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

REGIONAL BENCH- COURT NO.3

Excise Appeal No. 342 of 2010

(Arising out of OIO-29/DEM/2009 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

M/s. Radhika Syntex Pvt Ltd **........Appellant**
433, Gidc, Pandesara, Surat, Gujarat

VERSUS

C.C.E & S.T-Surat-i **.......Respondent**
New Building...Opp. Gandhi Baug,
Chowk Bazar, Surat,
Gujarat-395001

WITH
Excise Appeal No. 343 of 2010

(Arising out of OIO-29/DEM/2009 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

M/s. Kamal N Agarwal **........Appellant**
Director, Radhika Syntex Pvt Ltd., 433, Gidc, Pandesara,
Surat, Gujarat

VERSUS

C.C.E & S.T-Surat-i **.......Respondent**
New Building...Opp. Gandhi Baug,
Chowk Bazar, Surat,
Gujarat-395001

APPEARANCE:
Sh. K.I. Vyas, Advocate for the Appellant
Sh. S.N. Gohil, Authorised representative for the Respondent

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

Final Order No. A/ 11639-11640 /2019

DATE OF HEARING: 21.08.2019
DATE OF DECISION:21.08.2019

RAMESH NAIR

The appellant are processing of gray fabrics on job work basis, they availed cenvat credit on the invoice which is consigned to the appellant wherein the buyers name is mentioned as a principles name. The case of the department is that the party who issued the invoice, they are non-existing unit, therefore, the invoices issued by such non-existenting unit did not issued duty paying document for availing the cenvat credit, accordingly the cenvat credit was denied.

2. Sh. K I Vyas, Ld. Counsel appearing on behalf of the appellant submits that on merit the issue stand decided against the assessee by the Hon'ble Gujarat High Court in the case of Prayagraj Dyeing & Printing Mills Vs. Union of India-2013 (290) ELT 61 (Guj.) whereas in the same judgment the benefit of limitation was extended on the ground that the assessee who are availing the cenvat credit are not the party to the fraud committed by the supplier of the goods. He also submits that following this Hon'ble Gujarat High Court judgment which was upheld by the Supreme Court this Tribunal in the case of Shri. Labdhi Prints 2018 (360) ELT 138 (Tri.-Amd.) and in the case of Rameshwar Textile Mills Ltd in Final Order No. A/12489-12491/2018 dated 01.11.2018 extended the benefit of limitation and the demand for the period beyond normal period was set aside.

3. Sh. S.N. Gohil, Ld. Superintendent (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. We find that on merit the issue was decided against the assessee, however on limitation the demand was dropped on the ground that the assessee are not the party to the fraud, if any committed, by the supplier of goods. In the present case also there is no finding by the lower authorities that the appellant is party to the fraud, the facts are identical to the case decided in the judgment cited by the Ld. Counsel, therefore, following the ratio of the Hon'ble Gujarat High Court judgment in the case of Prayagraj Dyeing & Printing Mills (Supra) and other decision of this Tribunal in the case of Shri. Labdhi Prints and M/s. Rameshwar Textile Mills Ltd (Supra), the demand is not sustainable on limitation.

4. Considering the facts of the present case we find that the entire demand is beyond the normal period hence the same will not sustain on limitation. Accordingly the demand is set aside on time bar and appeals are allowed.

(Dictated & Pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Prachi