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

REGIONAL BENCH-COURT NO. 3

Excise Appeal No. 13633 of 2013 -DB

(Arising out of OIO-80/COMMR/2013 dated 22/07/2013 passed Commissioner of Central Excise, Customs and Service Tax-RAJKOT)

Sepal Ceramic Pvt Ltd ....**Appellant**
Morbi-halvad Road, At-mahendranagar,
Morbi, Gujarat

VERSUS

C.C.E. & S.T.-Rajkot ......**Respondent**
Central Excise Bhavan,
Race Course Ring Road...Income Tax Office,
Rajkot, Gujarat - 360001

APPEARANCE:
Shri P.D. Rachchh, Advocate for the Appellant
Shri Prakash Kumar Singh, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. C.L.MAHAR

Final Order No. A/ 11214 /2023

DATE OF HEARING: 17.02.2023
DATE OF DECISION:07.06.2023

RAMESH NAIR

The issue to be decided before us is that -

(i) whether benefit of concessional rate of duty of excise under Notification no 5/2006-CE dated 01.03.2006 subject to the condition that if no credit of duty paid on the inputs used in or in relation to manufacture of such ceramic tiles has been taken under Rule 3 or Rule 13 of Cenvat Credit Rules, 2004 can be denied especially when the appellant had availed cenvat credit on part of capital goods viz. refractory materials like liming brick and hollow bricks , bell flow (84748090), ceramic rollers

(69149000) which were used in manufacture of roller kiln" of 84178090 and which is covered by definition of capital goods.

(ii)Alternatively when entire cenvat credit of Rs. 2,91,602/- is paid with interest of Rs 3,31,644/- whether same can be considered as if no cenvat credit was availed and there was no violation of condition of the said notification as per the settled position of law.

2. Shri P.D Rachchh, Learned Counsel appearing on behalf of the appellant submits that the exemption under Notification No. 05/2006 -CE dated 01.03.2006 was denied on the ground that the condition No.5 of the Notification has been violated in as much as the appellant have availed cenvat credit on refractory materials which were used in manufacture of Roller Kiln. The contention of the Revenue is that the refractory material since used in manufacture of Roller Kiln is an input, for the reason that as per definition of input it also includes the goods used in the manufacture of capital goods. It is his submission that the refractory material on which the credit was taken is a capital goods since the same is part of capital goods, therefore, on availment of cenvat credit on capital goods condition No. 5 of the Notification has not been violated.

2.1 He further submits that it is alternate pleading of the appellant that even though the cenvat credit was availed but the entire cenvat credit of Rs. 2,91,602/- with interest of Rs. 3,31,644/- was paid back. Therefore, even if initially cenvat credit was availed after payment thereof with interest, the condition No. 5 of the notification stand complied with. On this submission he placed reliance on following judgments:

- Hello Minerals Water (P) Ltd. Vs. Union of India- 2004 (174) ELT 422 (All.)
- Commissioner of Central Excise Vs. Ashima Dyecot Ltd- 2008 (232) ELT 580 (Guj.)
- Face Ceramics Pvt. Ltd Vs. Commissioner of Central Excise, Rajkot – 2010 (249) ELT 119 (Tri.Ahmd.)
- Commissioner of Central GST and CX Vs. Himmat Glazed Tiles – 2018 (15) GSTL 486 (Guj.)

3. Shri Prakash Kumar Singh, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order. He submits that the refractory material was used in the manufacture of capital goods namely Roller Kiln. As per the definition of input, input also includes the goods manufactured in the capital goods. Therefore, in the facts of the present case the refractory material is qualified as input since the same was used as goods used for manufacture of capital goods.

4. We have carefully considered the submission made by both sides and perused the records. In our view this case can be decided on the second issue that the appellant had paid the entire cenvat credit of Rs. 2,91,602 /- along with interest. We find that this issue has been considered in catena of judgment mainly in case of Chandrapur Magnet Wires (P) Ltd vs. Collector – 1996 (81) ELT 3 (SC). This landmark judgment of Apex court was followed

by the Hon'ble High Court of Allahabad in the case of Hello Minerals Water (P) Ltd. Vs. Union of India (Supra). In these judgments it has been held that even though initially the cenvat credit is availed but when subsequently the same was paid back along with interest the situation becomes as if no cenvat credit was availed. Accordingly, Condition No. 5 of the notification in the present case stands complied with. Therefore, the exemption under Notification No. 05/2006 - CE is available to the appellant. However, the Revenue is at liberty to verify the correctness of the payment of cenvat credit and interest there upon.

5. With above observation, we set aside the impugned order and allow the appeal in the above terms.

(Pronounced in the open court on 07.06.2023)

RAMESH NAIR
MEMBER (JUDICIAL)

C.L MAHAR
MEMBER (TECHNICAL)