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

REGIONAL BENCH- COURT NO.3

Excise Appeal No. 11 of 2012

(Arising out of OIO-35-38/BVR/COMMISSIONER/2011 passed by Commissioner of Central Excise-BHAVNAGAR)

C.C.E. & S.T.,-Bhavnagar **........Appellant**
Plot No.6776/B-1...Siddhi Sadan, Narayan Upadhyay Marg,
Beside Gandhi Clinic, Near Parimial Chowk,
Bhavnagar,Gujarat-364001

VERSUS

M/s. Ultra Tech Cement Ltd **.......Respondent**
Village : Kovaya, Taluka : Rajula,
AMRELI, GUJARAT.

WITH
Excise Appeal No. 1312 of 2011

(Arising out of OIO-35-38/BVR/COMMISSIONER/2011 passed by Commissioner of Central Excise-BHAVNAGAR

M/s. Ultra Tech Cement Ltd **........Appellant**
(formerly Known As L & T Ltd.), Village-kovaya,
Taluka-rajula, AMRELI, GUJARAT

VERSUS

C.C.E. & S.T.,-Bhavnagar **.......Respondent**
Plot No.6776/B-1...Siddhi Sadan, Narayan Upadhyay Marg,
Beside Gandhi Clinic, Near Parimial Chowk,
Bhavnagar,Gujarat-364001

APPEARANCE:
Sh. Anand Nainawati , Advocate for the Appellant
Sh. T.K. Sikdar, Authorised representative for the respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU

Final Order No. A/ 11106-11107 /2019

DATE OF HEARING: 03.07.2019
DATE OF DECISION: 03.07.2019

RAMESH NAIR

The issue involved in that the appeals filed the assessee as well as by the Revenues is that whether the appellant is entitled for the Exemption Notification No. 67/95-CE dated 16.03.1995 in respect of clinker captively consumed within the factory for the manufacture of Cement cleared availing benefit under Notification No. 2/2001-CE dated 27.01.2001 and 16/2001-CE dated 26.03.2001 as amended. Whereby, the Exemption was granted in respect of removal of cement for the purpose of re-construction in the earthquake affected areas.

2. Sh. Anand Nainawati, Ld. Counsel appearing on behalf of assessee submits that in the appeal filed by the assessee, the period involved in February 2001 to May 2001 which is prior to the Notification No. 31/2001-CE dated 01.06.2001 by which the Original Notification No. 67/95-CE dated 16.03.1995 was amended. He submits that even for the period prior to amendment, this Tribunal has considered the identical issue in the case of Shree Digvijay Cement Co. Ltd. Vs CCE., Rajkot vide Final Order No. A/ 10403/ 2019 dated 01.03.2019 whereby the demand was set aside and appeal was allowed. As regard, the Revenue's appeal which is for the period April, 2002 to March 2004. He submits that the Revenue's appeal is on the ground that the Commissioner could not have decided the issue related to reversal of credit as in the original proceeding, the issue was related to denial of Exemption Notification No. 67/95-CE and not related to reversal of credit, since, the Tribunal order was only to consider the Section 71 of the Finance Act, 2010 that order has not been challenged, therefore, the Commissioner could not have decided other issues. In this regard, he submits that the remand was open. The Tribunal also not decided regarding the reversal of credit in connection with the Notification No. 67/95-CE, therefore, there was no specific direction in the remand order, even the issue of reversal of credit and grant Notification No. 67/95-CE is a part of the larger issue covered under Section 71 of Finance Act, 2010, therefore, there is no error on the part of the Commissioner in deciding the issue related to reversal of credit and grant of Notification No. 67/95-CE. He also relied upon the following judgments:-

- Sri Balaji Cable Industries-1987 (29) ELT 77.
- Parmali Wallace Ltd-1993 (66) ELT 619

3. Sh. T.K. Sikdar, Ld. Assistant Commissioner (AR) appearing for the Revenue reiterates the finding of the impugned order which is against the assessee and ground of the appeal for the Revenue's appeal.

4. We have carefully considered the submission made by both the sides and perused of the record. We find that in the assesse's appeal, the period is February 2001 to May 2001 during which the Exemption Notification No. 67/95 was denied. We find that this issue has been considered in the case of Toyota Kirloskar Motor Ltd. (Supra), wherein, it was held that the benefit of Exemption Notification No. 67/95 is available even for the period prior to the

amendment Notification No. 31/2001-CE. Considering the said decision of the Bangalore Tribunal, this Tribunal also given the relief in the case of Shree Digvijay Cement Co. Ltd wherein the following order was passed

> *"4. We have carefully considered the submissions made by both sides and perused the record. We find that the entire controversy arose because of the reason that appellant have availed Cenvat credit in respect of inputs namely fuel. As per the Revenue, the appellant have not discharged the obligation as per Rule 6, accordingly they are not eligible for exemption under Notification No. 2/2001-CE and 16/2001-CE. We find that Notification No. 2/2001-CE reads as under :- " Donations for relief and rehabilitation of the people affected by the Earthquake in the State of Gujarat — Exemption from excise duty In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944), read with sub-section (3) of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts all goods falling under the First and Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) donated or purchased out of cash donations, for the relief and rehabilitation of the people affected by the earthquake in the State of Gujarat from the whole of the duty of excise leviable thereon under both the above mentioned Acts, subject to the following conditions, namely (i) that it is certified by the manufacturer of such goods on the relevant clearance documents that the goods are intended to be donated for the relief and rehabilitation of the people affected by the earthquake in the said State without making any charge therefore"; (ii) that the goods are sent directly from the factory of the manufacturer or warehouse to the Central Government, the Government of Gujarat; or as the case may be, the relief agencies of the Central Government, the Government of Gujarat including the relief agencies duly approved by the Government; and (iii) that the manufacturer produces before the jurisdictional Deputy Commissioner or the Assistant Commissioner of Central Excise, as the case may be, within three months from the date of removal of the goods or within such extended period as the said officer may allow, a certificate from the District Magistrate of the affected area in the State of Gujarat that the said goods have been donated for use for the aforesaid purpose. 2. This notification shall remain in force up to and inclusive of the 31st day of July, 2001. " From the reading of the above notification, it is clear that the goods supplied as donation for earthquake relief*

are exempted. In the appellant's case, even though the clinker was not supplied but though the cement supplied contains the clinker and therefore, it is clear that clinker is deemed to have been supplied for earthquake relief. Therefore, the appellant are entitled for the exemption under Notification No. 2/2001-CE. In such case, even if appellant is not entitled for Notification No. 67/95-CE the exemption otherwise is available under Notification No. 2/2001-CE. For the subsequent period, as regards the claim of the appellant for Notification No. 16/2001-CE, we find that only lapse is that the appellant have availed and retained Cenvat credit on fuel. Though the appellant have discharged obligation prescribed under Rule 6 (2) of Cenvat Credit Rules, 2004 but by availing Cenvat credit on fuel, the obligation under sub Rule 1 of Rule 6 of Cenvat Credit Rules, 2004 has not been discharged. 5. Shri J.C. Patel, Ld. Counsel during arguments submitted that they are ready to reverse the Cenvat credit on fuel if required therefore, they are entitled for the Notification No. 16/2001-CE. We find that the appellant under circumstances not entitled for Cenvat credit in respect of the value attributed to the exempted goods. In terms of Rule 6(1) of Cenvat Credit Rules, 2004, if the appellant have reversed full Cenvat credit attributed to the goods cleared under Notification No. 16/2001-CE, the appellant become eligible for exemption. Since, the ld. Counsel has agreed to reverse the credit, we direct the appellant as well as the Adjudicating Authority to ensure the reversal of Cenvat credit on fuel attributed to the goods cleared under exemption Notification No. 2/2001-CE and 16/2001-CE, accordingly, the appellant shall be eligible for exemption under both the notifications. With our above observations, we set-aside the impugned order and allow the appeal by way of remand to the Adjudicating Authority."

5. From the above decision, it can be seen that the Exemption under Notification No. 67/95-CE was also extended for the period prior to the amendment made by Notification No. 31/2001-CE. Therefore, the appellant is entitled for the Exemption Notification No. 67/95-CE even for the period prior to Notification No. 31/2001-CE i.e. for the period February, 2001 to May 2001.

6. As regard, the Revenue's appeal on going through the remand order, we do not find anything in the order which restricts the Ld. adjudicating authority to deal with the other issues such as reversal of credit and consequent relief. The remand order only directs the Commissioner to decide

the matter in the light of Section 71 of Finance Act, 2010, it is open for the Commissioner to decide the issue of reversal of credit and consequent relief i.e. grant of Exemption Notification No. 67/95-CE, therefore, the order is grant and proper to the extent it, dropped the demand on the basis of reversal of credit.

7. Accordingly, as a result assesse's appeal is allowed and the Revenue's appeal is dismissed.

(Dictated & Pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Prachi