IN THE HIGH COURT OF ORISSA AT CUTTACK

CUSREF No. 1 of 2007

M/s. Polar Pharma India Ltd.	....	***Appellant***
		Mr. P.K. Jena, Advocate

-versus-

Commissioner of Central Excise and Customs	...	***Respondent***
		Mr. P.K. Panda, Senior Standing Counsel

CORAM:
THE CHIEF JUSTICE
JUSTICE CHITTARANJAN DASH

ORDER
16.08.2022

Order No.

17. 1. This is a reference petition at the instance of the Appellant-Assessee under Section under Section 130A of the Customs Act, 1962 (Act) in which on 2nd May, 2007 while admitting the reference, the following questions of law were framed by this Court for consideration:

> "(i) Whether on the facts and in the circumstances of the case, the interest can be chargeable as per notification No.53/97 CUS 03-06-97, as the goods were lying in the warehouse for a period up to three years, which is within five years in terms of permissible period as embodied under Section 61(1)(a) of the Customs Act, 1962 ?
>
> (ii) Whether, on the facts and in the circumstances of the case, the Tribunal was right in upholding the

finding of the original authority that the appellant is liable to pay interest and whether the said conclusion of the Tribunal is based on reason and materials on record and is not perverse and/or is not vitiated in law ?

(iii) Whether, the Tribunal has misdirected itself in law in coming to the conclusion that the order passed by the Commissioner (Appeals) is erred in law and whether the said finding of the Tribunal is in accordance with provisions of law ?

(iv) Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the original authority had correctly charged interest upon the appellant in view of the conditions mentioned in notification No.52/2003-CUS dated 31.03.2003, not conditions mentioned in notification No.53/97 CUS dated 03.06.97 ?"

2. This Court has heard the submissions of learned counsel for the parties.

3. Admittedly, the Appellant is a 100% Export Oriented Unit (EOU). It had warehoused the goods in question, which were capital goods, on 10th December, 2001. On 25th February, 2003 the Appellant wrote a letter for extension of the period of export obligation due to snag in the machine at the trial round. However, the snag could not be rectified and with a view to avoiding losses the Appellant on 10th March, 2003 wrote a letter for premature debonding. On 13th/27th March, 2003 the Commissioner allowed the debonding subject to fulfillment of certain conditions.

4. Learned counsel for the Appellant points out that such debonding, in fact, took place and the goods were removed from the warehouse.

5. Although learned counsel for the Department sought to contend that the Appellant had not removed the goods from the warehouse within five years, he is not able to show any document to substantiate such contention.

6. Under Section 61 of the Act warehoused capital goods intended for use for 100% EOU may be left in the warehouse "till the expiry of five years". This has to be read along with the circular dated 14th February, 2006 regarding "waiver of interest". The Petitioner, as an EOU is covered by para 4(iv) read with para 5 of the said circular. However, the circular applies only where the warehoused goods have been kept in the warehouse more than five year and not if they are removed within a period of five years. Consequently, the Customs, Excise & Service Tax Appellate Tribunal [CESTAT] fell in error in rejecting the plea of the Appellant on the ground that it had not fulfilled its export obligation. That question would arise only if the goods have been warehoused beyond five years.

7. For the aforesaid reasons, the questions framed are answered in the negative by holding that no interest would be chargeable on the capital goods of the Appellant lying in the warehouse for a period less than five years. The impugned order dated 20th September, 2006 of the CESTAT is accordingly hereby set aside.

8. The reference petition is disposed of in the above terms. An urgent certified copy of this order be issued as per rules.

(Dr. S. Muralidhar)
Chief Justice

(Chittaranjan Dash)
Judge

S.K. Jena/Secy.