CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 2

Excise Appeal No. 20134 of 2022

[Arising out of Orders-in-Appeal No. 401-403/2020 dated 26.10.2020 passed by the Commissioner of Central Tax (Appeals-I), Bangalore]

M/s. Veepee Graphic Solutions
Private Limited
No. 78, Nagappa Reddy Layout
Kaggadasapura, CV Raman Nagar
Bangalore – 560 093 **.......Appellant(s)**

VERSUS

Commissioner of Central Tax
Bangalore East
BMTC Building, Old Airport Road
Domlur, Bangalore – 560 071 **...........Respondent(s)**

With

Excise Appeal No. 20135 of 2022

[Arising out of Orders-in-Appeal No. 401-403/2020 dated 26.10.2020 passed by the Commissioner of Central Tax (Appeals-I), Bangalore]

M/s. Veepee Graphic Solutions Private Limited
No. 78, Nagappa Reddy Layout
Kaggadasapura, CV Raman Nagar
Bangalore – 560 093 **..........Appellant(s)**

VERSUS

Commissioner of Central Tax
Bangalore East
BMTC Building, Old Airport Road
Domlur, Bangalore – 560 071 **........Respondent(s)**

AND

Excise Appeal No. 20140 of 2022

[Arising out of Orders-in-Appeal No. 401-403/2020 dated 26.10.2020
passed by the Commissioner of Central Tax (Appeals-I), Bangalore]

M/s. Veepee Graphic Solutions
Private Limited
No. 78, Nagappa Reddy Layout
Kaggadasapura, CV Raman Nagar
Bangalore – 560 093 **..........Appellant(s)**

VERSUS

Commissioner of Central Tax
Bangalore East
BMTC Building, Old Airport Road
Domlur, Bangalore – 560 071 **.......Respondent(s)**

Appearance:

None for the Appellant
Mr. H. Jayathirtha, Superintendent (AR) for the Respondent

Coram:
Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)

<u>Final Order Nos. 20905 - 20907 / 2025</u>

Date of Hearing: 02.08.2024
Date of Decision: 31.01.2025

M/s. Veepee Graphics Solutions Pvt. Ltd., the appellant is in the manufacture of excisable goods viz., flexographic printing plates falling under Central Excise Tariff Item entry (CETI) 37013000 of the First Schedule of the Central Excise Tariff Act, 1985.

2. The brief facts are the appellant filed refund claims under Rule 5 of Cenvat Credit Rules, 2004 read with Notification No. 27/2012-CE (N.T) dated 28.06.2012, claiming refund of unutilized input tax credit on account of export of goods for the period October 2016 to December 2016 involving an amount of Rs. 1,57,642/-, for the period January

2017 to March 2017 involving an amount of Rs. 4,10,852/- and for the period April 2017 to June 2017 involving an amount of Rs. 41,755/-.

3. The Respondents issued 3 (three) show-cause notices dated 07.02.2018 proposing rejection of refund applications filed by the appellant on the ground that the appellant has not produced all the relevant documents required for processing the refund claims. The appellant submitted that in response to the show-cause notices they have submitted all the relevant documents vide letter dated 03.04.2018. The Adjudicating Authority vide order dated 18.09.2019 rejected the refund claims on the ground that few original documents were not submitted for processing the refund claims. Aggrieved by the Orders-in-Original, appeals were filed before Commissioner (Appeals) and also filed the balance documents as part of the appeal submissions. The Commissioner (Appeals) remanded the case for De-novo Adjudication to the Adjudicating Authority. In the Appeal Memorandum the appellant has submitted the details of the documents required to be submitted under Notification No. 27/2012 dated 18.06.2012. Aggrieved by the order of Commissioner (Appeals) the appellant has filed the above 3 (three) appeals before this Tribunal.

4. In the Appeal Memorandum the appellant has submitted that the Appellate Authority as per Section 35A(3) of the Central Excise Act, 1944 can exercise the following powers:-

> *"The collector appeals may after making such enquiry as may be necessary, passed such order as he thinks fit confirming, modifying or annulling the decision or order appeal against, or may refer the case back to the Adjudicating Authority with such directions as he may think fit for a fresh Adjudication or decision, as the case may be, after taking additional evidence if necessary. The above said provision is amended with effect from 11.05.2001 to read as follows:-*

> *"(3) The Commissioner (Appeals) shall, after making such enquiry as may be necessary, pass such order, as he thinks just and proper, confirming, modifying and annulling the decision or order appeal against.'*

5. The learned AR submitted that in compliance with the said OIA and the directions of the appellate authority contained therein, the original sanctioning authority took the said matter for adjudication by considering the matter afresh. After following due process and providing sufficient opportunities to the appellant, the original sanctioning authority decided the matter in denovo proceedings vide OIO No. 11 to 13/2021 dated 13.07.2021. The original authority again rejected the refund claims in terms of Notification No. 27/2012 CE(NT) dated 18.06.2012 issued under Rule 5 of CCR read with Section 11B of CEA. The sanctioning authority found that the total admissible cenvat credit available for the month of June 2017 has been carried forward by them in GST regime through TRAN-1 and that the appellant has not reversed the Cenvat credit claimed as refund and hence all the refund claims filed by them are liable for rejection. The clause 2(h) of the Notification No. 27/2012 CE(NT) dated 18.06.2012 mandates the debit of refund claimed under Rule 5 of CCR, which in the present case the appellant has failed to adhere to. The original authority has upheld the order of the earlier authority.

6. The present appeal filed by the appellant is against the OIA No. 401- 403/2020 dated 26.10.2020, which had remanded the matter to the original sanctioning authority. The said appeal has been filed against an order which has been acted upon further in terms of its directions and in such cases, it has to be examined as to whether the appeal filed in such circumstances is legally admissible and whether the same is liable to be decided on merits.

7. The learned AR submitted the details of the refund. On perusal of details submitted by the learned AR, it can be observed that the OIA was issued on 26.10.2020, the OIO in remand proceedings was issued on 13.07.2021 where the appeal against the OIA dated 26.10.2020 has been filed before the Hon'ble CESTAT on 18.01.2022. It can be seen that the appeal against the OIA has been filed after six months from the date of the De novo OIO, which was based on the directions of the impugned OIA. Once the order in the remand proceedings was issued, the OIA which passed the remand directions will not be active/live for taking any further action, whether it is filing appeal or any other action. The said OIA would have become inactive and the appeal filed against the said OIA would be infructuous and no action on merits can be taken against the said OIA in this appeal.

8. It is also on record that the appellants have actively participated in the De novo proceedings by furnishing the documents required therein and also attending the personal hearing held on 30.06.2021. During the De novo proceedings, the appellant had also requested for early sanction of the refund. During the said proceedings and till the De novo OIO was passed, the appellants have not raised any protest/complaint against the OIA before the sanctioning authority nor raised any objection against the De novo proceedings. They never brought to the notice of the authority that they intend to file appeal against the OIA and they never requested for stopping the De novo proceedings for that reason. If the intention of the appellant was to file appeal against the OIA, the same should have been brought to the notice of the sanctioning authority to ensure that the denovo /remand proceedings are not taken up. However, no such intimation was given and hence, the filing of appeal against OIA is an afterthought in view of the fact that the refund was again rejected in the De novo proceedings also. In view of the above, the appeals filed are clearly infructuous and are liable for rejection.

9. Further, while considering their grounds of appeal, they have contended that the appellate authority does not have any power to remand back the matter and accordingly, the impugned orders have been passed without authority of law. They have also argued that they have submitted all relevant documents before the adjudicating authority and that the remand has been wrongly remanded for 'fresh consideration' and does not restrict the remand for verification of documents and processing of the refund claim. However, it is on record that they had not submitted all original records before the original authority during the initial proceedings and they themselves have submitted during the appeal proceedings that they have all the original documents at that point of time. Hence, their contention with regard to production of documents is far from truth and is in contrast to the facts of the case. The same is liable to be rejected.

10. It is a settled law that the Commissioner (Appeals) have power to remand back to original adjudicating authority even after the amendment of Section 35A (3) of CEA. Many of the higher fora has held that the Commissioner (Appeals) has the power to remand and some of such decisions are relied upon as below:

a) 2012 (284) ELT 97 [Tri. - Del.] - Singh Alloys (P) Ltd.

b) 2020 (374) ELT 552 [Bom.] - Ganesh Benzoplast Ltd.

c) 2017(355) ELT 184 [Jhar.] - TRF Ltd.

d) 2015(321) ELT 435 [Del.] Voith Paper Fabrics India Ltd.- Appellant being satisfied with remand order of Commissioner (Appeals) has not preferred an appeal. It was filed on second thought when proceedings pending before adjudicating authority.

Learned AR submits that in this case, it is the same situation and further, the appellant had participated in the De novo adjudication proceedings and appeal is filed only after the said De novo OIO was passed. Hence the said decision squarely applies here.

11. It is very clear that the appellant having participated in remand/ De novo proceedings by following the directions contained in the impugned OIA of the Commissioner(A), cannot seek to reopen the proceedings against the said OIA just because the Original sanctioning authority's order in De novo proceedings was not in favour of the appellants. The time line of this case as detailed in the above paras abundantly indicates that they waited and expected that the original authority passed order in their favour and only after they received the order rejecting their refund claims, instead of filing the appeals against the said De novo OIO, they have tried to reopen the OIA which had got merged with the De novo OIO.

12. Accordingly, the order of the Commissioner (Appeals) remanding the matter back to the original authority is legal and was within the authority of the Commissioner (Appeals) as has been held by various judicial fora and the same is liable to be upheld. Moreover, the appeals filed against the said OIA after passing of the remand order and the appellants having duly participated during the remand proceedings, are infructuous and are not liable for admission for consideration of merits itself. Considering the above submission, the appeals are liable to be dismissed.

13. Heard both sides and perused the records.

14. I find that the learned AR has submitted the details of the case with regard to the De novo adjudication which has taken place after the remand by the Commissioner (Appeals). I find that the appeals are filed against the order of Commissioner (Appeals) wherein the appeals have been remanded to the original adjudicating authority for De novo adjudication. I find that the Order-in-Original has been issued on De novo adjudication wherein the refund claims have been rejected. The appellant has filed appeals before the Tribunal against the Orders-in-Appeal passed by the Commissioner (Appeals) remanding the

matter to the adjudicating authority after the passing of the De novo order by the adjudicating authority. Therefore, I find that the appeals filed by the appellant are infructuous and are liable to be dismissed.

15. Accordingly, all the 3(three) appeals filed by the appellant are dismissed.

(Order pronounced in Open Court on 31.01.2025)

(Pullela Nageswara Rao)
Member (Technical)

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