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

REGIONAL BENCH- COURT NO.3

Excise Appeal No.593 of 2012

(Arising out of OIA-226/2012/COMMR-A-/RBT/RAJ passed by Commissioner of Central Excise, Customs and Service Tax-RAJKOT)

M/s. Royal Recycling Industries ....**Appellant**
Plot No. 347, Gidc, Phase-Ii, Dared,
Jamnagar, Gujarat-361004.

VERSUS

C.C.E. & S.T.-Rajkot ....**Respondent**
Central Excise Bhavan,
Race Course Ring Road...Income Tax Office,
Rajkot, Gujarat-360001

APPEARANCE:
Sh. P.V. Sheth, Advocate for the Appellant
Sh. G. Jha, Authorised representative for the Respondent

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

Final Order No. A/ 11140 /2019

DATE OF HEARING: 12.07.2019
DATE OF DECISION:12.07.2019

RAMESH NAIR

The brief facts of the case are that the appellant being a 100% EOU stored the goods outside the factory premises on which the appellant had claimed exemption while imported the goods being a 100% EOU. The case was investigated by the DGCEI and it was found that the appellant have stored the imported goods outside the factory premises. The case of the department is that since the goods were removed from 100% EOU, the appellant was liable to pay duty accordingly, SCN was issued for demand of duty on the goods stored outside. The appellant filed application before Settlement Commission for settlement of the demand case. The settlement Commission has passed the order according to which the appellant had paid the duty subsequently. Since the duty was paid on the inputs they have claimed cenvat credit. The adjudicating authority has rejected their claim by a letter issued by a Superintendent. The appellant filed an appeal before the Commissioner (Appeals) who remanded the matter with an observation that the order should have been passed by the Assistant Commissioner. He also directed the department to issue SCN. Thereafter the appellant approached the Jurisdictional Assistant Commissioner with their claim of cenvat credit, the same was rejected on the ground that there is no provision in Cenvat Credit Rules for allowing cenvat credit tp 100% EOU. The appellant filed an appeal before the Commissioner (Appeals) who rejected the appeal on the ground that the appellant being a 100% EOU was not entitled to cenvat credit prior to issuance of Board Circular No. 799/32/2004-CX dated 23.09.2004, therefore, the present appeal.

2. Sh. P.V. Sheth, Ld. Counsel appearing on behalf of the appellant submits that they claim cenvat credit on the inputs which was stored outside the factory premises, however the same was accounted for in their books of accounts. In this regard, he also referred to various records wherein the receipt of inputs was recorded. As regard the denial of credit by the Commissioner (Appeals) he submits that the Board Circular only clarify the legal position which was already existing even prior to issuance of the circular, therefore, the cenvat credit was available to the 100% EOU before issuance of the Circular.

3. Sh. G. Jha, Ld. Superintendent (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order and further submits that since the case was investigated by the DGCEI, therefore, it appears that there is a fraud. He also submits that since the appellant have approached the Settlement Commission, it shows that there is fraud on the part of the appellant, therefore, whatever duty they have paid for the inputs they are not entitled for cenvat credit.

4. I have carefully considered the submission made both the sides and perused the records. I find from the impugned order that the Commissioner has not denied the cenvat credit on the ground of suppression. Moreover, the appellant has claimed that they have recorded the goods, which was lying outside the factory premises, in their books of accounts, therefore, it cannot be said that there is suppression. Ld. Commissioner (Appeals) denied the cenvat credit only on the ground that the Board has clarified about entitlement of

cenvat credit to the 100% EOU by a Circular dated 23.09.2004 therefore before this date the credit is not permissible. I completely reject the contention of the Ld. Commissioner (Appeals) for the reason that the Board is not the authority to make law whether the credit is admissible or not. The Board has only clarified the existing law regarding entitlement of the cenvat credit, therefore, the Board clarification is a retrospective and not the prospective. Since the lower authorities have not verified the records that whether the goods had been recorded in the books of accounts and other excise records by the appellant, the matter needs to be remitted back only for verification purpose. Accordingly, I set aside the impugned order and remand the matter to the adjudicating authority for passing a fresh order after verifying the facts as discussed above.

(Dictated & Pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

Neha