CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.3

EXCISE Appeal No. 11141 of 2014
(Arising out of OIA-VAP-EXCUS-000-APP-402-13-14 dated 16.12.2013 passed by Commissioner of Central Excise –Vapi)

BAJARI FILAMENTS PVT LTD **...Appellant**
PLOT NO. 47, PIPARIYA INDUSTRIAL ESTATE
PIPARIA, SILVASA 396230
DADAR & NAGAR HAVELI

VERSUS

C.C.E. & S.T.-VAPI **...Respondent**
4TH FLOOR...ADHARSH DHAM BUILDING,
OPP. TOWN POLICE STATION, VAPI-DAMAN ROAD, VAPI
VAPI, GUJARAT-396191

WITH

EXCISE Appeal No. 10405 of 2019
(Arising out of OIA-CCESA-SRT-APPEALS-PS-700-2018-19 dated20.12.2018passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

BAJARI FILAMENTS PVT LTD **...Appellant**
PLOT NO. 47, PIPARIYA INDUSTRIAL ESTATE
PIPARIA, SILVASA 396230
DADAR & NAGAR HAVELI

VERSUS

C.C.E. & S.T.-DAMAN **...Respondent**
3rd FLOOR...ADHARSH DHAM BUILDING,
OPP. TOWN POLICE STATION, VAPI-DAMAN ROAD, VAPI
VAPI, GUJARAT-396191

APPEARANCE:
Shri R. Subramanya, Advocate appeared for the Appellant
Shri A. R. Kanani, Superintendent(Authorized Representative) for the Respondent

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

Final Order No. 12439-12440 /2023

DATE OF HEARING: 09.10.2023
DATE OF DECISION:03.11.2023

RAMESH NAIR

The issue involved in the present case is that for the purpose of re-credit of cenvat credit already reversed, due to availment of Notification 30/2004-CE dated 09.07.2004, in respect of capital goods whether the provision of Section 11B is applicable and the re-credit even as per cenvat credit rules is within the reasonable time.

2. Shri R. Subramanya, learned Counsel appearing on behalf of the appellant submits that the re-credit is not a case of refund of excise duty, therefore, Section 11B is not applicable as rightly held by the adjudicating authority. He submits that the recredit of cenvat is as good as taking a fresh credit, therefore, in case of availment of cenvat credit Section 11B and the time limit prescribed therein is not applicable, therefore, the order of the learned Commissioner (Appeals) is not legal and proper. He placed reliance on the following judgments:

- ICMC Corpration 2014 (1) TMI 1473
- Hwashin Authomative India Pvt ltd. 2020 (2) TMI 1166
- Navin Fluroine Internation Ltd 2022 (6) TMI 858
- Vikrant Extrusions 2020 (6) TMI 14
- Krishav Engineering Ltd 2015 (12) TMI 234
- Indo-Nippon Chemicals 2002 (2) TMI 136

3. Shri A. R. Kanani, Learned (Superintendent) authorized representative reiterates the findings of the impugned order.

4. On careful consideration of the submission made by both the sides and perusal of record, we find that the appellant admittedly had reversed the cenvat credit in the year 2006 and thereafter they claimed the re-credit after almost 7 years i.e. in 2013. Apart from the applicability of Section 11B, we find that even in case of initial credit, whether the appellant is entitled to re-credit after substantial period of 7 years was not examined by the adjudicating authority. The adjudicating authority has only decided the matter that Section 11B is not applicable in the case of re-credit. Even if it is assumed that provision of Section 11B for the purpose of re-credit of Cenvat credit is not applicable but whether the appellant can take the re-credit after 7 years of its reversal. This issue needs to be addressed by the adjudicating authority. The judgment relied upon by the appellant is based on different facts of each case. However, in the present case the fact that such a long period for claiming re-credit was not found in those judgments. Accordingly, we are of the

view that the matter as a whole needs to be reconsidered by the adjudicating authority. All the issues are kept open. The impugned order is set aside. Appeal is allowed by way of remand to the adjudicating authority for passing a fresh order.

(Pronounced in the open court on 03.11.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

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