similarity of the goods cleared in DTA sale vis-à-vis those exported by them. With the help of a list of products, they have drawn attention of this Bench to establish that the products cleared in DTA sales are similar to those exported by them. They have relied on the definition of "similar goods " as per the Customs Valuation (import of goods) Rules, 2007, clarifications issued by the CBIC and Judicial pronouncements by various Courts/Tribunals regarding extending the benefit of DTA sale on similar products. However, what is '**similar**' and what is '**not similar**' has to be seen in the light of composition & use of each product with the help of guidelines issued by CBIC and Foreign Trade policy. Composition and use of Pharmaceutical drugs is a highly technical subject and therefore, it will be

proper if the similarity or otherwise is adjudged by the learned Commissioner based on parameters of composition, use for specific ailments, trade or proprietary name etc. For this purpose Adjudicating authority can allow appellant to submit on the basis of established Pharmacopoeias like British Pharmacopoeia or Indian Pharmacopoeia or similarity based on product patent.

5.4 The appellant has assailed invocation of extended period, on the ground that they were regularly filing ER-2 returns with the Department, quarterly and annual performance reports and also intimating DTA clearances to the Development Commissioner. We however, find from their ER-2 returns that consolidated figures/details of goods cleared in DTA sale are mentioned whereas issues involved in the present case have arisen after deeper scrutiny of documents of the Appellant by the officers. The issues such as similarity of the products, DTA sales entitlement with reference to exports and carried forward balance of entitlement at the close of the previous quarter, cannot be known from the details provided by the appellant in their ER-2 returns and/or in other intimations. These were known to the department only when appellant's records were audited by the officers which otherwise would have remained unnoticed. In para 4.9 of his order, Learned Commissioner has discussed this issue in detail and justified invocation of extended period in this case. Keeping in view of the facts in this case, we agree with the findings of the learned Adjudicating authority on this issue and hold that extended period of limitation has correctly been invoked.

6. With above observation, we remit the matter to the Adjudicating Authority for deciding various issues raised by the appellant afresh in the light of above observations and then, re-determine central excise duty liability on the appellant, if any. The appeal is allowed by way of remand.

(Pronounced in the open court on 26.12.2025)

(SOMESH ARORA)
MEMBER (JUDICIAL)

(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)