CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL AHMEDABAD

REGIONAL BENCH, COURT NO. 2

EXCISE APPEAL NO. 10374 OF 2019

[Arising out of OIA-VAD-EXCUS-001-APP-459-2018-19 dated 12/11/2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I]

SATYENDRA PACKAGING PVT LTD **Appellant**
Opp. Hotel 2000, NH 08
Anand, Gujarat

Vs.

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

Appearance:
Dhaval K Shah Advocate for the Appellant
Shri Sarjeet Kumar, Superintendent (AR) for the Respondent

CORAM:
HON'BLE DR. AJAYA KRISHNA VISHVESHA, MEMBER (JUDICIAL)

FINAL ORDER NO. 11441/2025

Date of Hearing : 24.11.2025
Date of Decision : 23.12.2025

DR. AJAYA KRISHNA VISHVESHA

This appeal is directed against the impugned order dated 12.11.2018 passed by the learned Commissioner GST & Central Excise (Appeals) Vadodara through which the learned Commissioner upheld the Order-in-Original dated 24.05.2018 passed by the Adjudicating Authority and rejected the appeal.

1.1 The facts of the case in brief are that during the course of audit, on scrutiny of sales invoice records of the appellant, it was observed that the unit had goods which was inputs for them and cleared them as such at higher value than purchase price of goods. Whereas, they had paid Central Excise duty on actual purchase price of goods, thus the appellant had short paid the amount of duty as selling price / value was higher than the purchase price / value. As

the appellant was required to pay duty on actual selling price and it appeared that the appellant had made short payment of duty as per Rule 3 (1) of Cenvat Credit Rules (CCR) 2004. Accordingly, Show Cause Notice dated 31st October, 2017 was issued for the period from October-2016 to June-2017 alleging short payment of Central Excise Duty by the appellant on "inputs cleared as such". The Show Cause Notice was adjudicated by the Adjudicating Authority vide order dated 24.05.2018. The Adjudicating Authority confirmed the demand of Central Excise duty of Rs. 2,97,277/- under Section 11A (10) of Central Excise Act, 1944 along with interest under Section 11AA of Central Excise Act, 1944 and imposed penalty of Rs. 29,727/- under Section 11AC (1) of Central Excise Act, 1944.

1.2 Being aggrieved from the Order-in-Original the appellant filed appeal before the learned Commissioner (Appeals).

1.3 The learned Commissioner came to the conclusion that in the instant case, though it has not been alleged in the SCN that the appellant was collecting any excess central excise duty, however, the Hon'ble High Court of Gujarat, has held in Commissioner vs. Inducto Therm (I) Pvt Ltd 2012-TIOL-929-HC-AHM-CX that when a manufacturer removes/sells goods "as such" at a higher price than purchase price then such manufacturer has to reverse equal amount of CENVAT credit which was availed at the time of receipt of such goods and the balance amount is required to be paid through Personal Ledger Account i.e. in cash/bank only, though CENVAT credit balance is available in the books of accounts. It is in this context, that the appellant's reliance on the OIA dated 29.11.2017 passed by his predecessor officer in their own case for previous period is not applicable and moreover, same is not binding on him. Further, the appellant failed to submit whether the said issue prior to OIA dated 29.11.2017 in their own case finalized in their favour or otherwise as it is a periodic one and appears to have been settled against them.

1.4 In the light of the above conclusion learned Commissioner (Appeals) observed that the adjudicating authority has rightly confirmed the demand of short paid central excise duty on the differential value and same is required to be upheld as Rule 3 restricts the utilization of cenvat credit in excess of the amount availed by them at the time of purchase of inputs / capital goods and for 'as such' removal thereof (of the said goods) the differential duty liability has not been discharged by the appellant in the instant case through PLA. He upheld the order passed by the Adjudicating Authority dated 24.05.2018 and rejected the appeal. Feeling aggrieved from the impugned order dated 12.11.2018, the present appeal has been filed before this Tribunal.

2. The learned Counsel for the appellant submitted that they had cleared the input as such on reversal of credit taken initially at the time of receipt of the same which does not involve any manufacturing activity under Section 2 (f) of Central Excise Act, 1944. Hence, as per Rule 3 (5) of CCR 2004, they had reversed the credit taken and cleared the input as such. The learned Counsel for the appellant also pleaded that the escalation of price of the input was on account of value addition on account of freight cost. The learned Counsel for the appellant also submitted that they have not charged and collected Central Excise duty on higher value basis and therefore, there was no short payment of duty in their case.

3. The learned Authorised Representative for the department reiterated the impugned order passed by the learned Commissioner (Appeals) and submitted that in view of the provisions of Rule 3 (5) of Cenvat Credit Rules, 2004, the appellant was required to pay an amount equal to the credit availed in respect of such inputs and such removal shall be under the cover of an invoice referred to in Rule 9. There is no violation of the aforesaid rule in the appellant's case as they had reversed the said credit while clearing the input as such. In fact prior to this rule under the erstwhile Cenvat Credit Rules, 2002 prior to 1st March, 2003 thee was indeed a provision in form of Rule 3 (4)

which required when inputs or capital goods on which Cenvat Credit has been taken are removal as such form the factory, manufacturer of the final product has to pay an amount equal to the duty of excise which is leviable on such goods at the rate applicable to the same on the date of removal and on the value determined for such goods under Section 4 of 4A of the Central Excise Act. But the said rule was substituted w.e.f. 1st March, 2003 in Cenvat Credit Rules, 2002 with the provisions akin to the present day Rule 3 (5) which do not require the payment of duty on transaction value under Section 4.

3.1 The Authorised Representative for the department also submitted that when inputs are cleared as such, the same do not attract the provisions of Section 2 (f) of the Excise Act, which provides for definition of 'manufacture' and hence no charging section is applicable on the same leading to the conclusion that valuation under Section 4 of the Excise Act is not called for. However, when it is admitted by the appellant that the price charged to the customer was higher viz-a-viz the purchase price and manufacturing activity undertaken then, the value addition on the purchase price on account of inward freight coupled with profit margin thereon implies that they had undertaken trading activity in the guise of manufacturing registration.

3.2 The learned Authorised Representative for the department also submitted that from the perusal of Section 11D of the Central Excise Act, it can be seen that whenever any duty has been collected in excess of excise duty payable or in any manner as representing duty of excise, such person has to pay the same to the Central Government forthwith. In the present case, the appellant has collected certain amount from the purchasers which were in excess to the purchase price. The same, therefore, had to be forthwith paid to the Central Government in terms of Section 11D of Central Excise Act. The same not having been done, the department was within its right to seek recovery thereof.

3.3 The learned Authorised Representative for the department also cited **CCE Ahmedabad-II** vs. **Inducto Therm (I) Pvt Ltd** reported in 2012-TIOL-929-HC-AHM-CX in which Hon'ble Gujarat High Court has held that when a manufacturer removes / sells goods as such at a higher price then purchase price and collects Central Excise duty on transaction value i.e. sale value then such manufacturer has to reverse equal amount of Cenvat Credit which was availed at the time of receipt of such goods and the balance duty is required to be paid through personal ledger account i.e. in cash only, though Cenvat Credit balance is available in the books of account.

3.4 The learned Authorised Representative for the department prayed that the impugned order dated 12.11.2018 passed by the learned Commissioner (Appeals) be upheld and the appeal may be dismissed.

4. I have heard the learned Counsel for the appellant and the learned Authorised Representative for the department and perused the records.

4.1 I am of the view that the learned Commissioner (Appeals) has passed the impugned order dated 12.11.2018 in accordance with the provisions of Rule 3 (4) and Rule 3 (5) of Cenvat Credit Rules, 2004 and Section 11D of the Central Excise Act, therefore, the impugned order passed by the learned Commissioner (Appeals) is sustainable. I also find that the impugned order dated 12.11.2018 has been passed in compliance of the law laid down by Hon'ble High Court of Gujarat in **CCE Ahmedabad-II** vs. **Inducto Therm (I) Pvt Ltd** reported in 2012-TIOL-929-HC-AHM-CX and the arguments of the learned Counsel for the appellant can not be accepted. In my view, it will be proper to reproduce the provision of Rule 3 (5) of Cenvat Credit Rules, 2004 as it existed at the relevant time which is as follows:-

> *"(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:"

4.2 From the perusal of the above provision of Rule 3 (5) of Cenvat Credit Rules, 2004 it is clear that in the present case the appellant was required to pay an amount equal to the credit availed in respect of such inputs and such removal shall be under the cover of an invoice referred to in Rule 9 and the appellant complied with the provision of Rule 3 (5) of Cenvat Credit Rules, and reversed the said credit while clearing the input as such. The argument of the learned Counsel for the appellant is that when the inputs are cleared as such the same do not attract the provision of Section 2 (f) of the Central Excise Act which provides definition of the word 'manufacture' and therefore, no charging section is applicable on the same.

4.3 However, in the present case during the course of audit of the records and documents, maintained by the appellant, the Central Excise Auditors noticed that the price at which Cenvat inputs were cleared as such, under Rule 3 (5) of the Cenvat Credit Rules, 2004 was higher than the basic price, at which such inputs were originally purchased. The concerned auditors worked out the total purchase value as Rs. 6,46,48,536.00 whereas the sales value was worked out by them from the sales invoices issued by the appellants under Rule 3 (5) of the Cenvat Credit Rules, 2004 read with Rule 11 of the Central Excise Rules, 2002 as Rs. 6,70,26,753.00 and took differential sales value realized by the appellants as Rs. 23,78,217.00. On the basis of these observations, the learned Commissioner came to the conclusion that as the price charged to the customer of the inputs was higher viz-a-viz the purchase price and no manufacturing activity was under taken then the value addition on the purchase price on account of inward freight coupled with profit margin thereon implies that they had undertaken trading activity in the guise of manufacturing registration. In my view the above conclusion arrived at by

the learned Commissioner (Appeals) is liable to be confirmed and there seems to be no defect in the said conclusion.

4.4 In this context, it will be proper to reproduce Section 11D of the Central Excise Act, which is as follows:-

> ***[11D. Duties of excise collected from the buyer to be deposited with the Central Government***
>
> *(1) Notwithstanding anything to the contrary contained in any order or direction of the Appellate Tribunal or any court or in any other provision of this Act or the rules made thereunder, [every person who is liable to pay duty under this Act or the rules made thereunder, and has collected any amount in excess of the duty assessed or determined and paid on any excisable goods under this Act or the rules made thereunder from the buyer of such goods] in any manner as representing duty of excise, shall forthwith pay the amount so collected to the credit of the Central Government.*
>
> *[(1A) Every person, who has collected any amount in excess of the duty assessed or determined and paid on any excisable goods or has collected any amount as representing duty of excise on any excisable goods which are wholly exempt or are chargeable to nil rate of duty from any person in any manner, shall forthwith pay the amount so collected to the credit of the Central Government.]*
>
> *(2) Where any amount is required to be paid to the credit of the Central Government under [sub-section (1) or sub-section (1A), as the case may be] and which has not been so paid, the Central Excise Officer may serve on the person liable to pay such amount, a notice requiring him to show cause why the said amount, as specified in the notice, should not be paid by him to the credit of the Central Government.*
>
> *(3) The Central Excise Officer shall, after considering the representation, if any, made by the person on whom the notice is served under sub-section (2), determine the amount due from such person (not being in excess of the amount specified in the notice) and thereupon such person shall pay the amount so determined.*
>
> *(4) The amount paid to the credit of the Central Government under [sub-section (1) or sub-section (1A) or sub-section (3), as the case may be] shall be adjusted against the duty of excise payable by the person on finalisation of assessment or any other proceeding for determination of the duty of excise relating to the excisable goods referred to in [sub-section (1) and sub-section (1A)].*
>
> *(5) Where any surplus is left after the adjustment under sub-section (4), the amount of such surplus shall either be credited to the Fund or, as the case may be, refunded to the person who has borne the incidence of such amount, in*

accordance with the provision of section 11B and such person may make an application under that section in such cases within six from the date of the public notice to be issued by the Assistant Commissioner of Central Excise for the refund of such surplus amount.]

4.5 The provisions of Section 11D of the Central Excise Act makes it clear that whenever any duty has been collected in excess of excise duty payable or in any manner as representing duty of excise, such person has to pay the same to the Central Government forthwith. In the present case, the appellant has collected certain amount from the purchaser which were in excess to the purchase price. The same, therefore, had to be forthwith paid to the Central Government in terms of Section 11D of Central Excise Act. The same not having been done the department was within its right to seek recovery thereof.

4.6 Further, in **CCE Ahmedabad-II** vs. **Inducto Therm (i) Pvt Ltd** (supra) Hon'ble Gujarat High Court has held that when inputs were cleared by the appellant as such, there was no manufacturing activity. There is no question of collection of excise and therefore, while removing the goods as such, the respondent- assessee had to follow the procedure laid down under Rule 3 (5) of C.C. Rules, 2004. As per this Rule, the respondent was required to pay equal amount of Cenvat Credit which was availed in respect of such material. Rule 3 (4) (b) specifically provides to use Cenvat Credit for such purpose and the department has also not objected to the same. However, the objection is that Rule 3 (5) does not permit collection of higher excise duty from the purchaser and therefore, such situation has not specifically been covered under any of the clauses of (a) to (e) of Rule 3 (4) which provides the specific purposes for which Cenvat Credit can be utilized. Therefore, considering this legal provision, the Hon'ble High Court is of the opinion that any amount which is collected more than exact Cenvat Credit which was taken on such raw materials, then such difference (actual amount collected minus

Cenvat Credit) which was taken in respect such raw materials is required to be pay through PLA.

4.7 I am of the view that the impugned order passed by the learned Commissioner dated 12.11.2018 has been passed in the light of the judgment of Hon'ble Gujarat High Court in **Inducto Therm** case therefore, the impugned order is liable to be upheld whereas the appeal is liable to be rejected.

5. Consequently, the appeal is rejected.

(Order pronounced in the open Court on 23.12.2025)

(DR. AJAYA KRISHNA VISHVESHA)
MEMBER (JUDICIAL)

Dharmi