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

REGIONAL BENCH-COURT NO. 3

EXCISE Appeal No. 11551 of 2016 - DB

(Arising out of OIO-VAD-EXCUS-002-COM-048-15-16 dated 29/03/2016 passed by Commissioner of Central Excise and Service Tax-VADODARA-II)

Climax Synthetics Pvt Ltd **........Appellant**
A/1, - 835,
Gidc, Estate, Makarpura,
Vadodara, Gujarat

VERSUS

C.C.E. & S.T.-Vadodara-ii **......Respondent**
1st Floor... Room No.101,
New Central Excise Building,
Vadodara, Gujarat- 390023

WITH

EXCISE Appeal No. 11910 of 2016 - DB

(Arising out of OIO-VAD-EXCUS-002-COM-011-16-17 dated 28/07/2016 passed by Commissioner of Central Excise-VADODARA-I)

Climax Synthetics Pvt Ltd **........Appellant**
A/1-835 Gidc Estate
Makarpura
Vadodara, Gujarat

VERSUS

C.C.E. & S.T.-Vadodara-ii **......Respondent**
1st Floor... Room No.101,
New Central Excise Building,
Vadodara, Gujarat- 390023

APPEARANCE:
Shri J C Patel & Shri Rahul Gajera, Advocate for the Appellant
Shri Sanjay Kumar, Superintendent (AR), for the Respondent

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

Final Order No. 10422-10423/2024

DATE OF HEARING: 19.10.2023
DATE OF DECISION: 16.02.2024

RAMESH NAIR

The issue involved in the present case is that whether the Competent Authority has rightly rejected the claim of the appellant for remission of duty on the finished goods which were destroyed in fire and whether the consequential demand confirmed by the Adjudicating authority is correct or otherwise.

2. Shri J C Patel, Learned Counsel along with Shri Rahul Gajera, Advocate appearing on behalf of the appellant at the outset submits that in the present case the fire has taken place due to the short circuit. Appellant have taken all the possible steps to extinguish the fire. However, the finished goods were destroyed in the fire.

2.1 It is his submission that the appellant have been granted the insurance claim by Insurance Agency, before that the stringent survey was conducted in connection with the insurance claim and not only that even the forensic inspection was also conducted and after overall checking, it was found that the fire took place due to unavoidable reason, hence the insurance claim was given to the appellant. This itself shows that there is no *mala fide* or any lapse on the part of the appellant for fire accident took place in their factory.

2.2 He further submits that one of the grounds for rejection of remission is that the appellant was operating from two plots i.e. A-1/835 and 836, whereas the registration certificate dated 26 November, 2001 was issued only in respect of plot No. A-1/835.

2.3 It is his submission that there was a minor mistake occurred in the registration certificate. He refers to the earlier registration dated 29.06.1992, which bear both the plot Nos. A-1/835 and 836 and the error in the registration certificate of 2001 was rectified and a fresh certificate was issued on 25.07.2013, wherein both the plot numbers are appearing. Therefore, this minor mistake happened in the registration cannot be the reason for denial of remission claimed by the appellant. In support of his submission he placed reliance on the following judgments:

- Arihant Studes Ltd V. CCE – 2016 (332) ELT 827
- Shri Dudhganga Vedganga Sahakari Sakhar Karkhana Ltd V. CCE -198 (29) ELT 22
- Voltamp Transformers Ltd V. CCE-2010 (262) ELT 909

- Sarjoo Sahakari Chini Mills Ltd Vs. CCE -2010 (262)ELT 336
- In Re: Arraycom India Ltd- 2006 (205) ELT 1023 (GOI)
- Mafatlal Industries Ltd V. CCE -2003 (154) ELT 543
- Sanskriti Packaging P Ltd. V. CCE- 2015 (318) ELT 451
- Raltronics India P Ltd V. CESTAT- 2017 (354) ELT 324 (All)
- CCE V. M. Kumar Udhyog (P) LTD-2014 (306) ELT 19 (All)
- Tej Shoe Factory V.CCE-2018 (363) ELT 863
- Milton Plastic Industries V. CCE-2005 (188) ELT 206
- CCE V. Welspun Terri Towels- 2002 (149) ELT 593
- Union of India V. Hindustan Zinc Ltd-2009 (233) ELT 61 (Raj)
- Greenply industries Ltd V. CCE -2014 (314) ELT 356
- CCE V. APR Packaging Ltd-2005 (191) ELT 395
- Finolex Industries Ltd. V.CCE-2003 (156) ELT 96

3. Shri Sanjay Kumar Learned Superintendent (AR) appearing on behalf of the revenue reiterates the finding of the impugned order.

4. On careful consideration of the submission made by the both the sides and perusal of record, we find that the Adjudicating Authority rejected the claim for remission of duty made by the appellant, on the assumption and presumption that the appellant have not taken proper steps to avoid the fire accident. From the facts which is revealed in detail from the survey report of the survey conducted by the insurance company, it was found that the fire accident has taken place due to short circuit and immediately when the fire broken out the appellant's staff have properly taken the steps to call the fire extinguisher. Therefore, the defense of the appellant appears to be reasonable.

4.1 Moreover, it is observed that in one hand there is no inspection carried out by the department to allege that there is a lapse on the part of the appellant, on the other hand the detailed survey was conducted for the purpose of insurance and even the forensic inspection was also conducted by the surveyor. In this case the Learned Commissioner instead of assuming about the lapse of the appellant, could have considered all the documents and inspection related to insurance claim and come to the conclusion about the correctness of claim of remission, which the commissioner failed to consider.

4.2 We also find that one of the reasons given for rejection of remission claim is that there is discrepancy in the plot number in the Central Excise Registration of the appellant. However, the appellant have submitted that there was an inadvertent mistake in their registration which was subsequently rectified. In our prima facie view once a mistake has been rectified, the rectification should be considered retrospectively as the same is inadvertent mistake. Accordingly, the correct registration should be considered for processing the remission claim. We are therefore of the view that as per our above observation, the learned Commissioner must reconsider the overall case and re-adjudicate both the matters of remission as well as demand of duty. Needless to say that the appellant have relied upon numerous judgments on the identical issue, same also need to be considered while passing the de-novo orders.

5. Accordingly, the impugned orders are set aside. Appeals are allowed by way of remand to the Adjudicating Authority.

(Pronounced in the open court on 16.02.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Raksha