

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

REGIONAL BENCH- COURT NO. 3

Excise Appeal No. 11580 of 2016

(Arising out of OIO-AHM-EXCUS-003-COM-009-16-17 dated- 15/06/2016 passed by Commissioner of Central Excise-AHMEDABAD-III)

Hitachi Life And Solution India Ltd

.....Appellant

Ashima Complex, Karannagar,
Kadi-Kalol Road, Kadi
Mehsana, Gujarat

VERSUS

C.C.E. & S.T.-Ahmedabad-iii

.....Respondent

Custom House... 2nd Floor,
Opp. Old Gujarat High Court, Navrangpura,
Ahmedabad, Gujarat - 380009

WITH

Excise Appeal No. 12091 of 2017

(Arising out of OIA-AHM-EXCUS-003-APP-089-17-18 dated- 30/08/2017 passed by Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)

Johnson Controls Hitachi Air Conditioning India Ltd

.....Appellant

Former Known As Hitachi Life And Solution India Ltd Ashima Complex
Karannagar Kadi Kalol Road Kadi
Mehsana, Gujarat

VERSUS

C.C.E. & S.T.-Ahmedabad-iii

.....Respondent

Custom House... 2nd Floor,
Opp. Old Gujarat High Court, Navrangpura,
Ahmedabad, Gujarat- 380009

Appearance:

Shri S. J Vyas, Advocate appeared for the Appellant

Shri Dinesh Prithiani, Assistant Commissioner (AR) for the Respondent

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

Final Order No. A / 10152 -10153 /2023

DATE OF HEARING: 23.09.2022

DATE OF DECISION: 20.01.2023

RAMESH NAIR

The Appeal No. E/11580/2016-DB is directed against Order-In-Original dated 15.06.2016 whereby the Commissioner (Appeals) rejected the claim of remission of duty amount of Rs 1,14,53,671/-. The Adjudicating Authority rejected the claim on the ground that appellant have not only claimed the tax amount from the insurance but also the excise duty for which the remission of duty has been claimed. Appeal No. E/12091/2017 was filed by

the appellant against Order-In-Appeal AHM-EXCUS-003-APP-089-17-18 whereby the demand of excise duty attributed to the goods for which remission was claimed has been upheld. It was confirmed by the Additional Commissioner vide Order-In- Original dated 12.01.2017 and the same was upheld by the Commissioner (Appeals). Therefore, this appeal is consequent to the first appeal.

2. Shri S.J Vyas, Learned Counsel appearing on behalf of the appellant submits that the Learned Commissioner has erred in misunderstanding the entire insurance claim. He submits that the Cenvat/Excise duty mentioned in the claim is a duty on the raw material/ inputs used in the manufacture of final product which was destroyed in the fire and no excise duty is payable on the finished good for which the remission was claimed. Therefore, the entire basis of the Commissioner for rejecting the remission claim is incorrect. The appellant is rightly eligible for remission of duty. Consequently, in the second appeal the demand which is consequential to the rejection of the remission claim is also not sustainable. He placed reliance on the following judgments:

- Barodia Plastics Pvt Ltd Vs. Commissioner Of Central Excise - 2015 (315) ELT 357 (P& H)
- Thermoplast Ltd vs. CCE, New Delhi – 2018 (3) TMI 608- CESTAT New Delhi.
- Union of India Vs. Hindustan Zinc Limited - 2009 (233) ELT 61 (Raj.)
- Arhant Studes Ltd Vs. Commissioner of C. Ex., Ghaziabad - 2016 (332) ELT 827 (Tri. Del)
- Sanskriti Packaging Pvt Ltd Vs. Commr.Of C. Ex. & S.T., Surat - 2015 (318) ELT 451 (Tri.Ahmd)
- Lord Chloro Alkali Ltd Vs. Commissioner of Central Excise. Jaipur - 2013 (293) ELT 68 (Tri. Del)
- Kisan Sahkari Chini Mills Ltd Vs. Commissioner of Central Excise, Meerut –I – 2008 (222) ELT 540 (Tri. Del.)

2.1 He has submitted a letter along with the chart given by the Insurance Suveyor wherein the bifurcation of the claim was clearly mentioned which shows that only duty of raw material was included as part of cost of the raw material for which the insurance claim was made and there is no claim as regard the excise duty on the finished goods.

3. Shri Dinesh Prithiani, Learned Assistant Commissioner appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. We have carefully considered the submission made by both sides and perused the records. We find from the records that the appellant had neither paid any duty on the finished goods nor made any claim in respect of any duty of excise on the finished goods. Therefore, the entire base of the Learned Commissioner for denial of the remission claim is based on the incorrect fact. Now, the learned counsel submitted the letter from the surveyor along with the detailed worksheet wherein it is clearly shown that the duty which is a part of the insurance claim is not duty of finished goods but the duty of raw material contained in the finished goods, work in progress. Since the appellant have admittedly reversed the entire credit on the inputs contained in finished goods, work in progress and input as such, the same being the stock of the raw material and the appellant have correctly made the claim. Since the detailed chart showing the bifurcation was not before the adjudicating authority, in the interest of justice it is appropriate that the adjudicating authority should reconsider the matter. The other appeal bearing No. E/12091/2017 being consequent to the order of the commissioner rejecting the remission also needs to be reconsidered. Accordingly, both the impugned orders are set aside. Appeals are allowed by way of remand to the adjudicating authorities to pass fresh orders by the respective adjudicating authority.

(Pronounced in the open court on 20.01.2023)

RAMESH NAIR
MEMBER (JUDICIAL)

RAJU
MEMBER (TECHNICAL)