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

REGIONAL BENCH- COURT NO.3

Excise Appeal No. 13420 of 2013- DB

(Arising out of OIO-78-COMMR-2013 dated 17/07/2013 passed by Commissioner of Central Excise and Service Tax-RAJKOT)

Flora Ceramic Pvt Ltd **.........Appellant**
8-a, National Highway,
Lakhdhirpur Road,
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, Ajay Kumar Samota, Superintendent(AR), for the Respondent

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

Final Order No. 11764/2023

DATE OF HEARING: 24.04.2023
DATE OF DECISION: 23.08.2023

RAMESH NAIR

The issue involved in the present case is that whether an amount 5% or 10% as the case may be on the value of exempted supply of goods can be recovered under Rule 6(3) of Cenvat Credit Rules, 2004, when the appellant have reversed the proportionate Cenvat Credit on exempt supply of goods with interest well before the issue of show cause notice.

2. Shri P D Rachchh, Learned counsel appearing on behalf of the appellant submits that the appellant have admittedly reversed the proportionate credit of input attributed to the exempted goods along with payment of interest than the demand under Rule 6(3) of 5%or 10% equal to value of exempted goods is not sustainable in the light of settled legal position in the following judgments:

- Chandrapur Magnet Wires (P) Ltd. Vs. Collector of C.Excise, Nagpur - 1996 (81) ELT 3 (SC)
- Hello Minerals Water (P) Ltd. Vs. UOI - 2004 (174) ELT 422 (All)
- Commissioner of Central Excise Vs. Ashima Dyecot Ltd. - 2008(232) ELT 580 (Guj.)
- Commissioner of C.Ex. & Customs Vs. Foram Glazed Tiles-2011 (267) ELT 461 (Guj.)
- Face Ceramics Pvt. Ltd. Vs. Commissioner of C.Ex., Rajkot 2010 (249) ELT 119 (Tri. Ahmd.)
- Lear Automotive India Ltd. Vs. Commissioner of C.Ex., Vadodara-11-2013 (291) ELT 411 (Tri.- Ahmd.)
- Pushpam Pharmaceuticals Company Vs. Collector of C.Ex., Bombay - 1995 (78) ELT 401 (SC)
- Commissioner of C.Ex., Raigad Vs. Echjay Forgings Pvt. Ltd. 2011 TIOL 1413 Cestat- Mum.
- Commissioner of C.Ex. Vs. Sudarshan Cables Industries-2012 (276) ELT 300 (All.)
- Ranbaxy Laboratories Ltd. Vs. Commr. of C.Ex., Chandigarh 2011 (269) ELT 237 (Tri. Del.)
- Hawkins Cookers Limited Vs. Collector of C.Ex., Chandigarh - 1997 (96) ELT 507 (SC)
- Union of India Vs. Delhi Cloth and General Mills Co. Ltd. - 1977 (1) ELT (J 199) SC
- Siwss Parenterals Pvt. Ltd. Vs. CCE & ST Ahmedabad-2014 (308) ELT 81 (Tri.-Ahmd)
- CCE & ST, Rajkot Vs. Digital Ceramic Pvt. Ltd. Final Order No. A/12890-12892/2017 dated 10.10.2017
- Mafatlal Industries Ltd. Vs. Commr. of C. Ex. & ST, Ahmedabad - 2020 (43) GSTL 562 (Tri.- Ahmd.)
- Welspun Corp. Ltd. Vs. Commissioner of Central Excise, Kutch - 2019 (368) ELT 179 (Tri.-Ahmd.)

3. Shri A.K Samota, Learned Superintendent(AR) appearing on the behalf of the revenue reiterates the finding of the impugned order.

4. We have carefully considered the submissions made by both sides and perused the record. We find that it is appellant's submission that they have reversed the proportionate Cenvat credit on the inputs attributed to the exempted supply of goods along with payment of interest thereon before issuance of show cause notice. Therefore, in such situation as per the judgments cited by the learned counsel, the demand of 5%/10% as the case may be under Rule 6(3) of Cenvat Credit Rules, 2004 was not sustainable and we hold so. As regard the reversal of credit and payment of interest the revenue is at liberty to verify the correctness of the calculation.

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

(Pronounced in the open court on 23.08.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(C L MAHAR)
MEMBER (TECHNICAL)

Raksha