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

REGIONAL BENCH- COURT NO.3

Excise Appeal No.10270 of 2017

(Arising out of OIO-RAJ-EXCUS-000-PR-COM-58-16-17 dated 10/11/2016 passed by Principle Commissioner Customs, Excise and Service Tax-RAJKOT)

Nayara Energy Limited **.........Appellant**
P B No. 24, Head Post Office Khambhalia
Dev Bhumi, Dwarka, Gujarat

VERSUS

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

WITH

- **i. Excise Appeal No. 10890 of 2017 (Nayara Energy Limited)**
- **ii. Excise Appeal No. 10891 of 2017 (Nayara Energy Limited)**
- **iii. Excise Appeal No. 11718 of 2018 (Nayara Energy Limited)**
- **iv. Excise Appeal No. 12974 of 2018 (Nayara Energy Limited)**
- **v. Excise Appeal No. 10967 of 2019 (Nayara Energy Limited)**
- **vi. Excise Appeal No. 10338 of 2020 (Nayara Energy Limited)**
- **vii. Excise Appeal No. 10344 of 2020 (C.C.E. & S.T., RAJKOT)**
  With Excise Cross-Objection (CO) No.10265 of 2020

(Arising out of OIO-RAJ-EXCUS-000-PR-COM-68-16-17 dated 31/01/2017 passed by Principle Commissioner Customs, Excise and Service Tax-RAJKOT)

(Arising out of OIO-RAJ-EXCUS-000-PR-COM-67-16-17 dated 31/01/2017 passed by Principle Commissioner Customs, Excise and Service Tax-RAJKOT)

(Arising out of OIO-RAJ-EXCUS-000-COM-10-17-18 dated 21/03/2018 passed by Commissioner of Central Excise, Customs and Service Tax-RAJKOT)

(Arising out of OIO-RAJ-EXCUS-000-COM-01-18-19 dated 02/08/2018 passed by Commissioner of Central Excise, Customs and Service Tax-RAJKOT)

(Arising out of OIO-RAJ-EXCUS-000-COM-12-18-19 dated 28/02/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-RAJKOT)

(Arising out of OIA-RAJ-EXCUS-000-APP-198-2019 dated 20/12/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-RAJKOT)

(Arising out of OIA-RAJ-EXCUS-000-APP-198-2019 dated 20/12/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-RAJKOT)

APPEARANCE:
Shri Vipin Jain, Shri Vishal Agrawal, Shri Roshil Nichani, Mrs. Dimple Gohil, Advocates for the Appellants
Shri Ghanshyam Soni, Joint Commissioner (Authorised representative) for the Respondents

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

Final Order No. A/ 11300-11307 /2021

DATE OF HEARING: 02.12.2020/06.01.2021
DATE OF DECISION: 31.03.2021

RAMESH NAIR

In all these appeals the common issue involved is that whether the appellant has correctly paid/reversed the amount as required under Rule 6(3) when common Input/Input Services used in exempted goods/exempted services and dutiable goods/taxable services.

2. Shri Vipin Jain, Learned Counsel along with Shri Vishal Agrawal, Shri Roshil Nichani & Mrs. Dimple Gohil appearing on behalf of the appellants made detailed submission during hearing and also filed detailed written submissions. The grievance of the appellant is that the appellant have been calculating the amount correctly in terms of Rule 6(3A) of Cenvat Credit Rules on provisional basis month wise and also final payment on the completion of the financial year. It is their submission that the revenue has issued Show Cause Notices on the monthly reversal as well as on the yearly reversal. Therefore, there is a duplication of demand. It is also their submission that for the purpose of calculating, the revenue has taken total Cenvat Credit which includes the credit exclusively used for dutiable goods/taxable service. It is not correct as only common input/input service credit which were used commonly in dutiable/taxable goods/service should be taken therefore, to this effect the calculation made by the department is absolutely wrong. The learned counsel also relied upon various following judgments:-

- ADECCO FLEXIONE WORKFORCE SOLUTIONS LTD. v/S. CCE, 2016 (42) STR 202 (T).
- CRANES & STRUCTURAL ENGINEERS v/S. CCE, 2017 (347) ELT 112 (T)
- ASTER PVT. LTD. v/S. CCE, 2016-TIOL-1035-CESTAT-HYD

3. Shri Ghanshyam Soni, Learned Joint Commissioner (Authorized Representative) appearing on behalf of the revenue reiterates the finding of the impugned order.

4. We have carefully considered the submissions made by both the sides and perused the records. We find that the appellant have pointed out the glaring mistake in calculation of amount which is required to be paid under Rule 6(3) of Cenvat Credit Rules when the input/input service is used commonly in dutiable/taxable and exempted goods/services.

4.1 We prima facie find that there is indeed serious error in calculation of the amount to be paid under Rule 6(3). As regard the terms "total Cenvat Credit" to be considered for the formula as provided under Rule 6 (3A), the various judgments were cited by the learned counsel. It also appears that there is a duplication of demand in as much as Show Cause Notice issued on monthly reversal as well as on yearly reversal. The Adjudicating Authority has also not properly considered the "total Cenvat Credit" that whether the clearances made to SEZ and deemed export under Notification No.108/95-CE dated 28.08.1995 should be taken as exempted clearances or otherwise. Likewise there are serious discrepancies in the Show Cause Notices which are purely on a factual matrix. Therefore, we are of the view that in all these appeals, the matter needs to be remitted to the Adjudicating Authority for proper appreciation of the facts and correct calculation of demand, if any arise. The Adjudicating Authority also must take the cognizance of various judgments cited by the learned counsel.

5. Accordingly, the impugned orders are set aside and matters are remanded to the Adjudicating Authority for fresh Denovo Adjudication. CO also stands disposed of.

(Pronounced in the open court on 31.03.2021)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

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