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

REGIONAL BENCH- COURT NO.3

Excise Appeal No.10319 of 2020

(Arising out of OIO-RAJ-EXCUS-000-COM-05-19-20 dated 17/12/2019 passed by Commissioner of Central Excise, Customs 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
Excise Appeal No.10673 of 2020
Excise Cross-Objection (CO) No.10343 of 2020

(Arising out of OIA-RAJ-EXCUS-000-APP-081-2020 dated 30/07/2020 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-RAJKOT)

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

VERSUS

Nayara Energy Limited ………**Respondent**
M/S Essar Oil Limited., Jam Khambhaliya, P.O. Box No. 24,
Dev Bhumi Dwarka
Dev Bhumi Dwarka, Gujarat

AND

Excise Appeal No.10779 of 2020

(Arising out of OIA-RAJ-EXCUS-000-APP-081-2020 dated 30/07/2020 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-RAJKOT)

Nayara Energy Limited ………**Appellant**
Essar Oil Ltd, P.O.Box.No.24, Head Post Office, Khambhalia
Devbhumi Dwarka
Devbhumi Dwarka, Gujarat

VERSUS

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

APPEARANCE:
Shri Roshil Nichani, Advocate for the Appellants
Shri Dharmendra Kanjani, Superintendent (Authorised representative), for the Respondents

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

Final Order No. A/ 12262 - 12264 /2021

DATE OF HEARING: 09.03.2021
DATE OF DECISION: 24.06.2021

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.

02. Heard both the sides and perused the records. We find that in identical issue of the appellant's own case, bunch of appeals was heard on 02.12.2020 & 06.01.2021 and vide Order No. A/11300-11307/2021 dated 31.03.2021 the matter was remanded to the adjudicating authority for fresh denovo adjudication. The relevant order portion is reproduced below:

> *"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.*
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> *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.*
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> *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."*

Since in the above order matter was remanded for fresh denovo adjudication this matters also need to be reconsidered.

03. Accordingly, all the appeals along with CO disposed of by way of remand to the adjudicating authority for denovo adjudication considering the observation made in the above order dated 31.03.2021.

(Pronounced in the open court on 24.06.2021)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

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