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

REGIONAL BENCH-COURT NO. 1

Excise Appeal No. 10181 of 2021–SMB

(Arising out of Order in Appeal CCESA-SRT-APPEAL-PS-143-20-21dated 31.12.2020 passed by Commissioner(Appeals), CGST & Central Excise-Surat)

ARYAN PACKAGING INDUSTRIES ....Appellant
Plot No A-1/42 CIB/79 and CIB/80 100 Shed Area,
GIDC Vapi, Gujarat

VERSUS

COMMISSIONER OF CGST &
CENTRAL EXCISE - SURAT ......Respondent
New Central Excise Building, Opp. Gandhi Baug,
Chowk Bazar, Surat-395001

APPEARANCE:
Shri Devashish K Trivedi, Advocateappeared for the appellant
Shri Sarjeet Kumar, Superintendent (AR) appeared for the department

CORAM:
HON'BLE MEMBER (TECHNICAL), MR. SATENDRA VIKRAM SINGH

Final Order No. 10322/2026

DATE OF HEARING: 13.03.2026
DATE OF DECISION: 30.04.2026

SATENDRA VIKRAM SINGH

1. M/s. Aryan Packaging Industries, GIDC, Vapi (Appellant) have filed refund claim for Rs.2,84,873/- with Jurisdictional Assistant Commissioner which was rejected on the ground that there is no provision for refund under Central Excise Act, 1944. Their appeal before learned Commissioner (Appeal) was also rejected vide impugned order dated 07.01.2021. Hence, appellant has filed the present appeal.

1.1 The facts of the case are that during EA 2000, the audit officers found that the appellant had availed Cenvat Credit of service tax of Rs.2,45,544/- on outward freight during the year 2016-17 and 2017-2018 (up to June 2017). As per the appellant, credit of above service tax was admissible to them as the said service (outward transportation) falls within the definition of the Input Service as defined under Rule 2(l) of Cenvat Credit Rules, 2004. The officers however objected to it and therefore, appellant paid back the said Cenvat Credit of Rs.2,45,544/- alongwith interest of Rs.39,329/- on

15.05.2018 and filed declaration for settling the issue under the provisions of Section 11A(2B) of the Central Excise Act, 1944. Subsequent to decision of Hon'ble Supreme Court in the case of M/s.Roofit Industries, M/s. Emco Limited, CBIC issued a Circular No.1065/4/2018-CX dated 08.06.2018 which allowed Cenvat Credit of service tax paid on outward transportation incurred upto the buyer's premises provided contract for sale is on FOR basis. The appellant therefore, considered themselves eligible to above Cenvat Credit and since, they had reversed the same, they filed the refund application with the Jurisdictional authorities.

2. The appellant has taken following grounds in their appeal:-

- Learned Commissioner (Appeal) has observed that though the appellant is entitled to Cenvat Credit of above service tax but they cannot claim the refund as the issue stands concluded during audit under Section 11A(2B) of the Central Excise Act, 1944. The matter cannot be opened because as per the provisions of this Section, department has no power to issue show cause notice subsequent to appellant filing the declaration for settlement of their case.
- As per Article 265 of the Constitution, no tax shall be levied or collected except by the authority of law. They draw reference from the decision of Hon'ble Culcutta High Court in the case of State of West Bengal Vs. Suresh Chandra Bose reported in 1980 (45) STC 118 (Cal). In another case of Commissioner of Sales Tax Vs. Auraiya Chamber of Commerce, Allahabad reported in 1986 taxmann.com 903 (SC), it has been held that where assessee paid the tax on the belief that tax was due and payable but subsequently found that the provision for levy of sales tax on forward contract was ultra vires, then such sum should be refunded.
- In the case of Parle Products Ltd. Vs. Union of India reported in 1986 taxmann.com 398 (Bombay), it was held that the right to relief under

Section 72 of the Indian Contract Act extends to money paid under mistake of law i.e. *'mistake in thinking that the money paid was due when in fact, it was not due.'* In the case of Unitech Machines Ltd. Vs. Commissioner of C. Ex. & S.T. Meerut-1 reported in 2015 (40) STR 499 (Tri.- Del.), it was held that whatever service tax has been paid by the appellant to the job worker, appellant is entitled to take Cenvat Credit.

- The appellant in this case, was not required to reverse the Cenvat Credit but due to objection by the audit party, they had to pay the amount alongwith interest, refund of which is allowable to them. They rely on the decision of Hon'ble Bombay High Court in the case of Commissioner of Central Excise, Thane Vs. Clariant (I) Ltd., reported in 2015 (319) ELT 646 (Bom.) wherein, it has been observed that refund is allowed for voluntary payments made by the appellant.
- The appellant also relied on the decision of CESTAT Bangalore in the case of NSP Electronics Ltd. Vs. Commissioner of Central Excise, Bangalore reported at 2016 (331) ELT 451 (Tri-Bang.) and Order-in-Appeal No. CCESA-SRT(APPEALS)/PS-550/2017-18 dated 29.01.2018 where refund was allowed when payment was made voluntary on the basis of objection raised by audit and request was made for waiver of show cause notice.

In view of the above, appellant prayed for allowing the appeal and granting them refund.

3. During arguments, learned Advocate highlighted the case laws relied upon by them in their appeal. He also placed reliance on the decision of CESTAT Bangalore in the case of Divi Laboratories Limited Vs. Commissioner C. Ex., Cus & ST, Hyderabad-III reported at 2015 (40) STR 743 (Tri.- Bang.). He pleaded that Cenvat Credit of service tax paid on outward transportation was admissible to them which was wrongly reversed by the appellant due to audit objection as they wanted to close the matter. However, subsequent to

issue of CBIC Circular dated 08.06.2018 which validated availment of Cenvat Credit in such situations, reversal was not justified and therefore, they applied for refund of said Cenvat Credit and interest paid by them. The Adjudicating Authority in this case has travelled beyond the scope of show cause notice which he cannot, in view of the following decision:-

A) Bhor Industries Ltd Vs. Union of India-2011 (266) ELT 444 which was upheld by Hon'ble Apex Court -2011 (267) ELT A127 (S.C.)

(B) Hindustan Polymers Co. Ltd. Vs. Collector Of C.Ex.-1999 (106) ELT 12 (SC)

(C) N.D. Metal Industries Ltd. Vs. Commr of C.Ex. 2013 (292) ELT 520 (Tri-Ahmd).

3.1 Learned Advocate also pleaded that Revenue has issued show cause notice for rejecting the refund claim on the ground that (a) service in question not be considered as "Input Service", (b) appellant had not produced explicit contracts or insurance documents to show that ownership of the goods rested with them till delivery of goods to the buyer. He submits that three different issues were framed by the Adjudicating Authority viz.

(a) Whether freight was included in the price of goods and excise duty was paid on it?

(b) Whether Cenvat Credit of service tax paid on outward transportation of goods was available to appellant?

(c) Whether reversal of Cenvat Credit can be refunded to the appellant if it is held that the same was not actually payable as per law?

The Adjudicating Authority has held issues at (a) and (b) in party's favour but decided the issue at (c) against them. Learned Advocate argues that reliance by the lower authorities on the decision in Saroj Engineers case is not correct. Section 11A(2B) clearly provides that if any assessee either on his own ascertainment or on the basis of ascertainment of Central Excise officer, before service of notice, paid the duty and informs about the same to the Department, then on receipt of such information, notice is not to be served at all. Learned Advocate also pleads that refund can be claimed within a period of one year from the date of voluntary payment under Section 11A(2B). As the refund in this case was filed within the time, it should not have been denied by the Revenue.

4. Countering the arguments, learned AR submits that even though, the Adjudicating Authority concluded that the appellant was eligible for Cenvat Credit of service tax paid on outward freight, they are not eligible to refund of credit reversed by them as the matter was settled subsequent to filing of declaration under Section 11A(2B) of the Central Excise Act, 1944. He relied on the decision of CESTAT Mumbai in the case of Saroj Engineers Vs. CCE, Kolhapur reported in 2017 (356) E.L.T. 136 (Tri. - Mumbai) which has held that once case is settled under Section 11A(2B), they cannot now dispute the merit of the case by filing refund claim. Learned AR also distinguished the matter with the decision of Hon'ble Bombay High Court in the case of Clariant (I) Ltd. (cited supra) and the decision of CESTAT Bangalore in the case of NSP Electronics Ltd. (cited supra) relied upon by the appellant. He pleaded that the order of the Commissioner (Appeal) be upheld and the party's appeal be set aside.

5. Heard rival submissions. The appellant has made out a case that the Adjudicating Authority has decided the matter on issues other than what was raised in the show cause notice. Another ground taken is that on merits also, they have strong case as they had reversed Cenvat Credit of service tax paid on outward freight which was otherwise eligible to them in view of CBIC Circular No.1065/4/2018-CX dated 08.06.2018. As Cenvat Credit on outward freight has been held admissible by the Assistant Commissioner, reversal of the same was not at all required and thus, they were entitled to refund of

Cenvat Credit wrongly reversed by them along with interest as this credit cannot be allowed in GST regime.

5.1 I find that in Order-in-Original dated 25.11.2020, the Assistant Commissioner has discussed three issues namely; (a) whether freight was included in the price of excisable goods and whether appropriate excise duty was paid on it? (b) whether appellant was eligible to avail Cenvat Credit of service tax paid on outward transportation of goods from their factory to the buyer's premises during 2016-2017 to 2017-2018 (upto June 2017)? (c) whether appellant was entitled to refund of Cenvat Credit reversed by them along with interest as per audit objections, if at a later stage, it is found that such reversal was not required?

5.2 On first issue, the learned Assistant Commissioner held that the appellant has included freight in the price of goods and paid appropriate excise duty. On the second issue, he has held that the appellant was eligible to avail Cenvat Credit of service tax paid on outward transportation of goods from the factory to the buyer's premises. On third issue, he held that since appellant had reversed Cenvat Credit alongwith interest and got their matter settled as per the provisions of Section 11A(2B) of the Central Excise Act, 1944 without issue of show cause notice, refund of such amount is not admissible. These findings have also been upheld by the learned Commissioner (Appeal) on the same ground by relying on the decision of CESTAT Mumbai in the case of Saroj Engineers (cited supra).

5.3 I find that the show cause notice dated 17.06.2019, issued for rejection of refund claim of the appellant takes a ground that there is no provision for refund under Central Excise Act, 1944 and the Rules made thereunder. The lower authorities have however rejected this refund claim on grounds other than what was raised in the show cause notice. Therefore, such an order cannot be allowed to sustain when the Adjudicating Authority has travelled beyond the scope of the show cause notice which is the basic foundation of the case. Hon'ble Allahabad High Court in the case of Associated Switch Gears and Projects Ltd. Vs. State of U.P. reported in 2024 (89) G.S.T.L. 188 (All.) / (2024) 20 Centax 596 (All.), held that the orders passed beyond the scope of show cause notice are bad in law. The relevant paras of the decision are reproduced below:-

> ***"4.*** *It is pertinent to mention here that the Supreme Court on numerous occasions has upheld that the authorities cannot transgress the boundaries of the show cause notice. In Commissioner of Customs, Mumbai v. Toyo Engineering Ltd., reported in (2006) 7 SCC 592 = 2006 (201) E.L.T. 513 (S.C.) = [2006] 2006 taxmann.com 1488 (SC), the Supreme Court emphasized upon the necessity of specifying the grounds for taking action against an individual in the show cause notice. The relevant paragraph of the judgment is delineated below :*
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>> *"16.Learned Counsel for the Revenue tried to raise some of the submissions which were not allowed to be raised by the Tribunal before us, as well. We agree with the Tribunal that the Revenue could not be allowed to raise these submissions for the first time in the second appeal before the Tribunal. Neither the adjudicating authority nor the Appellate Authority had denied the facility of the project import to the respondent on any of these grounds. These grounds did not find mention in the show cause notice as well. The Department cannot travel beyond the show cause notice. Even in the grounds of appeals these points have not been taken."*
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> ***5.*** *In Commissioner of Central Excise, Bhubaneshwar v. Champdany Industries Ltd., reported in (2009) 9 SCC 466 = 2009 (241) E.L.T. 481 (S.C.) = [2010] 3 taxmann.com 321 (SC), the Supreme Court held as follows :*
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>> *"38.Apart from that, the point on Rule 3 which has been argued by the learned counsel for the Revenue was not part of its case in the show cause notice. It is well settled that unless the foundation of the case is made out in the show cause notice, the Revenue cannot in Court argue a case not made out in its showcause notice. (See Commr. of Customs v. Toyo Engg. India Ltd. [(2006) 7 SCC 592]. Similar view was expressed by this Court in CCE v. Ballarpur Industries Ltd. [2007] 8 SCC 89. In para 27 of the said Report, Learned Judges made it clear that if there is no invocation of the Rules concerned in the show cause notice, it would not be open to the Commissioner to invoke the said Rules."*
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> ***6.*** *Finally, in Commissioner of Central Excise, Chandigarh v. Shital International, reported in (2011) 1 SCC 109 = 2010 (259) E.L.T. 165 (S.C.) = [2010] 1 taxmann.com 413 (SC), the Supreme Court, stated that unless the foundation of the case is laid in show cause notice, the Revenue cannot be permitted to build up a new case against the assessee. The relevant paragraph of the judgment is delineated below :*
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>> *"19.As regards the process of electrifying polish, now pressed into service by the Revenue, it is trite law that unless the foundation of the case is laid in the show cause notice, the Revenue cannot be permitted to build up a new case against the assessee. (See Commr. of Customs v. Toyo Engg. India Ltd. [(2006) 7 SCC 592], CCE v. Ballarpur Industries Ltd. [(2007) 8 SCC 89] and CCE v. Champdany Industries Ltd. [(2009) 9 SCC 466]. Admittedly, in the instant case, no such objection was raised by the adjudicating authority in the show cause notice dated 22-6-2001 relating to Assessment Years 1988-89 to 2000-2001. However, in the show cause notice dated 12-12-2000, the process of electrifying polish finds a brief mention. Therefore, in the light of the settled legal position, the plea of the Learned Counsel for the Revenue in that behalf cannot be entertained as the Revenue cannot be allowed to raise a fresh plea, which has not been raised in the show cause notice nor can it be allowed to take contradictory stands in relation to the same assessee."*
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> ***10.*** *In Ramlala v. State of U.P. and Ors., reported in, 2023 SCC OnLine All. 2479, this Court, while placing reliance on Board of High School and*

Intermediate Education, U.P. v. Kumari Chitra Srivastava, reported in, (1970) 1 SCC 121, held that the reason to not allow the authorities to go beyond the show cause notice is that a person must be given a chance to put up his case with regard to the said show cause notice. Relevant paragraphs are extracted below :

> *'9. The principle that emerges from the above judgments is patently clear that a show cause notice is required to provide details of the nature of the offence and the grounds on which the show cause notice has been issued. Furthermore, the order that is subsequently passed, based on the show cause notice, cannot go beyond the said show cause notice and cannot in any manner penalise the noticee on grounds that were not stated in the show cause notice.*
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> *10. The rationale for not allowing the respondents from going beyond the realm of the show cause notice is that the petitioner has to be given a chance to put up his case with regard to the said show cause notice. In the event, a particular case is made out in the show cause notice and the order passed subsequently is beyond the said show cause notice, the same would amount to violation of the principles of natural justice, as the petitioner would not have been aware of the new grounds or new factual elements and could never have placed his case for the above before the authority concerned. It is in this background that the Supreme Court in umpteen judgments has laid down the law that an order passed by an authority cannot go beyond the scope of the show cause notice. In fact, the Supreme Court in the case of The Board of High School and Intermediate Education, U.P. v. Kumari Chitra Srivastava, (1970) 1 SCC 121 has categorically stated that the principles of audi alteram partem are required to be followed even if the same is burdensome in nature. Justice S.M. Sikri in his inimitable style stated as follows :*
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> *"Principles of natural justice are to some minds burdensome but this price - a small price indeed - has to be paid if we desire a society governed by the rule of law.'*

11. *In Jitendra Kumar v. State of U.P. and Anr., reported in, 2023 SCC OnLine All. 2837 = (2024) 17 Centax 454 (All.) = [2024] 161 taxmann.com 782 (All.), Allahabad Court, while dealing with a similar factual matrix, stated that as has been settled by various Supreme Court judgments, once the Revenue had taken a particular stand, the same cannot be completely changed and/or supplemented by a different reason or ground. Relevant paragraphs are delineated below :*

> *"5.It is trite law, settled by a catena of Supreme Court judgments, that the Revenue cannot beat around the bush and keep changing the goal post at each stage. Once the Revenue had taken a particular stand, the same cannot be completely changed and/or supplemented by a different reason or ground.*
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> *6. In the present case, it is clear that the detention was made on the ground that the goods were not accompanied by valid documents. However, when the show cause notice was issued, there is no whisper of any invalid document whatsoever. In fact, the stand was completely changed by the Revenue and this volte face cannot be countenanced by this Court. The detention of goods causes serious prejudice to an assessee and the same can only be done on the basis of specific, valid and reasonable grounds. In the present case, it is quite obvious that at the time of detention, the ground that was stated by the Revenue was incorrect. More so, there was no reason for the Revenue to have detained the goods and the consequential actions that followed, were obviously vitiated."*

5.4 On merits also, I find that as per CBIC Circular issued on 08.06.2018 (cited supra), the appellant was entitled to Cenvat Credit of service tax paid on outward freight. Due to audit objection, appellant decided to settle dispute by reversing Cenvat Credit amount along with interest in May, 2018 which was just prior to issue of above Circular. In the present matter, the appellant was otherwise entitled to above Cenvat Credit and hence, insistence on reversal by audit was not warranted. Therefore, appeal of the party succeeds on both the grounds. I therefore allow party's appeal and set aside the impugned order dated 07.01.2021 passed by the learned Commissioner (Appeal) and remand the matter to the Jurisdictional Assistant Commissioner with direction to sanction the refund claim to the appellant.

6. The appeal is allowed.

(Pronounced in the open court on 30.04.2026)

(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)

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