

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST ZONAL BENCH : AHMEDABAD**

REGIONAL BENCH - COURT NO. 3

EXCISE Appeal No. 13954 of 2014-DB

[Arising out of Order-in-Original/Appeal No RAJ-EXCUS-000-COM-22-14-15 dated 23.09.2014 passed by Commissioner of Central Excise-RAJKOT]

Senor Metals Pvt Limited

.... Appellant

Plot No. 353, GIDC-ii, Dared,
JAMNAGAR, GUJARAT-361004

VERSUS

Commissioner of Central Excise & ST, Rajkot

.... Respondent

CENTRAL EXCISE BHAVAN, RACE COURSE RING
ROAD, INCOME TAX OFFICE, RAJKOT,
GUJARAT-360001

APPEARANCE :

Shri Anand Nainawati, Advocate for the Appellant
Shri Ajay Kumar Samota, Superintendent (AR) for the Respondent

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

DATE OF HEARING : 29.05.2023

DATE OF DECISION: 26.07.2023

FINAL ORDER NO. 11609/2023

C.L. MAHAR :

The brief facts of the matter are that appellant are engaged in the manufacture of brass articles classifiable under CETH 7407, 7408, 7418, 7403 of Central Excise Tariff Act, 1985. The appellant was manufacturing brass articles as well as processing of raw materials or semi finished goods supplied by their principals on job work basis. They were manufacturing dutiable goods on job work basis which were cleared by them without payment of duty in Domestic Tariff Area availing Notification No. 214/86-CE dated 25.03.1986 and to a 100% EOUs availing benefit of Notification No. 22/2003-CE dated 31.03.2003. The appellant was also manufacturing their own goods and clearing the same on payment of duty.

2. The Revenue entertained a view that the appellant was required to comply with the provisions of Rule 6(2) or 6(3) of the Cenvat Credit Rules, 2004. It was also noticed that they had not maintained separate accounts of receipt, consumption, inventory of inputs and input services meant for use in the manufacture of dutiable finished products manufactured on job work and their own products, that is the quantity of inputs meant for use in exempted goods namely the goods cleared without payment of duty after caring out job work process under Notification No. 214/86-CE and/ or Notification No. 22/2003-CE dated 31.03.2003 should have been maintained separately. It has been the contention of the department that appellant should have availed Cenvat credit only on the quantity of inputs or input service which were intended for use in the manufacture of the dutiable goods or in providing output services on which service tax is payable, as provided under Rule 6(2) of the Cenvat Credit Rules. On the basis of above notion, a show cause notice dated 30.01.2014 came to be issued where under following demand and penal provisions have been proposed to be invoked:-

(i) Why the amount of Rs.2,29,73,314/-(Rupees Two Crore Twenty Nine Lakhs Seventy Three Thousand Three Hundred Fourteen only) payable by them under Rule 6(3) of the Cenvat Credit Rules, 2004 should not be recovered from them, as Cenvat credit wrongly taken, under Rule 14 of Cenvat Credit Rules, 2004 read with proviso to Section 11A (4) (earlier proviso to Section 11A(1) upto 07.04.2011) of Central Excise Act, 1944.

(ii) Why interest at the appropriate rate should not be recovered from them on the aforesaid amount under Rule 14 of CENVAT Credit Rules, 2004 read with proviso to Section 11AA (earlier Section 11AB upto 07.04.2011) of Central Excise Act, 1944.

(iii) Why penalty under Rule 15 of the Cenvat Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944 should not be imposed upon them.

The matter got adjudicated by learned Commissioner vide his order dated 29.09.2014 and the Commissioner dropped the demand for reversal of Cenvat credit to the extent of Rs. 1,45,52,699/- after observing that in view of the exception made out in the form of Rule 6(6) of Cenvat Credit Rules, 2004, the provisions of Rule 6(1), 6(2) and 6(3) of Cenvat Credit Rules, 2004 do not apply on clearances made by the appellant of the excise goods cleared to 100% EOU under Notification No. 22/2003-CE dated 31.03.2003. The learned Commissioner has also held that no reversal is required where goods cleared without payment of duty to domestic manufacturer under 214/86-CE and where the principal manufacturer has finally discharged Central Excise duty on the finished goods. Learned Commissioner (Appeals) has confirmed an amount of Rs. 84,20,615/- for reversal on the ground that the goods which have been cleared to M/s. Metal and Steel Factory, Ishapore without payment of duty availing the benefit of exemption issued to the manufacturers of defense equipments.

3. Learned Advocate appearing for the appellant has primarily agitated three points:-

(i) Whether learned Commissioner (Appeals) has travelled beyond the scope of show cause notice while confirming the demand in the order-in-original.

(ii) Whether credit is required to be reversed under Rule 6 of Cenvat Credit Rules, 2004 on the clearance of goods made by the appellant by properly compliance with the provisions of Notification No. 214/86-CE dated 25.03.1986 to M/s. Metal and Steel Factory,

Ishapore who has further cleared the finished goods availing exemption under Notification No. 62/1995-CE dated 16.03.1995.

(iii) Whether extended period of limitation invoked in this case is correct, where all the procedures with regard to providing information/intimation under Notification No. 214/86-CE dated 25.03.1986 have always been made before the department prior to the clearance of the goods for job work.

3.1 Learned Advocate contended that learned Commissioner (Appeals) has travelled beyond the scope of show cause notice and has passed the order in gross violation of principles of natural justice. It has been argued that the show cause notice only raises the legal issue whether reversal under Rule 6 of Cenvat Credit Rules, in respect of clearances made by the job-workers of the finished goods availing Cenvat credit on inputs used in such finished goods is correct or not, and whether the clearances have taken place under the provisions of Notification No. 22/2003-CE or Notification No. 214/86-CE and whether such goods cleared by following these two notifications can be considered as exempted goods. The learned Adjudicating Authority under Para 12.2 of the impugned order-in-original has held that clearances made by the appellant availing the benefit of Notification No. 22/2003-CE and 214/86-CE are well within the scope of Rule 6(6)(ii) of Cenvat Credit Rules, 2004 and hence he has found no violation on this count.

3.2 Learned Advocate submits that Adjudicating Authority has travelled beyond the scope of show cause notice by holding that on verification, the principal manufacturer namely M/s. Metal and Steel Factory has cleared the finished goods availing benefit of another notification and has not discharged duty on the finished goods and therefore, the appellant has been asked to

reverse Cenvat credit amounting to Rs. 84,20,615/-, penal and interest provisions have also been invoked in complete violating of legal provisions.

3.3 It has been the contention of the learned Advocate that verification called by the learned Commissioner was beyond the scope of show cause notice and verification reports dated 03.06.2014 and 06.08.2014 which were relied upon by the Adjudicating Authority were not provided to the appellant to defend this allegation. Learned Adjudicating Authority based on the above mentioned verification reports has confirmed the demand of Cenvat credit on altogether different grounds than the one raised by the show cause notice. It has forcefully been pointed out that order-in-original under challenge has violated the principles of natural justice by travelling beyond the scope of show cause notice and therefore, the same deserves to be set-aside. Learned Advocate has relied upon the following decision of Hon'ble Supreme Court in this regard:-

- (a) CCE vs. Ballarpur Industries Limited – 2007(215) ELT 489 (SC)
- (b) CC, Mumbai vs. Toyo Engineering India Limited – 2006 (201) ELT 513 (SC)

3.4 Learned Advocate has also said that on merit also the case stand in their favour since the appellant without any dispute has been meticulously following the procedures laid-down under Notification No. 214/86-CE and because the principal manufacturer availed exemption notification at his end will not make intermediate goods as exempted goods because it is well settled that goods cleared by the job worker operating under Notification No. 214/86 are not exempted goods. The learned Advocate has relied upon the decision of this Tribunal in the case of M/s. Sterlite Industries (I) Limited vs. CCE – 2005 (183) ELT 353 (LB) which has been affirmed by Hon'ble Bombay High Court – 2009 (244) ELT A89 (Bom.).

4. We have heard the learned Departmental Representative Shri Ajay Kumar Samota, Superintendent who has reiterated the findings in the impugned order-in-original.

5. Having heard both the sides, we first take the issue agitated by the learned Advocate that the impugned order-in-original has travelled beyond the scope that duty has been confirmed on the grounds which were never subject matter of the impugned show cause notice. Therefore, the impugned order-in-original has violated the principles of natural justice as the verification reports on the basis of which the demand has been confirmed, considering that the principal manufacturer has availed exemption notification while clearing the finished goods and therefore, the intermediate goods manufactured by the job worker would also hit by the same and therefore, the Cenvat credit need to be reversed by the appellant as per the provisions of Rule 6(3) of Cenvat Credit Rules, 2004. We find that the show cause notice has primarily asked for the reversal of Cenvat credit amounting to Rs. 2,29,73,314/- under Rule 6 (3) of Cenvat Credit Rules, 2004 on the inputs on which Cenvat credit has been availed by appellant and which have gone in the manufacture of both the dutiable goods as well goods manufactured and cleared on job work basis without payment of duty availing exemption Notification No. 214/86-CE and Notification No. 22/2003-CE. For ease of reference, we reproduce here the impugned show cause notice:-

“12. Whereas it appears that, the said assessee at no point of time disclosed the material facts to the department in any manner that they were using common inputs and availed Cenvat credit on the inputs for manufacture of dutiable goods on job-work basis which were cleared without payment of duty by availing exemption under Notification No. 214/86-CE and/or Notification No. 22/2003- C.E. also and were not maintaining any separate accounts for receipt, consumption and inventory of input and input service meant for use in the manufacture of dutiable final products and the quantity of input meant for use in the manufacture of such exempted goods as stipulated in Rule 6(2) of the CENVAT Credit Rules, 2004 and this fact came on record

only when the was information called for by the Range Superintendent. Therefore, it appears that the assessee had deliberately suppressed the material facts from the department with an intention to evade payment of an amount under Rule 6(3) of the Cenvat Credit Rules, 2004, as amended. Hence, it appears that this is a fit case for invoking the extended period of five years under proviso to Section 11A (now Section 11A(4) with effect from 08.04.2011) of the Central Excise Act, 1944 to recover the amount not paid. Interest on amount so recoverable also appears to be recoverable from the assessee under provisions of Section 11AB (as it existed till 07.04.2011) and now Section 11AA (with effect from 08.04.2011) of the Central Excise Act, 1944. It also appears that by acting in the manner as aforesaid, the said assessee have rendered themselves liable for penal action under provisions of Rule 15 of the Cenvat Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944.”

5.1 The learned Adjudicating Authority has held that the appellants are entitled to avail Cenvat credit on inputs on the goods which have been manufactured and cleared following the laid down procedure under Notification No. 214/86-CE and 22/2003-CE. However, while confirming the demand of Rs. 84,20,615/- under Rule 6(3) of Cenvat Credit Rules, 2004 read with Rule 12 of Cenvat Credit Rules, 2004 and Section 11A of Central Excise Act, 1944, he has held as under:-

12.7 Further, I find that, the Noticee have also carried out job work of conversion of Brass Billets into Brass Rods in respect of M/s. Metal and Steel Factory, Ishapur, West Bengal (i.e., a unit of Indian Ordnance Factories under Ministry of Defence). These Brass Rods so converted were received back by M/s. Metal and Steel Factory and the same were further used for manufacturing of items required by defence which were exempted from Excise Duty under Notification No.62/1995- CE, dated 16.03.1995, the relevant portion thereof is as under:

Exemption to specified goods- In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excises and Salt Act, 1944 (1 of 1944) read with sub-section (3) of section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts, goods specified in column (2) of the Table hereto annexed, and falling under the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), subject to the conditions, if any, specified in the corresponding entry in column (3) of the said Table, from the whole of -

- (i) the duty of excise leviable thereon which is specified in the said Schedule; and
- (i) the additional duty of excise leviable under the second mentioned Act on goods specified against S. No. 1 of the said Table.

TABLE

S.No.	Description of goods	Condition
(1)	(2)	(3)

1	All goods	If produced in Ordnance factories belonging to the Central Government and intended for consumption by the members of the Armed Forces of the Union or by such Ordnance Factories.
2	Omitted	
3	omitted	

From the above, it is clear that the said principal manufacturer Le. M/s. Metal and Steel Factory, has cleared the final product without payment of duty, and the fact that the Noticee had not exercised any option as envisaged under Rule 6(3) of the CCR, and had availed and utilized Cenvat Credit on the inputs and input services used for of both dutiable products (their own) and exempted products (job worked goods), without maintaining separate records as envisaged under Rule 6(2) of the CCR. Therefore, the Noticee is liable to pay an amount @ 5% of the value of exempted products for the period from January 2009 to 31.03.2012 and @ 6% from 01.04.2012 to 31.03.2013 as per provisions of Rule 6(3) of the CCR, as amended for the job work carried out in respect of M/s. Metal and Steel Factory, Ishapur West Bengal. The verification report reveals that the Noticee for the period from January, 2009 to March, 2013 have carried out the job work without payment of duty in respect of M/s. Metal and Steel Factory, as under :-

Sr. No.	Period	Value of raw materials processed/ received for job work from other party (Rs,)	Value of service provided job work charges (Rs.)	Total Value (Rs.)	% of value	0
1	2	3	4	5=(3+4)	6	7
1	2008-09(from Jan-09)	0	0	0	5	0
2	2009-10	0	0	0	5	0
3	2010-11	94,17,000	6,38,854	1,00,55,854	5	5,02,793
4	2011-12	7,14,84,000	36,68,821	7,51,52,821	5	37,57,641
5	2012-13	6,62,16,000	31,20,355	6,93,36,355	6	41,60,181
	Total	14,71,17,000	74,28,030	15,45,45,030		84,20,615

5.2 It has been the contention of the learned Advocate that verification report referred in the order-in-original, in the above mentioned Para have never been revealed or provided to the appellant. We also find that the basis on which the Adjudicating Authority has confirmed the demand has

never been subject matter of the show cause notice and therefore, we hold that Adjudicating Authority has travelled beyond the scope of the show cause notice and therefore, violated the principles of natural justice by not disclosing the verification report to the appellant, this clearly amounts to an act of violation of the principles of natural justice. In this regard we also take note of the Hon'ble Supreme Court decisions in the case of Ballarpur Industries Limited (supra) and in the case of Toyo Engineering India Limited (supra). However, we take shelter of Hon'ble Gujarat High Court decision in the case of *Kandarp Dilipbhai Dholkia vs. UOI – 2014 (307) ELT 484 (Guj.)* and reproduce the relevant portion of the judgment as follow:-

“5.1 However, from the impugned orders, it appears that so far as rebate/refund claim of the petitioners on the inputs/used excisable goods used in manufacturing of the final product is denied also on the ground that petitioners have not followed the procedure while claiming rebate/refund under Rule 8, which is required to be followed under Notification No. 21/2004-C.E. (N.T.), dated 6-9-2004. However, on that ground, show cause notice was not issued and the rebate claim was not sought to be denied. Under the circumstances, to the aforesaid extent, the impugned orders are beyond the show cause notice. Under the circumstances, we are of the opinion that impugned orders deserve to be quashed and set aside and the matter is required to be remanded to the First Authority to consider the same in accordance with law and on merits.”

6. In view of the above, we do not take up the matter on merits and we set-aside the impugned order-in-original for the reasons as stated above and remand the matter to the Adjudicating Authority for de-novo adjudication.

(Pronounced in the open court on 26.07.2023)

(Ramesh Nair)
Member (Judicial)

(C L Mahar)
Member (Technical)

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