

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
MUMBAI**

REGIONAL BENCH

**Excise Cross Objection No. 91023 Of 2015**

(On behalf of Respondent)

**In**

**Excise Appeal No. 85170 of 2015**

(Arising out of Order-in-Original No. 57-58/CEX/Commr/2014 dated 21.08.2014 passed by the Commissioner of Central Excise, Customs & Service Tax, Aurangabad)

**Commissioner of Central Excise, Aurangabad**

**Town Centre, N-5,**

**CIDCO,**

**Aurangabad-431 003**

.....Appellant

*VERSUS*

**M/s Skoda Auto Volkswagen India Pvt. Ltd.,**

**Belapur.**

**Plot No. A-1/1,**

**Shendra MIDC Area,**

**India, Aurangabad-431 201**

.....Respondent

**&**

**Excise Cross Objection No. 91024 of 2015**

(On behalf of Respondent)

**In**

**Excise Appeal No. 85171 of 2015**

(Arising out of Order-in-Original No. 57-58/CEX/Commr/2014 dated 21.08.2014 passed by the Commissioner of Central Excise, Customs & Service Tax, Aurangabad)

**Commissioner of Central Excise, Aurangabad**

**Town Centre, N-5,**

**CIDCO,**

**Aurangabad-431 003**

.....Appellant

*VERSUS*

.....Respondent

**M/s Skoda Auto Volkswagen India Pvt. Ltd.,**

**Belapur.**

**Plot No. A-1/1,**

**Shendra MIDC Area,**

**India, Aurangabad-431 201**

**APPEARANCE:**

Shri Vinod S. Chettiparambil, Assistant Commissioner, Authorised Representative for the Appellant.

Shri Anay Banhatti, Advocate alongwith

Ms. Dhanishha Kawale, Advocate for the Respondent.

CORAM:

**HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)**

**HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)**

**FINAL ORDER NO. 85342-85343/2024**

Date of Hearing: 26.02.2024

Date of Decision: 18.03.2024

**PER: DR. SUVENDU KUMAR PATI**

Dropping of proceeding by the Commissioner of Central Excise, Customs & Service Tax, Aurangabad that was initiated against the Respondent-Assesse demanding Central Excise duty against non-reversal of credits availed in respect of exempted services, alongwith interest and proportionate penalty is assailed by the Appellant-Department in this appeal.

2. Facts of the case, in a nutshell, is that Respondent M/s Skoda Auto Volkswagen India Pvt. Ltd. is engaged in manufacturing of excisable goods mainly motor vehicle and parts. During the course of manufacturing, waste and scrap were generated which were disposed of by following two processes. For waste and scrap of packing materials viz. corrugated boxes, cartoons, MS scrap, plastic, industrial refuse etc. , it was paying Central Excise duty and for waste of wooden pallet and fire wood falling under chapter heading 4401 of Central Excise Tariff Act, 1985 that attracts Nil rate of duty, it was not paying any duty at the time of clearance. Appellant is of the view that Respondent was supposed to follow Rule 6(3) of CENVAT Credit Rules, 2004 and maintain separate records in respect of input and input services used in

production of dutiable and exempted goods and it should have proportionately reversed CENVAT Credit involved on exempted waste in terms of Rule 6(3)(ii) of the CENVAT Credit Rules, 2004 but as it fail to do so, Show-cause cum demand notice proposing Service Tax and reversal of CENVAT Credit, through two Show-cause notice's covering period from May 2008 to July 2012 and August 2012 to June 2013, along with interest and penalty, was raised against the Appellant that had followed the adjudication process and ultimately got dropped *vide* above referred order of the Commissioner which is assailed herein in this appeal. Respondent's cross objections are filed against both the appeals.

3. Learned Authorised Representative for the Appellant, Shri Vinod S. Chettiparambil submitted during the course of hearing of the appeal that Appellant had manufactured dutiable good and traded exempted goods, generated as waste, for which it is liable to pay the said duty demanded in the review order, Committee of Commissioners also took the view that trading is an exempted service against which proportional reversal was not done for which the Appellant is liable to pay the duty, interest and penalty and as the order passed by the Commissioner resulted in dropping of the proceedings, Department has preferred the appeal in the present Forum. He pointed out that the Committee of Commissioners placed reliance on the judgment of this Tribunal passed in the case of *Agauta Sugar & Chemicals Vs. Commissioner of Central Excise, Noida* reported in *2010 (19) S.T.R.849 (Tri.-LB)[01.09.2010]* of the Hon'ble Supreme Court passed in the case of *Collector of Central*

*Excise, Calcutta Vs. Pradyumna Steel Ltd.* reported in 1996 (82) E.L.T. 441 (S.C.) [19.01.1996] and *Commissioner of Central Excise V.s West Coast Industrial Gases Ltd.* reported in 2003 (155) E.L.T. 11 (S.C.) [23.04.2003] to arrive at the conclusion that the duty demand against exempted services was appropriate for which order passed by the Commissioner is liable to be set aside.

4. In response to such submissions, Learned Counsel for the Respondent Shri Anay Banhatti Advocate, submitted that Show-cause notice was issued on the ground that Appellant was a manufacturer who was also engaged in packing up/emptying inputs from packing material which is incidental or ancillary to the manufacturing process and therefore, it was required to pay Central Excise duty on clearance and sale of those waste and scrap of packing materials, but Appellant had raised a new ground before the Tribunal seeking its indulgence in reversing the order passed by the Commissioner that Respondent was engaged in providing exempted services like trading of goods, which was not alleged in the Show-cause notices. He further submitted that in view of Hon'ble Supreme Court decision passed in the case of *Commissioner of Customs, Mumbai Vs. Toyo Engineering India Ltd.* reported in 2006 (201) E.L.T. 513 (S.C.) [31.08.2006], *Warner Hindustan Ltd. Vs. Collector of Central Excise, Hyderabad* reported in 1999 (113) E.L.T. 24 (S.C.) [03.08.1999], *Commissioner of Customs, Ahmedabad Vs. Krishna Petrochemicals* reported in 2014 (304) E.L.T. 744 (Tri.-Ahmd) [26.03.2014] & *Commissioner of Central Excise Vs. Gas Authority of India Ltd.* reported in (2007) 15 Supreme Court cases 91,

Show-cause notice being foundation of Department's case, it cannot take a contrary stand beyond the said notice and it has got no justification in agitating issues before the Tribunal, which were not agitated before the lower Authorities.

4.1 Further, in distinguishing the judgment relied upon by the Appellant-Department, he pointed out that *West Coast Industrial Gases Ltd.* decision was wrongly applied by the Appellant, since basing on the same decision including in the case of *Maruti Suzuki India Ltd. Vs. Commissioner of Central Excise, Delhi-III* reported in 2016 (339) E.L.T. 287 (Tri.-Chan) [16.12.2015], findings are given by the Hon'ble Court and Tribunal that Central Excise duty is not payable on waste and scrap of packing materials of inputs. He also submitted that in the case of *Agauta Sugar & Chemicals Vs. Commissioner of Central Excise, Noida* reported in 2010 (19) S.T.R. 849 (Tri.-LB) favorable order was made only for the reason that demand notice was issued under wrong provision of law but not on a different issue which was not at all available in the Show-cause notice.

5. We have carefully gone through the case record and the relied upon judgments. We are of the view that no demand is raised on the Appellant in the Show-cause notices on the ground that it was engaged in trading which was treated as an exempted service against which it cannot avail credits on inputs but the demand was solely based on the ground that out of two varieties of manufacturing waste, one is exempted from payment of Excise Duty for which demand is raised against non-reversal of the allegedly inadmissible credit availed on those

exempted products and it is a settled principle of Law, which has been affirmed by the Hon'ble Supreme Court through various decisions including that of *Maruti Suzuki India Ltd. Vs. Commissioner of Central Excise, Delhi-III* reported in 2016 (339) E.L.T. 287 (Tri.-Chan) [16.12.2015], that duty is not payable on waste and scrap of packing material of inputs and demand is not sustainable if it had travelled beyond the Show-cause notice or made contrary to it, as has been held in the *Commissioner of Central Excise Vs. Gas Authority of India Ltd.'s* (Respondent) case, cited *Supra*. In carrying forward the judicial precedent set by this Tribunal and by the Hon'ble Supreme Court of India, the following order is passed.

### **THE ORDER**

6. Both the appeals are dismissed and the order passed by the Commissioner of Central Excise, Customs & Service Tax, Aurangabad in Order-in-Original No. 57-58/CEX/Commr/2014 dated 21.08.2014 are thereby conformed. Cross objections are also disposed of.

(Order pronounced in the open court on 18.03.2024)

**(Dr. Suvendu Kumar Pati)**  
**Member (Judicial)**

**(Anil G. Shakkwar)**  
**Member (Technical)**