

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

REGIONAL BENCH- COURT NO.3

Excise Appeal No.11742 of 2015

(Arising out of OIO-BVR-EXCUS-000-COM-017-019-15-16 dated 16/09/2015 passed by Commissioner of Central Excise-BHAVNAGAR)

Sanjay Casting

.....Appellant

Survey No. 407/2, Gidc, Phase-II, Sihor,
BHAVNAGAR, GUJARAT

VERSUS

C.C.E. & S.T.-Bhavnagar

.....Respondent

Plot No.6776/B-1...Siddhi Sadan, Narayan Upadhyay Marg,
Beside Gandhi Clinic, Near Parimial Chowk,
Bhavnagar, Gujarat-364001

With

Excise Appeal No.11743 of 2015

(Arising out of OIO-BVR-EXCUS-000-COM-017-019-15-16 dated 16/09/2015 passed by Commissioner of Central Excise-BHAVNAGAR)

Dipak Rathod

.....Appellant

Partner, Sanjay Castings, Survey No. 407/2, Gidc, Phase-II, Sihor,
BHAVNAGAR, GUJARAT

VERSUS

C.C.E. & S.T.-Bhavnagar

.....Respondent

Plot No.6776/B-1...Siddhi Sadan, Narayan Upadhyay Marg,
Beside Gandhi Clinic, Near Parimial Chowk,
Bhavnagar, Gujarat-364001

APPEARANCE:

Shri Paresh Sheth, Advocate for the Appellant

Shri T. G. Rathod, Additional Commissioner (AR) for the Respondent

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

Final Order No. A/ 10508-10509 /2022

DATE OF HEARING: 17.03.2022
DATE OF DECISION: 12.05.2022

RAMESH NAIR

M/s Sanjay Castings and its partner Shri Dipak Rathod, have filed present appeals against Order-In-Original No. BVR-EXCUS-000-COM-17 TO 019 -15-16 dated 16.09.2015 passed by the Commissioner of Central Excise, Bhavnagar, wherein demand of excise duty Rs. 8,09,39,585/- and

cenvat credit demand of Rs. 49,825/- was confirmed with interest and penalty and also a separate penalty of Rs.2,00,00,000/- was imposed on Shri Dipak Rathod.

1.1 The brief facts of the case are that appellant was engaged in manufacturing of C.I. Castings Moulds and are availing the Cenvat Credit of duty paid on the input used in or on relation to manufacture of the final products and are also manufacturing of C.I. Moulds on Job Work basis. The Factory premises of Appellant searched by the department and noticed that the Appellant is manufacturing C.I. Moulds out of the material purchased as also old and used Moulds supplied by some other manufacturers under intimation to the Central Excise Department and by following the procedure prescribed under Notification No. 214/86 dated 25.03.1986. The officers recorded the statement of employee and partner of Appellant and various suppliers of old and used mould supplied as raw material. Such investigation culminated into show cause notices proposing demands on the grounds that Rule 4(5)(a) does not allow removal of old and used C.I.Moulds. Department also issued separate show cause notice dated 13.07.2012 proposing confiscation of the goods seized on the date of visit.

1.2 In Adjudication, Learned Adjudicating Authority confirmed the entire demand vide impugned order. Therefore, the present appeal filed by the appellants

02. Shri Paresh Sheth, Learned counsel appearing on behalf of the appellant submits that Appellant are manufacturing CI Moulds out of old and used moulds or scrap moulds supplied by the customers by following the procedure prescribed under Rule 4(5)(a) read with Notification No. 214/86. Clearance of such Job Work goods manufactured is also disclosed in respective ER-1 return filed. The basis for demanding duty is that the Appellant received scrap of old and used moulds in the guise of moulds from customers not for intended purpose like testing, repair, re-conditioning or the manufacture of intermediate products but for removing fresh moulds as replacement against recoverable metal from the scrap of old and used moulds. During the course of investigation department recorded the statements of various supplier of used/scrap CI Ingot Moulds and all the suppliers have accepted that they have supplied scrap/ Used CI Moulds to the Appellant for conversion into fresh Moulds and admittedly all the suppliers have filed declaration for availment of exemption under Notification

No. 214/86. Department accepted the fact that suppliers have filed relevant declaration as required under Notification No. 214/86. Department has also issued show cause notices to suppliers of material. He submitted the copies of two show cause notices issued to supplier by the department. He also submits that in case of suppliers the Hon'ble tribunal has held that old and used moulds /scrap can be removed under Rule 4(5)(a) of Cenvat Credit Rules, 2004.

2.1 He also submits that Learned Commissioner of Central Excise has erred in confirming the demand ignoring the facts that the clearances made under Notification No. 214/86 is not only supported by the Job Work challan but is also supported by the invoices and therefore, in view of the decision of Hon'ble CESTAT Mumbai in the case of M/s Bharat Industries Vs. CCE reported in 2008(227) ELT 281, it can not be said that the goods were clandestinely cleared and hence, no duty can be demanded from the Job Worker.

2.2 He further submits that the Learned Commissioner has erred in confirming the demand of Rs. 4,32,019/- on the goods seized by the department. The goods seized includes the material supplied by various supplier for conversion into moulds on which neither the duty stands paid by the supplier nor any credit is availed by the Appellant. For storage of non-cenvatable material, outside the factory premises, neither any permission is required nor is there any Rule whereby the duty can be demanded by the department. The duty demanded on coal, stored outside the factory premises but in premises just opposite to the factory premises and in the premises owned by the Appellant, due to shortage of space, is also not liable to be confirmed in as much as the said material was duly accounted for and is proved to have been used in manufacturing of final product. The duty confirmed is liable to be set aside.

2.3 He also submits that Learned Commissioner has erred in disallowing the Cenvat Credit of Rs. 49,825/- as much as, the said goods are proved to have been used in manufacturing of final products and the premises stand approved as part of factory premises vide order dated 03.10.2012 issued by the Jurisdictional Assistant Commissioner.

2.4 He also placed reliance on the following decisions in support of his arguments.

- Kakda Steel Pvt. Ltd. final order No. 50034/2019 dated 11.01.19
- Bajaj Auto Ltd. 2018-10-GSTL 141 (Tri. Mumbai)
- New Steel Trading Pvt. Ltd. final order No. A/86152-86153/2018
- Bharat Industries 2008-227-ELT-281 (Tri. Mum)
- Plastika Industries 2016-335-ELT-574 (Tri. Mum)
- La Prenca Industries Pvt. Ltd. 2017-346-ELT-412
- Shakti Wire Products 2009-241-ELT-223
- OPG Metals Pvt. Ltd. 2016-343-ELT-223
- Sagun Foundry Pvt. Ltd. 2002-150-ELT-624
- Sree Rayalaseema Dutch Kassenbouw Ltd 2006-203-ELT-248
- Ampson Engineering Pvt. Ltd. 2016-336-ELT361
- Wyeth Laboratories Ltd. 2000-120-ELT-218
- Pravin N. Shah 2014-305-ELT-480

03. On the other hand, Shri T.G.Rathod, Learned Authorized Representative appearing for the Revenue reiterates the finding of the impugned order. He placed reliance on the following decisions:-

- Mettur Spinning Mills Ltd. Vs CCE, Salem 2009(246)ELT 705 (Tri. Chennai)
- CCE Aurangabad Vs. India Containers Ltd. 2017(355)ELT 326 (Bom)
- Thermax Babcock & Wilcox Ltd. Vs. CCE Pune -I 2018(364)ELT 945 (Tri.LB)
- SalasarDyg&Ptg Mills Pvt. Ltd. Vs. CCE, Surat -I 2013(290)ELT322
- CCE, Calcutta Vs. Pradyumna Steel Ltd. 1996 (82)ELT 441 (SC)

04. We have carefully considered the submissions made by both the sides and perused the records. The issue to be decided in the present case are as under:-

- (i) Whether the confiscation of the goods lying outside the factory premises is correct and whether the duty can be demanded in respect of such goods.

- (ii) Whether the revenue is correct in confirming the demand on the C.I. Moulds manufactured on job work basis from the old and used moulds supplied by the principal supplier under Notification No.214/86 dated 25.03.1986.
- (iii) Whether demand of duty on the coal stored outside the factory premises on which no Cenvat credit was taken is liable for confiscation and whether the Cenvat credit can be denied on such coal.

4.1 As regard the goods allegedly lying outside the factory premises whether liable for confiscation. We are of the view that as per the facts of the case which is not under dispute that the appellant have applied for extension of ground plan for inclusion of the premises where the goods were lying well in advance and subsequently, the ground plan was approved. Therefore, it cannot be said that the goods were lying outside the factory. Moreover, the appellant received the old and used moulds for the purpose of job work in their factory under Notification No.214/86-CE therefore, no cenvat credit was taken on such goods accordingly, such goods cannot be treated as excisable goods hence, no question arise for confiscation of the goods. Accordingly, neither confiscation is legal nor the duty demanded on such goods is correct. Moreover, the goods were subsequently taken into the factory and used in the manufacture for the job work. For this reason also demand and confiscation of the goods is not sustainable.

4.2 As regard the demand on C.I. Mould which was manufactured on job work basis in terms of Notification No.214/86-CE, the case of the department is that the appellants have manufactured and cleared fresh goods in the guise of conversion of old and used mould into the job worked goods, therefore, they are liable to pay duty. In this regard, as per the undisputed facts, the various suppliers were supplying the old and used moulds to the appellant for converting into new mould and returning it back to the principal supplier. In this regard all the suppliers have filed a declaration as required under Notification 214/86-CE. This arrangement is permissible under which the job worker is exempted from payment of any excise duty in terms of notification No.214/86-CE.

4.3 The contention of the department is not based on any evidence for the reason that the appellant have received the old and used moulds from

various suppliers under the challan issued in terms of Rule 4(5)(a) of Cenvat Credit Rules and notification No.214/86-CE. The department could not adduce any evidence to substantiate their allegation such as receipt of raw material by the job worker on their end to manufacture of fresh and new C.I. Moulds. The job worker have done all the transactions as per the challans and for the job work purpose invoices were raised. No invoice was raised in respect of sale of the goods. The department also could not find anything to support their contention that the fresh moulds were made such as the total value of the goods for the fresh mould received by the appellant from the recipient of the C.I. Mould. All the documents and records clearly show that the appellant have received the old and used moulds and converted into fresh mould and returned back to the supplier of old and used mould for which they merely charged the job work charges.

4.4 As regard the department's objection that old and used mould/scrap cannot be cleared under Rule 4(5)(a) it is no longer under dispute as per the various judgments cited by the appellant. It is a settled law that manufacturer for the purpose of manufacturing their goods can clear their own generated scrap to the job worker and get the finished goods manufactured out of it in terms of Notification No.214/86-CE. Therefore, we do not find any reason why the department has proceeded to demand duty from the appellant when all the records and facts as revealed from the investigation clearly shows that the appellant have involved in job work of making C.I. Mould from old and used mould/scrap supplied by their principal manufacturer. Accordingly, we do not hesitate in holding that the demand on this count is not sustainable.

4.5 As regard the denial of Cenvat credit and the ground that the same was lying outside the factory, as per the facts of the case firstly, the appellant had not taken the cenvat credit when the goods were lying stored outside, the credit was taken only after taking the coal into the factory therefore, there is no violation of any Cenvat Credit Rules. Secondly, the coal was lying outside the factory but it was lying within the premises which is owned by the appellant only. As discussed above, the appellant had applied for inclusion of the said premises in the factory premises even before storing the goods and subsequently, the permission was granted and the said premises deemed to have been part and parcel of the registered premises of the appellant. For this reason also the Cenvat credit on coal

cannot be denied. Since the demand itself is not sustainable, penalty on the main appellant as well as co-appellant is also not sustainable.

4.6 The appellants have strongly raised the defence on limitation on the ground that the job work transactions were clearly declared in the monthly ER-1 return therefore, there is no suppression of fact. We, prima facie find force in the submission of the appellant however, since we have decided the entire case of its facts and merit we are not going into the issue of limitation.

05. As per our above discussion and findings, we are of the view that the entire demand made against the appellant and the confiscation of goods is not legal and correct hence the same is not sustainable.

06. Accordingly, the impugned order is set aside. Appeals are allowed with consequential relief, if any, in accordance with law.

(Pronounced in the open court on 12.05.2022)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Mehul