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

REGIONAL BENCH- COURT NO.3

**EXCISE Appeal No. 809 of 2012**
(Arising out of OIO-03/CEX/COMMR/BRC-I/MP/2012 dated 10.09.2012 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-I)

**SOLACE ENGINEERING (MKTG) PVT LTD** **...Appellant**
A-1, VIJAY INDUSTRIAL ESTATE,
VADODARA-PADRA ROAD, AT-SAMIYALA,
VADODARA-GUJARAT

*VERSUS*

**C.C.E. & S.T.-VADODARA-I** **...Respondent**
1ST FLOOR...CENTRAL EXCISE BUILDING,
RACE COURSE CIRCLE, VADODARA, GUJARAT-390007

**WITH**

**EXCISE Appeal No. 13024 of 2013**
(Arising out of OIA-PJ/239/VDR-II/2013-14 dated 17.07.2013 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-I (Appeal)

**Solace Engineering Mktg Pvt Ltd** **...Appellant**
A-1, VIJAY INDUSTRIAL ESTATE,
VADODARA-PADRA ROAD, AT-SAMIYALA,
VADODARA-GUJARAT

*VERSUS*

**C.C.E. & S.T.-VADODARA-I** **...Respondent**
1ST FLOOR...CENTRAL EXCISE BUILDING,
RACE COURSE CIRCLE, VADODARA, GUJARAT-390007

**AND**

**EXCISE Appeal No. 11123 of 2015**
(Arising out of OIO-VAD-EXCUS-001-APP-60-2015-16 dated 29.04.2015 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-I)

**SOLACE ENGINEERING P LTD** **...Appellant**
A-1, VIJAY INDUSTRIAL ESTATE,
VADODARA-PADRA ROAD, AT-SAMIYALA,
VADODARA-GUJARAT

*VERSUS*

**C.C.E. & S.T.-VADODARA-I** **...Respondent**
1ST FLOOR...CENTRAL EXCISE BUILDING,
RACE COURSE CIRCLE, VADODARA, GUJARAT-390007

**APPEARANCE:**
Shri Mrugesh Pandya, Advocate appeared for the Appellant
Shri Tara Prakash, Deputy Commissioner (Authorized Representative) for the Respondent

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

**Final Order No. 12617-12619 /2023**

DATE OF HEARING: 11.07.2023
DATE OF DECISION: 10.11.2023

**RAMESH NAIR**

The issue involved in the present case is that whether denial of cenvat credit in respect of capital goods imported and cleared after certain process, which as per the department does not amount to manufacture is legal and correct or otherwise.

2. Shri Mrugesh Pandya, Learned counsel appearing on behalf of the appellant, at the outset, submits that even if it is held that the activity carried out by the appellant is not amount to manufacture but since the duty was paid much more than the credit availed, no duty demand should sustain. He also submits that even though, the activity does not amount to manufacture but once the excise duty has been paid on the removal of such machinery then the cenvat credit cannot be denied. He placed reliance on the following judgments:

- Jindal Stainless Steel way Ltd 2014 (310) ELT 194 (T)
- Jindal Stainless Steel way Ltd 2016 (335) ELT 57 (T)
- Bunty Foods (India) P Ltd. 2018 (359) ELT 267 (T)
- Bericap India P Ltd 2018 (363) ELT 1078 (T)
- Commr vs Tripura Containers (P) Ltd 2011 (264) ELT 339 (HC)
- Foam Techniques MFG (I) P Ltd. 2015 (317) ELT 266 (T)
- Packotech Industries 2016 (1) TMI 879 (T)
- Gravita Metals 2020 (372) ELT 172 (T)
- CCE vs Ajinkya Enterprise 2013 (294) ELT 203 (HC)
- NRB Bearing Ltd. 2008 (221) ELT 134 (T)

3. On the other hand, Shri Tara Prakash, Learned Deputy Commissioner (Authorized Representative) appearing on behalf of the Revenue 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 addition to the dispute whether the activity of the appellant is amount to manufacture or otherwise, the appellant have vehemently argued that since the duty which is more than the cenvat credit has been paid on the removal of the machinery, even though the activity is manufacture or not, further demand cannot

be made. It is also a submission of the appellant that once the duty was paid on the removal of goods, cenvat credit cannot be denied.

5. We find that on these issues, subsequent to passing of the order in original, various forums have passed many judgments as cited by the appellant. However, this development of laws subsequent to passing of impugned order was not before the adjudicating authority, therefore, due to change in circumstances of the law on the issue, in the interest of justice, the matter should be reconsidered in light of various judgments relied upon by the appellant. Accordingly, we set aside the impugned order and allow the appeal by way of remand to the adjudicating authority. All the issues are kept open.

(Pronounced in the open court on 10.11.2023)

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

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

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