

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
AHMEDABAD
REGIONAL BENCH, COURT NO. 3**

EXCISE APPEAL NO. 11549 OF 2016

(Arising out of OIA-AHM-EXCUS-002-APP-0014-0016-15-16 dated 15/06/2015 passed by Commissioner of Central Excise-AHMEDABAD-II)

BAYER VAPI PVT LTD

Plot No. 423-427, Mahagujarat Industrial Estate,
Sarkhej-bavla Road, Village-moraiya, Taluka-sanand,
Ahmedabad, Gujarat.

Appellant

Vs.

**COMMISSIONER OF CENTRAL EXCISE AND
SERVICE TAX-VALSAD**

Custom House... First Floor,
Old High Court Road, Navrangpura,
Ahmedabad,Gujarat-380009

Respondent

Appearance:

Present for the Appellant : Shri Anand Nainavati , Advocate

Present for the Respondent:Shri Rajesh Nathan, Assistant Commissioner
(AR)

CORAM:

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

HON'BLE MR. C. L. MAHAR, MEMBER (TECHNICAL)

Date of Hearing/Decision: **11/01/2024**

FINAL ORDER No. 10186/2024

RAMESH NAIR

1. Brief facts of the case are that the appellant have availed CENVAT Credit in respect of various capital goods plant and machinery. After use for almost 10 years plant and machinery became wasted and scraped and appellant had cleared on payment of duty on the transaction of the waste and scrap under Rule 3(5) of CENVAT Credit Rules, 2004. However, appellant have made book entry in books of account as written off heading of such plant and machineries. The case of the department is that since the appellant have written off the plant and machinery in their books of account, they are required to reverse the Cenvat Credit of such plant and machineries.

2. Shri Anand Nainavati learned Advocate appearing for the appellant submits that for the same plant and machinery which was shown written off in the books of account goods were cleared payment of duty which is in confirmation to Rule 3(5) Cenvat Credit Rules, 2004. Therefore, no further

reversal is required. It is submitted that the appellant has to establish that the plant and machinery shown as written off in the books of account, were cleared as waste and scrap. To this effect the Chartered Engineer certificate has been submitted. However, Adjudicating Authority has confirmed the demand for want of Chartered Engineer certificate which has now been submitted before this Tribunal and he submits that in this circumstances demand is not sustainable. He prays for allowing the appeal.

3. Shri Rajesh Nathan, Assistant Commissioner (AR) appearing on behalf of the revenue reiterates the finding of the impugned order. He submit that throughout the investigation till the adjudication the appellant had not submitted documentary evidence to establish that the capital goods which were shown as written off in the books of account being cleared as waste and scrap. Therefore, the demand was rightly confirmed.

4. On careful consideration of the submission made by both the sides and perusal of record, We find that it is clear by the department that plant and machinery on which CENVAT Credit has been taken was shown as written off thereof. The revenue has sought to demand the CENVAT Credit. On the other hand it is claim of the appellant that those plant and machinery became waste and scrap and the same has been cleared by him on duty which is absolutely in confirmation to Rule 3(5)(A) of CENVAT Credit Rules. Merely because same was shown as written off in the books of account but the facts remains those plant and machinery were used for substantial period and then cleared as waste and scrap on payment of duty. Therefore, no further demand can be made. We agree with the submission of the learned Counsel that on the basis of Chartered Engineer certificate it can be decided that whether the Plant & Machinery is Waste or otherwise but since it is technical matter it needs to be verified. The Adjudicating Authority's demand for submitting chartered engineer certificate is found to be logical and correct. As per the submission by the learned Counsel they have submitted Chartered Engineer certificate before us however the same was not before Adjudicating Authority. Therefore, only for the limited purpose of verification of the Chartered Engineer certificate matter needs to be remanded back to the Adjudicating Authority. As submitted by the learned Counsel it is evident that on the basis of Chartered Engineer certificate for the subsequent period demand have been dropped, Adjudicating Authority needs to take cognizance of the said orders.

5. In view of above, impugned order is set aside. Appeal is allowed by way of remand to the adjudicating authority. All other issues are kept open.

(Dictated and pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(C. L. MAHAR)
MEMBER (TECHNICAL)

Arpita