CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 60017 of 2020

[Arising out of Order-in-Appeal No. CHD-EXCUS-001-APP-154-2019-20 dated 09.10.2019 passed by the Commissioner (Appeals), Central Excise and Service Tax, Chandigarh]

M/s Zeto Engineers and Fabricators **......Appellant**
Unit-II, Industrial Area, Phase-1, Chandigarh

VERSUS

Commissioner of Central Excise and Service Tax, Chandigarh **......Respondent**
Plot No. 19, Central Revenue Building,
Sector-17C, Chandigarh-160017

WITH

Excise Appeal No. 60048 of 2020

[Arising out of Order-in-Appeal No. CHD-EXCUS-001-APP-168-2019-20 dated 08.11.2019 passed by the Commissioner (Appeals), Central Excise and Service Tax, Chandigarh]

M/s GDB Enterprises **......Appellant**
220-224, Industrial Area, Phase-I,
Chandigarh-160002

VERSUS

Commissioner of Central Excise and Service Tax, Chandigarh **......Respondent**
Plot No. 19, Central Revenue Building,
Sector-17C, Chandigarh-160017

AND

Excise Appeal No. 60050 of 2020

[Arising out of Order-in-Appeal No. CHD-EXCUS-001-APP-173-2019-20 dated 15.11.2019 passed by the Commissioner (Appeals), Central Excise and Service Tax, Chandigarh]

M/s Zeto Engineers and Fabricators **......Appellant**
Unit-II, Industrial Area, Phase-1, Chandigarh

VERSUS

Commissioner of Central Excise and Service Tax, Chandigarh **......Respondent**
Plot No. 19, Central Revenue Building,
Sector-17C, Chandigarh-160017

APPEARANCE:

Present for the Appellant : Shri Naveen Bindal and Shri Aman Garg, Advocates
Present for the Respondent: Shri Aniram Meena and Shri G.D. Bansal, Authorized Representatives

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)

FINAL ORDER NO. 60239-60241/2026

DATE OF HEARING: 10.03.2026
DATE OF DECISION: 10.03.2026

S.S. GARG :

These three appeals are directed against the three Impugned Orders dated 09.10.2019, 08.11.2019 and 15.11.2019 passed by the Commissioner of Central Excise and Service Tax(Appeals), Chandigarh, wherein, the Commissioner(Appeals) has upheld the order of the original authority and dismissed the appeals of the appellants. All the three appeals involve identical issues and therefore, all the three appeals are taken together for the purpose of discussion and decision. For the sake of convenience, the details of all the appeals are:

Sr. No.	Appellant	Appeal No.	Period	Amount (in Rs.)
1.	Zeto Engineers and Fabricators	E/60017/ 2020	April, 1995 - June, 1999	20,57,473/
2.	GDB Enterprises	E/60048/ 20020	Jan. 1995 – July 1999	47,32,887/
3.	Zeto Engineers and Fabricators	E/60050/ 2020	Feb. - May, 1999	3,44,398/-

2. Briefly, the facts of the present case are that the appellants are engaged in the manufacture of Tractor parts and engine parts.

> 2. That the Central Excise Preventive Staff of Chandigarh visited the factory premises of the Appellants. On scrutiny of the records i.e. RG 23 A Pt. I & II, it was found that the Appellants had been availing modvat credit on GP Sheets. On round of the factory, it was noticed that none of the O.E. parts i.e. final products manufactured by the Appellants and lying in stock was manufactured out of GP Sheets. Further, no stock of GP sheet as such or in the form of scrap generated in the process of manufacture of OE parts was found in the factory premises.
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> 3. That on scrutiny of the records resumed from the Appellants, it was revealed that the complete descriptions of the goods were not mentioned on the purchase invoices of GP sheets. For instance, the description of the goods was mentioned as Sheet/GP sheet without indicating the dimension such as thickness, width and length etc. of the material sold. Further enquiries from concerned persons revealed that GP sheets could not be used for the manufacture of their final products and the right material required and ordered by OE manufacturers to be used was actually HR/CR Sheets.

4. That on the basis of above facts and circumstances, the Appellant was issued a show cause notice for recovery of modvat credit availed during the relevant period under the provisions of Rule 57(1) of the Central Excise Rules, 1944 (here-in-after referred to as the 'Rules') read with Section 11A of the Central Excise Act, 1944 (here-in-after referred to as the 'Act) by invoking extended period alongwith interest & penalty.

5. That the Appellant filed its detailed reply and contested the matter both on limitation and on merits. But the Adjudicating Authority confirmed the demand against the Appellant alongwith interest and also imposed equal penalty under Section 11AC of the C.E Act, 1944.

6. That feeling aggrieved by the above order-in-original, the Appellant preferred appeal with the Commissioner (Appeals) who vide Order-in-Appeal held that the issue has already been decided vide O-I-A No 726-727/03 dated 30.07.03 which has been upheld by the CESTAT vide its Final Order No. A/243-244/04-NB(SM) dated 08.02.04. The then Ld. Commissioner (A) allowed the appeal of the Appellant on merits and also on limitation.

7. That being not satisfied, the Respondent department filed appeal before CESTAT on the ground that GP Sheets could not be used in OE auto parts & what was used was HR/CR Sheets. CESTAT dismissed the appeal of the department holding that duty paid nature of GP sheets had not been disputed by the department and only the use of these sheets has been contested which have not been proved.

8. That the department filed second appeal before Hon'ble Punjab & Haryana High Court who after considering the facts available on record vide order dated 21.08.08 remanded the case to original Adjudicating authority with the direction to consider afresh the matter in accordance with the law after affording opportunity of hearing to the assessee and confronting the material collected against it.

9. That in compliance to remand order of Hon'ble High Court, the Respondent supplied all documents pertaining to

investigation conducted before issuance of show cause notice and also granted opportunity of hearing. The Appellants again filed written submission on various grounds. In the reply, it was submitted that demand is barred by limitation as well as on merits. OE parts could be manufactured from GP sheets and there was no suppression on the part of the Appellants.

3. Further, following the due process the original authority confirmed the demand along with interest and penalty. Aggrieved by the said order the appellants filed the appeals before the Commissioner (Appeals), who dismissed the appeals of the appellant. Hence, the present appeals. Heard both the sides and perused the material on record.

4. The Learned Counsel for the appellants submits that the Impugned Order is not sustainable in law as the same has been passed without properly considering the facts of the case and without following the due procedure of the law. He further submits that the present issue is no more *res integra* and has been decided by this Tribunal in the following cases which have attained finality:

- Silence Auto, 2014 (307) ELT 339 (Tri. Delhi)
- Auto Fabs and others, Final Order No. 207-210/2016-CHD dated 23.02.2016
- Grewal Enterprises, Final Order No. A/60482-60483/2017-SM(BR) dated 21.03.2017
- Grewal Industries, 2005 (186) ELT 378 (Tri.- Delhi)
- CCE vs. Silence Auto Ltd., 2004 (177) ELT 917 (Tri.-Delhi)

5. He further submits that both the Show-Cause Notice and the Impugned Order is based upon the investigation conducted from the dealers, sale officials and tractor manufacturers, but the cross-examination of those officers whose statements were relied upon relief was not granted to the appellant in spite of the request made by them. He further submits that on the basis of the same investigation number of cases were booked against different assesses, out of which five cases were filed before the Hon'ble High Court and the High Court vide its order dated 21.08.2008 reported in 2008 (232) ELT 403 (P & H) has remanded the matter back to the original authority and out of the five matters remanded by the Hon'ble High Court, in the two appeals the matter has already been decided by this Tribunal in the case of Silence Auto (supra) and Grewal Enterprises (supra), wherein the Tribunal by relying upon the decision of the Tribunal on identical issue, set aside the demand and allowed the appeal. He further submits that on identical matter this Tribunal in the case of Auto Fabs vide its Final Order No. 207-210/2016 dated 23.02.2016, while considering the same investigation has upheld that credit of GP Sheets cannot be denied to the appellant without concrete evidence and Impugned Orders were set aside and appeals were allowed with consequential relief. He further submits that in the present appeals also on the basis of same investigation the demand has been confirmed and once the demand of similarly situated parties have already been decided by this Tribunal vide its decision cited supra which have attained finality

as the department has not filed appeal against them. He prayed that these three appeals should also be allowed on the same grounds.

6. Shri Aniram Meena and Shri G.D. Bansal, Learned Authorized Representatives for the Revenue reiterated the facts of the case.

7. Heard both the parties and perused the material on record. I find that the issue involved in the present case is no longer *res integra* and has been decided by this Tribunal in various cases (cited supra) which have been accepted by the department as no appeals have been filed by them. Therefore, I find that the present cases are also based on the same investigation which have already been decided vide cases (cited supra). In this regard, it may be pertinent to refer to the relevant findings of the Tribunal in the case of Silence Auto which was also based on the same investigation as follows:

> 12. The impugned orders stands passed by the lower authorities in terms of the remand proceedings by the Hon'ble High Court vide their order dated 21-8-2008. On going through the said order of the Hon'ble High Court, I find that the appeal does not stand disposed of by the Hon'ble High Court on the merits of the case, as is clear from the re-produced part of the order, it stand remitted to the lower authorities, preliminary the ground that the entire material collected by the Revenue was not supplied to the assessee.
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> 13. The Assistant Commissioner has passed a detailed order by referring to the evidences collected from the OE manufacturers as also from the dealers who have sold the GP sheets to the appellants. The said evidences are not being referred to in as inasmuch as the same lead to the fact that the appellants have received GP sheets, which fact is not being rebutted by them. The Revenue's entire case is

based upon the fact that the OE manufacturers have deposed that the raw material required to be used in the OE parts is HR/CR sheets and normally GP sheets are not used. From the above, they have arrived at a finding that the appellants have not used GP sheets and have disposed of the same clandestinely in the market and instead have procured HR/CR sheets from elsewhere and have used the same in the manufacture of their final product.

14. However, the Revenue is completely silent on the point as to whom the said procured GP sheets were sold by the assessee and from which alternate source, they have procured the HR/CR sheets. Though the Assistant Commissioner has referred to the Hon'ble Supreme Court's decision in the case of Kundan Lal v. Custodian Evacuee Property reported at AIR 1961 SC 1316 and has correctly observed that the phrase "burden of proof has two meanings - one is the burden of proof as a matter of law and pleading and the other the burden of establishing a case. The former is fixed as a question of law on the basis of the pleadings and is unchanged during the entire trial, whereas the latter is not constant but shifts as soon as a party adduce sufficient evidence to raise a presumption in his favour. Accordingly, he has observed that burden of proof in a case of clandestine activities is that while onus of proving clandestine clearance lies on the department, the onus of adducing the evidence to establish a case keeps on shifting throughout the process of appreciation of the evidence in a case. Accordingly, he has observed that if the department is able to adduce sufficient evidence, which gives rise to a reasonable inference of clandestine clearance against the party, then the onus to rebut the evidence shifts on the party.

However, the above principle may be true but I really fail to understand that which initial evidence the Revenue has produced to establish that the appellant has cleared the GP sheets in the market. There is virtually no evidence produced by the Revenue inasmuch as no buyer of the GP sheets stands identified nor is there any documentary evidence to establish that the procured GP sheets were cleared by the appellant in the market. Further, the Revenue has also miserably failed to show as to from where the appellants have procured the HR/CR sheets, their final product cannot be manufactured. In the absence of any evidence produced by the Revenue, the burden of countering and rebutting the evidence does not get shifted to the assessee.

15. In any case and in any way of the matter, I find that the appellants have tried to explain as to how the GP sheets can be used by them in the manufacture of their final product. It stands explained by them that such GP sheets are first dipped in the sulphuric acid as a result of which Zinc coating thereon disappears and CR/HR sheets emerged. In such a process the sheets gets de-galvanised and can be used in the manufacture of final product.. The said stand does not stand accepted by the lower authorities by observing that it is not a profitable proposition and economically viable for the assessee. Admittedly, the above observations are in the nature of assumptions and presumptions.

The appellants have also produced a sheet of metal half of which was galvanised and the other half was de-galvanised before the adjudicating authority who has simplicitor observed that the half non-galvanised part may not be a result of de-galvanisation but the other half may be galvanised part. The adjudicating authority has also Google searched on internet and observed that the search engine which shows millions of result for any term searched thereon, showed only 384 results for the term de-galvanisation and none of these results showed that a commercial process of de- galvanisation exists in automobile industry. The same may be a process tried in a few countries at experimental stages to recover the Zinc from galvanisation steel scrap and has still not found to be commercially viable or successful. I find the above findings of the adjudicating authority to be self contradictory. The number of search conducted on the Google is not indicative of a process being commercially viable or not. On one hand the adjudicating authority has observed that de-galvanisation exists and on the other hand he is rejecting the appellant's stand that there is no technical literature to show that de-galvanisation actually exists. He has also observed that the show cause notice has referred to and relied upon circumstantial evidences to show that it is not possible to use GP sheets in the manufacture of tractor component.

16. The evidences collected by the Revenue from the tractor component manufacturer have nowhere stated that it is impossible to manufacture OE parts out of GP sheets. In fact the opinion tendered by SAIL, is to the clear effect that normally GP sheets are not used. The Revenue establishing a fact that in the normal course GP sheets are not used for manufacture of OE parts, cannot lead to inevitable conclusion that the appellants have not used the said GP sheets in the manufacture of their final product. This is specifically so as the Revenue has failed to produce any evidence on record to establish that the said GP sheets stand cleared by the appellant in the open market and also to establish that the appellants have procured the HR/CR sheets from any other source.

17. It is also seen that the appellants have produced the parts manufactured by them from GP sheets before the earlier Commissioner (Appeals). Though no reliance can be placed on the findings of the appellate authority in his earlier order, nevertheless, I find that the said facts remains unrebutted.

18. The appellants have also taken a categorical stand that there was no benefit for them the produce HR/CR sheets from grey market and obtain bills of GP sheets since both were chargeable to 16% rate of duty. The said plea does not stand accepted on the ground that the GP sheets are costlier than HR/CR sheets and the same are used in the industries like manufacture of utensils, coolers, buckets, air conditioners which are in unorganised sector and required no Modvat documents. Accordingly it stands observed that

> from the said fact it can be reasonably inferred that the Modvat documents of GP sheets are freely available for utilisation of credit of by unscrupulous manufacturers. On the other hand, HR/CR sheets can be obtained from the grey market without payment of excise duty, while the corresponding Modvat documents of GP sheets can be obtained by payment of amounts which are only a fraction of duty amount involved. This explains the economic rationale behind adoption of such a modus operandi.
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> Obviously, the above reasoning is in the realm of surmise and conjecture. The judicial decisions are not required to be made on the basis of one's own opinion without support of the evidences. As already observed Revenue, having not been able to produce any evidence, to show that the appellant has cleared GP sheets in the market and has procured HR/CR sheets from alternate source, I find no reasons to uphold the Revenue's stand.
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> 19. I also find favour that the appellant's contention on limitation. Admittedly the credit on the GP sheets was being availed by the appellant by reflecting the same in the statutory records. The requisite returns were being filed with the Revenue along with invoices, which indicated the description of the material as GP sheets. The said invoices were being regularly defaced by appellant's jurisdictional Central Excise authorities, who never objected to the use of the GP sheets in the manufacture of OE parts. The RT-12 returns filed by the appellants were also being finally assessed. In such a scenario, I really fail to understand as to how any misstatement or suppression, etc. with an intent of mala fide can be attributed to the assessee so as to justifiably invoke the longer period of limitation. Accordingly, I hold the demand to be barred by limitation.

8. I also find that this Tribunal in the case of Auto Fabs and others vide Final Order No. 207-210/2016 dated 23.02.2016 allowed the appeals of other assessees against whom the cases were made on

the basis of same investigation and CENVAT Credit was denied on GP Sheets. Similarly, in the case of Grewal Enterprises this Tribunal vide its Final Order dated 21.03.2017 allowed the appeal of the appellant on the basis of precedent decision of the Tribunal in the case of Silence Auto.

9. Respectfully, following the ratios of decisions of the Tribunal (cited supra), I am of the considered opinion that the Impugned Order is not sustainable in law, therefore, I set aside the same by allowing all the three appeals with consequential relief, if any as per law.

(Operative part of the order pronounced in the open court)

(S. S. GARG)
MEMBER (JUDICIAL)

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