

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,  
WEST ZONAL BENCH : AHMEDABAD**

REGIONAL BENCH - COURT NO. 3

**EXCISE Appeal No. 11822 of 2019-DB**

CROSS Application No.- **E/CROSS/10753/2019**

[Arising out of Order-in-Original/Appeal No BHV-EXCUS-000-COM-24-2018-19 dated 27.02.2019 passed by Commissioner of Central Excise, Customs and Service Tax-BHAVNAGAR]

**Commissioner of Central Excise & ST, Bhavnagar** .... **Appellant**

Plot No.67-76/B-1, Siddhi Sadan, Narayan Upadhyay  
Marg, Beside Gandhi Clinic, Near Parimial Chowk,  
Bhavnagar, Gujarat - 364001

*VERSUS*

**Gujarat Heavy Chemicals Limited** .... **Respondent**

Survey No. 216, Near GPPL Main Gate, Village-  
Rampara-2, AMRELI, GUJARAT

**WITH**

**(i) EXCISE Appeal No. 11817 of 2019-DB (C.C.E. & S.T.-Bhavnagar)**  
[CROSS Application No.- **E/CROSS/10683/2019**]

**(ii) EXCISE Appeal No. 11818 of 2019-DB (C.C.E. & S.T.-Bhavnagar)**

**(iii) EXCISE Appeal No. 11820 of 2019-DB (C.C.E. & S.T.-Bhavnagar)**

**(iv) EXCISE Appeal No. 11821 of 2019-DB (C.C.E. & S.T.-Bhavnagar)**

**APPEARANCE :**

Shri Prabhat K. Rameshwaram, Addl. Commissioner for the Appellant-Revenue  
Shri Anand Nainawati, Advocate for the Respondent

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

DATE OF HEARING : 09.11.2022

DATE OF DECISION: 03.05.2023

**FINAL ORDER NO. [A/11094-11098 / 2023](#)**

**RAMESH NAIR :**

The present appeals have been filed by the Commissioner of CGST & Central Excise, Bhavnagar against impugned order-in-original No. BVR-EXCUS-000-COM-24-18-19 dated 27.02.2019 passed by the learned Commissioner of CGST & Central Excise Bhavnagar whereby he has set aside the proceedings initiated by the department against the respondents vide

show cause notice dated 31.10.2014 by which the total excise duty demand of Rs.2,41,02,864/- was proposed along with proposal for imposition of penalty and interest.

2. Facts in brief are that Respondents are engaged in import of Sodium Trio Poly Phosphate (hereinafter referred to as "STTP" for the sake of brevity) in 1000/1500 kgs. FIBC (Flexible Intermediate Bulk Containers) from Pipavav Port and subsequently selling the same in domestic market after carrying out process of re-packing of bulk packages of imported STPP into retail pack of 40/50 Kg. The Respondents are also engaged in trading of imported STTP. Since as per Chapter Note 9 to Chapter 28, "labeling or re-labeling of containers or repacking from bulk packs to retail packs or the adoption of any other treatment to render the product marketable to the consumer, shall amount to manufacture", the repacking of bulk packages of imported STPP into retail pack of 40/50 Kgs. in HDPP bags, amounts to manufacture and, hence, the same are excisable under Chapter sub-heading No. 28353100 of Central Excise Tariff Act, 1985. Respondents have therefore obtained Central Excise Registration on 08.12.2010 and are paying excise duty on retail packs of STPP cleared for home consumption. The Respondents for their trading activity are also registered as Dealer as per the provisions of Central Excise Act, 1944.

3. The DGCEI after detailed investigation, recording of statements of various persons, issued show cause notice dated 31.10.2014 by invoking extended period of limitation. In the show cause notice demand on different count was proposed, the summary of which is as under:-

<b>Duty Demand</b>	<b>Qty. of STTP bags in question</b>	<b>Reasons for demand</b>
Rs.1,49,05,121	44,177	On the basis of two Private Register, assumption has been drawn that bulk to retail packing was done and clearance of STTP was made without payment of excise duty.
Rs. 88,71,974	22,858	On the basis of 49 parallel invoices to contend that STTP in bulk sold on high sea sale basis to Ardor International Pvt. Limited (AIPL) were packed in 50 Kg. bags and cleared without payment of excise duty.
Rs.1,77,114	448	On the basis of one parallel invoice it is contended that 22.390 MT of STTP was cleared to Fact Trading Co. after repacking without payment of duty.
Rs.1,48,655	460	On the basis of presumption that 460 bags of STIP was cleared to AIPL after repacking without payment of duty.

The Adjudicating Authority after considering the detailed reply filed by the assessee and hearing, dropped the demand both on merit as well as on limitation. Being aggrieved by the impugned order-in-original, the Revenue preferred the present appeal.

4. Shri Prabhat K. Rameshwaram, learned Addl. Commissioner (AR) appearing on behalf of the Revenue reiterates the grounds of appeal. He submits that there is no dispute that the activity carried out by the respondent is amount to manufacture therefore, the repacked goods cleared by them is clearly liable for duty. He further submits that apart from the repacked goods, there are cases of clandestine removal as admitted by various persons of the respondent. Therefore, the Adjudicating Authority has wrongly dropped the demand. He placed reliance on the following judgments:-

- (a) Kalvert Foods - 2011-TIOL-76-SC-CX
- (b) D Bhormull - 1983 (13) ELT 1546 (SC)
- (c) Krishna Screen Art - 2015(316) ELT 534 (Guj).
- (d) Neminath Fabrics P. Limited - 2010 (256) ELT 369 (Guj)
- (e) Mathnia Fabrics - 2008(221) ELT 481 (SC)

5. Shri Anand Nainawati, learned Counsel appearing on behalf of the respondent submits that the entire quantity is sold either as repacked goods or job-work goods or alleged clandestine removal are duty paid during import of the goods and suffered CVD/ SAD therefore, even if it is assumed that appellant have cleared goods without payment of duty after adjustment from Cenvat credit, no demand exists. Therefore, the entire case is of Revenue neutrality and for this reason, demand is otherwise not sustainable. As regards the clandestine removal, there is no evidence to establish the clandestine removal therefore demand on that count is also not sustainable. He further submits that the Adjudicating Authority has dropped the demand not only on merit but also on limitation. However, the Revenue in its appeal has not made out any ground on limitation therefore, even if any doubt about dropping of the demand on merit, the demand is otherwise not maintainable as the order of dropping the demand on limitation has attained finality in the absence of any ground in the ground of appeal in the present appeal. He placed reliance on the following judgments:-

- (a) CCE vs. Indofil Chemical Company - 2001 (45) RLT 1068
- (b) CCE vs. Mahindra & Mahindra Limited - 2001 (43) RLT 514
- (c) CCE vs. Saharia Krishi AN Prathistan - 2003 (58) RLT 308
- (d) CCE vs. Spade Elektro (P) Ltd. 2004 (175) ELT 319 (T)
- (e) CCE v. Saakeen Alloys Pvt. Ltd. 2014 (308) ELT 655 (Guj.)  
(Affirmed by Supreme Court in 2015 (319) ELT A117 (SC))

- (f) CCE v. Gopi Synthetics Pvt. Limited - 2014 (310) ELT 299 (Guj.)  
(Relevant Para 7)
- (g) Shah Foils Limited vs. CCE 2019 (1) TMI 1162 - CESTAT  
Ahmedabad  
(Affirmed by Hon'ble High Court at 2020 (1) TMI 802 Gujarat High  
Court and Hon'ble Supreme Court by order dated 08.01.2021 in SLP  
(Civil) No. 13826-13828/2020)
- (h) Commissioner vs. Dhruv Dyestuff Pvt. Ltd. 2016 (339) ELT A-131  
(Guj.)
- (i) CCE & ST, vs. Cosmos Castings (India) Limited - 2017 (355) ELT  
261 (Chattisgarh)
- (j) Nutech Polymers Limited vs. CCE, Jaipur - 2009 (240) ELT A116  
(SC)
- (k) CCE vs. ABS Metals (P) Limited -2016 (341) ELT 425 (Tri.)
- (l) Capital Ispat Limited vs. CCE - 2016 (340) ELT 697 (T)
- (m) Raika Ispat Udyog Pvt. Limited vs. CCE - 2016 (337) ELT 99 (Tri.  
Del.)
- (n) CCE, Daman vs. Nissan Thermoware P. Limited - 2016 (340) ELT  
598 (Tri.)
- (o) Rukmani Concrete Pvt. Limited vs. CCE - 2013 (296) LET 526  
(Tri.)
- (p) Shirly Dyers vs. CCE - 2013 (293) ELT 234 (Tri.)
- (q) Maruthi Tex Print & Processors P. Limited vs. CCE - 2012 (281)  
ELT 509 (Mad.)
- (r) In On Creation vs. CCE - 2012 (278) ELT 512 (T)
- (s) Saravana Alloys Steels Pvt. Limited vs. CCE - 2011 (274) ELT 248  
(Tri.)
- (t) CCE vs. Nexo Products India - 2015 (325) ELT 106 (P&H)
- (u) CCE, Raipur v. P.D. Industries Pvt. Limited- 2016 (340) ELT 249  
(Tri. Del.)
- (v) CCE, Raipur v. Heliwal Polypackers Pvt. Ltd. - 2016 (340) ELT 204  
(Tri. Del.)

- (w) Chemco Steels Pvt. Limited vs. CCE, Hyderabad - 2005 (191) ELT 856 (Tri.)
- (x) CCE, Raipur vs. Ravi Vaswani - 2017 (347) ELT 351 (Tri.)
- (y) Navdeep Engineering vs. CCE, Thane - 2014 (313) ELT 268 (Tri.)
- (z) CCE, Haldia vs. Lord's Chemicals Limited - 2009 (245) ELT 695 (Tri.)
- (za) Eupec Welspun Coatings India Ltd. vs. CCE - 2009 (235) ELT 347 (Tri.) (Affirmed by Hon'ble High Court of Gujarat at -2010 (260) ELT 381)
- (zb) P.R. Industries v. CCE, Delhi – 1 - 2016 (344) ELT 234 (Tri.)
- (zc) T.T.K. Pharma Limited vs. CCE, Chennai -2005 (189) ELT 239 (Tri.)
- (zd) Arvind Agrawal vs. CCE, Delhi 2005 (179) ELT 570 (Tri.)
- (ze) Reckitt Benckiser (India) Limited vs. CCE - 2002 (147) ELT 616 (Tri.)
- (zf) V.P. Packaging v. CCE, Calcutta – 2001 (137) ELT 583 (Tri.)

6. On careful consideration of the submissions made by both the sides and perusal of records, we find that appeal can be disposed of only on threshold point that whether the entire case involves the Revenue neutrality or otherwise. There is no dispute that all the goods on which the duty was demanded have been imported duly duty paid including CVD/SAD. In such case, if at all there is any duty liability of repacked goods or alleged clandestine removal or sales under dealer invoice or repacking job work, in all these cases, the appellant were entitled for the Cenvat credit in respect of the goods imported/ purchased by them. If on reconciliation it is found that duty is payable on the goods being deemed manufactured in terms of Chapter note 9 to note 28, in all such cases it prima-facie appears that the appellant is entitled for Cenvat credit on the goods procured and if such

Cenvat credit is sufficient to adjust against the demand of output then the entire case is Revenue neutral and in such case, no further demand can be raised. However, this reconciliation exercise has not been conducted therefore in our considered view the matter needs to be reconsidered on this issue. After reconciliation the entire duty payable and availability of Cenvat credit no differential demand arises, the entire case being Revenue neutrality, the demand will not sustain. For this purpose, the respondent is required to submit reconciliation showing co-relation between the procurement and Cenvat involved therein and the sale of the goods involving duty payable thereon. After verifying these details, the Adjudicating Authority shall pass a fresh order keeping in mind our above observation.

7. As per our above observation and finding, we set-aside the impugned order and remand the matter to the Adjudicating Authority for passing a fresh order within a period of two months from the date of this order. Appeals are disposed of by way of remand. Cross objection also stands disposed of

*(Pronounced in the open court on 03.05.2023)*

**(Ramesh Nair)**  
**Member (Judicial)**

**(Raju)**  
**Member (Technical)**