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

REGIONAL BENCH- COURT NO.3

Excise Appeal No.12588 of 2018

(Arising out of OIA-AHM-EXCUS-001-APP-015-2018-19 dated 04/07/2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)

Aia Engeneering Ltd **........Appellant**
115,Gvmm,Odhav
AHMEDABAD, GUJARAT

VERSUS

C.C.E.-Ahmedabad-i **.......Respondent**
C. Ex Bhavan,
Nr Panjrapole & Polytechnic, Ambavadi,
Ahmedabad, Gujarat-380015

APPEARANCE:
Shri Amal Dave, Advocate for the Appellant
Shri. Vinod Lukose, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
Final Order No. A/ 11275 /2020

DATE OF HEARING: 15.10.2020
DATE OF DECISION: 21.10.2020

RAMESH NAIR

The issue involved in the present case is that whether the appellant is entitled for refund of accumulated unutilized Cenvat Credit of Krishi Kalyan Cess lying in his cenvat account as on 30.6.2018 due to reason of implementation of GST from 1.7.2017.

2. Shri Amal Dave, Learned counsel for the appellant appearing on behalf of the appellant submits that the accumulated unutilized Cenvat credit is liable to be refunded in view of the following judgments:-

- UNION OF INDIA v/S. SLOVAK INDIA TRADING CO. PVT. LTD.- 2006 (201) ELT 559 (Kar.)
- UNION OF INDIA v/S. SLOVAK INDIA TRADING CO. PVT. LTD.- 2008 (223) ELT A170 (S.C.)
- SLOVAK INDIA TRADING CO. PVT. LTD. v/S. CCE, BANGALORE- 2006 (205) ELT 956 (Tri.-Bang.)
- WELCURE DRUGS & PHARMACEUTICALS LTD. v/S. CCE, JAIPUR- 2018 (15) GSTL 257 (Raj.)

- SHALU SYNTHETICS PVT. LTD. v/S. CCE, VAPI- 2017 (346) ELT 413 (Tri.-Ahmd.)
- COMMR. v/S. SHREE KRISHNA PAPER MILLS AND INDUSTRIES LTD. MANU/PH/3052/2019.

2.1 He also submits that in one of the case, the Hon'ble Gujarat High Court has allowed the refund of unutilized Cenvat Credit by upholding the tribunal's judgment in the case of M/s. ISHAN COPPER PVT. LTD.- 2018 TIOL 1361-SC-AHHM-CX, which is binding on this tribunal being order of jurisdictional High Court.

3. On the other hand, Shri Vinod Lukose, Learned Superintendent (Authorized Representative) appearing on behalf of the revenue reiterates the finding of the impugned order. He submits that that appellant is not entitled for the refund of unutilized cenvat credit in the light of the following judgments:-

- CELLULAR OPERATORS ASSOCIATION OF INDIA [2018 (14) G.S.T.L. 522 (Del.)]
- M/S. STEEL STRIPS [2011-TIOL-656-CESTAT-Del-LB]
- M/s. GAURIPLASTICULTURE PVT LTD.- [2019-TIOL-1248-HC-MUM-CX-LB]
- M/s. IDOL TEXTILE LTD [2019-TIOL-2675-CESTAT-MUM]
- M/s. MAXHEAL PHARMACEUTICALS (India) [2017-TIOL-2937-CESTAT-MUM]
- M/s. ZENITH SILK MILLS PVT LTD [2017-TIOL-2375-CESTAT-AHM]
- M/s. PHOENIX INDUSTRIES PVT LTD [2014-TIOL-1981-CESTAT-MUM]
- SUTHERLAND GLOBAL SERVICES PVT LTD [2020-TIOL-192-HC-MAD-GST]
- M/s. BHEL [2020-TIOL-255-CESTAT-HYD]
- D.J. MALPANI [2019 (366) E.L.T. 385 (S.C.)]
- MANOJ NARULA v/S. UOI [WRIT PETITION (CIVIL) NO. 289 OF 2005]

3.1 He submits that now Larger Bench of the Hon'ble Bombay High Court has finally held that the refund of unutilized credit is not permissible in absence of any statutory provision in the case of M/s. Gauri Plasticulture Pvt. Ltd. V/s. The Commissioner of Central Excise, as per the Larger Bench judgment of the High Court which will prevail over all the earlier judgments, appellant is not entitled for refund.

4. I have heard both the sides and perused the records. I find on the subject issue much water flown and this tribunal's two larger bench

judgments one in the case of M/s. Gauri Plasticulture Pvt. Ltd. and in case of M/s. Steel Strips (supra) are contradictory. There are various high courts judgments such as SLOVAK INDIA TRADING CO. PVT. LTD.(supra) from Karnataka High Court, M/s. WELCURE DRUGS & PHARMACEUTICALS LTD. of Hon'ble Rajasthan High Court and M/s. JAIN VANGUARD POLYBUTLENE LTD from Bombay High Court. Now the larger bench of the Bombay High Court in the case of M/s. Gauri Plasticulture Pvt. Ltd. though after considering the SLOVAK INDIA TRADING CO. PVT. LTD. of Karnataka High Court which was upheld by the Hon'ble Supreme Court taken a view that accumulated unutilized Cenvat Credit cannot be refunded.

4.1 I find that the Larger Bench judgment of the Bombay High Court has been challenged before the Hon'ble Supreme Court in SLP(C) No. 007390/2020 registered on 09.06.2020 which is pending at present. In this position of law I am of the view that no purpose will be served if any order is passed by this tribunal when the matter is seized with the Hon'ble Supreme Court.

5. Accordingly, I set aside the impugned order and remand the matter to the Adjudicating Authority for passing the denovo order after the outcome of Hon'ble Supreme Court in the case of BOMBAY DYEING & MANUFACTURING CO. LTD. V/s. CCE in the aforementioned SLP. Appeal is allowed by way of remand to the adjudicating authority.

(Pronounced in the open court on 29.10.2020)

(RAMESH NAIR)
MEMBER (JUDICIAL)

Mehul