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

REGIONAL BENCH-COURT NO. 3

EXCISE Appeal No. 10678 of 2014 - DB

(Arising out of OIO-RAJ-EXCUS-000-COM-142-13-14 dated 29/11/2013 passed by Commissioner of Central Excise-RAJKOT)

PSL Limited **........Appellant**
Pipe Manufacturing Division, Survey No. 37, 35, & 41,
Village : Varsana, Taluka : Anjar,
Kutch, Gujarat

VERSUS

COMMISSIONER OF C.E. & S.T.-RAJKOT **......Respondent**
Central Excise Bhavan,
Race Course Ring Road...Income Tax Office,
Rajkot, Gujarat- 360001

APPEARANCE:
Shri Ishan Bhatt, Advocate for the Appellant
Shri Ajay Kumar Samota, Superintendent (AR) for the Respondent

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

Final Order No.11477/2024

DATE OF HEARING: 05.03.2024
DATE OF DECISION: 01.07.2024

RAMESH NAIR

The issue in brief to be considered by us is as follows:-

(i) Whether recovery under Rule 14 of CENVAT Credit Rules, 2004 is permissible, for reversals under Rule 3(5), (5A) & (5B) of CENVAT Credit Rules, 2004 prior to amendment carried out by Notification No. 03/2012-CE(NT) dated 01.03.2013?

(ii) Whether in the facts of the present case the Appellant was required to reverse CENVAT credit in terms of Rule 3(5) of CENVAT Credit Rules, 2004?

(iii) Whether extended period of limitation can be invoked in the facts of the present case?

2. Shri Ishan Bhatt, Learned Counsel appearing on behalf of the appellant submits that the demand was raised invoking Rule 3(5),(5A) and (5B) of Cenvat Credit Rules, 2004 for demanding the Cenvat Credit on the capital goods removed as such without putting to use.

2.1 He submits that the demand confirmed in the impugned order is without jurisdiction for the reason that during the relevant period there was no mechanism to recover any amount of Cenvat Credit availed in respect of capital goods removed as such. It is his submission, an explanation was added in Rule 3 vide Notification No. 03/2013-CE(NT) dated 01.03.2013 whereby the provision of Rule 14 readwith Section 11A was invoked. In the present case the period involved is prior to the aforesaid amendment. Therefore, for the relevant period in absence of any machinery provision for recovery, the confirmation of demand in the present case is without jurisdiction.

2.2 He also submits that the demand was raised by invoking extended period. Since, there is no suppression of fact, as the appellant have removed the capital goods on payment of duty at the rate prevailing at the time of removal. Therefore, the payment of duty on capital goods removed as such was known to the department even the issue was raised during Audit in 2010 despite the clear knowledge to the department the show cause notice was issued on 24.06.2013 by invoking extended period. Therefore, the demand is not sustainable on the ground of time bar. He placed reliance on the following judgments:-

- Haver Ibau India Pvt. Ltd. v. CCE & ST, Vadodara-II 2023 (10) TMI 677 - CESTAT AHMEDABAD
- M/S. GKN Driveline (India) Ltd. v. CCE, Delhi-III 2023 (9) TMI 1131 - CESTAT CHANDIGARH
- Ericsson India Pvt. Ltd. v. CCE 2019 (3) TMI 776-CESTAT New Delhi
- Steel Authority of India Ltd. v. CCE 2020 (3) TMI 147-CESTAT Chennai
- Udaipur Cement Works Ltd. v. CGST 2019 (11) TMI 610- CESTAT Chennai

- Heidelberg Cement India Ltd. v. CCE 2017 (11) TMI 1394- CESTAT Bangalore
- Hindustan Motors Ltd. v. CCE 2019 (7) TMI 1168-CESTAT Chennai
- Mangalam Durgs & Organics Ltd Vs CCE, Daman 2023 (6) TMI 642-CESTAT-AHMEDABAD
- CCE, Vadodara v. Indeos ABS Ltd. 2010 (254) ELT 628 (Guj.)
- Mahindra & Mahindra Ltd. v. CCE, Mumbai 2019 (368) ELT 105 (Tri. - Mumbai)
- Affirmed by Hon'ble Supreme Court in 2019 (368) ELT A41 (SC)
- CCE, Surat - II v. Gujarat Glass Pvt. Ltd. 2013 (290) ELT 538 (Guj.)
- Kansai Nerolac Paints Ltd. v. CCE, Ahmedabad 2016 (339) ELT 467 (Tri. Ahd.)
- Max Speciality Ltd. v. CCE & ST, Ludhiana 2021 (375) ELT 420 (Tri. Chd.)
- Bharat Aluminium Co. Ltd. v. CCE, Raipur 2021 (375) ELT 379 (Tri. Del.)
- CCE, Mumbai v. Special Steel Ltd. 2015 (329) ELT 449 (Tri. Mum.)
- Maintained by Hon'ble Supreme Court in 2016 (334) ELT A123 (SC)
- Precot Mills Ltd. v. CCE, Calicut 2014 (313) ELT 789 (Tri. Bang.)
- CCE & C (Appeals) Ahmedabad v. Narayan Polyplast 2005 (179) ELT 20 (SC)
- CCE & C, Vadodara V. Narmada Chematur Pharmaceuticals 2005 (179) ELT 276 (SC)
- CCE v. Textile Corporation 2008 (231) ELT 195 (SC)
- CCE v. Jamshedpur Beverages 2007 (214) ELT 321 (SC)
- CCE v. Coca Cola India (Pvt.) Ltd. 2007 (213) ELT 490 (SC)
- CCE v. Anupam Industries Ltd Final Order No. A/10432/2023 Dated 07.03.2023
- Golden Tobacco Ltd Vs CCE 2013 (292) ELT 373 (T)
- Madura Coats Pvt. Ltd Vs CCE 2005 (190) ELT 450 (T)
- Salona Cotspin Ltd Vs CCE 2006 (201) ELT 592 (T)
- CCE Vs Nahar Fibers 2007 (220) ELT 855 (T)
- CCE Vs Geeta Industries (P) Ltd 2008 (232) ELT 350 (T)
- CCE Vs Reforms Machine Tools Ltd 2007 (220) ELT 171 (T)
- Cummins India Ltd Vs CCE 2007(219) ELT 911 (T)
- Affirmed By the Bombay High Court 2009 (234) ELT A-120 (Bom.)

- CCE, Bangalore v. Pragathi Concrete Products (P) Ltd. 2015 (322) ELT 819 (SC)
- Apex Electricals Pvt. Ltd. v. Union of India 1992 (61) ELT 413 (Guj.)
- Cadila Pharmaceutical Ltd. v. CCE 2017 (349) ELT 694 (Guj.)
- CCE, Indore v. ZYG Pharma Pvt. Ltd. 2017 (358) ELT 101 (M.P.)
- Sanvijay Rolling & Engineering Ltd. v. CCE, Nagpur 2022 (379) ELT 229 - CESTAT (Tri. Mum)
- CCE, Vadodara - II v. Indeos ABS Limited 2010 (254) ELT 628 (Guj.)
- CCE v. Special Steel Limited 2015 (329) ELT 449 (Tri.)
- Affirmed by Hon'ble Supreme Court in 2016 (334) ELT A123 (SC)
- CCE v. Coca-Cola India Pvt. Ltd. 2007 (213) ELT 490 (S.C.)
- CCE v. Jamshedpur Beverages 2007 (214) ELT 321 (S.C.)
- CCE v. Narayan Polyplast 2005 (179) ELT 20 (S.C.)

3. Shri Ajay Kumar Samota, 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 both the sides and perusal of record, we are of the view that the present appeal can be disposed of only on the issue of time bar without going into merit of the case. The period involved in the present case is 2009-10 and the show cause notice was issued on 24.06.2013. The fact is not undisputed that the appellant have cleared the capital goods as such on payment of excise duty at the rate prevailing at the time of removal. The said transaction was reflected in their ER-1 return. Therefore, the only dispute was the amount of Cenvat credit to be paid by the appellant which was very much known to the department when the appellant cleared it on the invoice and reflected in ER-1 return. It is also fact on record that this issue was raised by the Audit party in 2010 despite that the show cause notice was not issued within the normal period.

4.1 It is also noted that whatever short paid duty as per the department was available as a Cenvat credit to their own recipient unit of capital goods. Therefore, the present case is also involved revenue neutrality. This also shows that there is no mala fide intention on the part of the appellant for short payment of duty on removal of capital goods.

4.2 In view of the above fact, we are of the opinion that there is no suppression of fact or mis-declaration with intent to evade payment of duty on the part of the appellant. Therefore, demand is clearly hit by limitation, as the entire period involved is under extended period of limitation.

5. Hence, we set aside the demand on the ground of time bar itself without going into the merit of the case. As a result the impugned order is set aside, appeal is allowed.

(Pronounced in the open court on 01.07.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(C L MAHAR)
MEMBER (TECHNICAL)

Raksha