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

REGIONAL BENCH- COURT NO.3

Excise Appeal No. 10316 of 2015
(Arising out of OIA-VAD-EXCUS-001-APP-573—574-14-15 dated 08.12.2014 passed by Commissioner of Central Excise- Vadodara-I)

SHRENO LTD ....**Appellant**
ALEMBIC GLASS INDS. ALEMBIC ROAD,
VADODARA-GUJARAT

VERSUS

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

AND

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(Arising out of OIA-VAD-EXCUS-001-APP-573—574-14-15 dated 08.12.2014 passed by Commissioner of Central Excise- Vadodara-I)

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APPEARANCE:
Shri Saurabh Dixit, Advocate appeared for the Appellant
Shri Sanjay Kumar, Superintendent (Authorized Representative) for the Respondent

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

Final Order No. 10321-10322 /2024

DATE OF HEARING: 05.10.2023
DATE OF DECISION: 05.02.2024

RAMESH NAIR

1.1 This group of appeals are preferred against the common impugned Order – In – Appeal VAD/EXCUS/ 001 – APP- 573 & 574/14 – 15 dated 08.12.2014 passed by the Learned Commissioner (Appeals) wherein he upheld the inclusion of value of packaging material freely supplied by the customer in the value of the appellant's final product under Section 4 of the Central Excise Act, 1994. The Learned Commissioner (Appeals) further upheld the demand of CENVAT Credit under rule 3(5A) of Cenvat Credit Rules 2004 on scrap of capital goods. Consequently, the Learned Commissioner (Appeals) upheld the finding of the Adjudicating Authority and dismissed the appeal preferred by the appellant.

Therefore, the present appeals.

1.2 The following two issues are involved in the present appeals:-

(I) Whether the value of Corrugated Boxes received free of cost by Appellant from buyers for packaging glassware will be included in the calculation of Assessable Value under Section 4 of the Central Excise Act, 1944.

(II) Whether the Appellant is liable to pay duty on Scrap of Capital Goods as per Rule 3(5A) of the Cenvat Credit Rules, 2004 when no credit has been availed by the Appellant.

2.1 Shri Saurabh Dixit, Learned Counsel appearing on behalf of the Appellant submits that the Department has relied on Section 4 of the Central Excise Act 1944 for including value of Corrugated Boxes in the Assessable Value when the boxes were received free of cost by the Appellant from the buyer. He further submits that the corrugated boxes so supplied by the buyers were returnable, reusable and durable and in consonance with the new and old regime. He takes the support of the case of Grasim Industries vs. CCE 2004 (164) ELT 257 wherein the Hon'ble Tribunal has stated that Section 4 defines transaction value by specifically including all value additions made to the manufactured article prior to its clearance, as permissible additions to be price charged for purpose of the levy. The Hon'ble Tribunal has upheld the view that there is no discernible difference in the statutory concept of transactional value and the judicially evolved meaning of normal price.

2.2 As regard to demand for duty on Scrap for Capital Goods, he submits that both the lower authorities held that the Appellant will be liable to pay duty whereas the Appellant has clarified the Department that the appellant has not availed the cenvat credit on capital goods at the time of it's receipt. They also the decisions passed by this Hon'ble Tribunal on the same issue under identical facts and circumstances.

2.3 In support of his above submission Shri Dixit relied upon the following judgments:

3.1 Shri. Sanjay Kumar, Learned Superintendent (AR) appearing on behalf of the Revenue reiterated the finding of the impugned order.

4.1 We have carefully considered the submissions made by both the sides and perused the records. We find that the main issue to be decided in the present case is whether the cost of corrugated boxes supplied by the buyer is includible in the computation of Assessable Value of the appellant's final product as per section 4 of the Central Excise Act 1944. The lower authorities have reiterated that the Assessed Value should include the cost of packaging. In the present case we are of the view that the cost of corrugated boxes supplied by the buyers to the appellant is includible in the transaction value of the glassware manufactured and supplied by the appellant as per the provision of Section 4 of the Central Excise Act 1944 and the rules made thereunder.

4.2 As regards the judgment in the case of M/s Transpek Industry Ltd., decided by this tribunal, we find that the entire case was decided on the fact that the packing material i.e the use of empty gas cylinders was limited to use for transportation purposes only and was not necessary for marketing the goods whereas for the Appellant, the corrugated boxes form part of Primary packaging for the glass ware manufactured and it cannot be said that it was only used for transportation purposes. Therefore, the facts of Transpek (supra) are completely different from the instant case.

4.3 We rely on this tribunal's order in Excise Appeal No. 423 of 2012 in the case of M/s. Kaira Can Company Limited vide Final Order No. A/12297- 123226/2019 dated 02.12.2019. The relevant portion of the above decision in reproduced below:-

> *"10. In this regard, on going through all the judgments and the statutory provision, we find that as far as inclusion of cost of packing material supplied free of cost for the purpose of packing of final product by the appellant there is no ambiguity in the law. For ease of reference, we reproduce the new Section 4.*
> *"1[4. Valuation of excisable goods for purpose of charging of duty of excise.-*
>
> *(1) Where under this Act, the duty of excise is chargeable on any excisable goods with reference to their value, then, on each removal of the goods, such value shall-*
>
> *(a) in a case where the goods are sold by the assessee, for delivery at the time and place of the removal, the assessee and the buyer of goods are not related and the price is sole consideration for the sale, be the transaction value;*
>
> *(b) in any other case, including the case where the goods are not sold, be the value determined in such manner as may be prescribed. 2[Explanation – For the removal of doubts, it is hereby declared that the price – cum – duty of the excisable goods sold by the assessee shall be the price actually paid to him for the goods sold and the money value of additional consideration, if any, flowing directly or indirectly from the buyer to the assessee in connection with the sale of such goods, and price – cum duty, excluding sales tax and other taxes, if any, actually paid, shall be deemed to include the duty payable on such goods.]"*
>
> *10.1 From the above section 4 it can be seen that only in cases where the transaction value is sole consideration such transaction value shall be the Assessable Value for charging Excise Duty. However, in the present case apart from the transaction value the packing material supplied Free of Cost by the customer was also used by the appellant. The value of such packing material was not included. When any Excisable product is manufactured and cleared the value of such goods shall be the total value of goods in the form it is cleared from the factory of*

the Assessee. It is immaterial that whether a part of the material contained in the final product to borne the cost.

As regard the heavy reliance placed on the Hon'ble Supreme Court Judgement in case of Grasim Industries Ltd. (supra) the Lager Bench of the Hon'ble Supreme Court dealing with old Section 4 and New Section 4 held that there is no difference in statutory concept of Transaction Value and Judicially evolved meaning of normal price. The appellant on this basis argued that with these judicial pronouncements all the judgements given with reference to the Old Section 4 i.e. before amendment of 2000 shall equally apply in the cases related to the period after amendment of 2000.

13. On going through the facts of the said judgmen we find that the assessee are charging to their customers certain amounts under different heads namely packing charges, facility charges, service charges, delivery charges and collection charges, rental charges , repaid and testing charges. The facts of the present case is different as the appellant is not charging separately. The issue involved in the present case is that the cost of corrugated boxes are used for packing of the final products is includable as clearly provided under Rule 6 of Central Excise Valuation Rules, 2000. Therefore the facts of the present case is completely different from the facts of the Hon'ble Supreme Court in the case of Grasim. Moreover, as per Rule 6 of Central Excise Valuation Rules, 200 it is is explicit wherein, the provision for inclusion of cost of packing material supplied Free of Cost by the customer is provided. The Hon'ble Supreme Court in the case of Grasim (supra) have not dealt with the provision of Rule 6 of the Central Excise Valuation Rules, 2000. It is also pertinent to note that the Central Excise Valuation Rules, 2000 have not been struck down by the Hon'ble Supreme Court in the case of Grasim (supra).

It can be seen from the above production that the issue is now squarely covered against the appellant, we hold that the demand on merit is sustainable for first issue."

4.4 As regards the demand raised on the Appellant for the scrap of Capital Goods, we find that the demand was raised on the scraps generated from used packing material of inputs. The Appellant has clarified that they have paid the excise duty on manufacturing scrap and scrap generated out of cenvatable input/capital goods. They have not paid duty on the scrap in question as they are not manufacturing it therefore it does not form part of either manufacturing scrap or cenvatable scrap. As the show cause notice was badly issued by the Department without proper investigation into whether the Appellant has availed Cenvat Credit in respect to the scrap which was apparently cleared without payment of duty on such capital goods scrap. In the absence of any such investigation and the Department unable to adduce any evidence the allegation made in the Show cause notice is bad. In this position the submission of the appellant must be taken correct as there is no material produced by the revenue that states otherwise. Therefore, it is clear that the Appellant have cleared the scrap which is neither generated from cenvatable capital goods or cenvatable input nor from manufacturing. Therefore, the same is clearly not liable for any duty.

4.5 The identical issue was raised in the appellant's own case only for a different period wherein this tribunal has taken a consistent view that such scrap other than manufacturing and non-cenvatable is not liable to duty.

5. In view of the above findings, with respect to the first issue in identical circumstances, this Tribunal held that the demand is sustainable on merits and as regards the second issue the demand raised in the SCN is not sustainable. Accordingly the appeal is partly allowed in the above terms.

(Pronounced in the open court on 05.02.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

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