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

REGIONAL BENCH- COURT NO.3

Excise Appeal No. 13172 of 2018

(Arising out of OIA-BHV-EXCUS-000-APP-291-292-2018-19 dated 24/09/2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-RAJKOT)

M/s. Renaissance Jewellery Ltd **.........Appellant**
Plot No. 2302, Hill Drive, Talaja Road,
Bhavnagar,
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

<u>APPEARANCE:</u>
Shri. Rahul Gajera, Advocate for the Appellant
Shri. H. K. Jain Assistant Commissioner(AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
Final Order No. <u>A/ 11126 /2020</u>

DATE OF HEARING: 06.03.2020
DATE OF DECISION:03.07.2020

RAMESH NAIR

The issue involves is that whether the appellant is entitled for Cenvat Credit in respect of Service Tax for Outward Freight Charges i.e. Indian Customs Ports to foreign destination for transportation of export goods.

2. Shri Rahul Gajera, Learned Counsel appearing on behalf of the appellant at the outset submits that for the same period the appellant had applied for refund claim in respect of the Outward Freight Charges under 5 of the Cenvat Credit Rules, 2004. The refund sanctioning authority after examining the eligibility of the Cenvat Credit granted the refund by passing an Adjudication Orders and the same has attained finality therefore, subsequently raising objection on admissibility of the Input Service Credit is not legal and correct. He submits that the revenue cannot take two yard

sticks, one for allowing the credit and other for deciding the refund which has been settled in following judgments:-

- CCE vs CONVERGYS INDIA P. LTD. – 2009 (16) STR 198
- CONVERGYS INDIA SERVICES PVT. LTD. vs CCX, DELHI-2017 (48) STR 173 (Tri.- Chan.)
- MORGAN STANLEY ADVANTAGE SERVICES LTD. vs CST-2015 (37) STR 639
- MORGAN STANLEY INVESTMENT MGMT. PVT. LTD. vs CCGST-2018 (365) ELT 1158 (Tri.Mumbai)

2.1 He also submits that the majority of demand being under extended period is time barred as there is no suppression of fact, the appellant were filing ER2 returns. There is no specific column in such return for disclosing the nature of service therefore, there is no suppression of fact on the part of the appellant and the demand is hit by limitation. He also placed reliance on this tribunal judgment in the case of COMMISSIONER OF CENTRAL EXCISE, INDORE V. MEDICAPS LTD. 2011 (24) S.T.R. 572 (Tri.-Del.).

3. Shri H.K. Jain, Learned Authorized Representative appearing on behalf of the revenue reiterates the finding of the impugned order.

4. I have carefully considered the submissions made by both the sides and perused the records. I find that the appellant have been exporting their goods and in context of export of goods they had claimed refund in respect of Input Services used in relation to the export of goods under Rule 5 of Cenvat Credit Rules, 2004. The Sanctioning Authority in following Orders In Original sanctioned the refund of Cenvat Credit in respect of Input Services including Outward Freight Charges.

- ORDER-IN-ORIGINAL No R-248/Refund/13-14. Dated 29.11.2013.
- ORDER-IN-ORIGINAL No R-90/Refund/14-15. Dated 23.06.2014.
- ORDER-IN-ORIGINAL No R-271/Refund/14-15. Dated 06.12.2014.
- ORDER-IN-ORIGINAL No R-350/Refund/14-15. Dated 20.01.2015.
- ORDER-IN-ORIGINAL No R-112/Refund/15-16. Dated 19.06.2015.
- ORDER-IN-ORIGINAL No R-346/Refund/15-16. Dated 04.12.2015.
- ORDER-IN-ORIGINAL No R-47/Refund/15-16.
- ORDER-IN-ORIGINAL No R-423/Refund/15-16. Dated 02.02.2016.

4.1 The above Orders In Original have been accepted by the revenue, as no further appeal was made. It is obvious that the refund claim under Rule 5 is sanctioned only after ascertaining the admissibility of Cenvat Credit in respect of Input Service for which the refund is sought for. Therefore, the issue of admissibility of Input Service has been clearly examined by the refund sanctioning authority and the issue attained finality therefore, subsequently issue the Show Cause Notice on the same Input Service Credit is not proper and legal. I agree with the submission of the Learned counsel that revenue cannot take two yard sticks, one for allowing the refund and other for allowing the Cenvat Credit.

5. I further observed that the appellant have been filing the refund claim periodically from 2013 onwards in respect of the Input Service which is the subject matter in this case. Moreover appellant had been filing ER2 returns regularly. Therefore there is no suppression of fact on the part of the appellant, hence the demand is also hit by limitation.

6. As per my above observations and findings, I am of the view that the demand in the present case is not sustainable. Accordingly, the impugned order is set aside. Appeal is allowed with consequential reliefs.

(Pronounced in the open court on_03.07.2020)

(RAMESH NAIR)
MEMBER (JUDICIAL)

Mehul