

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH - COURT No. III

(1) Excise Appeal No. 41167 of 2017

(Arising out of Order-in-Original No.17/2017 (C) (C.Ex.) dated 14.03.2017 passed by Commissioner of Central Excise, Puducherry Commissionerate, 1, Goubert Avenue, Puducherry 605 001)

M/s.Welcord Component Industries **Appellant**
B-8, PIPDIC Industrial Estate,
Mettupalayam,
Puducherry 605 009.

VERSUS

**The Commissioner of GST &
Central Excise,** ... **Respondent**
Puducherry Commissionerate,
No.1, Goubert Avenue,
Puducherry 605 001.

WITH

(2) Excise Appeal No. 41166 of 2017

(Arising out of Order-in-Original No.17/2017 (C) (C.Ex.) dated 14.03.2017 passed by Commissioner of Central Excise, Puducherry Commissionerate, 1, Goubert Avenue, Puducherry 605 001)

Shri Prasanna Bhutoria,
Managing Partner ... **Appellant**
M/s.Welcord Component Industries
B-8, PIPDIC Industrial Estate,
Mettupalayam,
Puducherry 605 009.

VERSUS

**The Commissioner of GST &
Central Excise,** ... **Respondent**
Puducherry Commissionerate,
No.1, Goubert Avenue,
Puducherry 605 001.

AND**(3) Excise Appeal No. 41168 of 2017**

(Arising out of Order-in-Original No.17/2017 (C) (C.Ex.) dated 14.03.2017 passed by Commissioner of Central Excise, Puducherry Commissionerate, 1, Goubert Avenue, Puducherry 605 001)

Shri Rankit Bhutoria, Partner**.... Appellant**

M/s.Welcord Component Industries
B-8, PIPDIC Industrial Estate,
Mettupalayam,
Puducherry 605 009.

*VERSUS***The Commissioner of GST &
Central Excise,****... Respondent**

Puducherry Commissionerate,
No.1, Goubert Avenue,
Puducherry 605 001.

APPEARANCE :

Shri V. Ravindran,, Advocate for the Appellant
Shri M. Selvakumar, Authorized Representative for the Respondent

CORAM :

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)

FINAL ORDER Nos.40615-40617/2025

DATE OF HEARING : 03.01.2025
DATE OF DECISION : 17.06.2025

Per: Shri P. Dinesha

These Appeals are filed against the common Order-in-Original No.17/2017 dated 14.03.2017 passed by the Commissioner of Central Excise, Puducherry and as we find that the issue in these Appeals are inter-connected, we proceed to dispose of these appeals by this common order.

2. Facts in brief are that the Appellant No.1 is manufacturing "Wire Insulated Assembly" which is claimed to be one of the components for M/s.Godrej Consumer Products Limited, Puducherry, used in the manufacture of Mosquito Repellent Device. The said assembly was supplied entirely by M/s.Godrej Consumer Products, Puducherry for use in the manufacture of mosquito device by the Appellant. It appears that there was a search in the premises of the Appellant-firm on 08.12.2014 by the investigating team of the Central Excise Department, during the course of which statements of several employees were recorded. Allegations/sum and substance of the charges levelled against the appellants in the SCN as we could notice from paragraph 18 of the SCN are the demand with applicable interest of the equal credit allegedly wrongly availed on

invoices, penalty on the firm, its Managing Partner and other Partner, which are the consequences of the duty demand.

3. From the documents placed on record, we find that during the course of search claimed to be from 11 AM to 06.00 PM/18.00 hours on the said date, statements of S.Bhuvana-Accounts Assistant, M.Kavitha-Production Supervisor, S.Sudha-Stores Assistant, Pankaj Ohja-Manager Admin. R.Prakash-Production in-Charge and Prasanna Bhutoria-Managing Partner, appear to have been recorded. It is the case of the Appellants that the said statements were recorded contrary to the procedure prescribed under Section 14 of the Central Excise Act, 1944 which was after 6 PM on the said date and hence, the said statements could never be used or relied upon since, according to the appellant, other than these statements, there is no other evidence found/unearthed by the Revenue/search team. Apart from this, it is also their case that the persons whose statements were recorded, retracted at the very first available opportunity, i.e. on the very next day wherein they have clearly admitted that they did not read the statements recorded by a typist but however, they only signed as per the direction of the search team. The above contentions of

the appellants are claimed to have been considered by the Adjudicating Authority since the reply filed by the Appellants to the SCN itself elaborately explain these points. The Original Authority however, proceeded to confirm the proposals made in the show cause notice, *vide* Order-in-Original No.17/2017 dated 14.03.2017 which is impugned here, in these Appeals.

4. Shri V. Ravindran, Id. Advocate appeared for the appellants and Shri M. Selvakumar, Id. Asst. Commissioner appeared for the Revenue; we have carefully considered the documents placed on record and we have also very carefully considered the rival contentions both verbal and written, of the respective parties.

5. The following issues arise for our consideration: –

- (i) Whether the Revenue is justified in demanding equal amount of credit on the allegedly wrongly availed ineligible invoices?
- (ii) Whether the Revenue is correct in demanding penalties against all the appellants?

6. The contentions of Sri V. Ravindran appearing for the Appellants, are summarized as below: –

(1) All the persons whose statements were recorded, have given their retraction on 10.12.2014; it was also explained through the letter dated 10.12.2014 to the ADG, DGCEI that an improper method was followed by the search team while stock-taking; there were omissions to inventories the work-in-process, semi-finished and finished goods; stock-taking was claimed to be witnessed by a single-stores Assistant; neither in the SCN nor in the Order-in-Original is there any reference to the above aspects and hence, the impugned order is unfair and opposed to principles of natural justice and therefore, the same deserves to be set aside.

(2) In the Mahazar dated 08.12.2014, there is a mention about the presence of raw materials like copper wires, PVC wires in different colours & quantity and various other items which are required to make 2 pin wire assembly; the presence of huge quantities of raw materials, consumables, finished goods, semi-finished goods & machineries which, however, do not find a place in the impugned order.

(3) Appellant actually manufactured and supplied wire insulated assembly to Godrej; there was no seizure either in

the transit or at the alleged destinations of diversion of the eligible inputs allegedly diverted.

(4) The retail invoices/cash memo bill of M/s.Jain Trading for 2013, 2014 and a few Excise invoices of Welcord-Jaipur, receipt notebooks, raw materials statement dated 23.07.2014, etc. did not add up to meet the volume of the entire clearances of finished goods of the Appellant-Firm in 2013 and 2014, which is not even claimed in the SCN. Hence, department did not correlate the volume of finished products cleared with the required raw-materials as per bill of materials.

(5) If the Department's allegation is correct to the effect that the appellant only procured finished products, then the very presence of various inputs like Wires, Patti, Copper wires, etc. referred to in scan No.2 of SCN at page 24 speaks contrary to the above allegation. These are the very inputs essential for manufacturing the finished products. Also, the Central Excise officers visited periodically the factories of the Appellant and had there been no manufacturing activity, the same would have been reported much earlier, which is not done.

(6) However, it is not the case of the Revenue that the volume of inputs on which CENVAT credit was taken was not relatable to the quantum of finished product supplied, the truth would have prevailed had there been an investigation or at least verification at the end-user viz., Godrej, which was not done for the reasons best known to the Revenue.

(7) Insofar as the reliance on the statement of Shri Prakash –Production-in-Charge and Shri Pankaj Ohja, it was argued that when summons was issued for their appearance, they did not appear and the Revenue did not make any further efforts to secure their presence for cross-examination since the Appellant/s did not waive their cross-examination of these two persons and hence, their statement, according to the Appellants, cannot be relied upon. Shri Prakash Sanghvi's statement is also argued to be unreliable since the said person in his cross-examination has categorically stated that he is not technically qualified to answer such technical related questions put across by the Revenue when they recorded his statement. The same argument was advanced with regard to the statement of Vinod Kumar of Reliance Industries and also the statement of Vimal Mehta since, admittedly, both Vinod Kumar and

Vimal Mehta were not the experts in the field to comment on the usage of PP materials for manufacture of wires and cables. However, Mehta has denied his statement in *toto* in his cross-examination and hence, his statement alone cannot be considered at all.

(8) Adverting to the statement of Shri R. Subramanian, Proprietor of Balaji Carriers, it was contended that he had clarified in his cross-examination that he was delivering the of materials of Reliance Industries to the appellant and only when rejected, he would be asked by the dealer to be delivered to M/s. Senbaga Enterprises.

7. In his reply, the Id. Asst. Commissioner Sri M. Selvakumar has countered the allegations of **(i)** OIO travelling beyond SCN, **(ii)** functional nature of on-going factory and disputed by the Revenue, **(iii)** impossibility of stock-taking from 11.00 AM to 6 PM; and **(iv)** Impugned order ignoring vital facts and materials found which were recorded in the Mahazar. He would further contend that in the first place there was no physical receipt of alleged inputs against which CENVAT credit was availed, since the Appellant-firm had no manufacturing facility for using the alleged inputs, it only procured finished goods under

fictitious invoices which were sold their customers. With reference to the contents of SCN specifically para 3.3 he would urge that the appellant was only engaged in the manufacture and sale of **(1) 5MM Terminal Set consisting of 5MM 'I' Braided, 5MM 'I' Silicon and 5MM 'U' Braided, (2) 8MM Terminal set consisting of 8MM 'U' Braided and 8MM 'I' silicon and (3) Neon Assembly.** Hence, it is not the case of the Revenue that the appellant did not manufacture anything but that the appellant had taken credit on inputs which were not received in the factory and which cannot be used in the machinery available in the premises. This only shows that they had received finished goods from fictitious traders which were cleared to their customers. Reliance in this regard is placed on **CC, Madras & Ors. Vs D Bhoormul** [1983 (13) ELT 1546 (SC)].

8. With regard to the impossibility of stocktaking within a short duration between 11 AM and 6 PM, it was argued that the same was not their case before the lower authority, but only had raised the issue of method of stocktaking to which, the ADG had replied. Further, regarding the availability of wires, Patti, etc. at the time of search which were claimed to be not mentioned in the Order-in-Original, it was argued

that the Authority was deciding the issue of non-receipt of inputs in the factory with no manufacturing facility for using such alleged inputs and procurement of finished goods and after considering the evidence and after following the principles of natural justice OIO has been passed. Hence, the availability of the goods specified by the appellant has not been disputed since the issue was not the availability or not of these items.

9. Regarding the allegations of violation of principles of natural justice, he would contend that impugned order has been passed after affording reasonable opportunities and after considering all such evidences that were placed by them and hence, there is no violation of principles of natural justice.

10. In his rejoinder, Sri Ravindran referring to the arguments of the Revenue, contended that when the Department is clearly not denying the fact that there was some manufacturing activity carried on by the appellant itself is sufficient; it was for them to probe further to ascertain what was being manufactured; and since the same was not done, the Revenue cannot draw adverse inference for their inability to do so. Further, the allegations as to

clandestine clearance under Central Excise Act cannot be made on assumptions and presumptions and in this regard, he places reliance on the following decisions/orders :-

- (i) **British Biologicals Unit II Vs CCE Bangalore** 2011 (266) ELT 217 (Tri.-Bang.)
- (ii) **Chemco Steels Pvt. Ld. Vs CCE Hyderabad** 2005 (191) 856 (Tri.-Bang.)
- (iii) **Dalmia Vinyls (P) Ltd. Vs CCE Hyderabad** 2005 (192) ELT 606 (Tri.Bang.)
- (iv) **Mohan Steels Ltd. Vs CCE Kanpur** 2004 (177) ELT 668 (Tri.-Del.)
- (v) **Vigirom Chem Pvt. Ltd. Vs CCE Bangalore** 2010 (251) ELT 544 (Tri.Bang.)
- (vi) **CCE Madurai Vs N. Manikandan** 2009 (246) ELT 349 (Tri.-Chennai)
- (vii) **CCE Vs Arsh Casting Pvt. Ltd.** 2010 (252) ELT 191 (H.P)

11. He would sum up his arguments by stating that the stocktaking was absolutely incorrect, statements recorded on the date of search are not reliable as the Revenue has not considered their retracted statements made on 10.12.2014, inputs on which credits was availed are actually on the basis of valid CENVAT documents capable of being

used in the manufacture of their final products. He would rely on the following judgements in support :

- (i) **Resham Petrotech Ltd. and Ors. Vs. CCE & ST** - 2019 (8) TMI 757-CESTAT Ahmedabad
- (ii) **Gujarat Victory Forgings Pvt. Ltd. Vs CCE&ST** - 2019 (7) TMI 5 CESTAT Ahmedabad
- (iii) **India Extrusion Vs CCE** 2019 (3) TMI 853 -CESTAT HYDERABAD

12. After hearing the counter arguments, we find that the issue lies on a very narrow compass: the allegation of the Revenue is that Appellant No.1 did not have required manufacturing facility to manufacture the goods on which CENVAT credit was claimed. The appellant is correct in its claim that the Revenue having not totally denied existence of manufacturing plant/facilities, without there being any adverse manufacturing activity noticed, they could not have simply asserted that there was no manufacturing activity at all. It appears that some of the serious claims of the appellant have either been not considered or ignored by the Adjudicating Authority. From the Mahazar and Annexures thereto, we find stock of work-in-progress for 2Pin cords has not been taken into account; Consumables in overhead shelves were not taken into account; Only those in select

workstations have been counted; Finished goods on floor have been taken into account and not those at the stage of testing. All stock of semi-finished goods has not been taken. Except one compressor that had been condemned, rest of the machinery listed are used and capable of being used; Hydraulic moulding machines were very much in working condition; Cable forming machine are machines capable of making granules and cable forming. It was not connected at the time of visit due to maintenance which was in running condition; Milling machine was not connected, as it is required only when milling work is to be carried out.

13. Scan No.2 in the SCN itself demonstrates the presence of stock of various inputs including wires, patti, bore copper wires etc., on the date of inspection, most of which are specifically required for the manufacture of final products. This has not been discussed at all for its evidentiary value. If the *modus operandi* alleged in the notice were to be true, there cannot be such inventory of specific raw materials present in the factory. On the contrary, the stock of 2Pin Cord Black/White Braided wire, which are alleged to be received as such, would have been found.

14. Further, as per the Bill of material for each of the final products, the volume of final products cleared by Welcord to the only customer, during the dispute period, should have been matched with the quantity of the required raw material. No such correlation was made. Only through correlation, the verification as to the input-output could have been ascertained.

15. The factual position submitted above is further buttressed by the fact that there is no seizure of any allegedly diverted material during transportation, or subsequent seizure at any of the alleged destinations where these were allegedly diverted though the alleged destinations were within Pondicherry itself.

16. Production of cables was very much happening-though not on the date of inspection-it was shown by Welcord apparently through a DVD submitted through letter dated 09.01.2015 but the same do not find any place in the OIO. It is also claimed that the Central Excise offices were from time to time visiting Welcord's factory premises and carrying out the checks / audit of accounts which fact is never denied.

17. On overall analysis, we find that the mahazar was drawn on 08.12.2014 and the witnesses have voluntarily travelled from Madipakkam and Padi, Chennai all the way to Mettupalayam, Pondicherry only to participate and witness the mahazar proceedings. Annexure (A) is the inventory of physical stock of finished/semi-finished goods / raw materials, consumables and machinery at the premises of the Appellant-firm. The condition of the above machinery as to whether they were in working condition or not is not clearly forthcoming as, apparently, none of the team members or even any of the witnesses is an expert to certify to that effect. The reference as "Unused/Dilapidated" does not lead us anywhere and hence, the investigation, according to us, is only a half-hearted attempt by the D.R.I. Hence, we are of the view that the investigating team should have at least obtained opinion of an expert in this regard since the Revenue is only denying the manufacturing facility of the Appellant-firm. Unfortunately, other than the physical stock there is no other documentary evidence to accept the Revenue's contention and hence, the allegation of the Revenue stands disproved. Appellant has equal responsibility here, hence it should also place all such records of earlier

years/periods relating to the visits and observations of the Excise Department.

18. In view of our above observation, we deem it appropriate to set aside the impugned order and remand the case back to the Adjudicating Authority, who shall consider all such relevant claims of the Appellant which are duly supported by documentary evidence, shall also cause enquiries with the end-user viz. Godrej and pass a *de novo* speaking order in accordance with law. The appellant shall be given reasonable opportunities of being heard; the Appellant should cooperate without seeking unnecessary adjournments, to enable the Adjudicating Authority to pass a *de novo* order within a period of 90 days from the date of receipt of our order. All the contentions are left open.

Appeals stand disposed of on the above terms.

(Order pronounced in open court on 17.06.2025)

(M. AJIT KUMAR)
Member (Technical)

(P. DINESHA)
Member (Judicial)