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

REGIONAL BENCH- COURT NO.3

Excise Appeal No.823 of 2011

(Arising out of OIO-03/COMMISSIONER/RAJU/AHD-I/2011 dated 12/04/2011 passed by Commissioner of Central Excise-AHMEDABAD-I)

Jindal Texofab Ltd ....**Appellant**
103-104, Gidc, Phase-I, Vatva,
AHMEDABAD, GUJARAT

VERSUS

C.C.E.-Ahmedabad-I ....**Respondent**
C. Ex Bhavan,
Nr Panjrapole & Polytechnic, Ambavadi,
Ahmedabad, Gujarat-380015

APPEARANCE:
Shri Hasit Dave, Advocate for the Appellant
Shri J.A.Patel, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL),MR.(P.Anjani Kumar M)

Final Order No. A/ 12515 /2021

DATE OF HEARING: 16.11.2021
DATE OF DECISION: 18.11.2021

RAMESH NAIR

The brief facts of the case are that the appellant had claimed Modvat Credit on the stock lying as on 31.03.2003 in terms of Notification No.25/2003-CE(NT) dated 25.03.2003 the appellant also claimed the Modvat Credit in respect of inputs in transit before 31.03.2003. The adjudicating authority allowed the credit in respect of stock lying in the factory of the appellant as on 31.03.2003 however, Modvat Credit in respect of inputs which were in transit was denied on the ground that the goods were only in transit and were not in stock as on 31.03.2003. Being aggrieved by the Order-In-Original, the appellant had filed appeal bearing No. E/824/2006, the tribunal vide Order dated 11.08.2010 remanded the matter to the adjudicating authority by giving the following observations:-

> *2. Learned advocate draws our attention to the various decisions of the Tribunal holding that the inputs in transit would also be available. He relies upon the following decisions.*
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> *1. Elecon Fabrics [2007 (216) ELT 694 (Tri.-Ahmd.)]*

2. Jaldarshan Textile [2009 (243) ELT 751 (Tri.-Ahmd.)]

3. We also note that apart from the above issue the appellants claim also stands rejected on the valuation aspect. In as much as the matter needs to go back for exact quantification of the claim, the adjudicating authority would also re-decided the principle issue of availability of credit in the light of the above referred judgment. The appeal is thus allowed by way of remand.

1.1 In the remand proceeding, the adjudicating authority vide impugned order dated 12.04.2011 once again denied the Cenvat Credit imposing a penalty of Rs.3 Lakhs therefore, the present appeal filed by appellant.

02. Shri Hasit Dave, learned counsel appearing on behalf of the appellant submits that the tribunal has clearly directed the adjudicating authority to decide the matter in the light of the judgment on the issue regarding eligibility of Modvat Credit on the goods in transit. He submits that the appellant have duly filed the declaration dated 07.04.2003 and the same has also been verified by the Range Superintendent as per report dated 05.12.2005 wherein, it was clearly recorded that goods were in transit and received after 01.04.2003. He submits that the adjudicating authority going beyond the scope of remand order denied the Cenvat Credit on the goods in transit on the ground that the goods were in transit as on 31.03.2003 were actually received after 01.04.2003. He submits that the tribunal while remanding, clearly stated that the judgments in the case of Elecon Fabrics [2007 (216) ELT 694 (Tri.-Ahmd.)] & Jaldarshan Textile [2009 (243) ELT 751 (Tri.-Ahmd.)] is to be considered. He submits that as per the aforesaid judgments Modvat Credit on the goods in transit has been allowed. Therefore, the learned Commissioner has erred in not following the aforesaid judgments. He further submits that the issue of quantification of valuation is not being contested therefore, the issue to be decided is only eligibility of Modvat Credit on the inputs in transit as on 31.03.2003.

03. On the other hand Shri J.A.Patel, learned Superintendent (Authorized Representative) appearing on behalf of the revenue reiterates the finding of the impugned order.

04. We have carefully considered the submissions made by both the sides and perused the records. We find that the present dispute is only in respect of admissibility of Modvat Credit in respect of goods in transit as on 31.03.2003. The appellant have obtained the report under RTI given by the Range Superintendent to the Commissioner (Adjudication) vide letter dated 5.12.2005. From the said report, it is clear that the Range Superintendent

has recorded the Grey Stock in transit therefore, it is not in dispute that there is a stock which was covered under the consignment which were in transit as on 31.03.2003. Now the issue to be decided is that whether in terms of the notification allowing the credit on the stock as on 31.03.2003 whether the goods in transit shall be considered as stock as on 31.03.2003. This tribunal in the earlier round of appeal remanded the matter making a categorical observation that the issue to be decided in the light of the judgments in the case of Elecon Fabrics & Jaldarshan Textile (supra). In the case of ELECON FABRICS (supra), following order was passed.

> ***5.*** *I have carefully considered the submissions from both sides.*
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> ***6.*** *There is no dispute that the declaration for the purposes of deemed credit has been filed within the time limit specified by CBEC. As regards the availability of credit in respect of goods lying at places other than factory premises, CBEC has issued instructions dated 28-3-03 which is as follows :*
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> *" Please refer to Rule 9A of Cenvat Credit Rules issued vide Notification No. 25/2003-Central Excise (N.T.), dated 25-3-2003, regarding transitional provisions pertaining to Textiles and Textiles Articles and declaration of stock as on 31-3-2003. Trade may be informed suitably that in the case the declared stock as on 31-3-2003 is kept in a place other than the registered/to be registered premises, the address of the said premise or premises where such stock is kept, must be declared by the assessee in the stock declaration".*
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> ***7.*** *There is no dispute in respect of goods which are lying in the factory premises as on 1-4-2003 credit would be available as per the declaration made within the specified time limit. Regarding transitional credit, it is envisaged that the goods belonging to the receiver of such inputs may lie, on the crucial date at places other than the factory premises. However, concessional deemed credit would be available in respect of such stock also subject to furnishing the details envisaged in the said Circular. The Commissioner (Appeals) held that the appellants have not declared the address where the goods were lying and they also have not indicated the transporter's name in the declaration and that there was no means of verifying the authenticity of the claim.*
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> ***8.*** *Learned Advocate refers to sub-para (c)of Para (B) of Circular No. 703/19/2003-CX, dated 25-3-2003 , which is reproduced below :*
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> *"(B) OTHER FACILITATION MEASURES TO BE ISSUED THROUGH DEPARTMENTAL INSTRUCTIONS.*
>
> *(a) ....*
>
> *(b) ....*

> *(c) The officers may be instructed not to visit the premises of the new assessees, to verify the stock of premises (except in respect of traders), unless there is a specific intelligence. Such verification, if any, will be done only with the approval of the jurisdictional Additional Joint Commissioner, who will record the reasons for such verification in writing. So long as the assessee keeps the records of production, clearance, particulars of receipt of inputs and pays the applicable duty, all procedural lapses, if any, should be ignored. Till further instructions, no audit or preventive checks would be carried out without specific intelligence and prior approval of Commissioner."*
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> ***9.*** *It is noticed that in respect of M/s. Elecon Fabrics when registration itself has taken place on 19-5-2003, the records of the assessee and the declarations filed by them were relied upon to extend the credit of goods which were lying as on 1-4-2003 at the factory premises. The dispute only relates to some portion of the goods, which were in transit. There is no dispute that the said goods have been received and utilized by the appellants. Private records including the subsequent returns filed by them indicates the details of such receipts and utilization. Inasmuch as the Board envisaged the condonation of procedural lapses to ensure the credit being taken as a transitional measure, the order of the Commissioner (Appeals) is set aside and the appeals are allowed with consequent relief.*
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> ***10.*** *The appeals are allowed with consequential relief.*

In the case of JALDARSHAN TEXTILE (SUPRA), the said order is reproduced below:

> ***2.*** *The appellants on the other hand have produced the lorry receipts showing that the goods were being transported, which stands rejected by Commissioner (Appeals) on the ground that such transportation of the goods from Tamil Nadu in respect of lorry receipts issued on 31-3-2003, cannot be arrived at the appellant's factory.*
>
> ***3.*** *I find that the Tribunal in the case of Elecon Fabrics v. Commissioner of Customs &C.Ex., Rajkot reported in 2007 (216) E.L.T. 694 (Tri. - Ahmd.) has held that in terms of the Board's Circular No. B3/3/2003-TRU dated 28-5-2003, deemed credit can be availed in respect of material lying at places other than registered premises subject to certain conditions. Non-discloser of address of premises where goods were lying and name of the transporter cannot be a ground to deny deemed credit in view of CBEC Circular No. 703/19/2003-CX., dated 25-3-2003. I also note that Board's Circular No. 714/30/2003-CX., dated 14-5-2003 allows a manufacturer to file additional declarations declaring the stock of the above mentioned items and claim onetime credit thereon provided such declarations are made by 26-5-2003. As such it becomes clear that even the stock which is not actually reached the appellants premises but was lying somewhere else, the benefit of deemed credit is required to be extended as long as it can be*

> *established that the goods stands purchased by the manufacturer. In view of the above, I am once again constrained to set aside the impugned orders and remand the matter to Original Adjudicating Authority for fresh consideration in the light of the above Circulars of the Board and the Tribunal's decision. Appeal is thus allowed by way of remand.*

From the above judgments, it is clear that even though the goods have not arrived in the factory but the assessee have purchased the goods and the said goods were in transit, the same was considered as stock as on 31.03.2003 and Modvat Credit was allowed. Therefore, ratio of the above two judgments are clearly applicable in the facts of the present case.

4.1 The learned Adjudicating Authority despite applicability of the above judgments denied the Modvat Credit which is clearly not acceptable. Accordingly, we hold that the appellant is entitle for Modvat Credit also in respect of stock which was in transit accordingly the Modvat Credit is allowed.

05. The impugned order is modified to the above extent. Appeal is allowed in above terms.

(Pronounced in the open court on 18.11.2021)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(P.Anjani Kumar M)
MEMBER (TECHNICAL)

Mehul