

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO.3

Excise Appeal No. 11435 of 2014- DB

(Arising out of OIO-DMN-EXCUS-000-COM-15-13-14 dated 29/11/2013 passed by Commissioner of Central Excise-DAMAN)

Bayer Vapi Pvt Ltd

Plot No. 306/3, 2nd Phase,
Gidc, Vapi,
Valsad, Gujarat

.....Appellant

VERSUS

C.C.E. & S.T.-Daman

3rd Floor...Adarsh Dham Building,
Vapi-Daman Road, Vapi
Opp.Vapi Town Police Station,
Vapi,Gujarat-396191

.....Respondent

APPEARANCE:

Shri S. Suriyanarayanan, Advocate for the Appellant
Shri, Tara Prakash, Deputy Commisisoner(AR), for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. C L MAHAR**

Final Order No. 11790/2023

DATE OF HEARING: 11.08.2023
DATE OF DECISION: 25.08.2023

RAMESH NAIR

The brief facts of the case are the appellant have paid duty on export of all the goods at the time of clearance. Subsequently, while making the monthly payment of duty inadvertently they also included the duty paid on export in their monthly dues of the duty and same was paid. Thus, they have paid the same duty twice. When it was detected the appellant have taken the *suo-moto* credit in their Cenvat account. During the audit it was objected that the appellant should not have taken the *suo-moto* re-credit, whereas they should have applied for refund, on this the appellant reversed the re-credit. However, the show cause notice dated 11-11-2011 was issued whereby, it was proposed to demand the amount of *suo-moto* re-credit and

also to appropriate the same amount, which was reversed by the appellant on the direction of audit officers. It was also proposed to demand the interest and imposition of penalty. The show cause notice was adjudicated by the Learned Commissioner Central Excise, Customs & Service Tax Daman, whereby, the demand of Central Excise Duty equivalent the Cenvat Credit availed *suo-moto* amounting to Rs. 1 crore was confirmed and the same was appropriated demand of interest and imposition of equal amount of penalty was also confirmed. Therefore, the present appeal filed by the appellant.

2. Shri S. Suriyanarayanan, Learned Counsel, appearing on behalf of the appellant submits that once the appellant had reversed the credit of duty, which was paid second time no show cause notice should have been issued and case could have been closed after reversal on the direction of the audit. He submits that by adjudicating the show cause notice and Adjudicating Authority has confirmed the duty paid twice, which is absolutely incorrect the illegal. Under any circumstances on the clearance of goods duty cannot be demanded twice.

2.1 He submits that after reversal of the credit even on issue a show cause notice the appellant have made their submission before the Adjudicating Authority. Therefore, the Adjudicating Authority should have allowed the re-credit. He further submits that even the *suo-moto* re-credit was not illegal once the duty was paid twice the second payment should have been restored to the appellant. In support he placed reliance on the following judgments:

- Sopariwala Exports Pvt. Ltd. Vs. Commissioner of C.Ex., Vadodara-I 2013 (291) E.L.T. 70 (Tti.-Ahmd.)

- Bodal Chemicals Ltd. Vs. Commissioner Of C. Ex. Ahmedabad-I 2013(291) E.L.T. 399 (Tri.- Ahmd.)
- C.C.E. & S.T- Daman Vs. M/s Polycab Wires Pvt. Ltd. 2019 (7) TMI 444-CESTAT Ahmedabad
- C.C.E. & Cus. Vs. M/s. S. Subrahmanyam & Co. 2014 (3) TMI 316/ Gujarat High Court
- C.C.E, C. & S.T., Bangalore Vs. Stumpp, Scheule & Somappa P. Ltd. 2015(9) TMI 1375-CESTAT Bangalre
- Esdee Paints Ltd. Vs. C.C.E., Ahmedabad 2009 (7) TMI 588- CESTAT, Ahmedabad
- M/s Krishnav Engineering Ltd. Vs. C.E. & S.T. Appellate Tribunal and another 2015 (12) TMI 234- Allahabad High Court
- M/s. Pushp Enterprises Vs. Commissioner of Central Excise Jaipur-I 2015 (10) TMI 1651- CESTAT Delhi

3. Shri Tara Prakash, Learned Deputy Commissioner (AR), appearing on behalf of the revenue reiterates the findings of the impugned order.

4. On careful consideration of the submission made by both the sides and perusal of record, we find that there is no dispute on the fact that the appellant initially paid the duty on export twice, one at the time of clearance of goods and second on the closer of month along with monthly payment of duty. Therefore, there is no dispute that on one clearance duty was paid twice, therefore the duty paid second time needs to be restored to the appellant as credit, the appellant had taken *suo-moto* credit. In our considered view if no discrepancy is found as regard the second time payment of duty and *suo-moto* re-credit thereof then no objection could have been raised by the department.

4.1 We find that the appellant being law abiding assessee even though *suo-moto* credit was available to them, they had reversed the same on pointing out by the audit officers. Thereafter, the department could have regularized by allowing the re-credit but instead the appellant were issued the show cause notice for demand of re-credit made by the appellant *suo-moto* despite the fact that they had already reversed the same. Therefore, in our view the show cause notice itself *ab initio*, void and illegal. The judgment cited by the appellant support their case that even they were entitled for the *suo-moto* credit. Hence, the *suo-moto* credit taken by the appellant was correct and legal. Therefore, on that issue no show cause notice could have been issued. Since, appellant had already reversed the credit and we did not find any discrepancy with regard to the double payment on duty and *suo-moto* re-credit. Even, the same was not disputed by the department either in the show cause notice or in the order. The appellant is correctly entitled for the re-credit therefore we hold that appellant has legal right to re-credit the amount of Rs. 1crore, in their Cenvat Account.

5. Accordingly, we set aside the impugned order and allow the appeal.

(Pronounced in the open court on 25.08.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(C L MAHAR)
MEMBER (TECHNICAL)