CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
AHMEDABAD
REGIONAL BENCH, COURT NO. 2

EXCISE APPEAL NO. 11994 OF 2017

[Arising out of Order-in-Original/Appeal No VAD-EXCUS-004-APP-205-2017-18 dated 11.07.2017 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I]

GUJARAT INSECTICIDES LTD **Appellant**

Plot No.805-806, G.I.D.C., Ankleshwar
Bharuch, Gujarat

VERSUS

CCE & CUSTOMS - BHARUCH **Respondent**

Vadodara-II,GST Bhavan, Subhanpura,
Vadodara, Gujarat- 390023

Appearance:

Present for the Appellant :Shri Dhaval K Shah, Advocate
Present for the Respondent: Shri Rajesh K Agarwal, Superintendent (AR)

CORAM:

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

FINAL ORDER NO. 10158/2025

Date of Hearing : **26/02/2025**

Date of Decision : **26/02/2025**

SOMESH ARORA

The limited issue in this case is Cenvat Credit on capital goods whether should be allowed or not to the party. The rival submissions are based around that proposition only, with the department seeking to demand duty on the old capital goods cleared and the party stating that as per the statutory provision there was no need to do so as they never availed Cenvat Credit while bringing in these capital goods in the business.

2. Learned Advocate for the party seeks to place reliance on the statutory provision as per pertains Rule 3 (5A) recorded below :-

> *" (5) When inputs or capital goods, on which CENVAT credit has been taken, are removed as such from the factory, or premises of the provider of output service, the manufacturer of the final products or provider of output service, as the case may be, shall pay an amount equal to the credit availed in respect of such inputs or capital goods and such removal shall be made under the cover of an invoice referred to in Rule 9:*

Provided that such payment shall not be required to be made where any inputs [or capital goods] are removed outside the premises of the provider of output service for providing the output service: " (emphasis supplied)

2.1. It was stated by the learned Advocate that it is clear that credit can be demanded by the Department, only when Cenvat Credit has been availed by them while bringing in capital goods. He takes this court through appeal memo to indicate that a certificate giving the stated position was also produced before the lower authority but was not taken cognizance of.

3. Learned AR takes this court to the findings of learned Commissioner (Appeals) which have taken cognizance of the statutory provision as in Rule 3 (5A) of Cenvat Credit Rules, but has confirmed demand on the basis that the party has not produced evidence of the capital goods not having been subjected to Cenvat Credit being taken, at the time of their receipt in the factory.

4. This Court finds that the certificate at Annexure-5 to the appeal memo indicates various capital goods and packing materials which as stated by the party were not subjected to Cenvat Credit having been taken and which was part of the record. Further some tax invoices were also produced by which it is indicated that there was no duty paid or Cenvat Credit taken, in support of their contention. If that be so, clearly the Commissioner (Appeal) has erred in not considering such evidence and in affording opportunity to the party to provide any further evidence, if so desired.

4.1. In view of the forgoing the order is liable to be set aside with direction to the Commissioner (Appeal) to consider evidence which is already on record and allow the benefit, as per the statutory provision.

5. The appeal is allowed by way of remand.

(Dictated and pronounced in the open court.)

(SOMESH ARORA)
MEMBER (JUDICIAL)

Arpita