Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad

REGIONAL BENCH-COURT NO.2

Excise Appeal No. 12755 of 2019- DB

(Arising out of Order in Appeal CCESA-SRT-APPEAL-PS-378-2019-20 dated 30.08.2019 passed by the Commissioner (Appeals), CGST & Central Excise-Surat)

SMITA CONDUCTOR LTD ....**Appellant**
Survey No. 8, Village- Khutali,
Silvassa-396230

VERSUS

COMMISSIONER OF CGST AND
CENTRAL EXCISE-DAMAN ......**Respondent**
5TH Floor, GST Bhawan,
RCP Compound, Vapi, Gujarat-396191

APPEARANCE:
Shri Vipul Khandhar, Chartered Accountant appeared for the Appellant
Shri Mihir G Rayka, Additional Commissioner (AR) appeared for the Respondent

CORAM:
HON'BLE MEMBER (JUDICIAL), DR. AJAYA KRISHNA VISHVESHA
HON'BLE MEMBER (TECHNICAL), MR. SATENDRA VIKRAM SINGH

Final Order No. 10751/2026

DATE OF HEARING: 25.03.2026
DATE OF DECISION: 23.09.2026

SATENDRA VIKRAM SINGH

1. The appellant M/s. Smita Conductors Ltd., Silvassa are engaged in the manufacture of AAC Conductors & ACSR Conductors falling under CTH 76149000 of the Central Excise Tariff Act, 1985. The central excise officers observed that the appellant was collecting certain amount from their buyers towards "testing charges" but were not including the same in the assessable value of the goods for payment of central excise duty. They had earlier been issued show cause notice for the period 2009-2010, 2013-2014 and for the period from May-2014 to June-2015 and from July-2015 to March-2016. The present matter relates to demand of central excise duty on additional amount collected towards "testing charges" for the period April-2016 to June-2017. On the basis of data given by the appellant vide their letter dated 12.04.2017 and 28.09.2017, the officers found that the appellant had collected testing

charges of Rs.17,38,331/- from M/s. Power Grid Corporation of India Ltd on which central excise duty of Rs.2,17,291/- was payable.

1.1 The appellant were therefore issued a show cause notice dated 26.03.2018 proposing demand of central excise of Rs.2,17,291/- under Section 11A along with interest under Section 11 AA of the Central Excise Act, 1944 and penalty under Section 11AC and Rule 25 of the Central Excise Rules, 2002. The show cause notice was decided by the Adjudicating Authority vide order dated 30.05.2019, wherein, he confirmed the above demand of central excise duty along with interest and also imposed an equal amount of penalty under Rule 25 of the Central Excise Rules, 2002. Aggrieved with this order, the appellant filed appeal before the Commissioner (Appeal) who vide impugned order dated 30.08.2019 rejected their appeal and upheld the order of the lower authority.

2. Aggrieved with the order of learned Commissioner (Appeal), appellant filed appeal before this Tribunal wherein, they took the following grounds:-

- "Type test" is a very specific test which in the instant case, was conducted by M/s. Tag Corporation, Chennai at the request of the customer M/s. Power Grid Corporation of India. This is not a regular testing. Since, it is an additional test which is got done from a third party at the request of the customer, it's charges are reimbursed to them and therefore, it cannot be included in the assessable value of the goods for payment of central excise duty. This view is supported by decisions of various Tribunals.
- In the case of BHEL, it has been held by the Tribunal that the activity of quality control test at the instance of customer and being optional, is not required to be added in the assessable value. The expenses originally made are re-imbursed by their clients.

- They are selling goods to other customers without conducting this additional test and only in the case of M/s. Power Grid Corporation of India Ltd, this test is being got done at their special request.
- They rely on the decision of Larger Bench of the Tribunal in the case of Commissioner of Central Excise, Raipur Vs. Bhaskar Ispat Pvt. Ltd. reported at 2004 (167) ELT189 (Tri.-LB), wherein, it was held that, "cost of additional testing conducted at customer's request and borne by customer not includible in the assessable value of goods." They also relied on the decision of CESTAT Bangalore in the case of Raghavendra Pre-Stress Products (P) Ltd Vs. Commissioner of Central Excise, Tirupati reported at 2006 (205) ELT 743 (Tri- Bang.). In this case, it was held that quality control test is done at the instance of customers by RITES, hence, not includible in the assessable value of goods.
- In the case of J. J. Confectionery (P) Ltd. Vs. CCE. Cochin reported at 2007 (210) ELT 196 (Tri-Bang), it was held by the Tribunal that pre-delivery inspection at the option of buyer whose charges are paid by the buyer, is not includible in the assessable value of goods.
- In the case of CCE, Ahmedabad Vs. Johnson Pumps (India) Ltd. reported at 2013 (294) ELT 263 (Tri.- Ahmedabad), it has been held that cost of additional testing at consumer's request and borne by the customer is not included in the assessable value of goods. Expenses originally incurred being reimbursed by clients.
- CESTAT New Delhi in the case of Paxma Axle & Springs (P) Ltd Vs. CCE, New Delhi reported at 2000 (125) ELT 836 (Tribunal), has held that inspection charges borne by the buyer with regard to inspection carried out by a third party on account of the buyer, is not includible in the assessable value.
- They also rely on the following cases wherein, it has been held that additional/ special tests carried out at the instance of the buyer whose

cost was reimbursed, are not includible in the value of goods for payment of central excise duty:-

a) Collector of Central Excise, Jaipur Vs. Shree Pipes Ltd.-1998 (103) E.L.T. 94 (Tribunal),
b) S & S Power Switchgear Limited Vs. Addl. Collr of C. Ex., Madras-1998 (99) E.L.T. 507 (Tribunal)
c) Commissioner of Central Excise, Belapur Vs. Sulzer Pumps India Ltd.- 2015 (326) E.L.T. 619 (Tri. Mumbai)

- Similar issue in their own case has been decided by Commissioner (Appeal), Central Excise & Customs, Meerut-II vide OIA No. GZB-EXCUS-000-APP-0351-15-16 dated 09.03.2016. It was held that special test carried out by the third party at the request of the buyer would not form part of transaction value in terms of Section 4(3)(d) of the Central Excise Act, 1944.
- The situation in their case is revenue neutral. Had they paid central excise duty on testing charges, M/s. Power Grid would have been entitled to the Cenvat Credit. Likewise, they would also have been entitled to Cenvat Credit of service tax paid by the third party conducting the type test. They rely on the following decisions to plead ground of revenue neutrality:-

a) Vidarbha Iron & Steel Co. Ltd. Vs. Commissioner of Central Excise, Nagpur- 2013 (288) E.L.T. 352 (Bom.)

b) Wolfra Tech (P) Ltd. Vs. Commissioner of Central Excise, Mangalore- 2012 (284) E.L.T. 89 (Tri. Bang)

c) Daman Ganga Board Mills Pvt. Ltd. Vs. Commr. of C. Ex. Daman-2012 (276) E.L.T. 532 (Tri. - Ahmd.)

d) Rajhans Pressings Pvt. Ltd. Vs. Commissioner of C. Ex, Delhi-IV-2011 (271) E.L.T. 283 (Tri. - Del.)

e) Commissioner of C. Ex. Vs. Kitply Industries Ltd.- 2011 (267) ELT. 289 (S.C.)

f) Jay Yuhshin Ltd. Vs. Commissioner of Central Excise, New Delhi-2000 (119) E.L.T. 718 (Tribunal - LB)

g) Commr. of C. Ex. & Cus., Vadodara-II Vs. Indeos Abs Limited-2010 (254) E.L.T. 628 (Guj.)

h) Perstrop Chemicals India Pvt. Ltd. Vs. Commissioner of C. Ex., Daman-2013 (294) E.L.T. 115 (Tri. - Ahmd.)

- Penalty under Section 11AC is not imposable on them when issue involved relates to interpretation of statute. They rely on the following cases:-

  a) 2007 (210) E.L.T. 84 (Tri-Ahd) - White Silco Pvt. Ltd. Vs. CCE

  b) 2007 (207) E.L.T. 241 (Tri-Bom) - Ircon Intl. Ltd. Vs. CCE

  c) 2005 (187) E.L.T. 119 (Tribunal) - Anand Metal Industries Vs. CCE

- They also rely on the decision of Hon'ble Supreme Court in the case of Hindustan Steel Vs. State of Orissa reported at AIR 1970 SC 253. They prayed for allowing their appeal by setting aside the impugned order.

3. During arguments, learned Advocate pleaded that various case laws including that of Larger Bench of the Tribunal have held that cost of any optional test if carried out at the choice of the buyer, are not liable to be included in the value of the goods for payment of central excise duty. To support this point, he placed copy of the purchase order, of M/s. Power Grid Corporation of India Limited on the appellant bearing reference No.CC-CS/162-CC/CD-1182/3/G10/NOA/3946 dated 22.10.2011. Drawing attention of the bench, learned Advocate mentions that at para 3.1 of above PO, amount against type test charges is separately mentioned which is in addition to price of goods at its work's. He also pleads that the entire exercise is revenue neutral as duty paid by them would be eligible as credit to the buyer. He pleads that in the light of various case laws referred to by him, his appeal may be allowed and the demand in the case be set aside.

4. Opposing the prayer, learned AR reiterated the finding of the lower authority justifying demand of differential duty along with interest and penalty.

He submits that explanation to Section 4 of the Central Excise Act, 1944 clarifies that the transaction value includes any amount that the buyer pays to the assessee by reason of or in connection with the sale of goods. It is established from the facts of the case that amount representing type test charges have flown from the buyer to the appellant for sale of finished goods. Therefore, such charges are includible in the assessable value of goods and leviable to central excise duty as clarified vide CBIC Circular No. 643/34/2002-CX dated 01.07.2002. Drawing attention of the bench towards decision of Hon'ble Supreme Court in the case of CCE Mysore Vs. TVS Motors Company Ltd. reported at 2015-TIOL-299-SC-CX, he pleads that at para-11, it has been held that, the expression "*any amount that the buyer is liable to pay to*" shows that, apart from the price of the goods, the buyer should also be liable to pay an additional amount to the manufacturer/seller. In other words, sale of the goods would not be made unless the buyer also pays an additional amount to the manufacturer, apart from the price of goods. This is also supported by the use of expression "*by reason of or in connection with the sale*". The expression "*in connection with the sale*" would only mean that but for the payment of the additional amount, sale of the goods would not take place. On revenue neutrality, he placed reliance on the decision of CESTAT Delhi in the case of Shree Ranie Gums & Chemicals P Ltd Vs. CCE, Jaipur-II - 2017 (4) GSTL 340 (Tri-Del) and in the case of ACL Mobile Ltd Vs. CCE, Delhi - 2019 (20) GSTL 362 (Tri-Del), wherein, it has been held that revenue neutrality cannot mitigate tax liability of the assessee which is otherwise payable. He pleaded for dismissal of the appeal by upholding the impugned order.

5. Heard both the sides. The short issue to be decided in this matter is whether type testing charges received by the appellant from the buyer M/s. Power Grid Corporation of India Limited are includible in the value of goods for charging central excise duty? The appellant has cited several decisions including decision of the Larger Bench of the Tribunal in the case of Bhaskar

Ispat Pvt. Ltd. (cited supra) wherein, it is held that cost of additional testing conducted at the request of the customer and the cost of such testing being borne by the customer, are not includible in the assessable value of goods. Therefore, moot point to be decided here is whether "type test" got conducted by appellant through a third-party agency were optional or mandatory testing?

5.1 The appellant has pleaded that Type testing on ACSR Conductors is an additional testing which was done at the instance of the buyer. In India, Bureau of Indian Standards is the National Standard Body of India established under the BIS Act for the harmonious development of the activities of standardization, marking and quality certification of goods and for matters connected therewith or incidental thereto. It provides safe, reliable and quality goods; minimising health hazard to consumers; promoting exports and imports substitutes; control over proliferation of varieties etc through standardization, certification and tests. IS 398 (Part II) not only specifies various tests to be conducted on ACSR Conductors but also prescribes samples selection for type tests, methodology for testing, calculations as well as various parameters.

5.2 Type tests for ACSR conductors are done to verify design, material quality and the manufacturing process to examine whether the conductor can safely withstand the extreme mechanical, thermal and electrical stress of long- distance, high-voltage power transmission before it is mass-produced. These tests are to be done once on sample of conductor to be supplied under the contract. These tests are typically mandated by international specifications like IS 398 (Part-II/V), IEC 61089, or ASTM B232 and are to be conducted in accordance with the procedures laid down in IS 398 (Part-V) in certified, accredited laboratories. They are divided into Electrical, Mechanical, and Material-specific categories to ensure long-term grid reliability.

1. Mechanical Tests

- Ultimate Tensile Strength (UTS): Verifies the maximum mechanical load the conductor can bear before snapping. This ensures the conductor won't break under heavy winds, ice loads, or long spans.
- Stress-Strain Test: Measures how much the aluminum and steel components stretch under sustained tension, ensuring minimal sagging over the lifespan of the transmission line.
- Wrapping & Torsion Tests: Ensures the ductility and flexibility of both the aluminum wires and the galvanized steel core so they don't crack or snap when bent.
- Lay Ratio Check: Confirms the exact angle and tightness of the stranded wires to balance flexibility and electrical performance.

2. Electrical Tests

- DC Resistance Test: Measures the electrical resistance of the Aluminum wires at 20° C to check that the aluminum strands meet conductivity standards to minimize I^2R power losses and overheating during power transmission.
- Corona & Radio Interference (RIV) Tests: Conducted on high-voltage lines (more than 220 KV lines) to ensure the conductor's surface limits energy loss (corona) and minimizes buzzing noise or interference with nearby communication signals.

3. Material & Durability Tests

- Measurement of Diameter: Verifies the exact diameter of individual Aluminum and steel wires.
- Galvanizing Test: Assesses the uniformity and weight of the zinc coating on the steel core to prevent corrosion so that it won't rust or corrode in harsh outdoor environments.

- Chemical Analysis: Tests the purity of the raw aluminum, steel ingots and zinc so that these meet the metallurgical standards.

5.3 From above, we are of the view that type tests prescribed under IS 398 (Part II) are required for ensuring proper quality of ACSR Conductors used for transmission of electricity from the generation point to the substation or from one substation to another. Therefore, type tests undertaken as per the mandate and requirement of IS 398 (Part II) are to ensure safety in transmission of electricity from one place to other and are thus, mandatory test. These cannot be considered as optional testing. Accordingly, we hold that the additional amount received by the appellant towards "type test charges" was in relation to sale of ACSR Conductors to M/s. Power Grid Corporation India Limited as without such certificate/ report, sale would not happen. Thus, the amount received by the appellant is in connection with sale of goods and accordingly, includible in the value of goods (ACSR conductors) for the purpose of payment of excise duty as per decision of Hon'ble Supreme Court in the case of TVS Motors Company Ltd. (cited supra). The appellant has also raised a plea on revenue neutrality claiming that had they paid excise duty on Type test charges, the buyer M/s. Power Grid Corporation would have been entitled to the Cevnat Credit. Likewise, they would have also availed Cenvat Credit of input service on such testing charges. This is purely a presumption on part of the appellant as liability of excise duty on excisable goods and availment of Cenvat Credit are governed by two separate provisions. Leviability of excise duty on all excisable goods which are produced or manufactured in India, is governed by the provisions of Section 3 of the Central Excise Act,1944 whereas, availament of the Cenvat Credit of duty paid on inputs or capital goods or input service is subject to certain procedural requirements as specified under the Cenvat Credit Rules, 2004.

5.4 As regards equal penalty on the appellant under Rule 25 of the Central Excise Rules, 2002. We find that this issue in respect of the appellant is not a new one as they had been issued show cause notices for the earlier period also. Taking a lenient view in the matter, we reduce the quantum of penalty on the appellant to Rs.35,000/- under Rule 25 of the Central Excise Rules, 2002. Accordingly, we confirm duty demand on the appellant along with interest, but reduce the penalty amount on the appellant to Rs.35,000/-. With this modification, the impugned order is upheld.

6. Appeal of the party is party allowed.

(Pronounced in the open court on 23.09.2026)

(DR. AJAYA KRISHNA VISHVESHA)
MEMBER (JUDICIAL)

(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)

Bharvi