CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

EXCISE APPEAL NO: 88624 OF 2013

[Arising out of Order-in-Appeal No: BC/97/BEL/2013-14 dated 30th May 2013 passed by the Commissioner of Central Excise (Appeals), Mumbai – III.]

Savita Oil Technologies Limited
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 Xavier R Mascarenhas, Superintendent (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: 87200/2023

DATE OF HEARING: 30/06/2023
DATE OF DECISION: 06/12/2023

PER: C J MATHEW

The issue in this appeal of M/s Savita Oil Technologies Limited is the stand of the central excise authorities that, notwithstanding the duty liability having been discharged to full extend on procurement of inputs, *viz.*, ‘base oil’ and ‘other petroleum oils’ which are volatile in nature, the availment of credit to the extent of ‘loss in transit’, ascertained from measurement at the factory, is incorrect in terms of rule 3 of CENVAT Credit Rules, 2004. The impugned order[1] of Commissioner of Central Excise (Appeals), Mumbai – III has upheld the finding of the original authority confirming recovery of ₹ 40,22,712/- for the period from October 2010 to September 2011. It would appear that the lower authorities had adopted the benchmark of 2% as the ‘tolerance’ and further denied credit wherever the difference was more than 0.4% as established by issue of debit notes.

2. We have heard Learned Counsel for the appellant and Learned Authorised Representative at length.

3. It would appear that payment of duty by the supplier on clearance of the goods, as well as inclusion thereof in invoices raised on appellant, is not in dispute and objection is solely on the ground that, in terms of rule 2(k) of CENVAT Credit Rules, 2004, only such ‘duty paid’ goods as have been used in the manufacture of excisable goods are entitled to be availed as credit. As pointed out by the Learned Counsel, order[2] of the Tribunal in *Savita Oil Technologies Ltd v. Commissioner of Central Excise*, *Belapur*, disposing off their

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[1] [order-in-appeal no. BC/97/BEL/2013-14 dated 30th May 2013]
[2] [final order no. A/9153/17 dated 15th December 2017]

appeal[3] against order[4] of Commissioner of Central Excise (Appeals), Mumbai, in *Savita Oil Technologies Ltd v. Commissioner of Central Excise, Belapur*, final order[5] disposing off appeal[6] against order[7] of Commissioner of Central Excise, Belapur, in *Savita Chemicals Ltd v. Commissioner of Central Excise, Surat* by final order[8] disposing off appeal[9] against order[10] of Commissioner of Central Excise & Customs (Appeals), in *Commissioner of Central Excise, Vapi v. Savita Chemicals Ltd* by final order[11] in appeal[12] against order[13] of Commissioner Central Excise & Customs (Appeals), Vapi and in *Savita Oil Technologies Ltd v. Commissioner of Central Excise, Belapur [2022 (6) TMI 1175 –CESTAT MUMBAI]* has settled the issue.

4. We find that the issue is no longer *res integra* and that, in *re Savita Oil Technologies Ltd*, it was held that

> *'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*

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[3] [E/85340/2017]
[4] [order-in-appeal no. PK/149/BEL/2016 dated 8th December 2016]
[5] [final order no. A/86097/2019 dated 14th June 2019]
[6] [no. E/682/2011]
[7] [order-in-original no. Belapur/37-38/Bel-II/RII/Commr/SLM/2010-11 dated 18th January 2011]
[8] [final order no. A/1609/C-IV/SMB/WZB/2006 dated 24th April 2006]
[9] [E/3143/2003]
[10] [order-in-appeal no. RSK/47/Daman/2003 dated 30th June 2003]
[11] [final order no. A/767/WZSB/AHD/2007 dated 2nd April 2007]
[12] [. E/3643/2005]
[13] [order-in-appeal no. VP/312/Vapi/2005 dated 29th July 2005]

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.'*

as also in several other decisions of similar nature in disputes of the appellant.

5. Accordingly, nothing remains in the impugned order which is set aside to allow the appeal.

(Order pronounced in the open court on 06/12/2023)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*