CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, BANGALORE

REGIONAL BENCH - COURT NO. 1

Central Excise Appeal No. 28028 of 2013

[Arising out of Order-in-Appeal No.484/2013 dated 30.09.2013 passed by the Commissioner of Central Excise (Appeals-II), Bangalore]

M/s. Emka India Panel Accessories Pvt. Ltd.,
No.48/41, Yelechanahalli, Bikasipura Main Road, J.C. Industiral Layout,
Kanakapura Road,
Bangalore-560 062.

Appellant(s)

VERSUS

The Commissioner of Central Excise and Service Tax,
Bangalore III Commissionerate,
Queens Road,
Bangalore-560 001.

Respondent(s)

WITH

1. **Central Excise Appeal No. 20995 of 2017 (M/s. Emka India Panel Accessories Pvt. Ltd. Vs. Commissioner of Central Excise, Bangalore)**

2. **Central Excise Appeal No. 20997 of 2017 (M/s. Emka India Panel Accessories Pvt. Ltd. Vs. Commissioner of Central Excise, Bangalore)**

3. **Central Excise Appeal No. 20999 of 2017 (M/s. Emka India Panel Accessories Pvt. Ltd. Vs. Commissioner of Central Excise, Bangalore)**

4. **Central Excise Appeal No. 21000 of 2017 (M/s. Emka India Panel Accessories Pvt. Ltd. Vs. Commissioner of Central Excise, Bangalore)**

5. **Central Excise Appeal No. 21001 of 2017 (M/s. Emka India Panel Accessories Pvt. Ltd. Vs. Commissioner of Central Excise, Bangalore)**

6. **Central Excise Appeal No. 21002 of 2017 (M/s. Emka India Panel Accessories Pvt. Ltd. Vs. Commissioner of Central Excise, Bangalore)**

7. **Central Excise Appeal No. 21003 of 2017 (M/s. Emka India Panel Accessories Pvt. Ltd. Vs. Commissioner of Central Excise, Bangalore)**

8. Central Excise Appeal No. 21004 of 2017 (M/s. Emka India Panel Accessories Pvt. Ltd. Vs. Commissioner of Central Excise, Bangalore)

9. Central Excise Appeal No.21005 of 2017 (M/s. Emka India Panel Accessories Pvt. Ltd. Vs. Commissioner of Central Excise, Bangalore)
[Arising out of Order-in-Appeal No.120-128/2017-CE-AU-I dated 16.03.2017 passed by the Commissioner of Central Excise, Customs and Service Tax (Appeals-I), Bangalore]

10. Central Excise Appeal No.20363 of 2019 (M/s. Emka India Panel Accessories Pvt. Ltd. Vs. Commissioner of Central Excise, Bangalore)
[Arising out of Order-in-Appeal No.36/2019 dated 08.02.2019 passed by the Commissioner of Central Excise, Customs and Service Tax (Appeals-I), Bangalore]

APPEARANCE:

Mr. Ramesh Ananthan with Mr. Sundaraman. K, Advocates for the Appellant

Mr. M. Sreekanth, Superintendent (AR) for the Respondent

CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR. PULLELA NAGESWARA RAO, MEMBER (TECHNICAL)

Final Order No. 21301-21311 /2025

DATE OF HEARING: 31.07.2025
DATE OF DECISION: 31.07.2025

Dr. D.M. MISRA

These eleven appeals are filed against respective Orders-in-Appeal passed by the Commissioner of Central Excise (Appeals-II), Bangalore, since involved common issue, these are taken up together for hearing and disposal.

2. Briefly stated the facts of the case are that the appellant are engaged in the manufacture of Industrial Locks falling under Chapter sub-heading 83015000 of Central Excise Tariff Act, 1985(CETA, 1985). During the course of audit of their records, it was noticed that the appellant had cleared Industrial Locks,

hinges and gaskets falling under Chapter 83 and 40 of CETA, 1985. The appellant were availing cenvat credit on the hinges and gaskets which were received as inputs and cleared along with finished goods. The appellant were using all the raw materials except hinges and gaskets in the manufacture of Industrial Locks. The hinges and gaskets imported as well as procured locally are cleared along with Industrial Locks on payment of appropriate duty on the transaction value. Alleging that since no process of manufacture involved relating to the hinges which are only repacked and sold and the gaskets that were subjected to cutting and packing from bigger roll to smaller rolles of required sizes, show-cause notice dated 16.09.2010 was issued alleging irregular availment of cenvat credit and for recovery of cenvat credit of Rs.35,30,677/- for the period from 2007-08 to 2009-10 along with interest and penalty. On adjudication, the demand was dropped. Revenue filed appeal against the said adjudication order; the learned Commissioner(Appeals) set aside the order of the adjudicating authority and allowed Revenue's appeal. Hence, the assessee filed appeal bearing No.E/28028/2013. Periodical show-cause notices were issued to the appellant from April 2010 to October, 2013. The adjudicating authority confirmed all these demands which were later upheld by the learned Commissioner(Appeals). Accordingly 6 appeals are filed bearing No.E/20995/2017; E/20997/2017; E/20999/2017; E/21000/2017; E/21001/2017 and E/21002/2017. For the later period, the appellant had started reversing the credit availed on the inputs viz. hinges and gaskets considering the clearances "as such"; however, the Department continued to issue demand notices and on adjudication, the demands were confirmed, which were later upheld by the learned Commissioner(Appeals). Hence, the appeals No.E/21003/2017; E/21004/2017/ and E/21005/2017 relate to the said period. Further, one more show-cause notice was issued for the period from April 2015 to March 2016. On adjudication, the demand was confirmed which was later upheld by the Commissioner(Appeals); hence appeal No.E/20363/2019**.**

3. At the outset, the learned advocate for the appellant has submitted that they are manufacturers of Industrial Locks and for that, hinges and gaskets are also considered as inputs being supplied along with Industrial Locks which are to be installed in the customers' premises without which the Industrial Locks cannot function. The hinges imported are subjected to various testing and when found to be in order, packed along with Industrial Locks and cleared on payment of duty on the transaction value. Similarly, the gaskets which are received in bulk cut into specific sizes and supplied along with Industrial Locks discharging duty on the transaction value. He has submitted that the credit availed on the hinges and the gaskets are utilised in the clearance of the finished goods viz. Industrial Locks and the duty paid on the transaction value, hinges and gaskets at the time of its removal from the factory is always higher than the credit availed on the said hinges and gaskets. Therefore, the demand for recovery of cenvat credit even if it is assumed that the activities carried out by them does not amount to manufacture cannot be sustained in view of the judgment of the Hon'ble Bombay High Court in the case of CCE, Pune Vs. Ajinkya Enterprises [2013(294) ELT 203 (Bom.)]. Also, he has submitted that the credit availed at the time of receiving the inputs since not lower than the duty paid on the transaction value of the said goods at the time of its clearance along with hinges demand for reversal of the credit by the Department on the said inputs is contrary to the principles of law laid down by the Tribunal in various cases. Also, the learned advocate has submitted that after the Department objected to the method adopted by the appellant by discharging the duty on the transaction value of the hinges and gaskets when cleared along with Industrial Locks, they had started reversing the credit availed on the hinges and gaskets considering the same as

clearance of inputs "as such" under Rule 3(5) of the Cenvat Credit Rules, 2004. Thus, the confirmation of the demand denying cenvat credit on the inputs cannot be sustained.

4. Learned Authorised Representative (AR) for the Revenue has reiterated the findings of the learned Commissioner(Appeals).

5. The short issue involved in the present appeals for consideration are whether the recovery of the cenvat credit on the inputs viz. hinges and gaskets is justified, when the said inputs were cleared along with Industrial Locks discharging duty on the total transaction value considering the activities of repacking of hinges and cutting the gaskets into required sizes as amounting to 'manufacture';

6. The learned advocate for the appellant has mainly argued that whatever cenvat credit that had been availed on the hinges and gaskets were reversed at the time of clearance of the same along with Industrial Locks, since the duty was paid on the transaction value of the Industrial Locks which include the value of hinges and gaskets. It is their contention that once the duty is accepted by the Department on the transaction value considering the activity as manufacture, denial of credit on the inputs is not sustainable in law.

7. We find that the issue is no more *res integra* and squarely covered by the judgment of the Hon'ble Bombay High Court in the case of CCE, Pune Vs. Ajinkya Enterprises (supra), wherein their Lordships held as follows:-

> **9.** It is relevant to note that the Board in its Circular dated 7th September, 2001 had only held that the activity of cutting/slitting of HR/CR coils into sheets or strips constitutes manufacture. Admittedly, the assessee had carried on additional activities such as pickling and oiling on the decoiled HR/CR coils, which is a complex technical process involving huge investment in plant and machinery. Since these additional activities were not considered by the Board in its Circular dated 7th September, 2001, the withdrawal of the said

Circular cannot be a ground to hold that the activity carried on by the assessee did not constitute manufacturing activity. It is only on 24th June, 2010, the Board has issued a Circular to the effect that the process of pickling does not amount to manufacture. Therefore, during the relevant period, that is, during the period from 2nd March, 2005 to 31st December, 2005, it could not be said that the issue was settled and that the assessee paid duty on decoiled HR/CR coils knowing fully well that the same were not manufactured goods. If duty on decoiled HR/CR coils was paid *bona fide*, then availing credit of duty paid on HR/CR coils cannot be faulted.

10. Apart from the above, in the present case, the assessment on decoiled HR/CR coils cleared from the factory of the assessee on payment of duty has neither been reversed nor it is held that the assessee is entitled to refund of duty paid at the time of clearing the decoiled HR/CR coils. In these circumstances, the CESTAT following its decision in the case of *Ashok Enterprises* - 2008 (221) E.L.T. 586 (T), *Super Forgings* - 2007 (217) E.L.T. 559 (T), *S.A.I.L.* - 2007 (220) E.L.T. 520 (T) = 2009 (15) S.T.R. 640 (Tribunal), *M.P. Telelinks Limited* - 2004 (178) E.L.T. 167 (T) and a decision of the Gujarat High Court in the case of *CCE* v. *Creative Enterprises* reported in 2009 (235) E.L.T. 785 (Guj.) has held that once the duty on final products has been accepted by the department, CENVAT credit availed need not be reversed even if the activity docs not amount to manufacture. Admittedly, similar view taken by the Gujarat High Court in the case of *Creative Enterprises* has been upheld by the Apex Court [see 2009 (243) E.L.T.A121] by dismissing the SLP filed by the Revenue.

8. In the present case, the authorities below have not disputed that the amount of cenvat credit availed on the inputs which were demanded, as less than the amount of duty paid on the total transaction value, when these inputs were cleared along with Industrial Locks. In these circumstances, the demands confirmed against the appellant cannot be sustained. Consequently, the impugned orders are set aside and the appeals are allowed with consequential relief, if any, as per law.

(Operative part of this Order was pronounced in Open Court on conclusion of the hearing)

(D.M. MISRA)
MEMBER (JUDICIAL)

(PULLELA NAGESWARA RAO)
MEMBER (TECHNICAL)

Raja…