

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

REGIONAL BENCH-COURT NO. 3

Excise Appeal No. 11554 of 2013- DB

(Arising out of OIA-SRP-253-255-VAPI-2012-13 dated 19/02/2013 passed by Commissioner of Central Excise-VAPI)

Pankaj Extrusion Ltd

.....Appellant

Survey No. 15/1/4,
Village : Rakholi,
Silvassa, U T Of Dadra & Nagar Haveli

VERSUS

C.C.E. & S.T.-Vapi

.....Respondent

4th Floor...Adharsh Dham Building,
Opp. Town Police Station, Vapi-Daman Road, Vapi
Vapi, Gujarat - 396191

WITH

Excise Appeal No. 11555 of 2013- DB

(Arising out of OIA-SRP-253-255-VAPI-2012-13 dated 19/02/2013 passed by Commissioner of Central Excise-VAPI)

Hitesh Shah

.....Appellant

Director Of M/S. Pankaj Extrusion Ltd,
Survey No. 15/1/4, Village : Rakholi,
Silvassa, U T Of Dadra & Nagar Haveli

VERSUS

C.C.E. & S.T.-Vapi

.....Respondent

4th Floor...Adharsh Dham Building,
Opp. Town Police Station, Vapi-Daman Road, Vapi
Vapi, Gujarat - 396191

AND

Excise Appeal No. 11556 of 2013- DB

(Arising out of OIA-SRP-253-255-VAPI-2012-13 dated 19/02/2013 passed by Commissioner of Central Excise-VAPI)

K P Shah

.....Appellant

Commercial Manager Cum Authorized Signatory
M/S. Pankaj Extrusion Ltd,
Survey No. 15/1/4, Village : Rakholi,
Silvassa, U T Of Dadra & Nagar Haveli

VERSUS

C.C.E. & S.T.-Vapi

.....Respondent

4th Floor...Adharsh Dham Building,
Opp. Town Police Station, Vapi-Daman Road, Vapi
Vapi, Gujarat - 396191

APPEARANCE:

Shri Mrugesh Pandya, Advocate for the Appellant

Shri P.Ganesan, Superintended (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR

HON'BLE MEMBER (TECHNICAL), MR. C L MAHAR

Final Order No. A/ 11232-11234 /2023

DATE OF HEARING: 11.04.2023

DATE OF DECISION: 12.06.2023

RAMESH NAIR

The issues involved in the present case are as under:-

- (i) Whether the appellant is liable to pay 10% of the value of the clearance made to the SEZ developer under Rule 6(3) of Cenvat Credit Rules, 2004.
- (ii) Whether excise duty is payable on refundable security deposit received from the customer on Die development charges for making die which is used in the manufacture of final product i.e. Aluminium Profiles supplied to the customer.
- (iii) Whether the appellant is liable to pay excise duty on excess insurance charges collected from the customers of their final product.

02. Shri Mrugesh Pandya, learned counsel appearing on behalf of the appellant submits that the learned Commissioner (Appeals) rejected the appeal in respect of first issue on the ground that Notification No.50/2008-CE (N.T.) has only prospective effect and not retrospective effect. He further submits that the Order-in-Original rejecting the appeal on the ground that the excisable goods cleared to SEZ Developer cannot construe export under bond as per Clause (v) of Sub-Rule (6) of Rule 6 of Cenvat Credit Rules, 2004. He submits that it is not in dispute that the final product was cleared by the appellant to the SEZ Developer without payment of duty under bond. It is also not disputed that the said final product were consumed in SEZ. He submits that the issue that whether the appellant is liable to pay 10% on the value of clearance made to SEZ Developer under Rule 6(3) of Cenvat Credit Rules, 2004 is squarely covered by the circulars and various judgments of the tribunal and High Court which are cited below:-

- Sujana Metal Products Ltd. Vs. Commissioner of C.Ex., Hyderabad- 2011 (273) E.L.T. 112 (Tri.-Bang.)

- Commissioner Vs. Sujana Metal Products Ltd.- 2016 (342) E.L.T. A115 (AP)
- Sujako Interiors Pvt. Ltd. Vs. Commr. Of Central Excise, Ahmedabad- 2011 (268) E.L.T. 505 (Tri,-Ahmd.)
- Union of India Versus Steel Authority of India Ltd.- 2012 (297) ELT 166 (Chhattisgarh High Court)
- Commissioner Vs. India Cements Ltd.- 2020 (34) G.S.T.L. 425 (Telangana High Court)

2.1 As regard the duty demand on security deposit received in respect of die development charges collected from the customers who were captively consumed in the manufacture of goods on which central excise duty has been paid by the appellant, he submits that in the impugned order, the Commissioner (Appeals) has not made any ground of differential duty on security deposit of die development charges. He submits that the impugned order fails to consider the fact that the die development charges were collected in the form of refundable security deposit that it is neither a ground for the security deposit and any nexus to the price of the finished goods. He submits that the differential duty amount of security deposit not refunded cannot be construed as part of the excisable goods under Rule 6 of Central Excise Valuation Rules, 2000. He submits that the appellant has paid the amount of Rs.7,08,201/- against the security deposit which is received from the customer for die development charges.

2.2 As regard the demand on excess insurances charges collected, it is his submission that the goods have been sold at the factory gate at an agreed price and transfer of goods at the factory gate and the sale is completed at the factory gate. The appellant's submission that this fact recorded in Para 24 of the Order-In-Original. The appellant further submits that the aforesaid fact was not disputed by the adjudicating authority as well as first appellate authority. He submits that the excise duty demand on the excess paid is not sustainable on the ground that the excess insurance is not part and parcel of sale price of goods. In support of his submission, he placed reliance on the following judgments:-

- Blue Star Led Vs CCE, Vapi-2008 (224) 258 - Ahmd.).
- Commissioner of Central Excise, Vapi Versus Aartek Surfin Chemicals- (286) E.L.T. 702 (Tri. Ahmd.).
- Neha Powerlines Pvt. Ltd., Versus Commissioner of Central Excise, Vapi- 2009 (245) E.L.T. 816 (Tri. Ahmd.).

- CCE, Vadodara Versus Amod Industries 2008 (229) E.L.T. 713 (Tri.-Ahmd.)
- Icomm Tele Ltd.- 2010 (251) E.L.T. 103 (Tri.-Bang.)
- Andra Sugars Ltd.- 2007 (212) E.L.T. 48 (Tri.-Bang.)
- Neha Powerlines Pvt. Ltd.- 2009 (245) E.L.T. 816 (Tri.-Ahmd.)
- Baroda Electric Meters Ltd.- 1997 (94) E.L.T. 13 (SC)
- ESCORTS JCB LTD. Vs. Commissioner of Central Excise, Delhi-II- 2002 (146) E.L.T. 31 (S.C.)

2.3 He further submits that the entire proceedings are expressly time barred. The issue involved in the appeals are issues of interpretation of law moreover, the issue in the present case is covered by the various above cited judgments. He submits that it has been the consistent view of the CESTAT that where the issues of interpretation of law is involved, the revenue cannot invoke larger period of limitation therefore, the demand for the extended period is not sustainable consequently, penalties are also not sustainable.

03. Shri Prabhat Rameshwaram, learned Additional Commissioner (AR) appearing on behalf of the revenue reiterates the finding of the impugned order.

04. We have carefully considered the submissions made by both the sides and perused the records. As regard first issue that whether the appellant is liable to pay 10% on the value of the goods supplied to SEZ in terms of Rule 6(3) of Cenvat Credit Rules, 2004, the supplies made to SEZ is considered as export even as per the SEZ Act therefore even though by Notification No. 50/2008-CE (N.T.) in Rule 6(6) specific clause (v) was added, before that also the supplies made to SEZ is considered as export of goods. In case of export of goods neither the duty on inputs/input service nor duty on the final product are exported. Moreover, keeping in view that the supplies made to SEZ is export, the legislature has incorporated a specific entry by Clause (v) of Rule 6(6) of Cenvat Credit Rules, 2004 by way of substitution therefore, this amendment may be taken as retrospective also. This issue is covered by the judgment cited by the appellants hereinabove accordingly, we are of the clear view that in respect of supplies made to SEZ, payment of 10% in terms of Rule 6(3) of Cenvat Credit Rules, 2004 does not apply. Accordingly, demand on this ground is set aside.

4.1 As regard the demand of duty on refundable security deposit for die development charges, we find that out of the total receipt of die development charges a part of amount has been refunded or adjusted

against the sale therefore, the adjudicating authority has not demanded the duty. However, while proceeding was going on, a specific amount of refundable security deposit were retained by the appellant which is reflected in their books of account. If the appellant has retained the amount of die development charges and not returned which will amount to recovery of the price of the die development, in such case the amortized cost of die development charges should be included in the assessable value of the final product i.e. Aluminium Product supplied by the appellant on payment of duty however, this aspect has not been examined by the adjudicating authority therefore, the issue of demand of duty on refundable security deposit for die development charges needs to be re-examined and re-considered on the basis of factual position that what treatment was given to such refundable security deposit in the appellant's books of account, accordingly, this issue is remanded to the adjudicating authority.

4.2 As regard the differential duty on excess insurance charges collected from the customers, we find that when the assessee charge an average amount of insurance charges in the invoice, it may be less or excess as compared to the actual insurance charges borne by the assessee supplier of the goods. On this issue various courts have held that the excess insurance not being part of the price of the goods, the same should not be liable to duty. This issue has been considered by the Hon'ble Supreme Court in the case of Baroda Electric Meters Ltd.- 1997 (94) E.L.T.13 (SC) wherein, the Hon'ble Supreme Court taken the following view:-

The Tribunal accepted the position that equalised freight was charged by the appellant from everyone, but proceeded to say that even though freight cannot be a part of the assessable value that wherever freight actually paid was less than the amount collected by way of freight and transportation charges the difference was appropriated by the appellant and, therefore, the same would be a part of the assessable value. In our opinion, the Tribunal proceeded on an incorrect premise. It was clearly held in Indian Oxygen Ltd. v. Collector of Central Excise - [1988 \(36\) E.L.T. 723](#) (S.C.) = 1988 (Supp.) SCC 658, that the duty of excise is a tax on the manufacturer and not a tax on the profits made by a dealer on transportation. In view of that decision, the view taken by the Tribunal cannot be sustained.

2. *Consequently, the appeals are allowed and the impugned judgment of the Tribunal is set aside.*

This issue has also been considered by this tribunal in the case of Neha Powerlines Pvt. Ltd.- 2009 (245) E.L.T. 816 (Tri.-Ahmd.) wherein, the Apex Court judgment in the case of Baroda Electric Meters Ltd.- 1997 (94) E.L.T. 13 (SC) was relied upon. In this decision, the tribunal held as under:-

A very short point is involved in the present appeal demand of duty of Rs. 26,676/- stands confirmed against the appellant along with the imposition of penalty of identical amount on the ground that during the period 1-8-2001 to 31-3-2005, they have received more insurance charges from their customers than the actual amount spent by them. As such the lower authorities have held that such excess receipt of amount is liable to be included in the assessable value of the goods. The demand stands confirmed by raising the show cause notice in terms of the proviso to Section 11A i.e. by invoking the extended period of limitation.

2. *After hearing both the sides, we find that appellants had taken a categorical stand before the authorities that they were not undertaking insurance in all the cases and it is only in some upcountry customers, who insist that the appellants should take transit insurance, they undertake such an activity. Any excess amount recovered by them for providing insurance services will not be a part of assessable value of the goods, as held by the Hon'ble Supreme Court in the case of Baroda Electric Meters - [1997 \(94\) E.L.T. 13](#) (S.C.) and in the case of M/s. Escorts JCB Ltd. v. C.C.E., Delhi reported in [2002 \(146\) E.L.T. 31](#) (S.C). The said two decisions stand followed by the Tribunal in umpteen number of cases.*

3. *Our attention has also been drawn to the sample invoice produced on record indicating that as per terms of purchase order, transit insurance is to be arranged by the customers. As such it becomes clear that the appellant is not undertaking insurance activities in respect of the clearances. The assessable value adopted in those clearances does not stand doubted or challenged by the Revenue. Any excess recovery on account of the insurance activity cannot be added to the assessable value, as the issue stand settled by the Hon'ble Supreme Court in the above referred matters. It is not the Revenue's case that the assessable value adopted in other cases, where no insurance service was being provided, is depressed or incorrect. There is also no other evidence on record indicating that such recovery of more insurance amount was on account of the value of the cleared products. As such we fully agree with the learned advocate that the demand is unjustified. We accordingly, set aside the same as also penalty imposed upon the appellant and allow the appeal with consequential relief.*

4. As the appeal has been allowed on merits the appellants' plea of the demand being barred by limitation is not being considered.

In view of the above settled legal position, no duty is payable on the excess insurance charged by the appellant to the customer accordingly, the demand on this count is set aside. As regard the appeals of Director and Employee of the company, we find that the major demand has been dropped moreover, the issue involved is interpretation of law and it is not the case of clandestine removal of goods, therefore, the individuals cannot be implicated in nature of present case therefore, the personal penalties on both the persons are set aside.

05. As a result the impugned order stand modified to the above extent. The appeals are allowed in the above terms.

(Pronounced in the open court on 12.06.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(C L MAHAR)
MEMBER (TECHNICAL)