CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

EXCISE APPEAL NO: 87631 OF 2013

[Arising out of Order-in-Original No. Belapur/90/Tal/R-II/Commr/KA/12-13 dated 21st March 2013 passed by the Commissioner of Central Excise & Customs, Belapur.]

Rohm & Hass (I) Pvt Ltd
Godrej IT Park 02, Block B, LBS Road
Pirojshanagar, Vikhroli West, Mumbai - 400079 … ***Appellant***

versus

Commissioner of Central Excise and Customs
Belapur
CGO Complex, CBD Belapur, Navi Mumbai - 400614 ***…Respondent***

APPEARANCE:

Shri Gajendra Jain, Advocate with Ms Payal Nahar, Advocate for the appellant

Shri Bhilegaonkar Deepak, Additional Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: A /86338 /2023

DATE OF HEARING: 09/05/2023
DATE OF DECISION: 05/09/2023

PER: C J MATHEW

This appeal of M/s Rohm & Haas (I) P Ltd lies against order[1] of

[1] [order-in-original no. Belapur/90/Tal/R-II/ Commr/KA/12-13 dated 21st March 2013]

Commissioner of Central Excise, Belapur holding the goods cleared by them, domestically and for export, between 2007 and 2011 as not liable to be charged to excise duty and, in consequence, ineligible to avail credit of ₹ 3,28,39,680 on ‘inputs’ procured by them, from domestic sources and from abroad, and to credit of ₹ 21,77,227 on ‘input services’ under rule 3 of CENVAT Credit Rules, 2004.

2. The appellant is in the business of re-packing and labeling ‘coronate LS’, ‘bayhdur 302’ and ‘atomatic blu RB2’ of which the first two are imported with credit was availed on the additional duty of customs discharged on clearance from customs and on the entire duty included in the purchase price of the last. Proceedings for recovery of such credit was initiated on the ground that the notes in related chapters and sections of Schedule to Central Excise Tariff Act, 1985 did not deem such activity to be manufacture and the said process did not also conform to any other facet of manufacture in section 2(f) of Central Excise Act, 1944 with no change in product or enhancement of marketability having occurred. It is on record that the appellant had been clearing the re-packed goods on payment of appropriate duties of central excise.

3. It is contended by Learned Counsel that the finding of no manufacture having taken place renders the collection of duty thereon to be beyond the pale of law and hence any credit availed for such

clearance should, therefore, be adjusted against the recovery ordered by the adjudicating authority. It was further contended that the credit taken has been offset by availment at the time of clearance and, hence, is 'constructive' reversal mandated in rule 3(5) of CENVAT Credit Rules, 2004. Reliance was placed on the decision of the Tribunal in *Ajinkya Enterprises v. Commissioner of Central Excise, Pune-III [2013 (288) ELT 247 (Tri-Mumbai)]* which was affirmed by the Hon'ble High Court of Bombay in *Commissioner of Central Excise, Pune-III v. Ajinkya Enterprises [2013 (294) ELT 203 (Bom)]*. It was further contended that any ruling on goods being outside the ambit of Central Excise Act, 1944 can have only prospective effect. However, he insisted that said activities did amount to manufacture and that, even if not, the entire computation emerges as revenue neutral. It was also contended that they had stopped re-packing in November 2010 when central excise authorities intimated them that the goods did not merit charging to duties of central excise and they had removed remaining stock by reversal of credit besides reversing credit taken on 'input services' despite which notice came to be issued and, that too, only in November 2012. Reliance was also placed on the decision of the Tribunal in *Jayaswal Neco Industries v. Commissioner of Central Excise, Nagpur [2016 (44) STR 116 (Tri-Mumbai)]* and in *Jindal Stainless Steelway Ltd v. Commissioner of Central Excise, Raigad [2016 (335) ELT 57 (Tri-Mumbai)]* and other decisions on limitation

and revenue neutrality.

4. Learned Authorized Representative submitted that the clear finding of no manufacture having taken place leaves no room for doubt on facts. According to him, the finding of no manufacture having taken place renders the collection of duty thereon to be beyond the pale of law and hence not utilizable for adjustment towards confirmed demand for which reliance was placed on the decision of the Hon'ble High Court of Gujarat in *Commissioner of Central Excise, Ahmedabad-II v. Inductotherm (I) P Ltd [2012 (283) ELT 359 (Guj)]*. It was pointed out that even if availed credit is to be construed as 'constructive' reversal, the details of computation would have to be verified afresh. Reliance was placed on the decision of the of the Hon'ble Supreme Court in *Star Industries v. Commissioner of Customs (Imports), Raigad [2015 (324) ELT 656 (SC)]* and in *Mercantile Company v. Commissioner of Central Excise, Calcutta [2007 (217) ELT 330 (SC)]* and of the Hon'ble High Court of Rajasthan in *Arihant Tiles & Marbles Pvt Ltd v. Union of India [2012 (281) ELT 692 (Raj)]*

5. Even if the goods cleared by the appellant have not undergone manufacture, the consequent non-excisability would render the credit as not having been availed. It would, therefore, appear that the issue in dispute is limited to taking of credit on goods that are not 'inputs' as

defined in rule 2 of CENVAT Credit Rules, 2004. In *re Ajinkya Enterprises*, the Hon'ble High Court of Bombay has held that

> *'10. Apart from the above, in the present case, the assessment on decoiled HR/CR coils cleared from the factory of the assessee on payment of duty has neither been reversed nor it is held that the assessee is entitled to refund of duty paid at the time of clearing the decoiled HR/CR coils. In these circumstances, the CESTAT following its decision in the case of Ashok Enterprises - 2008 (221) E.L.T. 586 (T), Super Forgings - 2007 (217) E.L.T. 559 (T), S.A.I.L. - 2007 (220) E.L.T. 520 (T) = 2009 (15) S.T.R. 640 (Tribunal), M.P. Telelinks Limited - 2004 (178) E.L.T. 167 (T) and a decision of the Gujarat High Court in the case of CCE v. Creative Enterprises reported in 2009 (235) E.L.T. 785 (Guj.) has held that once the duty on final products has been accepted by the department, CENVAT credit availed need not be reversed even if the activity docs not amount to manufacture. Admittedly, similar view taken by the Gujarat High Court in the case of Creative Enterprises has been upheld by the Apex Court [see 2009 (243) E.L.T. A121] by dismissing the SLP filed by the Revenue.'*

6. In effect, therefore, the utilization of credit for cleared products is tantamount to reversal and, hence, recovery of such credit is an exercise in superfluity. These decisions were not available with the adjudicating authority then and has settled the law on recovery thereupon. Learned Authorized Representative has suggested that actual availment and corresponding substantive reversal need to be verified.

7. Consequently, we set aside the impugned order and remand the matter back to the original authority for such verification and to limit recovery, if any, only to such credit as is in excess of that availed on procurement of the three products.

(Order pronounced in the open court on 05/09/2023)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*