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

REGIONAL BENCH- COURT NO.3

Excise Appeal No.12951 of 2018

[Arising out of OIA-90-AGU-ADT-VAD-2017-18 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I]

M/s. Alkem Laboratories Ltd **........Appellant**
Plot No. 167/2, Mahatma Gandhi Udyog Nagar, Dabhel,
Daman, Daman (Ut)-396210.

VERSUS

C.C.E. & S.T.-Daman **........Respondent**
3rd Floor...Adarsh Dham Building, Vapi-Daman Road, Vapi
Opp.Vapi Town Police Station, Vapi, Gujarat-396191

APPEARANCE:
Sh. Mahesh Raichandani, Advocate for the Appellant
Sh. T.K. Sikdar, Authorised representative for the Respondent

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

Final Order No. A/ 11777 /2019

DATE OF HEARING: 13.09.2019
DATE OF DECISION:13.09.2019

RAMESH NAIR

The issue involved is that whether in respect of the goods procured duty free under Notification No. 43/2001-CE(NT) and cleared without use for intended purpose, the excise duty can be paid from cenvat or otherwise.

2. Sh. Mahesh Raichandani, Ld. Counsel appearing on behalf of the appellant submits that the issue is squarely covered by the decision of this Tribunal in the case of Shree Rajasthan Syntex Ltd. Vs CCE Jaipur-II 2018 (360) ELT 106 (Tri-Del.), wherein in respect of similar issue the Tribunal held that cenvat credit can be utilized for payment of duty on the goods cleared which was procured under Notification 43/2001-CE(NT).

3. Sh. T. K. Sikdar, Ld. Assistant Commissioner (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order. He submits that the facts in the case of Shree Rajasthan Syntex Ltd. is different from

the facts of the present case inasmuch as that the goods was used in the manufacture but the manufactured goods was cleared to the domestic market whereas in the present case goods were not used for manufacture of exported goods and it was diverted to their sister concern, therefore, the decision in the case of Shree Rajasthan Syntex Ltd. (Supra) is distinguishable.

4. Heard both the sides and perused the records. I find that the limited issue to be decided that in respect of goods procured under Notification 43/2001-CE(NT) for the clearance of the same without putting to use for manufacture of exported goods, demand of duty can be paid by utilizing cenvat credit. I find that the identical issue has been considered by this Tribunal in the case of Shree Rajasthan Syntex Ltd. (Supra) and the payment of duty on the goods procured under Notification 43/2001-CE(NT), by utilization from cenvat credit for payment has been allowed. The submission of Ld. AR that the facts are different in both the cases, I find that fact will not have any implication for the reason that the issue involved is payment of duty on the goods procured under Notification 43/2001-CE(NT) by utilizing cenvat credit. Therefore, in my considered view, the decision of Shree Rajasthan Syntex Ltd. (Supra) is squarely applicable in the present case and following the same the impugned order is set aside. appeal is allowed.

(Dictated & Pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

NEHA