

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

REGIONAL BENCH-COURT NO. 3

Excise Appeal No. 11180 of 2019– SM

(Arising out of OIA-vad-excuse-001-app-628-2018-19 dated 27/02/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I)

Persang Alloys Industries Pvt Ltd

.....Appellant

Plot No. 353, Gidc Waghodia
Vadodara, Gujarat

VERSUS

Commissioner of C.E. & S.T.-VADODARA-I

.....Respondent

1st Floor...Central Excise Building,
Race Course Circle,
Vadodara, Gujarat- 390007

APPEARANCE:

Shri Devashish K Trivedi, Advocate for the Appellant

Shri Prashant Tripathi, Superintendent (AR)for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR

Final Order No. 11723/2024

DATE OF HEARING: 12.04.2024
DATE OF DECISION: 07.08.2024

RAMESH NAIR

The issue involved in the present case is that whether the appellant is eligible to claim refund of CVD and SAD in respect of payment of custom duty for regularizing excess import under advance authorization prior to introduction of GST regime but the duty liability was finalized and paid after the introduction of GST. The said CVD and SAD was paid by the appellant on their own suo moto in order to regularize excess import qua export obligation fulfillment.

2. Shri Devashish K Trivedi, Learned Counsel appearing on behalf of the Appellants submits that issue involved is that whether the appellant's refund is hit by Rule 9 (1)(b) or (bb) of Cenvat Credit Rules, 2004. He submits that there is no suppression of fact or malafide intention alleged/established against the appellants. He also submits that as per

the overall facts of the case, there is no malafide on the part of the appellant as the appellant have legally fulfilled their obligation of payment of CVD and SAD on their own suo moto without any notice of the department. For this reason also Rule 9 (1) (b) and (bb) cannot be invoked.

2.3 He also placed reliance on the following judgments whereby in the identical situation, the refund claim was allowed under Section 142 (3) of CGST Act, 2017:-

- ITCO Industries Ltd Vs. Commissioner of GST & Central Excise, Salem-(2023) 2 Centax 18 (Tri.-Mad)/2023 (70) GSTL 76 (Tri.-Mad)
- Mithila Drugs Pvt. Ltd. Vs. Commissioner of CGST-(2023) 11 Centax 338 (Tri.-Del.)
- Flexi Caps and Polymers Pvt. Ltd. vs. Commr. Of CGST & C. Ex., Indore- 2022 (58) GSTL 545 (Tri.-Del.)
- New Age Laminators Pvt. Ltd. Vs. Commissioner of C. Ex.. GST, Alwar-2022 (381) ELT 88 (Tri.-Del.)
- Ganges International Pvt. Ltd. Assistant Commr. of GST & C. Ex., Puducherry- 2022 (66) GSTL 186 (Mad.)
- Sri Chakra Poly Plast India Pvt. Ltd. Vs. Commissioner of Central Tax Medcheal-GST vide final order No. A/30023/2024 dated 17.01.2024
- Aurobobindopharma Ltd. Vs. Commissioner of C. Tax Hyderabad- Customs and Commissioner of Central Tax Medchal-GST vide final order No. A/30036-30047/2024 dated 18.01.2024
- Tobacco Pvt. Ltd. Vs. Commissioner of Central Tax, Guntur vide final order No. A/30026/2024 dated 19.01.2024

3. Shri Prashant Tripathi, Learned Superintendent (AR) appearing on behalf of the revenue reiterates the finding of the impugned order.

4. I have carefully considered the submission made by both sides and perused the records. I find that the appellant have claimed the refund of Cenvat of CVD and SAD in terms of Section 142 (3) of CGST, 2017 which reads as under :-

"142 (3) Every claim for refund filed by any person before, on or after the appointed day, for refund of any amount of CENVAT credit, duty, tax, interest or any other amount paid under the existing law, shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 (1 of 1944):

Provided that where any claim for refund of CENVAT credit is fully or partially rejected, the amount so rejected shall lapse.

Provided further that no refund shall be allowed of any amount of CENVAT credit where the balance of the said amount as on the appointed day has been carried forward under this Act."

4.1 From the reading of the above Section, it is clear that an assessee who is eligible for Cenvat credit and unable to take the credit due to GST regime after 01.07.2017 shall be eligible for the cash refund. In the present case the CVD and SAD was paid which is admissible as Cenvat credit to the appellants under the existing law i.e. Cenvat Credit Rules, 2004. Secondly the said amount is refundable to the appellants as per various judgments cited by the learned Counsel support the case of the appellant.

4.2 As regard the issue that whether the appellant's claim of CVD and SAD is hit by Rule 9 (1) (b) or(bb) of Cenvat Credit Rules, 2004, I find that firstly there is no demand notice in respect of CVD and SAD which

was paid by the appellants on their own and also no adjudication as regard the suppression fact, therefore, in absence of any charge by way of show cause notice or adjudication thereof, the allegation of suppression of fact only to invoke Rule 9 (1) (b) or (bb) of Cenvat Credit Rules, 2004 is on assumption and presumption which cannot be accepted. Moreover, the payment of CVD and SAD is not towards the non-payment of duty by suppression of fact. In the present case the advance license is on record and since there was excess import as compared to the eligible under advance license the appellant have discharged the duty of CVD and SAD *suo moto* for which no offence was made out by the department. Therefore, in this fact, no suppression of fact is involved. Consequently, penal provision under Rule 9 (1) (b) or (bb) shall also not apply.

4.3 Having observed as above, I find that except the legal issue there is no discussion about the fact, documents and verification thereof, hence the matter needs to be remanded for this limited purpose for processing the refund claim of the appellant.

5. Accordingly, I set aside the impugned order and allow the appeal by way of remand to the Adjudicating Authority.

(Pronounced in the open court on 07.08.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

Raksha