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

REGIONAL BENCH-COURT NO. 3

SERVICE TAX Appeal No. 10403 of 2015- DB

(Arising out of OIO-VLD-EXCUS-000-COM-0011-14-15 dated 12/01/2015 passed by Commissioner of Central Excise, Customs and Service Tax-Valsad)

Alok Industries Ltd ....**Appellant**
Survey No 261/268,254,251/2 P1, 263/p1 / P1,
Village Balitha, Vapi, Gujarat

VERSUS

C.C.E & S.T.-Valsad ......**Respondent**
Third Floor, Adarashdham Building,
Vapi-Daman Road, Vapi, Gujarat
Gujarat- 396191

APPEARANCE:
Ms Dimple Gohil, Advocate for the Appellant
Shri Rajesh K Agarwal, Superintendent (AR) for the Respondent

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

Final Order No. 10439/2024

DATE OF HEARING: 20.10.2023
DATE OF DECISION: 20.02.2024

RAMESH NAIR

The appellant has filed the present appeal against the impugned Order in Original No. VLD/EXCUS/000/COM/0011 – 14 – 15 dated 12.01.2015 and made submissions in view of the NCLT order dated 08.03.2019.

2. Ms. Dimple Gohil, Advocate appeared on behalf of the appellant. She submits that as per the resolution plan approved by NCLT, no dues exist against the applicant therefore, the demand involved in the impugned order is not recoverable by the department. Hence, the demands in the impugned order deserve to be set aside. She relied upon this Tribunal's order No. A/11269-11271/2022 dated 20.10.2022 in their own case.

3. On the other hand Shri Rajesh K Agarwal, learned Superintendent (AR) appearing on behalf of the revenue submits that there is no provision in the Central Excise Act, 1944 for setting aside the demand on the basis of

the NCLT proceedings.

4. We have carefully considered the submissions made by both the sides and perused the records. We find that this issue is no longer res-integra as it has been decided by this Tribunal in the Appellant's own case based on identical issue vide order No. A/11269-11271/2022 dated 20.10.2022. The relevant paragraphs from the order are re-produced below:-

"04. We have carefully considered the submissions made by both the sides and perused the records. We find that the NCLT has passed an order by approving resolution plan of the company M/s. Alok Industries Limited in favor of JM Financial Asset Reconstruction Company Limited and Reliance Industries Limited, who are the resolution applicant. The relevant terms of the resolution plan are reproduced below:-

"3.3 Operational Creditors (including the Central Government, State Government or any local authority)

3.3.1 ***Amount to be paid to Operational Creditors pursuant to this Plan*** *As per the Information Memorandum, the liquidation value of the Company is Rs. 4433,00,00,000 (Rupees Four Thousand Four Hundred Thirty Three Crores only), which is less than the sum of Estimated CIRP Costs and Outstanding Financial Debt, therefore, the liquidation value available to Operational Creditors (other than employees and workmen who have been dealt with separately under section 3.4 below) is NIL.* ***Accordingly, no amounts are proposed to be paid under this Plan to the Operational Creditors*** *(other than (i) employees and workmen who have been dealt with separately under Section 3.4 below; and (i) the dues owed by the Company to certain Operational Creditors (to each of whom the Company, as on the Insolvency Commencement Date, owes upto Rs. 3,00,000/- (Rupees Three lakhs) and whose details are set out in Annexure 9), which dues aggregates to Rs. 4,83,47,321/- (Rupees Four Crores Eighty Three Lakhs Forty Seven Thousand Three Hundred Twenty One). If any further claims of Operational Creditors (other than employees and workmen who have been dealt with separately under Section 3.4 below), relating to the period prior to the Closing Date arise and/or are made and/or are admitted, then the amounts payable under this Plan to the Operational Creditors (other than (i) employees and workmen who have been dealt with separately under Section 3.4 below; and (fil the dues owed by the Company to certain Operational Creditors (to each of whom the Company, as on the Insolvency Commencement Date, owes up to Rs. 3,00,000/- (Rupees Three Lakhs) and whose details are set out in Annexure 9)), which aggregates to Rs. 4,83,47,321/- (Rupees Four Crores Eight Three Lakhs Forty Seven Thousand Three Hundred Twenty One)* ***shall remain NIL, and shall not increase.***

Pursuant to the foregoing, the Company shall have no Liability towards any Operational Creditors with regard to any claims (as defined under the IBC) relating in any manner to the period prior to the Closing Date. All such Liabilities shall immediately, irrevocably and unconditionally stand fully and finally discharged and settled, with there being no further claims whatsoever, and all forms of security created or suffered to exist, or rights to create such a security, to secure any obligations towards the Operational Creditors (whether by way ofguarantee, bank guarantee, letters of credit or otherwise) shall immediately, irrevocably

and unconditionally stand released and discharged, and the Operational Creditors shall deem to have waived all rights to invoke or enforce the same.

(Emphasis supplied)

3.3.2……………

3.3.3……………

3.3.4……………

3.3.5 Treatment of claims under Applicable Laws (including Taxes)

(i) All claims that may be or that arise against the Company in relation to any payments required to be made by the Company under Applicable Law (including Taxes), or in relation to any breach, contravention or non compliance of any Applicable Law (including criminal laws), whether or not such claim was notified to or claimed against the Company at such time, and whether or not such Governmental Authority was aware of such claim at such time, in relation to the period prior to the Closing Date, is a "claim" and "debt", each as defined under the IBC, and would consequently qualify as "operational debt" (as defined under the IBC) and therefore, the full amount of such claims shall be deemed to be owed and due as of the Closing Date, the liquidation value of which is NIL and therefore, no amount is payable in relation thereto.

(II) In accordance with the foregoing, all claims (final or contingent, whether dispute or undisputed, and whether notified to or claimed against the Company) of all Governmental Authorities (including in relation to Taxes, and all other dues and statutory payments to any Governmental Authority), relating to the period prior to the Closing Date, shall stand fully and finally discharged and settled.

(iii) All claims that may be made against the Company in relation to any payments required to be made by the Company under Applicable Law, or in relation to any breach, contravention or non-compliance of any Applicable Law (whether or not such claim was notified to or claimed against the Company at such time, and whether or not such Government Authority was aware of such claim at such time), shall be deemed to be owed and due as of the Closing Date, and shall immediately, irrevocably and unconditionally stand abated, settled and extinguished. No Governmental Authority shall have any further rights or claims against the Company, in respect of the period prior to the Closing Date and/or in respect of such amounts.

3.3.6 Failure to Submit Claims or Rejected Claims

(i) The Resolution Professional had issued a public notice dated July 19, 2017 in accordance with the IBC, inviting all creditors of the Company to submit their proof of claims to the Resolution Professional on or prior to August 01, 2017. The Information Memorandum. and information uploaded to the virtual data-room from time to time, contains details of claims made by all creditors of the Company, including Financial Creditors and Operational Creditors, which have been admitted by the Resolution Professional. Further, under the CIRP Regulations, all creditors are required to submit their proof of claim prior to the approval of the Plan by the CoC. We assume that all persons that have any claim (s) against the Company (including Financial Creditors, Operational Creditors, Other Creditors, Governmental Authorities, persons who have paid any advances to the Company against supply of goods or services by the Company, and persons in respect of whom credit balances were written-back by the Company in the years ended March 31, 2016, March 31, 2017 and March 31, 2018 have all filed their claims and all verifiable claims as on the date of approval of this Plan by the CoC, have been admitted by the Resolution Professional and are disclosed in the Information Memorandum, provided that nothing contained herein shall result in an increase in the Total Financial Outlay proposed under this Plan.

In the event any person that has any claim (s) against the Company (including Financial

Creditors, Operational Creditors, Other Creditors, Governmental Authorities, or otherwise), has not submitted its claims) (whether or not it was aware of such claim at such time), or if the claim(s) filed by any person has been reiected and/or not been admitted by the Resolution Professional (including any claim against the Company from GAIL (India) Limited arising directly or indirectly under, out of, or in relation to the gas sale agreement dated May 27, 2013 entered into between GAIL (India) Limited and the Company), then: (a) all such obligations, claims and liabilities of the Company (whether final or contingent (whether crystallized or not), whether disputed or undisputed, and whether or not notified to or claimed against the Company; (b) all outstanding disputes or legal proceedings in respect of such claims; and (c) all rights or claims of such persons against the Company; in each case, relating to the period prior to the Closing Date, shall immediately, irrevocably and unconditionally stand extinguished and waived on the Closing Date, and the Company shall have no Liabilities in respect of such claim(s). Provided however any rights or claims of the Financial Creditors with respect to Existing Promoter Guarantees can continue against such guarantors.

3.3.7 No action by Operational Creditors

Pending the occurrence of the Closing Date, no Operational Creditors shall be entitled to take, initiate or continue any steps or proceedings against the Company or its assets whether by way of demand, legal proceedings, alternative determination process, the levying of distress, in any jurisdiction whatsoever for the purpose of obtaining payment of any Liability, or for the purpose of placing the Company into liquidation or any analogous proceedings."

From the above terms of the resolution plan approved by the NCLT, it prima facie appears that the appellant is not liable to pay any dues. However, this tribunal is not competent to decide regarding the recovery of any dues. It is the department who has to decide whether any dues is recoverable or otherwise, in the light of the resolution plan approved by the NCLT.

4.1 From the above facts, we find that as per the resolution plan approved by the NCLT and in the light of Hon'ble Supreme Court judgment in the case of Ghanashyam Mishra & Sons Pvt. Ltd.-2021 SCC Online SC 313, it prima facie appears that the adjudged dues cannot be recovered by the department however, this issue has to be decided by the department and not by this tribunal for the reason, that firstly, there is no provision made in the Customs and Central Excise Act to give effect of NCLT proceedings. This tribunal being creature under the Customs Act, even though the Insolvency and Bankruptcy Code have over riding effect over all the other acts, in absence of any explicit provision under the Customs/Central Excise Act, this tribunal cannot decide finally whether the adjudged amount can be recovered by the department or otherwise. This issue has to be resolved by the respondent.

Moreover, the learned AR submitted a letter dated 19.05.2022 issued by Additional Commissioner (Legal) wherein, the Additional Commissioner stated as under:-

As the NCLT, Ahmedabad has decided the matter vide Order 08.03.2019 and

> *therefore, all the government dues prior to 08.03.2019 stand extinguished and no demand or recovery proceedings can be initiated against them.*
>
> *5. In this position, we are of the view that at present the appeals became infructuous accordingly, we dismiss the appeals as infructuous. Both the sides have liberty, that in case of any amicable resolution is not arrived at between the appellants and respondents, to approach this tribunal to revive the present appeals and be decided on merit, if required. The appeals are disposed of as infructuous. MA also stand disposed of."*

5. In view of the above Tribunal's decision, the present appeal also deserves to be disposed of on the same line. Accordingly, the appeal is disposed of as infructuous. The Revenue has Liberty to comply with CBIC circular No.187/19/2022-GST Dated 27.12.2022

(Pronounced in the open court on 20.02.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Raksha