

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

REGIONAL BENCH- COURT NO.3

Excise Appeal No.901 of 2011

(Arising out of OIO-07/COMMISSIONER/RAJU/AHD-I/2011 dated 28/06/2011 passed by Commissioner of Central Excise-AHMEDABAD-I)

Jindal Texofab Ltd

103-104, Gidc, Phase-I, Vatva,
Ahmedabad, Gujarat

.....Appellant

VERSUS

C.C.E.-Ahmedabad-I

C. Ex Bhavan,
Nr Panjrapole & Polytechnic, Ambavadi,
Ahmedabad, Gujarat- 380015

.....Respondent

APPEARANCE:

Shri Hasit Dave, Advocate for the Appellant

Shri J.A Patel, Superintendent (AR) for the Respondent

**CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR M, MEMBER (TECHNICAL)**

Final Order No. A / 12514 /2021

DATE OF HEARING: 15.11.2021

DATE OF DECISION: 18.11.2021

RAMESH NAIR

The issue involved in the present case is denial of cenvat credit of Rs 85,06,974/- allegedly for not following the procedure prescribed under Rule 9A of Cenvat Credit Rules and not filing proper declaration for availing the said credit and the transitional credit as prescribed under Notification No. 25/03-CE (NT) dated 25.03.2003 and 4./03-CE(NT) dated 30.04.2003.

2. Shri Hasit Dave, Learned Counsel appearing on behalf of the appellant submits that this is the second round of appeal before this Tribunal. In the first round this Tribunal had remanded the matter to the Adjudicating Authority vide Order No. A/1900/ WZB/ AHD/2010 dated 19.11.2010. He submits that as per the tribunal remand order legal issue has been settled and only remanded for actual verification

of the stock of goods lying as on 01.04.2003. He submits that the appellant had filed declaration as required and the Range Superintendent has given his report. As per the report the proper verification was conducted despite this the Adjudicating Authority wanted to re-verify the entire records which is not possible after lapse of long time. The report is conclusive and on that basis the Adjudicating Authority should have decided the matter. He submits that the identical issue has been considered by this tribunal in the case of Commissioner of C.EX , Mumbai –III vs. Vandana Dyeing Pvt Ltd. – 2017 (358) ELT 399 (Tri.Mum)

3. Shri J.A Patel learned Superintendent (AR) appearing on behalf of the revenue reiterates the finding of the impugned order.

4. We have considered the submission made by both the sides and perused the records. We find that in the earlier round of appeal before this Tribunal, this Tribunal has passed order A/1900/WZB/AHD/2010 dated 19.11.2010 wherein the following observation was made.

"7. Learned advocate appearing for the appellant submits that the legal issues now stand decided by various decisions of the Tribunal in respect of both the disputed points. He relies upon following decisions of the Tribunal.

a)M/s Krishna Screen Art Vs. CCE AHD-2009 (233) ELT 395 (Tri-Ahd)

b)M/s VV. Prints Vs. CCE Rajkot 2008 (232) ELT 807 (Tri-Ahd)

c)M/s Vaibhav & Co Vs CCE Coimbatore 2010 (252) ELT 542 (Tri-Chennai)

d) M/s Jaldharshan Textile Vs CCE Rajkot - 2009 (243) ELT 751 (Tri-Ahd)

e) M/s Elcon Fabrics Vs. CCE Rajkot 2007 (216) ELT 694 (Tri-Ahmd.)

8. *The ratio of the above decisions is that as long as there is no dispute about the stock of grey fabrics lying with the assessee as on 31.3.03/1.4.03, the MODVAT Credit cannot be denied to them, on the ground of non-filing of requisite declaration or late filing of such declaration or non-filing of intimation. It stand held that the purpose of filing requisite declaration is to put the Revenue to notice in respect of such stock and to enable them to verify the same. Similarly, the above judgments have also held that whether the grey fabrics are still in transit, but actually stand purchased and duty has been paid by the assessee, credit is available in respect of such inputs.*

9. *As legal issue has been decided in favour of the assessee by above referred judgments of the Tribunal, we set aside the impugned order and remand the matter to Commissioner for actual verification of the stock of goods lying as on 14.03 as also the stock in transit.*

10. *The impugned order is set aside and matter remanded to Commissioner in above terms."*

From the above order it is absolutely clear that the legal issue has been settled in the appellant's case. The matter was remanded only for actual verification of the stock. We find that the appellant have filed declaration of stock to the department which was verified by the Range Superintendent. The said report is scanned below:

OFFICE OF THE SUPERINTENDENT OF CENTRAL EXCISE
AR-II DIVISION - II AHMEDABAD-I

F.NO.AR-II/MISE-ADHOC/03-04

AHMEDABAD

DT.05.05.2004

To
The Assistant commissioner
Central Excise, Div -II,
Ahmedabad -I.

Sir,

Sub: Transitional Provisions for Textile and Textile Articles
Credit allowed under Notification 35/2003 CE (NT)
Dated 10.04.2003 as amended - reg

In this connection, it is to report that there is One Unit which was availed credit of Rs. 20.00 lakhs and above under the above Notification. The details of declaration filed by the party on 07.04.2004 for the stock lying in the factory as on 31.03.2004 is as under:

Sl.No.	Particulars of Stock	Quantity	Value
01.	Finished stock as per RG1 Register		
02.	Semi finished stock as per Lot Register	CF 646674.00 KG 25052.75	41595499.67
03.	Grey Stock in Grey Deppt	CF 676951.55 MMF 144768.00	26051693.53 2763495.25
04.	Grey stock in transit Other Job	CF 440473.00 CF 45346.00 MMF 281000.00	18698868.28 1664268.00 8418080.00
05.	Colour/Chemical Stock		3008042.98
	TOTAL		101509857.67

On the basis of this declaration the party has taken Rs.85,06,974/- as transitional credit on the declared value of Rs.9,85,61,814/- (101509857-3008043) as per the formula as per Notification No.35/03 dated 10/04/2004 and on the basis of the party declaration dated 28.04.2004.

Further it is to report that for verification of the credibility of transitional credit availed by the party, I have directed the party to furnish certain details in the form of a worksheet showing the quantity, Lot No. rate and value etc. Accordingly the party has furnished item wise worksheet showing the particulars separately for all the above categories.

This office has verified the stock and value arrived for availing transitional credit on the goods lying as on 31.03.2003 as per books and accounts maintained by the party at random basis. During the scrutiny of the books and accounts and the worksheet filed by the party the following discrepancies have been noticed.

Sl.No. of declaration	Nature of discrepancy Noticed	Value declared as per declaration	Actual value as per worksheet	Difference (Excess)
2A	Totalling mistake of semi finished goods	✓ 4,15,95,499	4,14,47,865	1,47,634
2B	Overvaluation of bleached Fabrics of 11155 Mtr @ 40/- PM instead of @ 27/- P.M (Market rate)	4,45,200	3,01,185	1,44,015
3A	Totalling mistake in value of Grey fabric	✓ 2,60,51,603	2,48,32,603	12,19,000
4B	Totalling mistake in respect of C/P for jobwork	16,64,268	16,20,416	43,852
4C	Overvaluation of Panta/rugs as the party declared price per Meter instead of per KG	84,18,080 781,75,650	82,33,821 76435,890	1,84,259
Total difference in the value				17,39,760 ✓
Transitional value as per formula				15,02,509
Duty @ 10%			Rs. 1,50,250/-	

On pointing out the above discrepancies, the party agreed to reverse the taken and accordingly reversed the same vide its Entry No. 292 dated 05/05/04

Yours faithfully

Superintendent
Central Excise, AR-II,
Div -II, Ahmedabad-I

As per the above report it can be seen that after proper verification some discrepancy was found for Rs 1, 50,250/- which was reversed by the appellant. As per the procedure the proper stock verification was conducted by the Superintendent thereafter the Adjudicating Authority seeking further verification of all the records is unwarranted. We are of the view that the aforesaid verification report is conclusive one therefore; no further material is required for establishing the stock

lying in the factory of the appellant as on 31.03.2004. Therefore, we are of the view that the Commissioner (Appeals) has gone beyond the direction given by the Tribunal in the earlier order dated 19.11.2010.

5. In our view the appellant have complied with the procedure prescribed for availing transitional credit in respect of the stock lying as on 31.03.2004. Therefore, there is no reason to deny the Cenvat Credit.

6. Accordingly we set aside the impugned order and allow the appeal with consequential relief, if any, in accordance with law.

(Pronounced in the open court on 18.11.2021)

(Ramesh Nair)
Member (Judicial)

(P.Anjani Kumar M)
Member (Technical)

Geeta