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

REGIONAL BENCH-COURT NO. 3

Excise Tax Appeal No. 11334/2013-DB

(Arising out of OIO-AHM-CEX-003-COM-008-13 dated 25/01/2013 passed by Commissioner of Central Excise-AHMEDABAD-III)

C.C.E. & S.T.-Ahmedabad-iii **........Appellant**
Custom House... 2nd Floor,
Opp. Old Gujarat High Court, Navrangpura,
Ahmedabad, Gujarat-380009

Versus

Astral Poly Technik Ltd **......Respondent**
Plot No. 1253, Shed No. 2,
Village : Santej, Taluka : Kalol,
Gandhinagar- Gujarat

APPEARANCE:
Shri Satypal Singh Vikal, Assistant Commissioner (AR) for the Appellant
Shri Anand Nainawati, Advocate for the Respondent

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

Final Order No. 10170/2024

DATE OF HEARING: 11.01.2024
DATE OF DECISION:17.01.2024

RAMESH NAIR

The brief facts of the case are that appellant M/s. Astral Poly Technik Limited is registered dealer under Central Excise and are dealing in Ball valves, high Diameter industrial pipes (CPVC) and PVC fittings, etc under Chapter 39 of Central Excise Tariff Act, 1944. They also hold the Central Excise registration for the purpose of manufacture of one CPVC pipes of various dimension and two PVC pipes under Chapter 39 of Central Excise Tariff Act, 1944 at Gandhinagar. During the course of verification by the officer of the Central Excise (prev.). It was found that the appellant had been engaged in affixing the MRP on the containers of Adhesive solution falling under Chapter 35 of Central Excise Tariff Act, 1944. It was also found that the imported goods in their original packing as well as packing material i.e. plastic bags and corrugated boxes printed with the trademark and logo of APTL were also found the aforesaid imported goods repacked and labeled with the trademark and logo of APTA and ready for dispatch. The department contended that the activity of packing, re-packing, altering/ declaring of MRP, in respect of adhesive solution, etc is amount to manufacture. Therefore, the appellant is required to pay Excise Duty being manufacturer and not by issuing a dealer invoice for passing of Cenvat Credit to the buyer. Accordingly, show cause notice dated 19.05.2010 was issued to the appellant for recovery of Central Excise Duty of Rs. 2,69,00,897/- which was adjudicated vide Order-in-Original dated 25.01.2013 whereby the Adjudicating Authority after adjusting the Cenvat Credit whatever remaining duty which is over and above Cenvat Credit was confirmed which amounts of Rs. 12,44,763/- against which the appellant has already deposited Rs. 20,86,6624/-. Hence, the same was appropriated and the penalty of Rs. 12,44,763/- was also imposed under Section 11AC. Being aggrieved by the Order-in-Original revenue filed the present appeal on the ground that the Adjudicating Authority should not have adjusted Cenvat Credit amount of Rs. 2,56,56,134/- against the demand of Rs.2,69,00,897/- and revenue's appeal also seeks to impose Penalty equal to amount of Rs. Rs.2,69,00,897/-.

2. Shri Satypal Singh Vikal, learned Assistant Commissioner (AR) appearing on behalf of the revenue appellant submits that appellant had issued dealer invoice whereby the Cenvat Credit was passed on therefore, the same was not available for adjusting against the demand of duty on the repacked goods which undisputedly the manufacturing activity. Therefore, learned Commissioner could not have adjusted the amount of Cenvat Credit already passed through dealer invoice to their customer. He also reiterates the grounds of appeals.

3. Shri Anand Nainawati, learned Counsel appearing on behalf of the respondent submits that the Adjudicating Authority has rightly adjusted Cenvat Credit against the Central Excise Duty. He submits that dealer invoice was issued to the same customer whom the goods were supplied and the very same transaction has been considered by the Department as clearance of manufacture goods. Therefore, only due to procedure aspect that instead of Excise Duty payment invoice the dealer invoice showing the passing on Cenvat Credit, the appellant cannot be deprived of the adjustment of Cenvat Credit. He placed reliance on the following Judgement:-

- Formica India Division Vs CCE 1995 (77) ELT 511 (SC)
- Titan Industries Ltd Vs CCE 2007 (217) ELT 423 (T)
- United Distributors Vs CCE 2014 (309) ELT 571 (T)
- PSL Holdings Ltd Vs CCE 2003 (156) ELT 602 (T)

3.1. He further submits that on this very same issue, while remanding matter this Tribunal given finding in the matter of Commissioner of Central Excise and Service Tax, Bhavnagar Vs. Gujarat Heavy Chemicals Limited, 2023 (5) TMI 188 CESTAT, Ahmedabad that Cenvat needs to be adjusted.

4. We have carefully considered submission made by both the sides and perused the record. We find that the appellant treated their activity of repacking and resale of the goods as trading activity. Accordingly, under the dealer registration, they have issued dealer invoice in respect of the Cenvat Credit of CVD paid in respect of imported goods, later on when the department raised contention that this re-packing is amount to manufacture appellant admittedly paid an amount over and above the Cenvat Credit. The issue to be decided in the revenue's appeal is that whether the appellant is entitled for Cenvat Credit for making adjustment against the Excise Duty on the manufactured goods. In the present case on the same transaction the department has demanded the Excise Duty considering as manufactured goods. Therefore, obviously whatever Cenvat Credit involved with the goods needs to be adjusted against the total duty liability. The contention of the revenue is that since they have already passed credit of CVD through dealer invoice the same cannot be adjusted is absolutely incorrect for the reason that the CVD was not Passed on twice. It is the same CVD was passed on. Therefore, the contention of the revenue in this regard absolutely absurd and not acceptable. We have considered the identical issue in the case of Gujarat Heavy Chemicals Limited (Supra) where in this Tribunal has passed the order :-

> *" 6. On careful consideration of the submissions made by both the sides and perusal of records, we find that appeal can be disposed of only on threshold point that whether the entire case involves the Revenue neutrality or otherwise. There is no dispute that all the goods on which the duty was demanded have been imported duly duty paid including CVD/SAD. In such case, if at all there is any duty liability of repacked goods or alleged clandestine removal or sales under dealer invoice or repacking job work, in all these cases, the appellant were entitled for the Cenvat credit in respect of the goods imported/ purchased by them. If on reconciliation it is found that duty is payable on the goods being deemed manufactured in terms of Chapter note 9 to note 28, in all such cases it prima-facie appears that the appellant is entitled for Cenvat credit on the goods procured and if such Cenvat credit is sufficient to adjust against the demand of output then the entire case is Revenue neutral and in such case, no further demand can be raised. However, this reconciliation exercise has not been conducted therefore in our considered view the matter needs to be reconsidered on this issue. After reconciliation the entire duty payable*

and availability of Cenvat credit no differential demand arises, the entire case being Revenue neutrality, the demand will not sustain. For this purpose, the respondent is required to submit reconciliation showing co-relation between the procurement and Cenvat involved therein and the sale of the goods involving duty payable thereon. After verifying these details, the Adjudicating Authority shall pass a fresh order keeping in mind our above observation.

7. As per our above observation and finding, we set aside the impugned order and remand the matter to the Adjudicating Authority for passing a fresh order within a period of two months from the date of this order. Appeals are disposed of by way of remand. Cross objection also stands disposed of."

From the above decision it can be seen that the facts are absolutely identical that in respect of the consignment sold as trading activity by passing on the credit under dealer invoice. Subsequently, when the department has sought to consider the activity as manufacture and demanded Excise Duty Cenvat Credit was allowed to be adjusted. Accordingly, following above decision and the observation made by us here in above the revenue's appeal has no substance.

5. Accordingly, the impugned order is upheld. Appeal is dismissed.

(Pronounced in the open court on 17.01.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(C. L. MAHAR)
MEMBER (TECHNICAL)

Arpita