

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

REGIONAL BENCH- COURT NO. 3

Excise Appeal No. 11082 of 2014-SM

(Arising out of OIA-AHM-EXCUS-001-APP-067-070-13-14 dated 24/01/2014 passed by Commissioner of Central Excise-AHMEDABAD-I)

Bodal Chemicals Ltd

Plot No. 123, 124,
Phase-I, Gidc, Vatva,
Ahmedabad, Gujarat

.....Appellant

VERSUS

C.C.E.-Ahmedabad-I

C. Ex Bhavan,
Nr Panjrapole & Polytechnic, Ambavadi,
Ahmedabad, Gujarat - 380015

.....Respondent

WITH

Excise Appeal No. 11083 of 2014-SM - Bodal Chemicals Ltd

Excise Appeal No. 11084 of 2014-SM - Bodal Chemicals Ltd

Excise Appeal No. 11085 of 2014-SM - Bodal Chemicals Ltd

APPEARANCE:

None appeared for the Appellant

Shri Kalpesh P Shah, Assistant Commissioner (AR) for the Respondent

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

Final Order No. A/ 11296 -11299 /2023

DATE OF HEARING: 28.03.2023

DATE OF DECISION: 21.06.2023

RAMESH NAIR

In these appeals the issue involved is that whether the appellant is eligible for refund under Notification No. 41/2009-ST dated 29.06.2012.

2. The advocate on record Shri. N. K. Tiwari, submitted a letter dated 27.03.2023 wherein he stated that in the identical case of refund under Notification No. 41/2009-ST dated 29.06.2012 this Tribunal in the appellant's own case remanded the matter vide Order No. A/12114 - 12116 /2018 dated 23.08.2018. He requested that on the line of the said order these appeals may also be disposed by similar order.

3. Shri. Kalpesh P Shah, Learned Assistant Commissioner (AR) appearing on behalf of the revenue reiterates the finding recorded in the impugned order.

4. I have carefully considered the submissions made by leaned AR and the request made by learned Counsel in his letter dated 27.03.2023 and perused the records. I find that in these appeals the issue involved is the refund claim under Notification No. 41/2009-ST dated 29.06.2012. This Tribunal in the appellant's own case Vide Order No. A/ 12114 - 12116/2018 dated 23.08.2018 and A/10752 - 10754 /2022 dated 24.06.2022 remanded the matter to decide a fresh on the outcome of the case of Kalpesh Corporation which is pending before Hon'ble High Court of Gujarat SCA No. 9381/ 2015, this Tribunal in this order dated 23.08.2018 remanded the matter by giving the following observations.

"4. On careful consideration of the submission made by both the sides, I find that the sole issue is that whether the appellant is entitled for rebate despite the provision of paragraph 1(c) of the notification 41/2012-ST. I find from the record that the vires of paragraph 1(c) was challenged before the Hon'ble Gujarat High Court in the case of Kalpesh Corporation Ltd. Special Civil Application no. 9381/2015. I am of the view that unless the on vires civil application is decided by the Hon'ble Gujarat High Court, the matter cannot be concluded. Therefore, in the interest of justice, I set aside the impugned order and remand the matter to the adjudicating authority who should pass a fresh order after the outcome of the SCA no. 9381/2015 in the case of Kalpesh Corporation (supra). Needless to say, the appellant should be given sufficient hearing before the passing of the fresh order. Appeals are disposed of by way of remand to the Adjudicating Authority."

4.1 In view of the above, I am of the opinion that since these appeals are also on the same issue, the same deserves to be remanded to the adjudicating authority for a fresh order after the Hon'ble Gujarat High Court delivers a judgment in the case of Kalpesh Corporation vs. UOI in Special Civil No. 9381/2015.

5. Accordingly, the impugned orders are set aside and appeals are allowed by way of remand to the adjudicating authority.

(Pronounced in the open court 21.06.2023)

RAMESH NAIR
MEMBER (JUDICIAL)

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