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

REGIONAL BENCH - COURT NO. 3

EXCISE APPEAL NO. 10388 OF 2020-SM

[Arising out of Order-in-Appeal No CCESA-SRT-APPEAL-PS-655-2019-20 dated 28.02.2020 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I]

Rashtriya Metal Industries Limited **.... Appellant**
PLOT NO. 3810 TO 3821, 4017 TO 4043, 4050 TO
4056, PLASTIC ZONE, GIDC, SARIGAM
VALSAD, GUJARAT

VERSUS

Commissioner of CGST & Central Excise, Surat **.... Respondent**
Central Goods and Service Tax & Central Excise,
Surat Commissionerate
New Central Excise Building, Opp. Gandhi Baug
Chowk Bazar, Surat - 395001

APPEARANCE :

Shri Vineet Nagla, Advocate for the Appellant
Shri Anand Kumar, Superintendent (AR) for the Revenue.

CORAM:
HON'BLE DR. AJAYA KRISHNA VISHVESHA, MEMBER (JUDICIAL)

DATE OF HEARING : 07.05.2025
DATE OF DECISION : 28.08.2025

FINAL ORDER NO. 10668/2025

DR. AJAYA KRISHNA VISHVESHA :

This appeal is directed against Order-in-Appeal No. CCESA-SRT-APPEAL-PS-655-2019-20 dated 28.02.2020 passed by learned Commissioner (Appeals), CGST & CE, Surat through which he upheld the Order-in-Original No. 24/AC/REF/Div-UBR/2019-20 dated 05.12.2019. The issue involved in the present case is "whether refund claim is admissible under Section 142 (3) of CGST Act, 2017 in lieu of CENVAT credit of CVD & SAD, where such CVD & SAD are paid after introduction of GST due to non-fulfilment of export

obligations against the goods imported duty free, prior to introduction of GST."

1.1. The brief facts of the case are that M/s. Rashtriya Metal Industries Limited is a manufacturer of taxable goods, viz., Brass Strips, P.B. Strips & Brass Caps falling under Chapter Sub-Heading Nos. 74092100, 74093100 & 74199930 respectively of Central Excise Tariff Act, 1985. The Appellant was clearing the finished goods on payment of Central Excise duty in the domestic market as well as for export.

1.2. For the purpose of manufacturing their final products, the Appellant imports various inputs including Zinc Ingots from foreign suppliers. The Appellant imported the said inputs under Advance Authorization scheme without payment of Customs duties against export obligation of final products. The Appellant imported such goods during the period 12.01.2012 to 31.01.2014, i.e. prior to the introduction of GST regime.

1.3. The Appellant could not fulfil the export obligation in proportion to the imported Zinc Ingots within the prescribed time limit. Consequently, the Appellant was issued a deficiency letter dated 15.05.2019 by the office of the Additional DGFT to pay appropriate Customs duties along with interest to the extent of the excess import of Zinc Ingots.

1.4. The Appellant paid a total of Rs. 6,47,119/- (CVD) and Rs. 2,42,676/- (SAD) on account of excess import of Zinc Ingots through demand draft post 01.07.2017, i.e. after introduction of GST. The Appellant was eligible to avail credit of the said amounts in terms of Rule 3 of the Cenvat Credit Rules,

2004 and the Appellant was also in possession of the Bills of Entry for availing of credit in terms of Rule 9 of Cenvat Credit Rules, 2004.

1.5. However, since the amount was paid pursuant to introduction of GST and there being no specific provision or mechanism to avail Cenvat credit of CVD and SAD, the Appellant could not avail the credit under GST regime. Further, the Appellant could not revise the ER-1 post introduction of GST law. With effect from 01.07.2017, the Appellant migrated into the GST regime.

1.6. The Appellant had paid the CVD & SAD amount of Rs.8,89,795/- on 20.05.2019 i.e. after 01.07.2017. In the absence of any specific provision under GST for availing credit of CVD and SAD paid on goods imported during the erstwhile Central Excise regime, the appellants could not avail credit of the CVD and SAD amounting to Rs. 8,89,795/- in the electronic credit ledger in GST regime. The said amount of Rs. 8,89,795/- was otherwise available as eligible CENVAT credit under the Central Excise regime since the said CVD & SAD pertained to goods imported under the erstwhile Central Excise regime.

1.7. In the above circumstances, the Appellant filed a refund claim dated 29.08.2019 in terms of Section 142(3) of the CGST Act, 2017 for Rs. 8,89,795/-, pertaining to CVD and SAD paid due to non-fulfilment of export obligations in respect of goods imported before 01.07.2017 under Advance Authorisation scheme. Section 142(3) of the CGST Act, 2017 runs as under:-

Section 142(3) in The Central Goods and Services Tax Act, 2017

> "(3) Every claim for refund filed by any person before, on or after the appointed day, for refund of any amount of CENVAT credit, duty, tax, interest or any other amount paid under the existing law, shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the

contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944:

Provided that where any claim for refund of CENVAT credit is fully or partially rejected, the amount so rejected shall lapse:

Provided further that no refund shall be allowed of any amount of CENVAT credit where the balance of the said amount as on the appointed day has been carried forward under this Act."

1.8. Pursuant to filing of refund claim dated 29.08.2019, the Appellant was issued Show Cause Notice dated 01.10.2019, proposing to reject the refund claim filed by the Appellant.

1.9. The Learned Assistant Commissioner vide Order-in-Original dated 05.12.2019 rejected the refund claim of Rs. 8,89,795/- in view of the provisions of Sections 142(3) read with 142(6)(a) of the CGST Act, 2017 and Rule 9(1)(b) of the CENVAT Credit Rules, 2004.

1.10. Aggrieved by the Order-in-Original dated 05.12.2019, the Appellant preferred appeal before the Learned Commissioner (Appeals). The Learned Commissioner (Appeals), Surat vide Order-in-Appeal dated 28-02-2020 upheld the Order-in-Original rejecting the refund claim of the Appellant and dismissed the appeal filed by the Appellant. The reasons in brief for dismissal of the appeal in the impugned order are as below:

(a) For getting refund of CENVAT credit under existing law i.e. under CENVAT Credit Rules, 2004, one has to avail the CENVAT credit under the said rule. The Appellant had paid the duty after the appointed date, i.e. 01.07.2017 when the provisions of the Central Excise Act and CENVAT Credit Rules were repealed and thus, the credit of CVD & SAD was not available to the Appellant. Therefore, the refund of the same cannot be availed by the Appellant.

(b) CVD & SAD are not covered under Section 11B of the Central Excise Act, 1944. Thus, refund of CVD & SAD under Section 142(3) of the CGST Act read with Section 11B of the Central Excise Act, 1944 cannot be claimed by the Appellant.

(c) The Appellant is not eligible for the credit/ refund of the CVD & SAD in light of provisions of Rule 9(1)(b) of the CENVAT Credit Rules, 2004 as the payment of duty were made only after being pointed out by the DGFT.

Aggrieved by the aforesaid impugned order, the Appellant has filed the present appeal.

2.1. Shri. Vineet Nagla, learned Counsel appearing for the Appellant at the outset submits that the issue is no longer res-integra as this Tribunal as well as the Hon'ble High Court have upheld the grant of refund to the assessee under Section 142 (3) of CGST Act, 2017.He placed reliance on the following judgments delivered by Hon'ble Gujarat and Telangana High Courts:-

(a) **M/s. Epigral Limited & Anr. v. Union of India & Ors**., 2025 (97) G.S.T.L. 261 (Guj.)

(b) **Thermax Limited v. Union of India**, 2019 (31) GSTL 60 (Guj.)

(c) **Principal Commissioner of Customs v. Granules India Limited**- (2024) 25 Centax 167 (Telangana)

Learned Counsel also relied on the following orders of Ahmedabad, Delhi, Chennai and Hyderabad benches of CESTAT:-

(a) **Cadila Healthcare Limited. v. Commissioner of C.E. – Ahmedabad** – II, Excise Appeal No. 10455 of 2020 – DB - CESTAT, Ahmedabad Divisional Bench

(b) **Commissioner of Central Excise & Service Tax v. Aculife Healthcare Pvt. Limited** - (2024) 24 Centax 143 (Tri.-Ahmd) - CESTAT, Ahmedabad

(c) **M/s. Hindustan Equipments Private Limited v. Commissioner of CGST & Central Excise, Indore**, 2024 (6) TMI 245 - CESTAT Delhi

(d) **M/s New Age Laminators Pvt. Limited v. Commissioner, Central Excise, Goods and Service Tax**, 2022 (3) TMI 748 - CESTAT Delhi

(e) **M/s. ITCO Industries Limited v. The Commissioner of GST & Central Excise,** 2022 TMI 1040 – CESTAT Chennai

(f) **Sri Chakra Polyplast India Pvt. Limited v. CCT, 2024 (1) TMI 1272** - CESTAT Hyderabad

2.2. On the issue whether the Appellant's refund application is hit by Rule 9(1)(b) of CENVAT Credit Rules, 2004, the Learned Counsel for the Appellant submits that suppression of fact or malafide intention cannot be made out against the Appellant. He submits that the Appellant had *suo-moto* reported the excess imports made in Form ANF 4F. Further, the deficiency letter issued by DGFT was merely an intimation letter and not a demand notice, and that the deficiency letter had not invoked any provisions of the Customs Act or the Central Excise Act. Moreover, there have been no adjudication proceedings with respect to fraud, wilful misstatement or suppression of fact conducted against the Appellant and suppression of fact or malafide intention is not alleged/established against the Appellant. Thus, denial of Cenvat Credit and the resulting refund of CVD and SAD by invoking Rule 9(1)(b) of the Cenvat Credit Rules, 2004 is untenable. In this regard, the Learned Counsel has placed reliance on the following orders pronounced by CESTAT:-

(a) **Rubamin Private Limited v. Commissioner of C.E. & S.T. – Vadodara-II**, Excise Appeal No. 10409 of 2020 – SM - CESTAT, Ahmedabad

(b) **M/s. ITCO Industries Limited v. The Commissioner of GST & Central Excise** (supra)

3. Shri Anand Kumar, learned AR for the department reiterates the findings given in the Order-in-Appeal.

4.1. I have carefully considered the submissions made by both the sides and perused the records

4.2. I agree with the learned Counsel for the appellant that the issue as mentioned above is no longer res-integra. In **Epigral Limited** vs. **UoI & Ors** (supra), the Hon'ble Gujarat High Court has held that in view of section 142(3) of CGST Act, 2017 any refund accruing to the petitioners after 01.07.2017 is required to be refunded in cash. The Hon'ble Court further held that it is apparent that the respondent authorities could not have referred to and relied upon the provisions of section 142(8)(a) as the same would not be applicable to the facts of the case as the petitioners did not deposit the amount of duties in any recovery proceedings but the petitioners had voluntarily deposited the amount of duties on reconciliation of the imports made by the petitioners with the Advance Authorisation and EPCG license entitlement. Therefore, the case of the petitioners would be squarely covered by provisions of section 142(3) of the CGST Act which provides for considering the refund claim of the petitioners as per the existing law at the relevant time when import was made in the year 2016.

4.3 In **Principal Commissioner of Customs** vs. **M/s. Granules India Limited** (supra) the Hon'ble Telangana High Court has held that admittedly, the assessee had paid the amount of CVD and SAD between the period August, 2018 and March, 2019 by way of regularisation of shortfall in fulfilment of the export obligation. The Tribunal has relied on Section 142 (3) of the CGST Act and has held that the same provided that every claim for refund by any person before, on or after the appointed day for refund of any amount of Central Value Added tax credit/duty/tax/interest or any other

amount paid under the existing law, shall be disposed of in accordance with the provisions of the existing law. The Tribunal, by taking into account the provisions of sub-Sections (3), (5) and (8A) of Section 142 of the CGST Act, has held that the assessee is entitled to claim refund of CVD and SAD paid after the appointed day. Accordingly, the assessee had been held to be entitled to refund of Central Value Added Tax credit Rs. 3,28,75,733/-. The aforesaid finding is in consonance with law and the same cannot be termed as perverse.

4.4 In **Commissioner of Central Excise & Service Tax** vs. **Aculife Healthcare Pvt. Limited** (supra) the Division Bench of this Tribunal has upheld the grant of refund of CVD and SAD after introduction of GST on imports prior to introduction of GST due to non fulfilment of export obligation. This Tribunal upheld the grant of refund under Section 142(3) of the CGST Act, 2017 read with Section 11B of Central Excise Act, 1944.

4.5 In the impugned order, the learned Commissioner (Appeals) in Para 12 of his order stated that in the instant case, the appellant had made payment of Customs duties (CVD & SAD) for excess import under Advance Authorisation (licenses) vis-à-vis the export actually made by them. The appellant had never disclosed the said service tax liability to the department at any point of time and paid the same only after noticed by the DGFT. The appellant did not come clean with the facts before the department. Thus, the provisions of said Rule 9(1)(b) of Cenvat Credit Rules, 2004, which restricts the credit if the duty becomes recoverable on account of any non-levy or short levy by reason of fraud, collusion or any willful mis-statement or suppression of facts or any contravention of any provisions of Central Excise Act or Customs Act or the Rules made there under, with intent to evade payment of said duties. Therefore, the appellant is not entitled for the

Cenvat credit of CVD and SAD paid by them. Since the credit of such duty itself is disallowed therefore claim for refund of said amount is not sustainable. Thus, the view of the adjudicating authority that since the duty was discharged only after being pointed out by the Foreign Trade Development Officer, there was motive of evasion of Tax/Duty and hold that the adjudicating authority's decision that the appellant is not eligible for refund/credit of the said tax in view of Rule 9(1)(b) of Cenvat Credit Rules, 2004.

4.6 I am of the view that the conclusion arrived at by the Commissioner (Appeals) as mentioned above is not sustainable. In **Rubamin Private Limited** vs. Commissioner of Central Excise & Service Tax, Vadodara-II, in Excise Appeal No. 10409 of 2020, this Tribunal has held that as regards the issue whether the appellant claim of CVD & SAD is hit by Rule 9 (1) (b) or (bb) of Cenvat Credit Rules, 2004, that firstly there is no demand notice in respect of CVD and SAD which was paid by the appellants on their own and also no adjudication as regard the suppression fact, therefore, in absence of any charge by way of show cause notice or adjudication thereof, the allegation of suppression of fact only to invoke Rule 9 (1) (b) or (bb) of Cenvat Credit Rules, 2004 is on assumption and presumption which cannot be accepted. Moreover, the payment of CVD and SAD is not towards the non-payment of duty by suppression of fact. In the present case the advance license is on record and since there was excess import as compared to the eligible under advance license the appellant has discharged the duty of CVD and SAD suo-moto for which no offence was made out by the department. Therefore, in this fact, no suppression of fact is involved. Consequently, penal provision under Rule 9 (1) (b) or (bb) shall also not apply.

4.7 In the present case, the appellant vide letter dated 15.11.2007 applied to DGFT office for issue of export obligation Discharge certificate by clubbing of advance authorisations dated 12.01.2012 and 14.07.2014 but the DGFT office has issued letter dated 16.11.2017 against the said application and rejected the said clubbing of application. Thereafter, the appellant vide letter dated 18.04.2019 re-submitted a fresh application for Advance Authorisation dated 12.01.2012 to DGFT office for Export Obligation Discharge Certificate attaching the revised ANF 4F. The Appellant has disclosed the detail of excess import of 33772 kgs of Zinc Ingot in point no.7 of ANF 4F. The copy of that letter has been attached in the memo of appeal as Annexure – 4. Based on the above said application and excess import disclosed, the DGFT office vide letter dated 15.05.2019 issued deficiency letter requesting appellant to pay Custom duty along with interest on 33772.46 kgs of excess imports of Zinc Ingots to discharge the liability in respect of above Advance Authorisations. In pursuance to which the appellant made the payments.

4.8 Therefore, I find considerable force in the arguments of learned Counsel for the appellant that issuance of deficiency letter asking for making payment of additional duties of excise on account of import of excess of eligible quantities against advance authorization, is nothing but mere an opportunity provided to regularize the bona fide default made by authorization holder. The issuance of deficiency letter does not tantamount to initiation of assessment or adjudication proceedings unless an action is taken against authorization holder under the FTDR Act for any misrepresentation or misdeclaration.

5. In view of above observations, I am of the view that learned Commissioner (Appeals) and the first Adjudicating Authority have made

error in passing the impugned orders. Therefore, the impugned order passed by learned Commissioner (Appeals) dated 28.02.2020 is liable to be set-aside whereas the appeal is liable to be allowed and the appeal is allowed. The impugned order dated 28.02.2020 passed by learned Commissioner (Appeals) is set-aside and the matter is remanded to the first Adjudicating Authority to pass a fresh order on the application filed by the appellant for refund of the amount pertaining to deposit made by them, in the light of observations made in this order. It is also made clear that refund is required to be paid in cash to the appellant as per decision of Hon'ble Gujarat High Court in **Thermax Limited v. Union of India** (supra). The said exercise should be completed within a period of 12 weeks from the date of receipt of copy of this order by the respondent.

(Order pronounced in the open court on 28.08.2025*)*

(Dr. Ajaya Krishna Vishvesha)
Member (Judicial)

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