

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

WEST ZONAL BENCH

EXCISE APPEAL NO: 1117 OF 2012

[Arising out of Order-in-Appeal No. BC/03/MUM-III/2012-13 dated 19th April 2012 passed by Commissioner of Central Excise (Appeals), Mumbai – III.]

Savita Oil Technologies Ltd
Plot No 17-17A, Thane-Belapur Road
Vashi, Navi Mumbai – 400 703

...Appellant

versus

Commissioner of Central Excise
Belapur
CGO Complex, CBD Belapur, Navi Mumbai - 400614

...Respondent

APPEARANCE:

Ms Payal Nahar, Advocate for the appellant

Shri N N Prabhudesai, Superintendent (AR) for the respondent

CORAM:

**HON'BLE MR JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)**

FINAL ORDER NO: A / 85592 / 2022

DATE OF HEARING:	25/04/2022
DATE OF DECISION:	23/06/2022

PER: C J MATHEW

The dispute in this appeal of M/s Savita Oil Technologies Limited, a manufacturer of products utilizing 'base oil' and other 'petroleum oils' as inputs, arises from recovery ordered consequent to the finding that credit had been irregularly availed on 'inputs' said to have been received in their factory as

evidenced by the difference between the quantity indicated in the invoice and that in the 'goods receipt notes (GRNs)' recording the actual offloading from the tankers generated for internal use after weighment of tankers – laden and empty. Two notices issued to them, covering the period from November 2004 to March 2009 and from April 2009 to January 2010 dated 2nd December 2009 and 20th April 2010 for recovery of ₹ 98,16,722 and ₹ 21,40,589 respectively, were adjudicated by the jurisdictional Commissioner of Central Excise, *vide* order dated 18th January 2011, by segregating such consignments as were in excess of the permissible tolerance of 0.4% to uphold recovery of ₹ 72,98,407, along with interest thereon, under rule 14 of CENVAT Credit Rules, 2004 besides imposing penalty under rule 15 of CENVAT Credit Rules, 2004 while dropping demand of ₹ 46,58,904.

2. Two other notices for the period from February 2010 to April 2010 and from May 2010 to September 2010 for recovery of ₹ 9,74,575 and ₹ 16,82,567 respectively were issued on 4th March 2011 and 5th May 2011 and, applying the same yardstick, the original authority confirmed demand of ₹ 23,61,867 under rule 14 of CENVAT Credit Rules, 2004, along with interest thereon, besides imposing penalty under rule 15 of CENVAT Credit Rules, 2004 while dropping demand of ₹ 2,95,275. The first appellate authority upheld the recovery of credit with interest but granted relief by setting aside the penalty. That order is impugned here for upholding recovery of ₹ 8,48,772 and

₹ 15,13,095, and interest thereon, for the two periods.

3. It was pointed out by Learned Counsel for appellant that the dispute in the first of the proceedings noted *supra* had been decided in their favour by the Tribunal in ***Savita Oil Technologies Ltd v. Commissioner of Central Excise, Belapur [final order no.¹ disposing off appeal no. 682 of 2011 against order-in-original no. Belapur/37-38/Bel-II/SLM/2010-11 dated 18th January 2011 of Commissioner of Central Excise, Belapur]*** as well as in setting aside of recoveries confirmed by first appellate authority for other periods. It was submitted that these decisions had followed earlier rulings of the Tribunal in their own disputes besides that of ***Neera Enterprises v. Collector of Central of Central Excise, Chandigarh***² and in ***Commissioner of Central Excise, Rajkot v. Bombay Dyeing & Mfg Co. Ltd***³. It was further argued that the Tribunal in ***Petronet LNG Limited and others v. Principal Commissioner of Service Tax, Delhi-I [final order no.⁴ disposing off appeal no. 52946 of 2016 and 52980 of 2016 against order-in-original no. DLISVTAX001COM0141617 dated 26th July 2016 of Principal Commissioner of Service Tax, New Delhi]*** has held that 'book adjustments of allowed loss' had no bearing on the value of service rendered.

1. A/86097/2019 dated 14th June 2019

2. 1998 (104) ELT 382 (Tribunal)

3. 1998 (97) ELT 101 (Tribunal)

4. 51372-51373 dated 21st October 2019

4. Learned Authorized Representative placed reliance on the decision of the Tribunal in ***Indian Oil Corporation Ltd v. Commissioner of Central Excise, Mumbai-II***⁵ and in ***Ultratech Cement Ltd v. Commissioner of Central Excise, Belgaum***⁶.

5. The issue revolves around the alleged non-receipt of 'inputs' in excess of the tolerance margin of 0.4% at the facility of the appellant as evidenced by their own 'goods receipt note (GRN)' for the disputed period and the impugned order held that

'8. The Adjudicating Authority at para 18 of the impugned order, observes that the appellant has been raising debit notes on the supplier / transporter wherever the difference in weight is more than 0.4%. They have been raising the said debit notes as a deterrent measure but there is nothing on record to prove that they had paid the duty liability contained in such debit notes amounts along with interest. I find that the tolerance limit of 0.4% is acceptable norm in the case of lubricating oils being received in tankers. Hence, duty is recoverable in respect of the loss more than 0.4% and recovered through debit notes.'

6. In re ***Savita Oil Technologies Ltd v. Commissioner of Central Excise, Belapur*** it was held that

'5. It is seen that the order cited on behalf of appellant has settled the issue based on earlier orders of the Tribunal in their own matter. Likewise the decision of Tribunal in Neera Enterprises v. Collector of Central Excise, Chandigarh [1998 (104) ELT 382 (T)],

5. 2015 (5) TMI 1093 – CESTAT MUMBAI

6. 2017-TIOL-1653-CESTAT-BANG

Commissioner of Central Excise, Rajkot v. Bombay Dyeing & Mfg Co Ltd [1998 (97) ELT 101 (T) and host of others on similar lines preclude the recovery of duty in consequence of difference between quantity paid for and actual ascertainment on receipt.

and, as far back as 2005, in **Savita Chemicals Ltd v. Commissioner of Customs & Central Excise, Belapur⁷**, it was held that

'2. Briefly the facts are that the appellant took Modvat credit on the short received goods as the difference between the ascertained weight and the weight shown in the invoices is less than 2%. The applicant company however lodged claims with the insurance company for the loss and the latter paid up the claims. The case of the department was that since the claim amount also included the CVD amount the applicants would get double benefit if Modvat credit on short received goods is allowed. The Tribunal while passing the impugned order observed "therefore the orders of the lower authorities denying the credit are sustainable and accordingly confirmed and the appeal of the appellants as far as this aspect is concerned is required to be rejected".

3. From the facts of the case it appears that no further demand of CVD on the appellants survives as the appellants reversed the credit after they received their claim from the insurance company. There is a mistake apparent in the final order of the Tribunal. I, accordingly modify the order contained in para 5 of the impugned order of the Tribunal. The rectified order would now read as follows :

"Accordingly, I reduce the penalty under Section 11AC from Rs. 4,69,077/- to Rs. 50,000/- and set aside the penalties imposed on Shri Satish Talwar".'

7. Availment of CENVAT credit of duties paid on inputs is enabled by rule 3 of CENVAT Credit Rules, 2004. The credit taken by the appellant is the duty of central excise paid by the supplier as recorded in the invoices and any difference in quantity, manifested in 'goods receipt note (GRN)' on actual weighment at place of receipt, does not alter the tax thus borne on the goods except when credit accrues to the supplier through appropriate debit notes raised by recipient. No such document is placed on record. There is no evidence of any of inputs having been returned to supplier or rerouted elsewhere. The lower authorities are, themselves, not certain that duties, to the extent of quantity not received, have been re-credited by the manufacturer as is evident from the finding referred to *supra*. It is only by adverse presumption that the liability under rule 14 of CENVAT Credit Rules, 2004 has been ordered for recovery.

8. Furthermore, rule 3 of CENVAT Credit Rules, 2004 does not offer any adjustment towards tolerance or allowance and, yet, the lower authorities have deigned to provide for some arbitrary margin; implicit in the sheer arbitrariness is the principle of spreading the entire invoice value, and corresponding duty discharged, over the quantity of the goods as actually delivered. Tolerance limits are prescribed according to the nature of the goods and for the purpose of computation wherever such quantity is critical. Insofar as CENVAT credit is concerned, the underlying foundation is discharge of identical amount of duty on 'inputs' procured for manufacture or for

rendering of service on the part of supplier.

9. It was submitted on behalf of the appellant that any compensatory restitution received upon settlement of insurance claim is adjusted by payment of duty to such extent and that has not been controverted by Revenue. This is the sole situation that the decisions relied upon envisage for fastening liability in recovery proceedings.

10. The decision in ***Petronet LNG Ltd*** makes it abundantly clear that such loss in transit is not includible for computation of 'assessable value'; conversely, inclusion therein implies higher value per unit and consequent absorption of higher liability of tax.

11. Considering the circumstances *supra* and, in particular, the appellate orders in their own cases of identical recovery for other periods, the liability confirmed by original authority, and upheld in the impugned order, is without authority of law.

12. Appeal is allowed by setting aside the impugned order.

(Order pronounced in the open court on 23/06/2022)

(JUSTICE DILIP GUPTA)
President

(C J MATHEW)
Member (Technical)