CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.3

EXCISEAppeal No.12790 of 2014
(Arising out ofOIA-RJT-EXCUS-000-APP-118-119-14-15dated 10.07.2014passed by Commissioner of Central Excise, Rajkot)

CROWN CERAMICS **...Appellant**
NATIONAL HIGHWAY 8-A,
HASANPAR, WANKANER,-GUJARAT

VERSUS

C.C.E. & S.T.- RAJKOT **...Respondent**
CENTRAL EXCISE BHAVAN,
RACE COURSE RING ROAD...INCOME TAX OFFICE,
RAJKOT, GUJARAT-360001

WITH

EXCISE Appeal No. 12791 of 2014
(Arising out of OIA-RJT-EXCUS-000-APP-118-119-14-15dated 10.07.2014passed by Commissioner of Central Excise, Rajkot)

VISHAL V SHAH **...Appellant**
64-VIVEKANANDA SOCIETY,
OPP. SWAMINARAYAN TEMPLE, WANKANER,
RAJKOT, GUJARAT

VERSUS

C.C.E. & S.T.- RAJKOT **...Respondent**
CENTRAL EXCISE BHAVAN,
RACE COURSE RING ROAD...INCOME TAX OFFICE,
RAJKOT, GUJARAT-360001

APPEARANCE:
Shri PareshSheth, Advocate appeared for the Appellant
Shri A.K. Samota, Superintendent (Authorized Representative) for the Respondent

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

Final Order No. 12095-12096 /2023

DATE OF HEARING: 19.09.2023
DATE OF DECISION: 22.09.2023

RAMESH NAIR

The issue involved is with regard to alleged clandestine removal of goods on the basis of some documents recovered from the premises of the appellant. After detailed investigation, the department had issued show cause notice dated 30.12.2011 proposing recovery of duty amounting to Rs. 39,43,754/- on the basis of documents impounded during the visit of the preventive officers on 07.12.2010. The said show cause notice was adjudicated ex-parte on 16.11.2012 vide order no. 136/ADC/12. Being aggrieved by the said order-in-original appellant had fled appeal along with relevant documents before the Commissioner (Appeals). After considering the submission and relevant documents, the learned Commissioner (Appeals) has remanded the matter to adjudicating authority to re-adjudicate the matter on the basis of the documents which are running into 1178 pages. On remand the appellant further produced the documents before the adjudicating authority which were got verified by the department through the office of the Assistant Commissioner. During the de-novo, the appellant also filed submission vide letter dated 10.12.2013 along with copy of Chartered Accountant Certificate certifying the clearance of export and quotation. After verification of documents submitted by the appellant, the adjudicating authority accepted that there is some trading turnover and set aside the demand on such trading turnover. However, on the issue of value of clearances reflecting in quotation, export, rejection and Jangad (approval) sale did not agree and confirmed the demand. The appellant filed an appeal before Commissioner (Appeals) against the de-novo adjudication order. The learned Commissioner (Appeals) rejected the documents relied upon by applying the provisions of Rule 5 of Central Excise Appeals Rules 2001. Being aggrieved by the said impugned order-in-appeal, the appellant filed the present appeal.

2. Shri Paresh Sheth, learned counsel appearing on behalf of the appellant submits that as regard the allegation of clandestine removal in respect of the alleged transaction appearing in quotation, he submits that there is no clearance against the all documents, it is only a quotation given to the probable buyers of the goods and no actual sale

has taken place. He also referred to some quotations. He submits that the appellant have also submitted a chartered accountant certificate certifying export clearance, quotations and the trading activity. On the basis of which the export clearance and quotation do not involve any clandestine removal hence, the demand on that account is not sustainable. He submits that the chartered accountant certificate was accepted by the adjudicating authority in so far as it relates to trading activity therefore the chartered accountant certificate cannot be doubted. As regard, the export, the demand was confirmed on the ground that the appellant have not followed the procedure. He submits that there is no dispute that the goods have been exported and the appellant have produced the form-H which is admissible as proof of export, therefore, on the export clearance, demand cannot be confirmed. As regard, the demand relates to Jangad (approval), Shri Paresh Sheth does not press and accept the demand during the argument. In support, he placed reliance on the following circulars and judgments:

- Circular No. 648/39/2002-CX dated 25.07.2002
- Amar packaging industries 2016 (344) ELT 187 (Guj HC)
- Decorpac 2021 (376) ELT 759 (T-Del)
- Vishwas Traders 2013 (287) ELT 243 (Guj HC) confirmed by SC 2014 (303) ELT A24 (SC)
- Gupta Synthetics Ltd. 2014 (312) ELT 225 (T-Amd)
- Shree SidhbaliIspat Ltd 2017 (357) ELT 724 (Tri-Mum)
- Chhajsingh S kanwal 2011 (272) ELT 202 (Guj.)
- FlevelInternation 2016 (332) ELT 416 (Del.)
- Hingora Industries Pvt. Ltd. 2015 (325) ELT 116 (T-Amd.)

3. Shri A.K. Samota, learned authorized representative appeared on behalf of the respondent and reiterates the findings of the impugned order.

4. On careful consideration of the submission made by both the sides and perusal of records, we find that in the present appeal the

dispute relates to the alleged clandestine removal on the basis of quotations, export of goods, Jangad (approval). As regard the quotation, we find that firstly the appellant's representative have given statement which is exculpatory and have also explained that it is only quotation and no goods have been cleared under said quotation. The copy of such quotation is scanned below:

[redacted]

[redacted]

CROWN
CROWN
CERAMICS
AN ISO 9001:2000 CERTIFIED COMPANY

8-A, Natonal Highway, P. B. No 221, Hasanpar Wankaner - 363 622.
Fact. : (02828) 220512 / 220783, Resi. (0281) 2441073, Rajkot
Fax. : (0281) 2450382 Cell : Kirit - 98252 16554 E-mail: crownceramics2005@yahoo.com

Ref. No. : Date :

QUOTATION OR PERFORMA INVOICE

Date wise Particulars of Quotation & Performa Invoices given

Serial No.	Bill No.	Date	Party Name	Amt
1	2006-07			
2	5	04.04.06	Verma Supply Center	112370
3	7	07.04.06	Verma Supply Center	23300
4	20	10.04.06	S.K.S.Enterprise, Ludhiyana	87300
5	23	20.04.06	Rekmin Ceramics	382180
6	29	25.04.06	National General Ind. Ltd.	153520
7	33	29.04.06	Rekmin Ceramics	87600
8	35	01.05.06	Bharat Ggranite Pvt. LTd.	110735
9	39	05.05.06	Paras Chemical & Mill	100100
10	44	07.05.06	Vikas Sales	32800
11	45	07.05.06	Vikas Sales	53868
12	46	09.05.06	Jay Bharat Refractories	95500
13	52	12.05.06	Bharat Ggranite Pvt. LTd.	128450
14	54	15.05.06	Naveen Traders	40830
15	60	17.05.06	Verma Supply Center	22910
16	61	18.05.06	Ayus Traders	104400
17	62	19.05.06	Bharat Ggranite Pvt. LTd.	104412
18	65	20.05.06	Sajjansingh & Sons	142900
19	68	22.05.06	Naveen Traders	59095
20	69	23.05.06	J. N. Enterprise	11900
21	73	24.05.06	Unique Refractories	92140
22	78	27.05.06	Nandita	78450
23	86	01.06.06	Agrawal Suppliers	132000
24	91	13.06.06	Asha Overseas	72380
25	95	17.07.06	Sarachi Steel & Power Pvt. Ltd.	176900
26	97	22.07.06	Jyoti Enterprise	122850
27	101	27.07.06	Bholebaba Dairy Ind. Ltd.	223900
28	115	25.08.06	Adinath Concast Pvt. Ltd.	28600
29	130	12.09.06	Jai Bharat Refractories	184463
30	138	16.09.06	S. P. Graphite	122970
31	141	17.09.06	Bholebaba Dairy Ind. Ltd.	111000
32	143	19.09.06	Singal Ceramics	28800
33	144	20.09.06	Singal Ceramics	66475
34	145	21.09.06	Dehradoon Calcuim Minerals Pvt. LTd.	28500
35	147	23.09.06	S. P. Graphite	145700
36	148	23.09.06	B. S. Intigrated Steel Pro. Pvt. Ltd.	195122.5

Correspondence Address : **Crown Ceramics**
A/92, Chanakya Apartment, Shroff Road, Opp. ICICI Bank, RAJKOT - 360 001.

5. From the perusal of above quotation, it clearly shows that the aforesaid documents is only a quotation and does not indicate that any goods have been cleared under the aforesaid quotation. Moreover, the

appellant have not accepted the detail mentioning the above quotation as clandestine removal. The Revenue did not adduce any other evidence such as transportation of goods, buyer's statement etc., therefore, we are of the view that the demand on the basis of quotation is not sustainable. As regard the demand of excise duty on the goods cleared for export, there is no dispute about the physical export of the goods. The only reason for demand of duty is that the appellant have not followed the procedure. We find that so far as the form-H was submitted by the appellant, it is sufficient compliance as proof of export and on that basis no demand can be raised as held in various judgments, therefore, merely for a procedural lapse in respect of admitted export of goods, no duty can be demanded. As regard the demand relates to Jangad (approval), we find that learned counsel has not pressed this issue and accept the duty demand. Accordingly, we are not going into the facts of this case and the demand relates to Jangad (approval) is sustained.

6. Considering the overall facts of the case, the penalty is also not imposable, hence, the same is set aside. In view of our above observation, the duty needs to be re-quantified, accordingly, we set aside the impugned order and remand the matter to the adjudicating authority for passing a fresh order considering the above observation. The appeal is allowed by way of remand to the adjudicating authority.

(Pronounced in the open court on 22.09.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Neha