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

REGIONAL BENCH- COURT NO.3

Excise Appeal No. 13166 of 2013

(Arising out of OIA- CCEA-SRT-II/SSP-63/2013-14 dated 14/06/2013 passed by Commissioner(Appeals) of Central Excise, Customs and Service Tax-Surat-II)

C.C.E & S.T.-Surat-II **........Appellant**
New C.Ex Building...Opp. Gandhi Baug,
Chowk Bazar,
Surat, Gujarat – 395001

VERSUS

Gulshan Polyols Ltd **......Respondent**
Plot No. 762, GIDC Indl. Estate,
Jhagadia, Dist.- Bharuch

APPEARANCE:
Shri G.Kirupanandan,Assistant Commissioner (AR) for the Appellant
Shri Willingdon Chritsian, Advocate for the Respondent

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

Final Order No. A/ 11591 /2023

DATE OF HEARING: 23.03.2023
DATE OF DECISION: 21.07.2023

RAMESH NAIR

The brief facts of the case are that during the period 2005-2006 to 2007-2008 the respondent has paid the service tax on the service of goods transport agency as a recipient and availed the cenvat credit of the same. Further, the respondent contended that the said amount of service tax Rs. 57,10,277/- was paid in cash in the month of April, 2010 as it was paid inadvertently on misunderstanding that the said cenvat credit was wrongly availed and utilized by them. Therefore, they filed a refund claim on 08.11.2011 for the same amount. The said refund claim was rejected by the Adjudicating Authority on the ground that the respondent is not entitled for the cenvat credit on outward transportation in terms of Rule 2 (l) of Cenvat Credit Rules, 2004 as in respect of outward transportation cenvat credit is not admissible beyond the place of removal. Being aggrieved by the said order in original, the respondent filed appeal before the Commissioner (Appeals) who relying on the decision of the larger bench f this Tribunal in the case of ABB Ltd vs. CCE – 2009 (15) STR 23 (Tri.LB) and also various judgments including the judgment of Hon'ble Gujarat High Court held that the cenvat credit is admissible on outward transportation. Accordingly allowed the appeal filed by the respondent. Therefore, the present appeal.

2. Shri G. Kirupanandan, Learned Assistant Commissioner (AR) apeparing on behalf of the Revenue reiterates the grounds of appeal. He further submits that as per Rule 2 (l) prevailing at the relevant time the inclusion clause the cenvat credit on outward transportation was admissible only upto to the place of removal . He also submits that the revenue has filed the appeal on the ground that the judgment in the case of ABB Ltd by the Hon'ble Karnataka High Court was appealed against by the Revenue before the Hon'ble Supreme Court.

3. Shri Willingdon Christian, Learned Advocate appearing on behalf of the respondent submits that in this case the period involved is upto 31.03.2008 and prior to 01.04.2008, the issue has been settled that the assessee is entitled for the cenvat credit on outward transportation even beyond the place of removal,as per the following judgments:-

- ABB Ltd Vs. CCE – 2009 (15) STR 23 (Tri. LB)
- CCE Vs. ABB Ltd – 2011 (23) STR 97 (Kar.)
- CCE Vs. Parth Poly Wooven Pvt Ltd - 2012 (25) STR 4 (Guj.)
- CCE Vs. Vasavadatta Cements Ltd - 2018 (11) GSTL 3 (SC)

4. We have carefully considered the submission made by both sides and perused the records. We find that the issue of outward transportation from place of removal is no longer under dispute particularly for the period upto 31.03.2008.

4.1 In the present case, the respondent's claim is for the period from 2005-2006 to 31.03.2008. This issue has been considered in the judgment cited by the learned counsel for the respondent wherein it was held that the cenvat credit on outward transportation is admissible. However, in the revenue's appeal the main ground is that the judgment in the case of ABB Ltd of Karnataka High Court has been challenged by the Revenue before the Hon'ble Supreme Court. Now the revenue's appeal has been dismissed in the case of CCE vs. Vasavadatta Cements Ltd – 2018 (11) GSTL 3 (SC), accordingly, the issue is no longer res-integra.

5. Hence, the impugned order is upheld. Revenue's appeal is dismissed.

(Pronounced in the open court on 21.07.2023)

RAMESH NAIR
MEMBER (JUDICIAL)

C.L.MAHAR
MEMBER (TECHNICAL)