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

REGIONAL BENCH- COURT NO.3

Excise Appeal No. 11101 of 2014 -DB

(Arising out of OIO-AHM-EXCUS-001-COM-007-13-14 dated 13/12/2013 passed by Commissioner of Central Excise-AHMEDABAD)

Multi Metal Industries **........Appellant**
Plot No. 3819,
Phase-Iv, Gidc, Vatva,
Ahmedabad, Gujarat

VERSUS

C.C.-Ahmedabad **....Respondent**
Custom House,
Near All India Radio Navrangpura,
Ahmedabad, Gujarat

<u>WITH</u>

Excise Appeal No. 11102 of 2014 -DB

(Arising out of OIO-AHM-EXCUS-001-COM-011-13-14 dated 28/01/2014 passed by Commissioner of Central Excise-AHMEDABAD-I)

More Metal Industries **........Appellant**
C-1/B, 3504,
Phase-IV, Gidc, Vatva,
Ahmedabad, Gujarat

VERSUS

C.C.E.-Ahmedabad-i **.......Respondent**
C. Ex Bhavan,
Nr Panjrapole & Polytechnic, Ambavadi,
Ahmedabad, Gujarat - 380015

<u>AND</u>

Excise Appeal No. 11103 of 2014 -DB

(Arising out of OIO-AHM-EXCUS-001-COM-007-13-14 dated 13/12/2013 passed by Commissioner of Central Excise-AHMEDABAD)

Hajarilal Ramchandra Sharma **........Appellant**
Partner Of M/s, Multi Metal Industries
Plot No. 3819,
Phase-Iv, Gidc, Vatva,
Ahmedabad, Gujarat

VERSUS

C.C.E.-Ahmedabad-I **....Respondent**
C. Ex Bhavan,
Nr Panjrapole & Polytechnic, Ambavadi,
Ahmedabad, Gujarat - 380015

APPEARANCE:
Shri Aditya Tripathi, Advocate for the Appellant
Shri Anoop Kumar Mudvel, Superintendent (AR) for the Respondent

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

Final Order No. A/ 12245 - 12247 /2023

DATE OF HEARING: 30.08.2023
DATE OF DECISION: 11.10.2023

RAMESH NAIR

The brief facts of the case are that the appellants are engaged in the activity of manufacturing of SS Hot Rolled Patta Pattii and SS Cold Rolled Patta Patti falling under Chapter sub heading 72201290 And 72202090 respectively. The appellants were procuring duty paid raw material i.e. SS flats and were clearing cold rolled patta Patti on payment of appropriated duty. However, the appellants were availing benefit of Notification No.03/2005 (amended by Notfn. 12/2012) for clearance of hot rolled Patta Patti and were clearing this goods under exemption from payment of duty. The appellants were making payment of 6% of value of exempted goods as envisaged under Rule 6 (3) of Cenvat Credit Rules, 2004 as the appellant was manufacturing dutiable as well as exempted good. Show cause notices came to be issued to the appellant proposing to demand Central Excise duty invoking larger period of limitation towards the clearances of hot rolled patta patti denying benefit of the exemption claimed by the appellant on the ground that the benefit of exemption is available only if any further process is carried out on hot rolled patta patti and the appellant had not made any further process and hence the benefit of the exemption is not available to the appellant.

1.2 The show cause notice proposed central excise duty along with interest and penalty under Section 11 AC. Penalty was also proposed on the partner of the firm under Rule 26 of Central Excise Rules, 2002. The Adjudicating Authority vide Orders-In- Original dated 19.12.2013 and 28.01.2014 confirmed the proposal levelled in the show cause notices and confirmed the liability invoking larger period of limitation. Being aggrieved and feeling dissatisfied by the said impugned orders, the appellants filed the present appeal.

2. Shri Aditya Tripathi, Learned Counsel appearing on behalf of the appellants submits that as regard the claim of exemption on hot rolled Patta Patti the same is not subjected to cold rolling process. Since the hot rolled patta patti involved various procedure but not cold rolling, it is clearly covered under the exemption entry. He also referred to the board circular F. No. 96/85/2015-CX.I dated 07.12.2015 on this specific issue wherein it was clarified that the hot rolled patta patti does not involve cold rolling process is eligible for exemption. Therefore, the demand by denying the exemption is not sustainable.

2.1 As regard the penalty on the partner, he submits that it is a settled law by Hon'ble Gujarat High Court in the case of Pravin N Shah – 2014 (305) ELT 480 wherein it was held that in case of partnership firm, the separate penalty on partner cannot be imposed. He also placed reliance on this Tribunal decision in the case of D Jewel – 2019(369) ELT 1244 (Tri. Ahmd)

3. Shri Anoop Kumar Mudvel, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. We have carefully considered the submission made by both sides and perused the record. We find that the dispute in the present case revolves around the eligibility of exemption Notification No. 03/2005 as superseded by Notification No 12/2012 in respect of hot rolled Patta Patti. The exemption Notification and the relevant entry therein is reproduced below:-

Sr No. 203 of Notification No. 12/2012 –CE dated 17.03.2012

S. No	Chapter or heading or sub heading or tariff item	Description of goods	Rate of duty
203	7219 or 7220	patttis and pattas when subjected to any process other than cold rolling	Nil

4.1 From the above Notification particularly the Sr. No. 203 which provides the exemption to Pattas and Pattis subject to any process other than cold rolling which means if the Patta or Patti are cleared which has not undergone the process of cold rolling , the same goods are covered under exemption Sr. No 203 subject to falling under Chapter heading 7219 or 7220. In the present case the goods in question is hot rolled Patta or Patti falling under Chapter 72201290. The hot rolled Pattas and Pattis are undisputedly does not undergo the process of cold rolling therefore, irrespective of any other process carried out to manufacture HR Pattas and Pattis , the exemption is clearly admissible to such goods. This very issue has been considered in the Central Excise Tariff Conference by the Central Board of Excise and Customs wherein by Instruction F. No. 96/85/2015-CX.I dated 07.12.2015 the following clarification was issued.

> ***"B10 -*** *Ahmedabad Zone - Scope of Exemption to annealed Hot Rolled Patta Patti of Chapter 72 under Sr. No. 203 of Notification No. 12/2012-CE dated 17.03.2012 :*
>
> ***Issue:***
>
> *The sponsoring zone explained that an assessee in the zone is engaged in the manufacture of stainless steel hot rolled patties and pattas and stainless steel cold rolled patties and pattas falling under chapter 72. They have cleared the annealed hot rolled patta and patti by availing exemption from payment of Central Excise duty under Sr. No. 203 of notification no 12/2012-CE dated 17.03.2012. There are certain intermediate processes between hot rolling and cold rolling. Hot-rolled pattas/patties are subjected to process like pickling and annealing to*

make them suitable for cold-rolling process. The zone was of the view that the exemption was intended for processes that are performed on the hot rolled pattas/patties such as pickling and annealing. The exemption was not available for hot rolling of Stainless Steel (SS) flats into pattas and patties as the raw material for hot rolling process is not patta/patti, but SS flats. Pattas/patties emerge only after hot rolling process. The zone also 11 referred to the relevant part of the letter of J.S (TRU-I) vide F.No. B/31/8/94-TRU dated 4-5- 1994 which is reproduced below –

" Thus, all stages prior to the stage of cold rolling have been exempted from excise duty. This would cover hot rolling of pattas and patties processes such as annealing, pickling etc."

The zone was of the view that the exemption covers only processes such as annealing, pickling etc carried on hot rolled SS flats. Had the intention been to exempt hot rolling process too, then it could have been clearly mentioned along with annealing and pickling.

Discussion & Decision

The conference examined the tariff heading involved, exemption notification and the clarification issued by TRU and concluded that clarification was clearly worded with no room for doubt. All processes prior to cold rolling are eligible for exemption from duty under sr. no. 203 of notification no. 12/2012-CE dated 17.03.2012. It appeared that the view of the zone was premised on the interpretation that the expression patties and pattas do not include stainless steel flats. There is no reason for such interpretation as the expression patties and pattas have to be understood in terms of general trade parlance and would include stainless steel flats. Benefit of exemption was available to the process of hot rolling of SS flats.

It was also observed by the Member(CX) that field officers are bound by the clarifications and letters issued by the Board and where they have a contrary view, it should be referred to the Board. It was expected that the Chief Commissioners would take steps to ensure that the clarification issued by the Board are implemented in right earnest."

4.2 From the above clarification it was made absolutely clear that all the process prior to cold rolling stage is eligible for exemption from duty under Sr. No. 203 of Notification No. 12/2012 dated 17.03.2012.

4.3 In the present case the Hot Rolling process is admittedly the process which is taken place prior to the process of cold rolling, therefore, in view of the clarification, the Hot Rolled Pattas and Pattis are clearly covered under the Notification No 12/.2012- CE dated 17.03.2012 under Sr. No. 203.

4.4 As regard the partner's appeal, we agree with the submission of learned counsel that where there is a case against the partnership firm, no separate penalty on the partner cannot be imposed for the reason that the partnership firm is consisting of partners, therefore, imposing separate penalty on the partners will be double jeopardy on the same partner. This has been settled by the Hon'ble Gujarat High Court that separate penalty on the partner cannot be imposed in case of Praveen N shah (Supra). Moreover, since the appellant firm is eligible for exemption notification, there is no question of penalty.

4.5 As per the above discussion and finding, we are of the considered view that the appellant are legally eligible for exemption Notification No. 12/2012-CE (203) and consequential demand of excise duty cannot be sustained

5. Accordingly, the impugned orders are set aside. Appeals are allowed with consequential relief, if any, in accordance with law.

(Pronounced in the open court on 11.10.2023)

RAMESH NAIR
MEMBER (JUDICIAL)

RAJU
MEMBER (TECHNICAL)