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

REGIONAL BENCH- COURT NO. 3

Excise Appeal No. 12090 of 2013 – DB

E/CROSS/12576/2013

(Arising out of OIO-46-48/COMMR/SURAT-II/2013 dated 28/03/2013 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-I(Appeal))

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

VERSUS

Shree Dinesh Mills Ltd **.......Respondent**
Kapodra Road,
Village : Bhadkodara, Taluka : Ankleshwar,
Bharuch, Gujarat

APPEARANCE:
Shri Tara Prakash, Deputy Commissioner (AR) for the Appellant
Shri R.C Saxena, Advocate appeared for the Respondent

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

Final Order No. A/ 11910 /2023

DATE OF HEARING: 29.05.2023
DATE OF DECISION: 11.09.2023

RAMESH NAIR

The issue involved in the present case is as to whether the Respondent was entitled to exemption under Sr. No.10 of Notification No. 30/2004-CE which exempts tow manufactured from staple fiber procured from outside and subjected to any process required for spinning.

2. Shri Tara Prakash, Learned Deputy Commissioner (AR) appearing on behalf of the Revenue Appellant reiterates the grounds of appeal. He further submits that the top procured from outside subjected to process required for spinning for production of top was not staple fiber whereas exemption under Sr. No. 10 of Notification No 30/2004-CE is applicable to only 'Staple Fiber' and not to 'Top'.

2.1 He further submits that though the issue has been decided in the favour of the assessee by the Hon'ble High Court of Bombay in the case of Raymond Vs. UOI-2009 (240) ELT 180 against the same judgment revenue is in appeal before the Hon'ble Supreme Court and same is pending. Therefore, in this fact the Adjudicating Authority would not suppose to adjudicate the matter and to keep in call book awaiting the judgment of Hon'ble Supreme Court.

3. Shri R.C Saxena, Learned Counsel appearing on behalf of the Respondent submits that the issue on merit is settled in the favour of the Assessee in the case of Raymond vs. UOI 2009 (240) ELT 180. The present appeal was filed only on the ground that against the said judgment of the Hon'ble Bombay High Court, revenue's appeal is pending before the Hon'ble Supreme Court. He submits that since there is no stay on the judgment of Hon'ble High Court, the judgment prevails and the adjudicating authority has rightly dropped the proceeding.

4. We have carefully considered the submission made by both sides and perused the records. We find that in the present case revenue's appeal is only on the ground that their appeal is pending before the Hon'ble Supreme Court against the Hon'ble Bombay High Court Judgment in the case of Raymond Vs. UOI - 2009 (240) ELT 180. The said Judgment though appealed against by the Revenue but no stay has been granted by the Hon'ble Supreme Court, in that case the Hon'ble Bombay High Court judgment in case of Raymond Vs. UOI -2009 (240) ELT 180 is in force. However, since the revenue's appeal is pending before the Hon'ble Supreme Court, to avoid multiplicity of the litigation in our view it is just and proper to keep the matter in abeyance. Needless to say, the law on the issue in hand being in favour of the respondent for time being, the revenue shall not take any coercive action. We are therefore of the view that matter should be kept pending for denovo Adjudication till the outcome in the Raymond's case supra from the Apex Court.

5. Accordingly the impugned order is set aside and revenue's appeal is allowed by way of remand to the Adjudicating Authority. Cross Objection also stands disposed of.

(Pronounced in the open court on 11.09.2023)

RAMESH NAIR
MEMBER (JUDICIAL)

C.L.MAHAR
MEMBER (TECHNICAL)

Geeta