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

REGIONAL BENCH-COURT NO. 3

Excise Appeal No. 10191 of 2014 - DB

(Arising out of OIA-VAD-EXCUS-002-COM-006-13-14dated15/10/2013passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-I)

Automotive Stampings & Assemblies Ltd **........Appellant**
Survey No. 173, Village- Khakharia,
Taluka- Savli,
VADODARA
GUJARAT

VERSUS

Commissioner of C.E. & S.T.-Vadodara-I **......Respondent**
1ST FLOOR...CENTRAL EXCISE BUILDING,
RACE COURSE CIRCLE,
VADODARA,GUJARAT-390007

APPEARANCE:
Shri Amal Dave, Advocate, Appeared for the Appellant
Shri Rajesh K Agarwal, Superintendent (AR) Appeared for the Respondent

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

Final Order No.12032/2024

DATE OF HEARING: 26.06.2024
DATE OF DECISION: 13.09.2024

RAMESH NAIR

The issue involved in the present case is that whether central excise duty can be demanded on moulds and fixtures manufactured and captively consumed for manufacture of other final products when such moulds and fixtures are sold by issuing commercial invoices but not removed from the factory and in this fact whether the appellant is eligible for exemption notification No. 67/95-CE dated 16.03.1995.

2. Shri Amal Dave, Learned Counsel appearing on behalf of the appellant at the outset submits that the issue is no longer res-integra in view of the various judgments of this Tribunal, particularly, this Tribunal's

decision in the appellant's own case. He placed reliance upon the following judgments:-

1. CCE, Vadodara V/s. Automotive Stamping Assemblies Ltd. 2011(9) TMI 878- CESTAT Ahmedabad.
2. Elcon Clipsal India Ltd. V/s. CCE, Ahd-I 2002(146) ELT 360 (Tri.-Del.)
3. Tennco Exhaust India Pvt.Ltd. V/s. CCE & ST, Vadodara-II 2022(1) TMI 1326- CESTAT Ahmedabad
4. United Pressings V/s. CCE, Ujjain 2022(8) TMI 225- CESTAT New Delhi.
5. OzlaPlastooraft (P) Ltd. &ors. V/s. CCE, Delhi-II 2016(4) TMI 279- CESTAT New Delhi
6. B.P.L. Electronics Ltd. V/s. CCE, Bangalore 1994(71) ELT 801 (Tribunal)

3. Shri Rajesh K Agarwal, Learned Superintendent (AR)appearing on behalf of the Revenue, 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 we agree with the learned counsel that the issue is no longer res-integran the light of the decision of this Tribunal in the appellant's own case reported as CCE, Vadodara V/s. Automotive Stamping Assemblies Ltd, 2011(9) TMI 878-CESTAT Ahmedabad. The said order is reproduced below:

> *"The brief facts of the case are that respondent manufactured tools and dies for a customer and used the same in their own factory for manufacture of components for the same customer. The respondent recovered the price of such tools and dies from the customer by raising a commercial invoice. However, no duty was paid. Revenue took a view that duty should have been paid on such tools and dies. Secondly, the respondent was availing the benefit of service tax paid on GTA services for outward transportation of their finished goods. On the ground that credit is not available because the input service is not covered by the definition and was available only upto the place of removal which is the factory in their case, proceedings were initiated. The Commissioner (Appeals) in the impugned order has held that respondent need not pay duty on tools, dies and fixtures and Cenvat credit is admissible. Revenue is in appeal.*

2. Learned DR fairly admits that as regards GTA service, after the decision of the Hon'ble High Court of Karnataka in the 2. case of ABB Ltd. reported in 2011 (23) S.T.R. 97, the issue has been finally settled and since the Tribunal is bound by that order he is not contesting the same. As regards tools and dies, he submits that once these tools, dies and fixtures have been sold to the customers, it has to be held that there was a deemed removal of tools, dies and fixtures to the customer and the same were received back for use in the manufacture of components for the customer. In view of the deemed removal, when the commercial invoice was raised duty should have been paid. Since the respondent did not pay duty and raised commercial invoice, the impugned order was wrong in taking a view that no duty, interest were payable and penalty was not imposable. He also submitted that under these circumstances the benefit of exemption under Notification No. 67/95 would not be available to the respondent. The learned counsel for the respondent relied upon several decisions of the Tribunal and the Notification to submit that irrespective of the ownership of the goods, the test for eligibility under Notification No. 67/95 is whether the goods have been consumed in the same factory where they have been produced or not and in this case it is not the case of Revenue that goods have been removed from the factory.

3. I have considered the submissions made by both the sides. As regards GTA service, in view of the decision of the Hon'ble High Court of Karnataka in the 3. case of ABB Ltd., the issue is no longer res integra. In this case the period involved is prior to 1-4-2008 when the definition of input service was amended. Therefore the decision of the Hon'ble High Court of Karnataka is applicable to the facts of this case and therefore the appeal filed by the Revenue fails. As regards duty, liability on tools, dies and fixtures, Notification No. 67/95-C.E., dated 16-3-1995 exempts capital goods as defined in Cenvat Credit Rules, 2004 manufactured in a factory and used within the factory of production. The notification does not speak of any ownership. It is an unconditional exemption which provides exemption to capital goods manufactured in a factory and used within the factory. It is not the case of the Revenue that goods have been removed from the factory at all. Once goods are manufactured and used in the same factory, the notification squarely applies. I also find that the decisions of the Tribunal in the case of BPL Electronics Ltd. v. CCE, Bangalore reported in 1994 (71) E.L.T. 801 (Tribunal), Elcon Clipsal India Ltd. v. CCE, Ahmedabad reported in 2002 (146) E.L.T. 360 (Tri. - Delhi) are applicable to the facts of this case. In both the cases, the Tribunal took the view that notification nowhere provides that the use of capital goods should be on account of the manufacturer. It was also observed by the Tribunal in the case of BPL Electronics Ltd. that mere fact of raising any invoice in favour of a company does not create a liability for charging duty. It was also held that levy of excess duty is in relation to manufacture and has nothing to do with sale. Since both the decisions of Tribunal are applicable to the facts of this case and the notification also has no restriction, I find that the appeal filed by the Revenue has no merits. Accordingly, appeal is rejected. Cross objections filed by the respondents also get disposed of."

From the above decision, it can be seen that the facts in the above cited decision and the facts of the present case in the appellant's own case are absolutely identical.

5. Accordingly, the present impugned order is not sustainable. Hence, the impugned order is set aside, appeal is allowed.

(Pronounced in the open court on 13.09.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Bharvi