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

REGIONAL BENCH-COURT NO. 3

EXCISE APPEAL NO. 10341 of 2018- DB

(Arising out of OIA-AHM-EXCUS-001-APP-273-2017-18dated 25/01/2018passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)

Arvind Ltd **........Appellant**
(Div. Arvind Intex), Naroda Road,
AHMEDABAD, GUJARAT

VERSUS

Commissioner of C.E.-Ahmedabad-I **......Respondent**
C. Ex Bhavan,
NrPanjrapole& Polytechnic, Ambavadi,
Ahmedabad, Gujarat, 380015

WITH

(i) Excise Appeal No. 10342 of 2018- DB(Arvind Ltd)
(ii) Excise Appeal No. 10343 of 2018- DB (Arvind Ltd)
(iii) Excise Appeal No. 10413 of 2018- DB (Arvind Ltd)
(iv) Excise Appeal No. 10414 of 2018- DB (Arvind Ltd)
(v) Excise Appeal No. 10415 of 2018- DB (Arvind Ltd)
(vi) Excise Appeal No. 10439 of 2018- DB (Arvind Ltd)
(vii) Excise Appeal No. 10440 of 2018- DB (Arvind Ltd)
(viii) Excise Appeal No. 10441 of 2018- DB (Arvind Ltd)
(ix) Excise Appeal No. 10442 of 2018- DB (Arvind Ltd)
(x) Excise Appeal No. 10719 of 2018- DB (Arvind Ltd)
(xi) Excise Appeal No. 10720 of 2018- DB (Arvind Ltd)
(xii) Excise Appeal No. 10532 of 2018- DB (Arvind Ltd)

[(Arising out of OIA-AHM-EXCUS-001-APP-136-137-2017-18dated 27/10/2017passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)], [(Arising out of OIA-AHM-EXCUS-001-APP-136-137-2017-18dated 27/10/2017passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)], [(Arising out of OIA-AHM-EXCUS-002-APP-315-317-17-18dated 15/02/2018passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD-II)], [(Arising out of OIA-AHM-EXCUS-002-APP-315-317-17-18dated 15/02/2018passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD-II)], [(Arising out of OIA-AHM-EXCUS-002-APP-315-317-17-18dated 15/02/2018passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD-II)], [(Arising out of OIA-AHM-EXCUS-003-APP-0189-192-17-18dated 08/02/2018passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD-III)], [(Arising out of OIA-AHM-EXCUS-003-APP-0189-192-17-18dated 08/02/2018passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD-III)], [(Arising out of OIA-AHM-EXCUS-003-APP-0189-192-17-18dated 08/02/2018passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD-III)], [(Arising out of OIA-AHM-EXCUS-003-APP-0189-192-17-18 dated 08/02/2018passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD-III)],[(Arising out of OIA-AHM-EXCUS-001-APP-320-321-2017-18 dated 22/03/2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)], [(Arising out of

OIA-AHM-EXCUS-001-APP-320-321-2017-18dated 22/03/2018passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)], [(Arising out of OIA-AHM-EXCUS-002-APP-284-17-18dated 25/01/2018passed by Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)]

APPEARANCE:

Shri S. J. Vyas, Advocate appeared for the Appellant
Shri P Ganesan, Superintendent (AR), appeared for the Respondent

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

Final Order No.11495-11507/2024

DATE OF HEARING: 26.06.2024
DATE OF DECISION:03.07.2024

RAMESH NAIR

The brief facts of the case are that the appellant were availing exemption under notification No. 30/2004-CE dated 09.07.2004 which bears the condition that the assessee should not avail Cenvat Credit in respect of inputs used into manufacture of excisable goods cleared under the said exemption notification. The appellant were receiving spare parts of capital goods which falls under the definition of 'Capital Goods'. However, as per the notification no.13/2016 C.E. (N.T.) dated 01.03.2016, the definition of 'Input' was amended according to which all capital goods which have a value upto Rs.10,000/- per piece has been included in the definition of 'Inputs'. The appellant was under confusion whether the said spare parts are capital goods or inputs, accordingly, by taking precaution they sought clarification from the department as well as from the board. However, no response was given by the department. Therefore, they have been filing the refund claims in respect of Cenvat Credit on spare parts considering the same as capital goods. The claim was sought by way of credit in the Cenvat Account. With regard to the refund claims, the appellants were issued show cause notices wherein, the refund was proposed to be rejected under the provisions of Section 11B and 12B of the Cenvat Excise Act, 1944. After considering the reply submitted by the appellant the adjudicating authority rejected the claim for refund of duty under the provisions of Section 11(B) and 11(B) of Central Excise Act, 1944.

Being aggrieved by the Orders-In-Original the appellant filed appeals before the Commissioner(Appeals) who endorsing the view of the adjudicating authority rejected the appeals. Therefore, the present appeals before this Tribunal.

2. Shri S. J. Vyas Learned Counsel, appearing on behalf of the appellant submits that the appellants have filed the refund claims for taking credit for the reason that they were under apprehension that if at all the credit on the spare parts is considered as inputs, the effect would have been denial of exemption notification No. 30/2004-CE dated 09.07.2004. Therefore, there was no option except to claim the credit because of the interpretation of thedefinition of 'Input'/capital goods are involved. It is his submission that since the spare parts of the capital goods is clearly covered under capital goods, the appellant's claim for Cenvat Credit is in respect of capital goods which is not barred as per the notification No.30/2004-CE. Though the capital goods having value less than Rs.10,000/- is included in definition of 'Input' but the same was not excluded from the definition of the 'Capital Goods'. Therefore, it is the option of the assessee whether he takescredit under the capital goods or inputs. Without prejudice, he further submits that now after the introduction of GST from 01.07.2017 the Cenvat Credit in the present cases are available as cash refund in terms of Section 142(3) of CGST Act read with the Section 11B of Central Excise Act. Therefore, the appellant is clearly entitled for the cash refund of the Cenvat Credit which is admissible to the appellant as submitted above.

3. Shri P Ganesan, Learned Superintendent (AR) appearing on behalf of the respondent, reiterates the findings of the impugned order.

4. We have carefully considered the submission made by both the sides and perused the records. We find that the appellant have filed the refund claim for Cenvat Credit in respect of the spare parts covered under the definition of 'Capital Goods' as well as 'Inputs'. The appellant taking abandon precaution filed the refund claim for the reason that if they avail suomoto credit that could result into denial of exemption notification. Therefore, we do not find anything wrong in filing the refund claim for claiming the Cenvat credit in respect of spare parts used in the wear and tear of the capital goods. As regard the issue on merit whether the appellant is entitled for Cenvat credit in respect of spare parts when availing the notification No.30/2004-CE., we find that as per notification No.13/2016-CE dated 01.03.2016 at serial no.2 in clause(C) (iii) the following amendment was made:-

(iii) after sub-clause (iv) as so amended, the following sub-clause shall be inserted, namely:-

"(v) all capital goods which have a value upto ten thousand rupees per piece;"

As per the above insertion of sub clause (v)in the definition of 'Inputs' given in Rule 2(k) of Cenvat Credit Rules, all capital goods having a value upto Rs.10,000/- are included in the definition of 'Inputs'. However, there is no exclusion of these goods from the definition of 'Capital Goods'. The spare parts of the capital goods are also covered under the capital goods. Therefore, in our considered view, it is the option of the assessee either to claim Cenvat Credit in respect of capital goods having a value upto Rs.10,000/- per piece either as capital goods or inputs.

4.1 It is settled law that when simultaneously two benefits are available to the assessee at a time then the more beneficial provisions should be extended to the assessee. In this regard, we take support of the Hon'ble Supreme Court judgment in the case of SHARE MEDICAL CARE vs. UNION OF INDIA, 2007 (209) E.L.T. 321 (S.C.) in the said judgment the appellant's claim of Notification No. 64/88-Cus., dated March 1, 1988 was denied. However, during the relevant period the goods of the assessee was also covered under para 3 of the table of exemption. The Hon'ble APEX Court held that if the benefit of para 2 of exemption is not available then assessee should be given the benefit under para 3. Accordingly, when two benefits are available it is the option to the assessee to chose the more beneficial. Relevant para 16 of the judgment is reproduced below:-

> *"16. In the instant case, the ground which weighed with the Deputy Director General (Medical), DGHS for non-considering the prayer of the appellant was that earlier, exemption was sought under category 2 of exemption notification, not under category 3 of exemption notification and exemption under category 2 was withdrawn. This is hardly a ground sustainable in law. On the contrary, well settled law is that in case the applicant is entitled to benefit under two different Notifications or under two different Heads, he can claim more benefit and it is the duty of the authorities to grant such benefits if the applicant is otherwise entitled to such benefit. Therefore, non-consideration on the part of the Deputy Director General (Medical), DGHS to the prayer of the appellant in claiming exemption under category 3 of the notification is illegal and improper. The prayer ought to have been considered and decided on merits. Grant of exemption under category 2 of the notification or withdrawal of the said benefit cannot come in the way of the applicant in claiming exemption under category 3 if the conditions laid down thereunder have been fulfilled. The High Court also committed the same error and hence the order of the High Court also suffers from the same infirmity and is liable to be set aside."*

4.2 The department might interpret the entry of capital goods vis-a-vis input as per amended definition of input and may contend that the spare parts having the value less than Rs.10,000/- of each piece is covered under inputs, therefore, spare parts are falling under inputs. In this regard, we find that so long the spare parts are also covered under capital goods and the same was not excluded, there is no doubt that the spare parts are falling under capital goods as well as input. Even in this situation, the more beneficial provision of capital goods needs to be extended to the appellant. The principal of more specific prevails over general has been considered by Hon'ble Bombay High Court in the case of COCA COLA INDIA PVT. LTD. vs. COMMISSIONER OF C. EX., PUNE-III, 2009 (15) S.T.R. 657 (Bom.) wherein, this particular issue has been dealt with in para 41 which is reproduced below:-

*"**41.** The principle that a specific provision will override a general provision is not applicable to provisions which are in the nature of concessions or exemptions. We may consider the facts and some circumstances. In HCL Ltd. v. Collector of Customs - 2003 (159) E.L.T. 257 (Tri. - Del.) = 1998 (77) ECR 126 (T), Sl. No. 53 of Notification No. 96/61-Cus., dated 25-7-1991 referred to automatic testing or marking or printing or typing machine or any combination thereof and exempted customs duty in excess of 20% ad valorem. Notification No. 59/88-Cus., dated 1-3-1988 referred to optical time domain reflectometer and exempted customs duty in excess of 55% ad valorem. Assessee imported a optical time domain reflectometer. There was no dispute' that product in question was a optical time domain reflectometer. Assessee claimed the benefit of Sl. No. 53 of Notification No. 96/61-Cus. CESTAT held that product is squarely and more specifically covered by Notification No. 59/88-Cus and rejected the assessee's contention. CESTAT held as under :*

9. We have carefully considered the matter. We find that there is no dispute and it is an admitted position that the goods imported were optical time domain reflectometer. Optical time domain reflactometer are specifically described in Notification No.. 59/88-Cus., dt. 1-3-1988 which provided exemption to the goods specified in the Table annexed to that Notification No. 59/88-Cus., which was falling under Chapters 84, 85 or 90 of the Customs Tariff. The exemption was to the extent of the duty as was in excess of the amount calculated at the rate of 55% ad valorem. Subsequently, another Notification No. 96/91-Cus., dt. 25-7-1991 was issued which exempted the goods falling within the Chapters 82, 84, 85 and 90 of the Customs Tariff which was used in the electronic industries. The exemption available was to the extent of duty which was in excess of the amount calculated at 20% ad valorem. At serial No. 53 of the Table the following goods were covered :

"Automatic testing or marking or printing or taping machine or any combination thereof."

We find that the goods imported were Optical Time Domain Reflee tometer which was specifically covered by the already existing Notification No. 59/88-Cus. The description at serial No. 53 of the Table under Notification No. 96/91-Cus. was general in nature and it could not be said that the goods were equally covered by both the Notifications. When there is specific entry, it is settled position in law that the goods would be classified under that specific entry as against the general entry.

10. The learned Advocate had submitted that the Asstt. Collector, Customs had not disputed that the item in question was covered by serial No. 53 of Notification No. 96/91-Cus. We find that the Asstt. Collector, Customs had only referred that entry under Customs Notification No. 96/91-Cus. which was generic in nature and covered broad category of goods of particular nature. We find that he had held that the goods were not covered by serial No. 53 of Notification No. 96/91-Cus.

11. Learned Advocate had also referred that when two notifications were available to an assessee it was the option of the assessee to choose any one which was beneficial to him. He referred to the case law in support of his contention.

We consider that in the present case the two notifications were not equally applicable to the goods in question. In one notification, the goods were specifically and categorically described while the description in another notification was general in nature. We consider that the case law will be applicable only when the two notifications are equally applicable to the goods and the manufacturer.

The Supreme Court in an appeal filed by the assessee in HCL Limited v. Collector of Customs, New Delhi - 2001 (130) E.L.T. 405 (S.C.) reversed the decision of CESTAT and held as under :

"The question in these appeals is covered in favour of the appellant by the order of this Court in Collector of Central Excise, Baroda v. Indian Petro Chemicals [1997 (92) E.L.T. 13]. Where there are two exemption notifications that cover the goods in question, the assessee is entitled to the benefit of that exemption notification which gives him greater relief, regardless of the fact that the latter notification is general in its terms and the other notification is more specific to the goods".

As per the above observation of the Hon'ble Bombay High Court supported by the Hon'ble Apex Court judgment in the case of H.C.L. Ltd (supra) appellant's claim of Cenvat Credit on spare parts under capital goods is absolutely in order and legal.

4.3 In the present case, appellant have claimed the Cenvat Credit in respect of such spare parts under capital goods which is in order. In the present case the appellant has option to avoid the Cenvat Credit on spare parts either under capital goods or under input. When this be so then condition of the notification No.30/2004-CE does not get violated. Accordingly, the appellants are entitled for the exemption notification No 30/2004-CE and simultaneously, they are also entitled for the Cenvat Credit on the spare parts even though, the value thereof is upto Rs.10,000/- under the category of capital goods. Therefore, we are of the clear view that the appellants are legally entitled for the Cenvat Credit. As regard the submission of the appellant that in the event of eligibility of the Cenvat Credit on the parts of the capital goods in the present case they are entitled for the cash refund in terms of Section 142(3) of CGST Act read with Section 11B. This submission has strong force and we are of the view that since we have taken a view that the appellant is entitled for the Cenvat Credit of spare parts of the capital goods under the capital goods consequentially, they are also entitled for the cash refund in terms of Section 142 (3) read with Section 11B in accordance with the law.

5. As per the above discussion and finding, the impugned orders are set aside, the appeals are allowed with consequential relief

(Pronounced in the open court on 03.07.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Bharvi