

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

REGIONAL BENCH-COURT NO. 3

**Excise Appeal No. 10532 of 2013 - DB**

(Arising out of OIO-04/AKG/COMMR/AHD-II/2013 dated 08/02/2013 passed by  
Commissioner of Central Excise-AHMEDABAD-II)

**Messrs Rohan Automotive Equipment Pvt Ltd** .....Appellant

5, Ashwamegh Industrial Estate,  
Changodar, Taluka : Sanand,  
Ahmedabad, Gujarat

*VERSUS*

**C.C.E.-Ahmedabad-ii** .....Respondent

Custom House... First Floor,  
Old High Court Road, Navrangpura,  
Ahmedabad, Gujarat- 380009

**WITH**

**Excise Appeal No. 10533 of 2013 - DB**

(Arising out of OIO-04/AKG/COMMR/AHD-II/2013 dated 08/02/2013 passed Commissioner  
of Central Excise-AHMEDABAD-II)

**Upendrabhai C Shah** .....Appellant

Manager, Accounts/authorised Signatory,  
M/s. Rohan Automotive Equipment Pvt Ltd,  
5, Ashwamegh Industrial Estate, Changodar,  
Taluka : Sanand, Ahmedabad, Gujarati

*VERSUS*

**C.C.E.-Ahmedabad-ii** .....Respondent

Custom House... First Floor,  
Old High Court Road, Navrangpura,  
Ahmedabad, Gujarat- 380009

**APPEARANCE:**

Shri Paresh M. Dave, Advocate for the Appellant

Shri K.P.Shah, Assistant Commissioner(AR) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR  
HON'BLE MEMBER (TECHNICAL), MR. C L MAHAR**

**Final Order No. A/11396-11397/2023**

DATE OF HEARING: 21.03.2023  
DATE OF DECISION: 28.06.2023

**RAMESH NAIR**

The brief facts of the case are that during the course of audit, it appeared that Appellant was procuring imported and indigenous various parts of LPG/CNG Kits and clearing the same after affixing their brand name

under the description of Kit Assembly. In respect of supplies to Hindustan Motors, General Motors, Maruti Suzuki and Tata Motors, the Appellant had been clearing the kit assembly on payment of appropriate duty. However, appellant also had cleared such Kits to various buyers/ dealers without payment of duty. Whereas on being pointed out, the said Appellant produced trading unit records comparing the value of imported as well as indigenous components/Parts showing as non-excisable components/parts and profit margin. Statement of Shri Upendra C.Shah Manager(Accounts) of the Appellant was recorded and with a view to ascertain the manufacturing process undertaken by the Appellant, a team of officers was deputed to the premises of the Appellant. It appeared that a distinctive product emerged inasmuch as CNG/LPG gas conversion kit assembly came into existence as result of process applied. It appeared that the same constituted 'manufacture' within the meaning of Section 2(f) of the Central Excise Act, 1944 and Appellant was liable to pay duty. Since CNG/LPG gas conversion kit assembly merits classification under Heading 84.09 as suitable for use solely or principally with the engine of heading 84.07 or 84.04 of the First Schedule to the Tariff Act. It is on this basis that show cause notice dated 26-04-2012 was issued to the appellant for recovery of duty for the period from 2007-08 to 2009-2010 along with interest under Section 11AB and also for imposition of penalty on the appellant under Section 11AC. The show cause notice was adjudicated vide impugned Order-in-Original dated 08-02-2013 by which Ld. Commissioner holding the appellant's activity as manufacture of the goods attracting the Central Excise Duty under Tariff head 84.09, confirmed the duty demand against the appellant along with interest thereon and besides this, imposed penalty of equal amount on the appellant under Section 11AC. Penalty of Rs. 2,00,000/- was also imposed on Shri Upendrabhai Chhanalal Shah under Rule 26 of the Central Excise Rules, 2002. Against this order of the Commissioner, this appeal has been filed.

2. Shri Paresh M. Dave, learned counsel appearing for the appellant submits that there is no finding in the impugned order that any processes were undertaken by the Appellant on the bought out parts and components, and there is also no finding in the impugned order that a complete kit was assembled and then sold to the buyers in completely assembled condition. The bought out parts and components were not subjected to any process/es and such bought out parts were packed in a box and sold without any processing, has not been found to be false or incorrect by the Commissioner.

It is also accepted by the Commissioner that the buyer would assemble and install the CNG/LPG kit. Even otherwise, it is a matter of common knowledge that a CNG/LPG kit comes into existence only when the parts and components are fitted into a motor vehicle.

2.1 He also submits that the excise duty liability is confirmed only on the basis that a few bought out parts were assembled by the Appellants, and that by assembly of various parts a new product came into existence. Factually, there was no assembly of various parts in this case, because the appellants have not assembled or attached any parts with one another; and in any case, the bought out parts were not subjected to any process by the Appellant. The only activity undertaken by the appellant company was of procuring various parts and components of LPG/CNG kit, and packing such parts in a box, and selling such box with a tank and a tank stand in loose condition under the description of "CNG Automobile Conversion Kit" or "LPG Automobile Conversion Kit". No process on the bought out parts is undertaken by the appellant, but all such parts are packed in a box and the supply was made to traders, and the box carried the details like the Appellant's name and Ahmedabad. Such activity of collecting various components and packing them into a box for installation in a motor vehicle is not manufacture, and excise duty is not leviable on such activity. He placed reliance on the following judgments:

- CEV Engineering Pvt. Ltd. Vs. Commissioner of Central Excise, Delhi – II- 2015(38) STR 93 (Tri. Del.)
- The Commissioner Vs. CEV Engineering Pvt. Ltd. – 2015(39)STR J 85 (SC)
- OIA No. AHM-EXCUS-002-APP-59-60-18-19 dated 03.09.2018.

2.2 He also submits that the activity of putting together different duty paid items in a kit and selling such items under a description like 'Cable Jointing Kit' by selling them after packing in a box does not amount to manufacture. Only because the kit was sold under a distinct name, the other tests of any treatment, labour and manipulation for transformation of the raw material as well as the change resulting in bringing into existence a new and definite articles with a distinctive name, use and characteristics are not satisfied; and therefore excise duty cannot be levied even though the goods were mentioned in the Schedule to the Tariff. He placed reliance on the following judgments:

- XI Telecom Ltd. Vs. Superintendent of C.Ex., Hyderabad - 1999(105)ELT 263(A.P.)
- Final Order No. A/958-960/WZB/AHD/2011 dated 11.03.2016/06.06.2011 passed in case of M/s Neptune Equipment Pvt. Ltd. & Others.
- Dalmia Industries Ltd. Vs. Commissioner of C.Ex., Jaipur - 1999(112)ELT 305 (Tribunal)
- Bajaj Auto Ltd. Vs. Commr. Of C.Ex., Chennai-II- 2000(126)ELT 790 (Tri.)
- TI Diamond Chain Ltd. Vs. Commr. C.Ex., Chennai -II- 2000(126)ELT 790 (Tribunal)
- Commissioner, Baroda Vs. India Medtroncis Pvt. Ltd. 2015(323) ELT 728 (Guj.)
- India Medtronics Pvt. Ltd. Vs. Commissioner, Baroda -2006(199)ELT 347 (Tri. Mumbai)
- Eureka Forbes Ltd. Vs. Commissioner, Coimbatore - 2001 (138)ELT 1124 (Tri- Chennai)
- Commissioner, Daman Vs. Pilot Plastics - 2009 (234)ELT 471 (Tri. Ahmd.)
- Commissioner of Central Excise Vs. Rafique Malik

2.3 He also argued that the Appellant company has paid excise duty on similar activity involving sales to Motor vehicles manufactures like Hindustan Motors, General Motors, Maruti Suzuki etc., because of the Commercial exigency inasmuch as such OEMs insisted upon payment of excise duty so that they could avail Cenvat credit; but the act of paying duty for similar sales made to OEMs cannot be considered to be an evidence of the business activities constituting "manufacture", resulting in manufacture of a distinct goods. The conduct of the assessee could not serve as evidence of manufacture and marketability of the product. He placed reliance on the decision of Union Carbide India Ltd. Vs. Union of India -1986(24) ELT 169 (SC)

2.4 He also submits that there is no estoppel in law, and there is certainly no estoppels in taxing statute; because no tax can be levied and collected except by authority of law by virtue of mandate of Article 265 of the Constitution of India. Therefore, even if the appellant company paid excise duty on similar transaction involving OEM customers, it is open to the

appellant to contest the duty liability in respect of the sales made to other customers, namely, traders and dealers. Payment of any illegal duty cannot create estoppel against the assessee in challenging payment or demand of duty, and voluntary registration or voluntary payment of tax is no estoppel against disputing the duty liability at any stage. He placed reliance on the following judgments:

- Dilchant Shreelal Vs. Collector of Central Excise – 1986(26)ELT 298 (Calcutta)
- M/s N.J. Devani Builders Pvt. Ltd. Vs. UOI 2020(11) TMI 798(Guj.)
- Bootleggers Island Vs. Commissioner of C.Ex., Chennai -2005(187) ELT 232 (Tri. Chennai)
- Dharampal Premchand Ltd. Vs. Commissioner, Noida – 2020 (373)ELT 423 (Tri, -All)

2.5 He also argued that the demand is time barred. The invocation of extended period of limitation by issuing show cause notice in April 2012, after the final audit report was issued in October, 2010 is illegal and without jurisdiction.

2.6 He further submits that if any duty was recoverable from the appellant, then the selling price of the goods in question taken from the sales invoices has to be treated as "cum-duty price", and the duty payable has to be deducted from invoiced price, because the invoiced price of the goods is the total payment received by the appellant from the traders and dealers, which includes duties payable.

3. The learned Assistant Commissioner(AR), Shri K.P. Shah reiterated the impugned order.

4. On going through the impugned order, we find that the Learned Commissioner while confirming agreed with the submission of appellant about admissibility of CENVAT credit, but he left the work of quantum of CENVAT credit to Jurisdictional Assistant/Deputy Commissioner and Pursuant to the Commissioner's directions, the Deputy Commissioner vide letter dated 14.03.2013 had worked out admissible CENVAT credit at Rs. 1,64,68,644/-. However on 25.03.2013 the Deputy Commissioner issued another letter rectifying the error of mentioning the incorrect amount of admissible CENVAT credit in previous letter dated 14.03.2013 and confirmed that the

admissible CENVAT Credit was Rs. 1,70,17,818/- for the period. We further observed that in the present matter appellant also claimed the benefit of cum-duty price which was denied by the learned Commissioner on the ground that no evidence of inclusion of excise duty in the price charged from the buyer has been produced by the Appellant before him. However we find that the benefit of the same is liable to be extended to the appellant. In the case of *National Plywood Industries Ltd.*-[2000 (125) E.L.T. 986 (Tribunal) *Supra* the benefit of cum duty was extended to them and the price was considered to be cum-duty prices. The relevant observations made in para 8 of the said order are being reproduced below:-

*“8. The appellants had pleaded that in the facts and circumstances of the case the benefit of Modvat credit should be extended in their favour if the demand of duty is to be enforced and that the procedural requirements could not be followed at the appropriate time as the appellants were contesting their duty liability. In the case of Apex Steels Pvt. Ltd. v. CCE, Chandigarh - [1995 \(80\) E.L.T. 368](#) (T), the Tribunal had observed that the Modvat credit where otherwise due ought to be allowed even if prescribed procedure could not be followed. In the case of Dalmis Indus. Ltd. v. CCE, New Delhi - [1996 \(84\) E.L.T. 60](#) (T), the Modvat credit was not initially availed as finished products were considered to be exempted from duty. Subsequently, they were held to be liable to duty. The Tribunal observed that the Modvat credit should be available in spite of failure to make declaration. It has also been pleaded that their prices should be considered to be cum-duty prices and the benefit as flowing from the Tribunal’s decision in the case of Sri Chakra Tyres Ltd. v. CCE, Madras, 1999(108) E.L.T. 361 (Tribunal) = 1999 (32) RLT 1 (CEGAT-Larger Bench), be allowed. The Larger Bench of the Tribunal had held that the excise duty held payable subsequently was to be abated from total sale price realisation by treating it as cum-duty price for purpose of determination of the assessable value, and quantum of duty demand payable. The Tribunal had relied upon the Supreme Court’s decision in the case of Pravara Pulp & Paper Mills v. CCE - [1997 \(96\) E.L.T. 497](#) (S.C.) = 1997 (23) RLT 890 (S.C.), and had referred to the Tribunal’s decision in the case of Express Rubber Products v. CCE - [1998 \(101\) E.L.T. 495](#) (Tribunal) = 1998 (24) RLT 482 (T).”*

4.1 Thus in view of the foregoing, we hold that the appellants are entitled to the benefit of cum-duty price. The demand of duty is accordingly to be re-quantified.

4.2 With this observation, we find that the quantification of the demand needs to be re-worked out by the Ld. Commissioner. The penalties imposed on the appellants are also needs to be re-determined based upon the duty that has to be worked by the adjudicating authority. Since in the impugned matter quantification of demand itself was not properly done, we do not comment on the merit of the case and the same is kept open. We set aside the impugned order and remand the matter to Ld. Commissioner that first re-quantify the duty demand after considering the benefit of CENVAT credit and cum-duty price claimed by the appellant and pass afresh order.

4.5 Since the matter is of very old period, the *de novo* adjudication process may be completed within a period of three months from the date of this order after allowing opportunity of hearing to the appellant.

5. The impugned order is set aside and appeals are allowed by way of remand to the adjudicating authority.

(Pronounced in the open court on 28.06.2023)

**(RAMESH NAIR)**  
**MEMBER (JUDICIAL)**

**(C L MAHAR)**  
**MEMBER (TECHNICAL)**