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

REGIONAL BENCH- COURT NO.3
Excise Appeal No.13120 of 2018
(Arising out of OIA-CCESA-SRT-APPEAL-PS-320-321-2018-19 dated 31/08/2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

Rupesh Dahiwilkar **......Appellant**
Plot No. 810-811 And 920 Gidc Sarigam
Valsad, Gujarat

VERSUS

C.C.E. & S.T.-Surat-i **.........Respondent**
New Building...Opp. Gandhi Baug,
Chowk Bazar,
Surat, Gujarat-395001

WITH
Excise Appeal No.10182 of 2019
(Arising out of OIA-CCESA-SRT-APPEAL-PS-320-321-2018-19 dated 31/08/2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

Universal Medicare Pvt Ltd **......Appellant**
Plot No. 810-811 And 920 Gidc Sarigam
Valsad, Gujarat

VERSUS

C.C.E. & S.T.-Surat-i **.........Respondent**
New Building...Opp. Gandhi Baug,
Chowk Bazar,
Surat, Gujarat-395001

APPEARANCE:
Shri Srinath Kanon, Chartered Accountant for the Appellant
Shri S.N.Gohil ,Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
Final Order No. A/ 12324-12325 /2021

DATE OF HEARING: 26.08.2021
DATE OF DECISION:26.08.2021

RAMESH NAIR

Shri. Srinath Kanan, Learned Chartered Accountant appearing on behalf of the appellant submits that the refund claim was rejected by both the lower authorities on the ground that the CVD & SAD which was taken as Cenvat credit was not paid at the time of assessment due to suppression of facts, mis-declaration willful misstatement, etc. He submits that when the classification dispute was pointed out by the assessing authority, they have paid the differential duties along with interest and the assessment was finalized. No further action was taken by the department such as issuance of any show cause notice or adjudication order, therefore charge of suppression is not established and on that ground refund should not have been rejected.

1.1. He also submits that neither any penalty was imposed nor the same was paid by the appellant in respect of the differential duty paid.

2. Shri. S.N.Gohil, Learned Superintendent (Authorized Representative) appearing for the revenue reiterates the finding in the impugned order and he invited my attention to the impugned order wherein the Commissioner (Appeals) has recorded the submission of the appellant that they have paid duty, interest and penalty. He also invited attention to Para 9 of the impugned order wherein, the Commissioner (Appeals) has recorded that the appellant was demanded duty, interest and penalty by an order. Therefore, the non payment of duty by the appellant is under suppression of fact willful mis-statement by wrongly classifying the imported goods therefore in terms of Rule 9(1)(b)(b) of Cenvat Credit Rules, 2004, the appellant is not entitle for Cenvat Credit .

3. I have carefully considered the submission made by both the sides and perused the records. The refund claim was rejected only on the ground that credit was taken duty which was not paid at the time of assessment due to suppression of willful misstatement on the part of the appellant. The Commissioner (Appeals) has recorded in his order that the appellant has paid the differential duties, interest and also penalty. However, Learned Chartered Accountant Shri Srinath Kanan has strongly objected and submits that on pointing out by the assessing officer, the appellant have admittedly paid the duty and interest only thereafter the assessment was finalized. He submits that neither any show cause notice was issued nor any adjudication order was passed in respect of differential customs duty. Therefore, the charge of suppression is not established or rather it does not exist therefore, the entire basis for denial of cenvat credit is wrong.

3.1 I find that since the Commissioner has explicitly mentioned in the order, that the appellant have paid the differential custom duty interest and penalty but it was not accepted by the appellant. I also do not find anything on record, whether any show cause notice was issued or any adjudication order was passed in respect of differential custom duty and whether any penalty imposed under section 114-A. Therefore, I am of the view that the matter needs to be reconsidered by analyzing the actual facts of the case. I also expressed my view if no show cause notice was issued for non-payment under section 28(4) and no adjudication order on such show cause notice was passed, the charge of suppression will not exist and the case of Cenvat Credit should be decided accordingly.

4. As per my above discussion and finding, I set aside the impugned order and remand the matter to the Commissioner (Appeals) for passing afresh order after taking on record the actual facts as submitted by the learned Chartered Accountant. Appeal is allowed by way of remand to the Commissioner (Appeals).

(Dictated and Pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

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