

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
CHANDIGARH**

REGIONAL BENCH - COURT NO. I

**Excise Appeal No. 2761 of 2011**

[Arising out of Order-in-Appeal No. 315-316/BK/GGN/2011 dated 25.08.2011 passed by the Commissioner (Appeals), Gurgaon Haryana]

**M/s YKK India Pvt Ltd**

Plot not 699, Sector-2 HSIDC Growth Centre, Bawal,  
Distt. Rewari, Haryana

**.....Appellant**

*VERSUS*

**Commissioner of Central Excise, Delhi III**

Udyog Minar, Udyog Vihar, Vanijya Nikunj, Phase,  
Phase V, Gurgaon 122016 Haryana

**.....Respondent**

**WITH**

**Excise Appeal No. 2762 of 2011**

[Arising out of Order-in-Appeal No. 315-316/BK/GGN/2011 dated 25.08.2011 passed by the Commissioner (Appeals), Gurgaon Haryana]

**M/s YKK India Pvt Ltd**

Plot not 699, Sector-2 HSIDC Growth Centre, Bawal,  
Distt. Rewari, Haryana

**.....Appellant**

*VERSUS*

**Commissioner of Central Excise, Delhi III**

Udyog Minar, Udyog Vihar, Vanijya Nikunj, Phase,  
Phase V, Gurgaon 122016 Haryana

**.....Respondent**

**AND**

**Excise Appeal No. 57058 of 2013**

[Arising out of Order-in-Original No. 19/SA/CCE/2013 dated 28.01.2013 passed by the Commissioner (Appeals), Gurgaon, Haryana]

**M/s YKK India Pvt Ltd**

Plot not 699, Sector-2 HSIDC Growth Centre, Bawal,  
Distt. Rewari, Haryana

**.....Appellant**

*VERSUS*

**Commissioner of Central Excise, Delhi III** .....Respondent  
Udyog Minar, Udyog Vihar, Vanijya Nikunj, Phase,  
Phase V, Gurgaon 122016 Haryana

**APPEARANCE:**

Present for the Appellant: Shri Kishore Kunal A/w Shri Runjhun Pare,  
Advocate

Present for the Respondent: Shri Nikhil Kumar Singh and Shri Narinder  
Singh, Authorized Representatives

**CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)**  
**HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)**

**FINAL ORDER NO. 60284-60286 /2023**

DATE OF HEARING: 21.08.2023  
DATE OF DECISION: 25.08 .2023

**PER S. S. GARG**

These three appeals filed by the appellant are directed against the impugned order dated 25.08.2011 passed by the Commissioner (Appeals) and another impugned order dated 28.01.2013 passed by the Commissioner whereby duty penalty and interest are confirmed, details of all the three appeals are given hereinbelow:-

<b>Appeal No.</b>	<b>Relevant Period</b>	<b>Impugned Order</b>	<b>Demand Details</b>

E/2761/2011  (1 <sup>st</sup> Appeal)	2007-08  2008-09	to	25.08.2011  [Order-in- Appeal]	Duty: Rs. 10,71,925/-  Penalty: Rs. 10,71,925/-  Interest
E/2726/2011  (2 <sup>nd</sup> Appeal)	April 2009  December 2009	to	25.08.2011  [Order-in- Appeal]	Duty: Rs. 19,62,854/-  Penalty: 19,62,854/-  Interest
E/57058/2013  (3 <sup>rd</sup> Appeal)	December,  2010	to	28.01.2013  [Order-in- Original]	Duty: Rs. 57,36,277/-  Penalty: 57,36,277/-  interest

Since the issue involved in all the three appeal is identical therefore, all the three appeals are taken up together for discussion and decision.

2. Briefly the facts of the case are that M/s YKK India Pvt. Ltd is engaged in the manufacture of Slide Fasteners (Metallic and

Non-Metalic), chains and sliders ("Final Products") failing under chapter heading 9607 19, 9607 11 and 9607 20 respectively of the Central Excise Tariff Act, 1985. During the relevant period, the appellant discharged duty @ 10% and availed CENVAT credit on the duty paid on inputs/capital goods.

3. During the relevant period, the appellant sent brass cutting waste ("Brass Scrap") generated during the manufacture of the Final Products to job worker under job work challans issued in terms of Rule 4(5)(a) of the CENVAT Credit Rules, 2004 read with Notification No. 214/86-CE dated 25.03.2086 without payment of duty for remelting and conversion into brass wires. The brass wires were then returned to the appellant's factory for use in the manufacture of the final products.

4. The audit raised the objection that the appellant should have paid duty on the removal of the Brass Scrap to job worker and accordingly, issued three show cause notices during the relevant period viz. 10.08.2009 for the period 2006-07 to 2008-09, show cause notice dated 24.02.2010 and show cause notice dated 30.11.2011, alleging that:

*"a. the brass scrap emerged during the manufacture of the final product is a by- product and cannot be termed as input or semi processed finished product.. Moreover, the brass wire received back from job work would be an input not partially processed finished product. Therefore, the Appellant has contravened with the provisions of Rule 4. 6 and 8 of the Excise*

*Rules inasmuch as they failed to discharge duty on the removal of brass cutting waste,*

*b. The brass cutting waste sent on the job work challans are neither the inputs cleared as such nor inputs which have been partially processed. Therefore, such clearance appears to be considered as goods cleared without payment of appropriate duty which is liable to be recovered:*

*c. Rule 4(5)(a) of the Credit Rules provides that the CENVAT credit shall be allowed even if any inputs or capital goods as such or after being partially processed are sent to a job worker for further processing, testing, repair, re- conditioning or for the manufacture of intermediate goods necessary for the manufacture of final products. However, the brass scraps are neither inputs and nor were partially processed”.*

5. The appellant filed replies to the show cause notices and refuted the allegations in the show cause notices.

6. After following the due process, duty was confirmed in all three appeals. Aggrieved by the said order, the appellant have filed these present appeals.

7. Ld. Counsel for the appellant submitted that the impugned order passed by the Commissioner (Appeals) as well as Commissioner are not sustainable in law as the same have been passed without properly appreciating the facts and also the decision of the Larger Bench in the case of **Wyeth Laboratories Ltd. Vs. CCE Bombay [200 (120) E.L.T. 218 (Tri.-LB)]** which interpreted *pari materia* provisions of Rule 57F (2) and (4) and held that scrap generated during manufacture can be removed

without payment of duty at the option of the assessee for job work and can be used as inputs. He further submitted that impugned order has wrongly held that the Brass Scrap generated during the manufacture of final product is itself a final product and cannot termed as an input under Rule 4(5)(a) of the Cenvat Credit Rules. The Brass Scrap in question is recyclable material which is sent to the job worker for conversion into brass wires which is used as an input for manufacture of final product by the appellant. He further submitted that the brass scrap in the present case is nothing but semi-processed form of input which is used by the appellant for manufacturing final product. He further submitted that the appellant has followed the appropriate procedure while removing the brass scrap to the job worker as prescribed under the notification. Further, in compliance of the procedure under the notification, the appellant had given proper intimation to the Assistant Commissioner vide letter dated 03.07.2007.

8. Ld. Counsel further submitted that the issue involved in the present cases is squarely covered by the decision of the Hon'ble Larger Bench in the case of **Wyeth Laboratories Ltd.** cited (Supra). He further submitted that the said decision was upheld by the Hon'ble Apex Court in **CCE, Kerala Vs. Binani Zinc Ltd [2009 (243) ELT 648 (SC)]**. He further submitted that in the case of **Jain Metal Components Pvt. Ltd. Vs. CCE [2006 (206) ELT 842 (Tri)]**. The Tribunal in identical facts by relying upon the judgment of Wyeth Laboratories Ltd. allowed the claim of Cenvat

and the findings of the authorities below, that waste and scrap of metal as defined in Section XV of the Tariff Act has been rejected. He further submitted that the ratio laid down by the Larger Bench in the case of *Wyeth Laboratories Ltd.* has been consistently followed by the Tribunal in the following cases:-

“a) CCE, Coimbatore vs. Titan India Ltd., Hosur [2001 (134) ELT 292 (Tri-Chennai)]

b) Eagle Flask Industries Ltd. vs. CCE, Chennai (2001 (130) ELT 703 (Tri-Chennai)]

c) Hindustan Cables Ltd. vs. CCE, Bolpur [2001 (138) ELT 384 (Tri-Calcutta)] affirmed by Hon'ble High Court in /2022 (382) ELT 188 (Cal)]

d) VIP Industries Ltd. vs. CCE, Aurangabad (2001 (132) ELT 244]

e) Wyeth Lederle Ltd. vs. CCE, Mumbai-II [2001 (138) ELT 181 (Tri-Mumbai)]

f) Cable Corporation of India Ltd. vs. CCE, Mumbai-V [2002 (144) ELT 378 (Tri-Mum)]

g) National Torch and Tubes Vs. CCE, Mumbai-II [2004 (175) ELT 622 (Tri-Bom)]”

9. He further submitted that the lower authority in the present case has relied upon the minority view expressed in the case of ***Wyeth Laboratories Ltd*** which is not a correct position of the law. He further submitted that in the case of ***Comet Brass***

**Industries Vs. CCE [2005 (189) ELT 62 (Tri)]** the tribunal while referring to the judgment in the case of Wyeth Laboratories Ltd cited (Supra) held that the entire purpose of settling down the disputed issue is defeated if the majority decision are not followed by the field formations. Hon'ble Tribunal had thus, set aside the order which was based on the minority view expressed in the Larger Bench's decision in Wyeth Laboratories Ltd. With regard to imposition of penalty. The Ld. Counsel also submitted that since no duty is payable in the present case, the demand of penalty is not sustainable and interest is also not demandable.

10. On the other hand, Ld. AR reiterated the findings of the impugned order.

11. After considering the submissions made by both the parties and perusal of the material on record, we find that this issue is no more res-integra and has been settled by the decision of the Larger Bench in the case of **Wyeth Laboratories Ltd** cited (Supra) wherein it was specifically held that the word waste in Rule 57(F)(4) is to be restricted to such converted inputs which are not desired to be used any further in manufacture of final product. It was held that the Commercial prudence and technological feasibility would induce a manufacturer to reconvert, reprocess, recondition and otherwise deal with by-product, waste, scrap, etc. to obtain maximum targeted production of the final product. Only when final product is not profitable or technologically possible, a manufacturer would treat such by-



product, scrap, etc. Further, we find that the decision of the Larger Bench has been upheld by the Hon'ble Apex Court in the case of CCE, Kerala Vs. Binani Zinc Ltd cited (supra). Further, we find that ratio of the Larger Bench decision has been consistently followed in various decisions cited (Supra). Further, the judgment in Wyeth Laboratories Ltd which was reported in the context of Rule 57A of the Central Excise Rules, 1994 has similarly been applied to the pari materia provision of Rule 4(5)(a) of the Credit Rules in two of recent decisions of the Hon'ble Tribunal in:

"a) Tansi Pump Unit Vs. Comm of GST and C.Ex [2023 (3) TMI 434-CESTAT Chennai]

b) Sanjay Casting Vs. C. Ex & S.T. Bhavnagar [ (2023) 4 Centax 230 (Tri-Ahmedabad)]".

12. Further, we find that the lower authority have relied upon the minority view to confirm the demand which is against the settled principle of the law that majority decision is a binding precedents. The Tribunal in the case of **Comet Brass Industries** cited (Supra) while referring to the judgment of the Wyeth Laboratories Ltd has held that the entire purpose of setting down the disputed issue is defeated if majority decisions are not followed by the field formations and further the Tribunal set aside the order which was based on the minority view expressed in the Larger Bench's decision in the case of **Wyeth Laboratories Ltd** cited (Supra).

13. In these appeals also the impugned orders are based upon minority view in the case of Wyeth Laboratories Ltd to confirm the demand which according to us is not sustainable in law.

14. In view of our discussion above and by following the ratio of the above said decisions, we hold that the impugned order is not sustainable in law and the same is set aside by allowing the appeals of the appellant with consequential relief, if any, as per law.

(Order pronounced in the open court on 25.08.2023 )

**(S. S. GARG)**  
**MEMBER (JUDICIAL)**

**(P. ANJANI KUMAR)**  
**MEMBER (TECHNICAL)**