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

REGIONAL BENCH- COURT NO.3

Excise Appeal No.10699 of 2017

(Arising out of OIA-BHV-EXCUS-000-APP-229-16-17 dated 26/12/2016 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-RAJKOT(Appeal))

Jain Steels **........Appellant**
Plot No. 506, Gidc-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.10916 of 2017

(Arising out of OIA-BHV-EXCUS-000-APP-252-16-17 dated 15/02/2017 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-RAJKOT)

Kiran Ispat Udyog **........Appellant**
Plot No. 504, Gidc-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 Mukesh Patel, Advocate for the Appellant
Shri Dinesh Prithiani, Assistant Commissioner (AR) for the Respondent

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

Final Order No. A/ 10710-10711 /2022

DATE OF HEARING: 17.06.2022
DATE OF DECISION: 23.06.2022

RAMESH NAIR

The brief facts of the case are that there were proceedings regarding disallowance of deemed credit against the appellants. The said matter was travelled upto this Tribunal and this Tribunal vide orders dated 29.06.2007 and 25.10.2010 dismissed the appellant's appeals thereafter, the appellant have not taken up the matter further. However, on this same issue the earlier proceeding for the period April-94 to November-94 the matter had arrived up to the Hon'ble High Court and the High Court has allowed the deemed credit to the appellant. The appellant had filed refund claim in the matter of Jain Steel on 11.8.2015 & 13.08.2015 and for Kiran Ispat refund was filed on 17.08.2015. Both the refunds were rejected and the same were upheld by the Learned Commissioner (Appeals) therefore, the present appeals filed by the appellants.

02. Shri Mukesh Patel, learned counsel for the appellants submits that the issue in principle has been decided in the appellant's own case by the High Court of Gujarat for the previous period i.e. for April-94 to November-94 therefore, even though after the previous order in the present case, the appeals were dismissed but in terms of the Hon'ble High Court order the appellant is entitle for the deemed credit.

03. On the other hand Shri Dinesh Prithiani, learned Assistant Commissioner (AR) appearing on behalf of the revenue reiterates the finding of the impugned order. He submits that it is settled law that if there is an order against the assessee and if no further remedy is availed, the order which is against the assessee will be operative and according to which no relief can be given on the basis of different case even though in the assessee's own case. He placed reliance on the following judgments:-

- M/S. PAROS ELECTRONICS P LTD- 1996 (83) ELT 261 (SC)
- M/S. EURO CERAMICS LTD- 2017 (354) ERLT 23 (Guj.)
- M/S. AURANGABAD PAPER MILLS- 2017 (48) STR 14 (Bom.)
- M/S. SHOELINE- 2017-TIOL-289-SC-ST
- M/S. DGP HINODAY INDUSTRIES LTD.- 2010 (252) ELT 307 (Tri-Mum)
- M/S. K.B. ENGINEERING WORK- 2009 (238) ELT 515 (Tri-Mum)

04. I have carefully considered the submissions made by both the sides and perused the records. I find that in both the appeals as regard the admissibility of the deemed credit the matter was taken to this tribunal and the tribunal vide order dated 29.06.2007 (Kiran Ispat) and 25.10.2010 (Jain Steels) has dismissed the appeal of the appellants which attained finality as the appellant has neither taken the matter to the higher forum nor even pursued the matter with the tribunal by filing ROA application or otherwise.

In this position, even though for the previous period there is a judgment of Hon'ble High Court in favour of the appellant but in the very same case in the present appeals the last orders are against the appellants which are operative and according to which the refunds are not maintainable hence, there is no substance in the appeal filed by the appellants.

05. Accordingly, the impugned orders are upheld. Appeals are dismissed.

(Pronounced in the open court on 23.06.2022)

(RAMESH NAIR)
MEMBER (JUDICIAL)

Mehul