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

REGIONAL BENCH- COURT NO.3

Excise Appeal No.12847 of 2018

(Arising out of OIA-CCESA-SRT-APPEAL-PS-238-239-2018-19 dated 16/08/2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

Vijay Kumar Srivastaw ....Appellant
C/o M/s Alok Masterbatches Pvt Ltd., Survey No. 248/1 & 249/1, Valsad Falia, Near Jain Temple, Dadra,
SILVASSA
DADRA & NAGAR HAVELI (UT)

VERSUS

C.C.E. & S.T.-Daman ....Respondent
3rd Floor...Adarsh Dham Building, Vapi-Daman Road, Vapi
Opp.Vapi Town Police Station,
Vapi, Gujarat-396191

With

Excise Appeal No.12903 of 2018

(Arising out of OIA-CCESA-SRT-APPEAL-PS-238-239-2018-19 dated 16/08/2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

Alok Masterbatches Ltd ....Appellant
(Presently M/S Alok Masterbatches Pvt Ltd.), Survey No. 248/1 & 249/1, Valsad Falia, Near Jain Temple, Dadra,
SILVASSA, DADRA & NAGAR HAVELI (UT)

VERSUS

C.C.E. & S.T.-Daman ....Respondent
3rd Floor...Adarsh Dham Building, Vapi-Daman Road, Vapi
Opp.Vapi Town Police Station,
Vapi, Gujarat-396191

APPEARANCE:
Shri R P Jindal, Advocate for the Appellant
Shri Dharmendra Kanjani, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
Final Order No. A/11657-11658 /2021

DATE OF HEARING: 05.04.2021
DATE OF DECISION: 05.04.2021

RAMESH NAIR

The issue involved is that whether the revenue is correct in denying the cenvat credit on the ground that the appellant have availed the credit the after a period of 6 months from the date of issue of cenvatable invoices invoking the proviso which was inserted in Rule 4(1) & 4(7) vide notification No. 21/2014-CE(N.T.) dated 11.07.2014.

2. Shri. Ravinder Pal Jindal, learned counsel appearing on behalf of the appellant submits that though the credit was taken after the date of amendment notification 21/2014-CE (N.T.), but all the invoices were issued prior to the effect of said notification i.e. before 01.09.2014. Therefore, this amended provision is not applicable in the case where the invoices were issued prior to 01.09.2014. In support of this submission he placed reliance on the following judgments.

- M/S VOSS EXOTECH AUTOMOTIVE PVT LTD Vs. COMMISSIONER OF CENTRAL EXCISE, PUNE-I- 2018-TIOL-985-CESTAT-MUM
- GLOBAL CERAMICS PVT. LTD. v/S. PRINCIPAL COMMISSIONER OF C.EX., DELHI-I-2019 (26) G.S.T.L.470 (Del.)
- CCE RAJKOT v/S. RELIANCE INDUSTRIES-2019 (28) GSTL 96 (Tri-Ahmd)
- GOVERNMENT OF INDIA v/S. INDIAN TOBACCO ASSOCIATION-2005 (187) E.L.T. 162 (S.C.)

3. On the other hand Shri. Dharmendra Kanjani, Learned Superintendent (Authorized Representative) appearing for the revenue reiterates the finding of the impugned order. He also placed reliance on the following judgments:-

- A/11369/19 Dtd. 12.07.2019- BHARAT RESINS LTD. Vs. CCE, SURAT-I
- A/13086/17 Dtd.12.10.2017-SICGIL INDUSTRIAL GASES LTD Vs. CCE, ANAND
- 2018 (12) GSTL 330 (Tri-Del)- J K LAKSHMI CEMENT LTD Vs. CCE, JAIPUR-II

4. I have heard both the sides and perused the records. I find that the major issue to be decided is that the cenvat credit was availed after 01.09.2014, in respect of invoices issue prior to 01.09.2014. In the light of the amendment notification no 21/2014-CE(N.T.) whether the claim of cenvat credit is time barred. I find that though there are various decision on the issue however, the Division Bench in the case of BHARAT ALUMINIUM COMPANY LTD. V/S. JOINT COMMISSIONER OF CENTRAL EXCISE, CENTRAL TAX GOODS AND SERVICE TAX. held that the limitation of 6 months provided as per notification no 21/2014-CE(N.T.) is not applicable in cases where the invoices were issued before the notification came into effect i.e. 01.09.2014. the Delhi bench in said case has relied upon the judgment of Delhi High Court in the case of GLOBAL CERAMICS PRIVATE LIMITED AND ORS.-2019-TIOL-1129-HC-DEL-CUS. The relevant para of said judgment of BHARAT ALUMINIUM COMPANY LTD. (Supra) is reproduced below.

> *5. Having expressed our anguish, we note that the issue is no more res Integra. Reliance can be placed to the following decisions; (i) Indian Potash Ltd. vs Commissioner of Central GST, Meerut [2018 (10) TMI 1367-CESTAT Allahabad] (ii) Hindustan Coca Cola Beverages Pvt. Ltd. vs. Commissioner of Central Tax [2018 (10) TMI 1366- CESTAT Bangalore] (iii) Industrial Filters & Fabrics Pvt. Ltd. vs. CGST & CE, Indore[2019 (1) TMI 1426-CESTAT New Delhi] (iv) Suryadev Alloys and Power Pvt Ltd. vs. Commissioner of GST & Central Excise, Chennai [2018 (11) TMI 1019-CESTAT Chennai] 4 E/53851-53852/2018-[DB] (v) Umesh Engineering Works vs. Commissioner of Central Tax, Bengaluru West [2019 (1) TMI 1158- CESTAT Bangalore] (vi) Sarda Energy and Minerals Ltd. vs. CCE & ST, Raipur [2019 (4) TMI 473-CESTAT New Delhi] Wherein it was clearly held that the six month limitation provided with effect from 01/09/2014 would not apply to the cenvatable invoices issued prior to said date. The other decisions relied upon by the Ld. Advocate are also to the same effect but multiplying the precedent decisions would not make a difference as it is a settled law. Further, not only various Tribunals' decisions but Hon'ble Delhi High Court also in case of Global Ceramics Private Limited and Ors. vs. The Principal Commissioner of Central Excise and Ors. W.P. (C) 6706/2016 and W.P. (C) 9152/2016 has also observed to the same effect in paragraph 11.4 of their decisions.*
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> *6. As such, we find that the issue is no more res Integra and stands settled in favour of the assessee. However, the fact that the invoices in question were prior to 01/09/2014 is required to be verified. The Original Adjudicating Authority is directed to do so, with the association of appellant to whom an opportunity would be given.*

4.1 In view of the above decision which is based in Delhi High Court judgment of GLOBAL CERAMICS PRIVATE LIMITED AND ORS (supra), I am of the view that the appellant is entitled for the Cenvat Credit since all the invoices on which cenvat credit was claimed were issued prior to 01.09.2014.

5. The revenue is at liberty to verify this fact, therefore the impugned order is not sustainable and the same is set aside. Since the entire demand is set aside. The personal penalty imposed on Shri Vijay Kumar Srivastaw will also not sustain the same is also set aside. Both the appeals are allowed with consequential relief, if any, in accordance with law.

(Dictated & Pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

Mehul