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

REGIONAL BENCH- COURT NO.3

Excise Appeal No.12495 of 2018

(Arising out of OIA-CCESA-SRT-APPEALS-PS-090-2018-19 dated 22/06/2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

Viltans Polyplast ......**Appellant**
328/3, Behind Patel Cricket Ground, Kachigam, Nani Daman,
DAMAN,
DAMAN (UT)

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:
Shri Jagdish Surti, Advocate for the Appellant
Sh. R.K. Bhashkar, Authorised representative for the Respondent

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

Final Order No. A/10739 / 2020

DATE OF HEARING: 03.03.2020
DATE OF DECISION:03.03.2020

RAMESH NAIR

The brief facts of the case are that the appellant have availed the Cenvat Credit in respect of invoices issued from their own unit where under raw material and capital goods have been transferred to the appellant's unit. The Cenvat Credit was denied by the lower authority on the ground that as per Rule 10, appellant should have taken permission, and then only credit can be transferred.

2. Shri Jagdish Surti, Learned Counsel appearing on behalf of the appellant submits that firstly Rule 10 is not applicable in the present case for the reason that there is no transfer of unutilized credit from one unit to other unit, i.e. the appellant's unit. Their other unit has cleared the input and capital goods under Rule 3(5) of Cenvat Credit Rules, 2004. He submits that the goods have been cleared on payment of duty out of which major amount was paid by cash and small amount was debited from Cenvat account. Therefore, Rule 10 has no application. He further submits that even if Rule 10 is made applicable, there is no violation of Rule 10 as no provision of prior permission is required under Rule 10. He placed reliance on the following judgments:

1. Shree Ram Industries vs Central Excise & Service tax, Bangalore-V 2019 (365) E.L.T. 616 (Tri-Bang.)
2. Flex Art Foil Pvt. Ltd. vs Commissioner of C.Ex., Daman 2010 (260) E.L.T. 261 (Tri- Ahmd.)

3. Shri Rakesh Bhashkar, learned Superintendent (Authorised Representative) appearing on behalf of the Revenue reiterates the findings for the impugned order.

4. I have heard both sides and perused the records. I find that the facts of the present case is that the appellants have cleared the goods i.e. inputs and capital goods on payments of duty from their old location to their new present location. This removal is clearly covered by Rule 3(5) of Cenvat Credit Rules, 2004 according to which the appellant is allowed to clear inputs as such and capital goods used/as such on payment of duty covered by invoice issued under Rule 9. I find that the appellant have correctly followed the procedure for removal of goods under Rule 3(5) of Cenvat Credit Rule, 2004. The invoice issued by their old location is a duty paying invoice. The goods cleared under the said invoices were received by the appellant at their new location and there is no dispute in this fact. Therefore, there is no reason to deny the credit. However, in the present transaction, Rule 10 has no application. Lower authorities have denied the credit on the ground that the appellant have not taken the prior permission. Even by any stretch of imagination if Rule 10 is applicable, there is no provision of prior permission to be obtained by the assessee. Therefore, the impugned order is not sustainable. Hence, the same is set aside. The appeal is allowed.

(Dictated & Pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

Diksha