

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH - COURT NO. 1

Excise Appeal No. 51201 of 2020

(Arising out of Order-in-Appeal No. 80/2020-21 dated 30.07.2020 passed by the Commissioner (Appeals), CGST, Dehradun)

M/s KVS Castings (P) Ltd

(earlier M/s. Kashi Enterprises),
B-25-29, Industrial Estate,
Bazpur Road, Kashipur

.....Appellant

VERSUS

**Commissioner, Central Excise,
Dehradun**

.....Respondent

APPEARANCE:

Mr. Kapil Vaish, Advocate for the Appellant

Mr. Sanjay Kumar Singh, Authorized Representative of the Department

**CORAM : HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)**

Date of Hearing/Decision: 06.07.2023

FINAL ORDER NO. 50876/2023

JUSTICE DILIP GUPTA

M/s. KVS Castings (P) Ltd.¹ has filed this appeal for setting aside the order dated July 30, 2020 passed by the Commissioner (Appeals), Dehradun by which the order dated March 19, 2019 passed by the Joint Commissioner has been upheld and the appeal filed by the appellant has been dismissed.

2. The appellant has a factory at B-25-29, Industrial Estate, Kashipur, and is engaged in the manufacture of M.S Ingots, Casting and Runner/Riser. It had availed area based exemption provided under a notification dated June 10, 2003. The duration

1. the appellant

of the exemption was effective from November 02, 2006 for a period of ten years up to November 01, 2016.

3. The dispute in this appeal is with regard to the liability of the appellant to pay excise duty on the stock of 130.82 metric tonnes of finished goods lying at a place outside the factory of the appellant. According to the appellant, the goods were lying in a godown of the appellant but according to the Department it was lying in a warehouse belonging to the appellant.

4. In order to appreciate the contentions advanced by Shri Kapil Vaish, learned chartered accountant appearing for the appellant and Shri Sanjay Kumar Singh, learned authorized representative appearing for the Department, it would be appropriate to reproduce the relevant portions of the order passed by the Commissioner (Appeals) and they are as follows:

"9. It is therefore clear that the goods which are cleared from a unit within the specified time period of 10 years are eligible for exemption. I further observe that the Appellants had declared vide their letter dated 02.11.2016 that there is a stock of 11.952 MT in their factory premises and 130.830 MT in their outside godown. It is therefore now to be decided as to whether the stock of 130.830 MT of finished goods lying in their outside godown, as declared by the Appellants as on 02.11.2016 will attract Central Excise Duty or not. I find force in the contention of the Ld. Adjudicating Authority that the provisions of Rule 4 of the Central Excise Rules, 2002 are very relevant in this regard. Rule 4 (I) provides for payment of Central Excise Duty on the goods either in the factory or in the warehouse on the date of removal. **Since the Appellant themselves had declared stocks in their outside godown lying unsold, they should be treated as lying in the warehouse and the duty is liable to be discharged on such goods cleared on or after 02.11.2016.**

10. The case of the Appellant essentially is that the goods have already been cleared from the place of manufacture i.e. from the factory and therefore such goods are eligible for exemption in terms of erstwhile Rule 9 of the Central Excise Rules, 1944 as the factory was the place of removal. I observe in this regard that the Appellant has even not submitted anything as to when the goods weighing 130.830 MT were transferred from the factory to the outside godown. No document or record has been filed by the Appellant

to buttress their argument in this regard. Nobody can be allowed to evade Government Revenue in the guise of storage in outside godown when the exemption ceases. The Appellants have relied upon the decision of Hon'ble Supreme Court in the case of CCE v/s Polyset Corporation 2000 (I 15) ELT 451 [SCJ]. I have gone through the said order of the Hon'ble court. This case provides that no Central Excise Duty can be charged on the goods which were not excisable at the time of manufacture irrespective of time of clearance. The said judgment is not applicable to the facts and circumstance of this case. It is clear that the goods which are excisable but exempt under Section SA of the Central Excise Act, 1944 shall be leviable to duty in case the exemption is withdrawn.

11. I also find in this regard that the definition of 'place of removal' was amended in 1996 and the warehouse or the outside godowns where the goods are stored prior to sale were included in the place of removal. Circular of 1996 has also been relied upon by Appellant which clarifies that the warehouse or the godowns from where the goods are sold is covered within the definition of place of removal. I further take note that Notification No. 50/2003-CE dated 10.06.2003 speaks about the clearance of goods. The decision of Hon'ble High Court of Gujarat in the case of Anand Regional Co.op oil Seeds Growers Union Ltd.v/s UOI 2016 (342) ELT 379 relied upon by Ld. Adjudicating Authority appears to be correctly applicable to this case. I also take support from the decision of Hon'ble Tribunal in the case of Castrol Ltd., Calcutta v/s Collector of Central Excise, Patna 1985 (2) ELT 333 [Tri]. In view of these discussion and findings, I am not inclined to interfere with the order of the Ld. Adjudicating Authority.

12. In view of the above discussions and findings, the impugned Order-in-Original No. 11/Joint Commissioner (in situ)/Kashipur/2018-19 dated 19.03.2019 is upheld and appeal bearing no. 29/CE/APPL/DDN/19 dated 22.05.2019 filed by M/s Kashi Enterprises, B-25-29, Industrial Estate, Bazpur Road, Kashipur District U.S.Nagar Uttarakhand is dismissed."

(emphasis supplied)

5. A perusal of the aforesaid order shows that what weighed with the Commissioner (Appeals) was that under rule 4(1) of the Central Excise Rules 2002², central excise duty would be payable on the goods either in the factory or in a **warehouse** on the date of removal and as the appellant had declared stocks in the godown situated outside the factory lying unsold, they should be treated as lying in the warehouse of the appellant.

2. 2002 Rules

6. The contention of the learned chartered accountant appearing for the appellant is that neither the show cause notice mentions that the goods were lying in the warehouse nor the adjudicating authority had observed that the goods were lying in the warehouse. In fact, learned chartered accountant submitted that only a presumption has been drawn by the Commissioner (Appeals) that the goods should be treated as lying in the warehouse of the appellant. Learned chartered accountant also submitted that the finding recorded by the Commissioner (Appeals) that the appellant had not submitted anything to show when the stock of 130.82 metric tonnes was transferred from the factory to the outside godown is also not correct since this was not even an allegation in the show cause notice.

7. Learned authorized representative appearing for the Department, however, supported the impugned order and submitted that it was for the appellant to have led evidence before the authorities to substantiate that the goods had been removed from the factory prior to November 02, 2016.

8. The submissions advanced by the learned chartered accountant appearing for the appellant and the learned authorized representative appearing for the Department have been considered.

9. It is difficult to accept the finding recorded by the Commissioner (Appeals) that the goods should be treated as lying in the warehouse. In the first instance, the show cause notice does not even allege that the goods were lying in the warehouse and secondly, the godown could not have been treated as a

warehouse. A warehouse has been defined under rule 2(H) of the 2002 Rules to mean any place or premises registered under Rule 9. It is the specific case of the appellant that the premises were not registered as a warehouse. This apart, the show cause notice does not even allege that the premises which the appellant alleges is a godown is a warehouse. The Commissioner has merely drawn a presumption that the premises should be treated as a warehouse.

10. The observations made by the Commissioner that the appellant had not submitted anything to substantiate the date and time when the goods were transferred from the factory to outside godown is also not justified as the show cause notice proceeds on the footing that the goods had been transferred to the godown prior to November 02, 2006.

11. Such being the position, it is not possible to sustain the order dated July 30, 2020 passed by the Commissioner (Appeals). It is accordingly set aside and the appeal is allowed.

**(JUSTICE DILIP GUPTA)
PRESIDENT**

**(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)**