

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT AHMEDABAD**

REGIONAL BENCH – COURT NO. 03

Excise Appeal No. 10867 of 2013

[Arising Out Of OIA-CCEA-SRT-II/SSP-308/U/S/35A Dated- 13/03/2013 Passed By
Commissioner of Central Excise, Customs and Service Tax-SURAT-II]

Gujarat Guardian Ltd

Village : Kondh, Taluka : Valia,
Bharuch, Gujarat

.....Appellant

VERSUS

C.C.E. & S.T.-Surat-ii

New C.Ex Building...Opp. Gandhi Baug,
Chowk Bazar, Surat,
Gujarat-395001

.....Respondent

APPEARANCE:

Shri. S.J. Vyas, Advocate for the Appellant

Shri. P Ganesan, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. SOMESH ARORA

FINAL ORDER NO. A / 11331 /2023

DATE OF HEARING:21.06.2023

DATE OF DECISION:21.06.2023

Somesh Arora

This matter pertains to the period of September-2008 to April-2009. The appellants were glass manufacture and used furnace as one of the capital goods for the purpose of their manufacture. The case of the appellant is that they were using at the relevant time M.S Plate, and Nut, bolts and screw etc for making various parts which were in turn used in the furnace. It was submitted that a retrospective amendment was made in July-2009 under Notification No. 16/2009- C.E (NT) dated 07.07.2009 allowing certain inputs used in capital goods to be allowed CENVAT Credit. He pleaded that even for the impugned period they were entitled to the benefit of the material used in capital goods due to operation of retrospective clause of notification. He also brought to the notice of this Court that the department had relied upon the decision of Larger Bench of CESTAT as reported in 2010 (4) TMI 133, CESTAT, NEW DELHI (LB) in VANDANA GLOBAL LIMITED LTD

Vs. COMMISSIONER OF CENTRAL EXCISE. He pointed out that the decision was overruled by the Hon'ble Chhattisgarh, High Court in the matter of same party i.e. VANDANA GLOBAL LIMITED AND OTHERS VS. COMMISSIONER, CENTRAL EXCISE AND CUSTOMS, as reported in 2018 (5) TMI 305. Further he pointed out that the Hon'ble Gujarat High Court in the decision reported of MUNDRA PORTS AND SPECIAL ECONOMIC ZONE LIMITED VS. COMMISSIONER OF CENTRAL EXCISE & CUSTOMS as reported in 2015 (5) TMI 663-GUJARAT HIGH COURT has held a similar view as was later upheld by Hon'ble High Court of Chhattisgarh. In view of the foregoing he submitted that appellant is entitled to the retrospective amendment benefit.

2. Learned AR reiterates the finding of the lower authorities.

3. Considered, In view of the Larger Bench decision in the matter of VANDANA GLOBAL LIMITED vs. CCE, Raipur having being reversed by the Chhattisgarh High Court and which formed the basis of the decision of adjudicating authority as endorsed in para 4 (6) VI by the Commissioner (Appeals) in his Order-In-Appeal, the basis of the decision of Commissioner (Appeals) is now non-est.

4. In view of the forgoing, this Court finds that there is no merit in the decision of the Commissioner (Appeals). Accordingly, this Court allows the appeal with consequential relief.

(Dictated and pronounced in the open Court)

(SOMESH ARORA)
MEMBER (JUDICIAL)

PRACHI