# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL AHMEDABAD

## REGIONAL BENCH, COURT NO. 1

### EXCISE APPEAL NO. 10378 OF 2017

(Arising out of OIA-VAD-EXCUS-001-APP-401-2016-17 Dated- 26/10/2016 passed by Commissioner ( Appeals ) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I( Appeal))

**TRANSPEK INDUSTRY LTD** **Appellant**
Village-Ekalbara, ECP Road, Taluka- Padra,
Vadodara, Gujarat

Vs.

**COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX-VADODARA-I** **Respondent**
1st Floor...Central Excise Building, Race Course Circle,
Vadodara, Gujarat-390007

**Appearance:**
Shri Saurabh Dixit, Advocate for the Appellant
Shri Anand Kumar, Superintendent (AR) for the Respondent

**CORAM:**
**HON'BLE MR. SOMESH ARORA, MEMBER ( JUDICIAL )**

Date of Hearing/Decision : 23.01.2025

**FINAL ORDER NO. 10067/2025**

In the instant case, certain goods imported by the appellants were re-exported with due permission of the department. The Cenvat Credit of CVD and SAD paid at the time of import was reversed by mistake by their accountant. Later on they filed a refund of the duty debited by them on the basis of authority of Board Circular No. 283/117/96 dated 31st December, 1996 and Circular No. 345/2/2000/TRU dated 29.08.2000. The same was refused by the department on the ground that they having reversed the credit of duty which was paid at the time of importation, are no more eligible for refund.

2. The appellants are aggrieved by the refusal of refund of the duty paid. Learned advocate before us, inter alia, seeks to rely upon the decision of MRF Limited Vs. Commissioner of Central Excise & Service Tax, LTU Chennai

as reported in 2016 (337) ELT 583 (Tri. Chennai) to emphasize that credit in the similar circumstances was held admissible. Therefore, they were either entitled to re-credit their books of account with such amount as was wrongly debited by them or the same should have been allowed as refund to them.

3. Learned AR submits that the benefit has been denied as whatever duty was paid under the customs tariff has itself been debited by the party in their R.G. 23.

This court has gone through the above Board Circular as well as the cited decision specially para 6, 7, 8, 9 and 10 as reproduced below:-

> *"6. The impugned order is liable to be set aside for the reason that in the Board's Circular No. 283/117/96, dated 31-12-1996 it has been clearly stated that the credit availed on inputs which are re-exported as such under Bond need not be reversed. The relevant portion of the said circular is culled out below:*
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> *"5. Accordingly, it is clarified that the Modvat credit RG23A Part-II account against the export of inputs as such under bond can be utilized in the same manner as it is provided for a final product under proviso to Rule 57F(4). Obviously, it follows from this that such inputs should be allowed to be exported under bond without any reversal of the credit."*
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> *7. The subsequent Circular No. 345/2/2000-TRU, dated 29-8-2000 in para 8 clarified that there is no bar if the inputs or capital goods are removed as such from the factory for export under bond which also finds reiteration in para 3.4 of chapter 5 of the C.B.E. & C.'s Manual. This issue is no longer res integra as the same is covered by a plethora of decisions, the most relevant one being that of the Tribunal in the case of Zydex Industries V. Commissioner of C. Ex., Vadodara (supra)*
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> *8. This case is identical in as much as the inputs which have been imported have been re-exported on quality consideration to the foreign based suppliers. Similar to the case cited above, the goods under dispute have been re-exported and naturally the benefit of drawback for re-export is available under Section 74. The Tribunal had relied upon the circulars dated 31-12-1996 and 29-8-2000 which are akin to the facts of the instant case. The Commissioner (Appeals) placed reliance on the judgment of the Hon'ble Supreme Court in the case of M/s. KCP Limited V. CCE, Chennai – 2013 (295) ELT 353 (SC).*

*9. On a careful reading of the judgment of the Hon'ble Supreme Court, the facts were on an entirely different footing and in that case the assessee who is manufacturer of sugar and cement machinery and parts thereof, the objection of the department for denial of credit was on account of non-user of the inputs which were manufactured by other manufactures in their respective factory. In the instant case, the imported inputs were directly used and found to be defective and not up to the appellant's quality parameters. The judgments of the Hon'ble Supreme Court would thereof, not apply to the facts of the present case.*

*10. the issue being covered by the judgment in the case of Zydex Industries cited supra, the demand for the availment of Cenvat credit which is alleged to be incorrect is unsustainable. In one of the appeals, i.e., in Appeal No. 42061/2014, there is a plea of limitation. Since the appeals are decided on merits, the aspect of limitation is not visited."*

4.1 It is seen that the Hon'ble Member Judicial in the Single Bench considered Board's circular, as well as citation of Hon'ble Supreme Court in M/s. KCP Ltd Vs. CC Chennai reported in 2013 (295) ELT 353 (SC) and held that the Cenvat Credit in the similar circumstances is permissible. Agreeing with above proposition this court rules that either the credit of amount debited should have been allowed to the party or the same if not possible due to changed circumstances of GST having been introduced, should be allowed as refund to them as per provisions of G.S.T.

With above observation, the matter is remitted back granting relief to the party and for department to workout the course of action to be adopted by it with consent of the party ascertaining whether it needs credit back or wants refund.

5. Appeal is disposed of.

(Dictated and pronounced in the open Court)

**(SOMESH ARORA)**
**MEMBER ( JUDICIAL )**

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