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

REGIONAL BENCH-COURT NO. 3

EXCISE APPEAL NO. 10164 OF 2014 – DB

(Arising out of OIA-VAD-EXCUS-001-APP-404-2013-14 dated 04/10/2013 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-I)

S D FINE CHEM LTD ....**Appellant**
Survey No. 229, Village-Poicha, Taluka-Savli,
Vadodara, Gujarat.

VERSUS

CCE & ST-VADODARA-I ......**Respondent**
1st Floor...Central Excise Building,
Race Course Circle,
Vadodara, Gujarat-390007.

Appearance:
Shri Dhaval K Shah, Advocate for the Appellant
Shri A R Kanani, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. C L MAHAR

Final Order No. 11350/2024

DATE OF HEARING: **23/02/2024**
DATE OF DECISION: **05.06.2024**

RAMESH NAIR

The issue involved in the present case is that whether the appellant is eligible to adjust short payment to duty of some clearance against the excess payment of duty in some clearance in the same month at the end of the month before filing of monthly return when the goods are first cleared from the factory and thereafter the same goods are sold to the independent customer.

2. Shri Dhaval K Shah learned Counsel appearing on behalf of the appellant submits that the appellant have correctly adjusted the duty excess paid in some clearances against the short paid duty in remaining clearances within a month. He submits that in the appellant’s own case this issue has been decided by this Tribunal vide order No. A/ 10882-002- AHD-2013 dated 23.07.2013.

Therefore, the issue is no longer res integra, he also placed reliance on the following Judgments:

- Pr. Commr. of CGST & C. Ex., Headquarters, Bhopal Vs. Godrej Consumer Products Ltd 2019 (367) ELT 985 (M.P.)
- Savita Oil Technologies Ltd Vs. Commr. C. Ex., Vapi 2023 (384) ELT 672 (Tri. Ahmd)
- Commr. C. Ex., Pune Vs. Menon Piston Rings Pvt Ltd 2016 (339) ELT 459 (Tri-Bom)
- Commr. C. Ex., Pune - II Vs. Menon Piston Rings Pvt Ltd Central Excise Appeal No. 259 of 2014 (Bombay HC)
- Krishna Electrical Industries Ltd Vs. Commr. C. Ex., Indore 2017 (352) ELT 67 (Tri-Del.)

3. Shri A R Kanani, learned Superintendent (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. We have carefully considered the submission made by both sides and perused the records. We find that the limited issue in the present appeal to be decided is, whether the appellant is correct in adjusting the excess paid duty in some clearances against the short paid duty in other clearances in the same month and duty for which demand raised in the case of short payment of duty is liable to be set aside or otherwise.

We find that the very identical issue, under the same set of facts, in the Appellant's own case, this Tribunal has passed the following order :-

> *"This appeal has been filed by the appellant against the OIA No.PJ/372/VDR-1/2012, dt.24.12.12, The issue involved is whether appellant can adjust the duty paid excess or less from the depots of their own without resorting to refund provisions under Section 11B of the Central Excise Act, 1944.*
>
> *2. Shri Dhaval Shah, Id. advocate appearing on behalf of the appellant argued that there is no bar on such adjustment made by the appellant as duty is required to be paid by the appellant to the department at the end ofthe month only and duty recovered from the customers is never in excess of what is paid to the department. He relied upon the following case laws: -*
>
> *(1) Bajaj Tempo Ltd. Vs. CCE Pune (2004 (172) ELT 473 (Tri. Ahmd*

*(2) Sopariwala Exports Pvt. Ltd. Vs. CCE Vadodara-I imported order dated 17.01 * 0.13 + (- 13/2) / 13 passed by WZB, Ahmedabad in appeal No.e/948/2011.*

3. Shri K.J. Kinariwalla, learned A.R. argued that appellant can not make such adjustment of his own and if any excess duty gets paid the same should be, taken back only by resorting to the refund provisions under Section 11B of the Central Excise Act, 1944 as it could involve unjust enrichment.

4. We have given our anxious thoughts to the issue and perused the records. As per Section 3 of the Central Excise the central excise duty is attracted on the act of manufacturer of the goods but the same is required to be paid by the appellant at the time of clearance from the factory of manufacture on a value prevailing at the time and place of removal. The place of removal has been defined in sub section 3(c) of the Valuation Section -4 of the Central Excise Act, 1944. In the case of depot sale of the goods adopted by the appellant there is no need for further adjustment when duty is paid at the time of clearance from the factory on the value of sale prevailing at the depot at the relevant time, even if the same goods cleared and subsequently sold from the depots at a higher or lower price. In spite of the above position of law appellaht has undertaken an exercise of adjustment of duty when goods cleared from factory, on payment of duty at a value, are sold at higher/lower price from the depots subsequently. However, as argued appellant is charging the duty from the customers on a price at which the goods are sold from the depots. Revenue has no reservations when excess duty is paid by the appellant on the higher transaction value at the time of depot sale. However, in a situation when duty is paid on a higher value at the time of clearance from the factory but sale of the same goods from depots fetch lower price, appellants are passing on lesser duty to the customers. Revenue has reservations that appellant should have filed a refund claim under Section 11B of the Central Excise Act, 1944 for getting the excess duty paid of suo moto adjustment may involve unjust enrichment. In the first instance-appellant is not required to re-quantify the central excise duty element at the time of sale of goods from the depots when appropriate duty has been paid at the time of clearance from the factory. Even if such ar. exercise is done by the appellant there will not be any unjust enrichment when more duty is paid by the appellant at the time of clearance of goods from the factory and lesser duty is passed on to the customers at the time of sale of same, goods from the depots. The judgment of Bajaj Tempo Ltd. Vs. CCE Pune [2004 (172) ELT 473 (Tri. - Mumbai.)] is squarely applicable to this case where appeal filed by Bajaj Temp Ltd. was allowed holding that such an adjustment is proper.

5. In view of the above observations appeal filed by the appellant is allowed."

From the above order it can be seen that in the appellant's own case on same set of fact this Tribunal has held that the adjustment of duty between short payment in some clearance and excess payment in some clearances are correct and accordingly, the appeal was allowed.

4.1. As regards the judgments relied upon by the Lower Authority while deciding the matter against the appellant, we find that in those judgments, the vital fact that whether the adjustment was made within the same month before filing of the monthly return is not coming out on the record. Therefore, those judgments cannot be applied particularly when this Tribunal already passed order in the appellant's own case by considering various Judgments. Therefore, following this Tribunals order dated 23.07.2013 in the appellant's case, we are of the view that the adjustment made by appellant between short payment of duty and excess payment of duty in the same month is correct and Accordingly, no differential duty demand will survive.

5. Hence, the impugned order is set aside. Appeal is allowed with consequential relief.

(Pronounced in the open court on **05.06.2024** *)*

(RAMESH NAIR)
MEMBER (JUDICIAL)

(C L MAHAR)
MEMBER (TECHNICAL)

Arpita