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

REGIONAL BENCH-COURT NO. 3

EXCISE Appeal No. 12738 of 2014 - DB

(Arising out of OIA-SUR-EXCUS-001-APP-301-303-13-14 dated 22/08/2013 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

Shree Hari Traders **........Appellant**
Plot No. 70, Survey No. 31-32,
Siddhi Vinayak Society,
Outside Sahara Darwaja, Umarwada,
Surat, Gujarat

VERSUS

Commissioner of C.E. & S.T.-Surat-I **......Respondent**
New Building...Opp. Gandhi Baug,
Chowk Bazar,
Surat, Gujarat- 395001

With

EXCISE Appeal No. 12747 of 2014 - DB

(Arising out of OIO-SUR-EXCUS-001-COM-124-13-14 dated 14/03/2014 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

Hari Krishna Parikh **........Appellant**
Proprietor Of M/s, Shree Hari Enterprise,
Plot No. 70, Survey No. 31-32,
Siddhi Vinayak Society,
Outside Sahara Darwaja Umarwada,
Surat, Gujarat

VERSUS

Commissioner of C.E. & S.T.-Surat-I **......Respondent**
New Building...Opp. Gandhi Baug,
Chowk Bazar,
Surat, Gujarat- 395001

And

EXCISE Appeal No. 12748 of 2014 - DB

(Arising out of OIO-SUR-EXCUS-001-COM-124-13-14 dated 14/03/2014 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

Hari Krushna Parikh **........Appellant**
Karta Of M/s, Shree Narayan Muni Dev Enterprise,
Plot No. 70, Survey No. 31-32,
Siddhi Vinayak Society,
Outside Sahara Darwaja Umarwada,
Surat, Gujarat

VERSUS

Commissioner of C.E. & S.T.-Surat-I **......Respondent**
New Building...Opp. Gandhi Baug,
Chowk Bazar,
Surat, Gujarat- 395001

APPEARANCE:
Shri Anand Nainawati, Advocate for the Appellant
Shri Tara Praksah, Deputy Commissioner (AR) for the Respondent

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

Final Order No. 11943-11945/2024

DATE OF HEARING: 08.05.2024
DATE OF DECISION: 05.09.2024

RAMESH NAIR

The present appeals have been filed by the Appellants against the impugned Order-in-Original No.SUR-EXCUSE-001-COM-124-13-14 Dated 28.2.2014 passed by the Commissioner of Central Excise, Surat confirming duty demands and imposing penalties under Section 11AC and Rule 26 of the Central Excise Act and Rules made thereunder.

1.1 The facts in brief are that following trading concerns namely:

a) M/s. Shree Hari Traders, **prop**: Shri Hari Krishna Parikh

b) M/s. Shree Hari Enterprises, **Prop**: Late Shree Suresh Chadra Parikh

c) M/s. Shree Narayan Munee Dev Entp, **Prop**: Karta Hari Krishna Parikh

are engaged in trading of duplex paper board. The Trading Concerns purchase non-corrugated paper board from dealers of manufacturers and in some cases directly from manufacturers. The customer places order for purchase of paper board on the Trading Concerns. The Trading Concerns sell paper board to customer & consigns it to the appellants at the direction of the customer. The trading concerns raise commercial invoice on the customer for sale of duplex paper sheet. It would be seen from the copies of invoices that the particulars of the product shown in invoice is Sheets of different sizes.

1.2. The process undertaken on bought out duplex paper board has been explained in the impugned order and also during the course of hearing through different samples. Process in brief which is not in dispute is that trading concerns purchase duplex paper board from the authorized dealers of paper board manufacturers. These paper boards are then sent to offset printers for offset printing with customers design, name and logo. These paper boards are first cut to size as per requirement to set in offset printing machine. After receipt of printed paper board, the Appellants either themselves or through job workers do various further process such as process of lamination of BOPP films or PVC films as the case may be. The different processes such as UV treatment, embossing etc. are also done as per the need of the customer. Thereafter, process of punching and creasing is done on such laminated paper board.

1.3. According to the department, the Appellants are clearing three different sheets to the customers in set which according to them is top and bottom of box and also "tray" which is kept inside the box to give it strength. Though invoices/challans refer the products in question as Sheet only, case of the department is that these are not sheets but "Boxes" cleared in sheet form for ease of transportation and same can be converted into box by the customer for packing of sarees or any other dress material.

1.4 in view of the above department is of the view that the appellant are engaged in the manufacture of Boxes as a complete duplex box. Hence, liable to duty under the classification Tariff item 4819 20 20/ 4819 20 90 of the First Schedule the Central Excise Tariff Act, 1985. The Adjudicating Authority has confirmed the demand and imposed penalties, therefore the present appeals as detailed below are filed by the appellant:-

Appeal No.	**Name of the Client**	**Duty Rs.**	**Penalty Rs.**
E/12738/2014	Shree Hari Traders	Rs.3,07,64,928/-	Rs.3,07,64,928/-
E/12746/2014	Suresh Chandra Parikh (Prop. ***Shree Hari Enterprsies***) (**Deceased** proceedings abates in view of Rule 22 of CESTAT procedure Rules)	-	Rs.10,00,000/-
E/12747/2014	Hari Krishna Parikh (Prop. Shree Hari Traders)	-	Rs.15,00,000/-
E/12748/2014	Hari Krishna Parikh (Karat of ***Shree Narayanmuneedev Enterprises***)	-	Rs.10,00,000/-

2. Shri Anand Nainawati, Learned Counsel appearing on behalf of the appellants at the outset submits that neither in the show cause notice nor in the adjudication order authorities have come to the conclusion that the activity under taken by the appellant is a manufacturing activity. Therefore, straight way demanding the duty without first ascertaining the activity of manufacture is not sustainable. He submits that while confirming the demand, the adjudicating authority has not granted the benefit of Cenvat credit on the pretext that the invoices on which the Cenvat credit have been claimed bear the name of appellant but the same is endorsed.

Accordingly, invoices are not proper document in terms of Rule 9 of Cenvat Credit Rules. He submits that merely because the invoices are endorsed, Cenvat cannot be denied. He also submits that the cum duty benefit has not been extended by the adjudicating authority only on the ground that there is no bona fide belief on the part of the appellant but a mala fide intention to evade payment of excise duty.

2.1. He further submits that the entire case made on the basis of clubbing of clearances of three different units which is absurd and perverse. All three trading concerned are independent and working of their own without any mutual interest in each other. Therefore, the clubbing of clearances of all the three units is incorrect. He made various submissions and placed reliance on the following judgments:-

- Grasim Industries Vs. UOI 2011 (273) ELT 10 (SC)
- Maruti Suzuki Vs. CCE 2015 (318) ELT 353 (SC)
- Metlex Vs. CCE 2004 (165) ELT 129 (SC)
- Shyam Oil Cakes Vs. CCE 2004 (174) ELT 145 (SC)
- Dunlop India Vs. UOI 1983 (13) ELT 1566 (SC)
- Reliance Textile Industries Ltd. Vs. UOI 1993 (63) ELT 67 (Bom.)
- Indian Oil Corporation Ltd. Vs. CCE 1987 (27) ELT 482 (T)
- CCE, New Delhi v. S.R. Tissues Pvt. Ltd. 2005 (186) E.L.T. 385 (S.C.)
- CCE Vs. Tarpaulin International 2010 (256) ELT 481 (S.C)
- Anil Dang v. Commissioner 2007 (213) E.L.T. 29 (Tribunal-LB)
- Printo India Graphics (P) Ltd. Vs. CCE 2012 (275) ELT 592 (T)
- Affirmed by Hon'ble Supreme Court in 2012 (282) ELT A46(S.C)
- Win Enterprises Vs. CCE 2013-TIOL-1777-CESTAT-MAD-LB
- CCE Vs. Supreme Industries Ltd. 2000 (116) ELT 465 (T)
- Srichakra Tyres Ltd. Vs. CCE 1999 (108) ELT 361 (T)
- Affirmed by the Supreme Court of India 2002 (142) ELT A279 (S.C)
- CCE Vs. Maruti Udyog Ltd. 2002 (141) ELT 3 (S.C)
- Formica Division Vs. CCE 1995 (77) ELT 511 (S.C)
- Darshan Industries Vs. UOI 2014 (307) ELT 36 (Guj)
- Uni Cast Pvt. Ltd. Vs. CCE 2016 (331) ELT 369 (T)

- Cosmic Dye Chemical Vs. CCE 1995 (75) ELT 721 (S.C)
- Pahwa Chemicals Private Ltd. Vs. CCE 2005 (189) ELT 257 (S.C)
- Padmini Products Vs. CCE 1989 (43) ELT 195 (S.C)
- Chiripal Industries Ltd. Vs. CCE 2015 (328) ELT 502 (T)
- Accra Pac (India) Pvt. Ltd. Vs. CCE 2009 (245) ELT 461 (T)
- Approved by Hon'ble Gujarat HC in 2010 (257) ELT 84

3. Shri Tara Praksah, Learned Deputy Commissioner (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order. He submits that the appellant have mala fide intention as they have declared the goods in the invoice as sheets whereas the goods cleared under gone various process of Lamination, Punching, holding and the same is ready to use as a Duplex box for packing of sarees or any other dress material. Therefore, by misdeclaring the goods they tried to mislead the department therefore, demand was rightly confirmed against them. He further submits that there is a clear mala fide intention on the part of the appellant. Therefore, the demand for extended period is also sustainable.

4. We have carefully considered the submission made by both the sides and perused the records. We find that the appellant have raised very vital aspect pointed out in the impugned Order-In-Original. The appellant submitted that the Order-In-Original is miserably failed in the following respects:-

> *i) Both show cause notice and Order-in-Original without alleging and proving manufacture, devoting efforts and giving finding in respect of classification, is perverse particularly when such a contention is admittedly raised by the appellants in their reply to notice.*
>
> *ii) There is no suggestion or whisper, let alone evidence thereto, either in the notice or in the Order-in-Original to the effect that there is change in name, character and use. The burden to prove manufacture not been discharged by the Revenue.*

iii) In present case, the condition in which goods are cleared from the unit of the appellants, they can neither be held as manufactured goods nor can be classified as cartons/boxes of heading 48.19. Any process on the goods subsequent to removal cannot be taken into account for ascertaining the nature of the goods at the time of removal.

4.1 We find that the above aspects are crucial to determine the liability and adjudication on this aspect is called for. The show cause notice and the impugned Order-In-Original is in this regard is vague and confirmation of demand based on assumption and presumption and without adjudicating on above aspect is perverse and not tenable. Since, the root cause of this case is demand of Excuse duty assuming that the activity under taken by the appellant are manufacture, however, the adjudicating authority has not properly examined the overall activity of the appellant, process and whether a different goods emerged after carrying out the said activity. Therefore, without proper examination of the process and the emergence of distinct commodity the demand of Excise duty considering the activities as manufacture cannot be sustainable. Therefore, on the aspects of manufacture the matter needs to be re-examined by adjudicating authority.

4.2 As regard the issue of Cenvat credit, we find that the adjudicating authority has denied the Cenvat credit on the ground that the invoices on which the Cenvat credit was claimed bear endorsement. We find that in many cases it has been decided that merely because the invoices are endorsed Cenvat credit cannot be denied, when the duty payment and receipt of raw material and use in the manufacture is established. In our view these aspects are not under dispute in the present case except the charge that the invoices are endorsed. Therefore, in our prima facie view the appellant are entitled for the Cenvat credit subject to verification of the document. This issue of Cenvat credit on the endorsed invoices has been considered in the following judgments:-

- Darshan Industries Vs. UOI- 2014 (307) ELT 36 (Guj)
- Uni Cast Pvt. Ltd. Vs. CCE- 2016 (331) ELT 369 (T)

In view of the above judgments, the denial of Cenvat credit merely on the ground that the invoices are endorsed is not sustainable.

4.3 As regard the claim of the appellant on the aspects of cum duty benefit, we find that the adjudicating authority has denied this benefit on the ground that the appellant had a mala fide intention. We do not agree with this contention of the adjudicating authority for the reason that statutory provision under the Act cannot be flouted on the ground that the assessee has mala fide intention or bona fide intention. Even if it is established that the assessee has a mala fide intention, the statutory provision cannot be kept aside and matter cannot be decided on the whims of the authority. For example while confirming the demand, if it is established the assessee is eligible for SSI exemption or any beneficial notification, irrespective whether there is mala fide intention the said benefits provided in the statute cannot ignored. Therefore, merely on the contention that the appellant had a mala fide intention cum duty benefit cannot be denied. This issue has been considered by the Hon'ble Supreme Court in the case of CCE Vs. Maruti Udyog Ltd.- 2002 (141) ELT 3, according to which the Learned Commissioner ought to have granted benefit of cum duty price. Accordingly, we hold that the appellant is eligible for cum duty benefit. All of the issues are kept open, the impugned orders are set aside. The appeals are allowed by way of remand to the adjudicating authority, for passing a fresh order, after observance of principles of natural justice. Since, the matter pertains to very old period the adjudicating authority shall pass the de-novo adjudication order, within a period of two months, from the date of this order.

(Pronounced in the open court on 05.09.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Raksha