# CUSTOMS,EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
## WEST ZONAL BENCH : AHMEDABAD

REGIONAL BENCH : COURT NO. 3

**EXCISE Appeal No. 10356 of 2019-SM**

[Arising out of Order-in-Original/Appeal No 133-AGU-ADT-VAD-2017-18 dated 21.12.2018 passed by Commissioner ( Appeals ) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I]

**Aarti Industries Ltd** ...Appellant

Plot No 801/23, Iii Phase Gidc Vapi
VAPI, GUJARAT- 396195

*VERSUS*

**C.C.E. & S.T.-Surat-i** ...Respondent

NEW BUILDING...OPP. GANDHI BAUG,
CHOWK BAZAR,
SURAT, GUJARAT - 395001

**APPEARANCE:**

Present For the Appellant : Shri Prasanan Namboodiri, Advocate

Present For the Respondent : Shri J. A. Patel, Superintendent (AR)

**CORAM:**
**HON'BLE MEMBER (TECHNICAL) ,RAJU**

**FINAL ORDER NO. A/12353 / 2021**

DATE OF HEARING/ DECISION : 09.09.2021

**RAJU**

The appeal filed by M/s Arti Industries Ltd. relates to denial of Cenvat Credit of 2 percent CVD paid on import of coal made by them availing notification no. 12/12-Cus dated 17.03.2012. The issue is squarely covered by decision of CESTAT in the case of Asahi Songwon Colors Limited vs CCC & S.T. Vadodara-2018 (9) TMI 159-CESTAT-Ahmedabad. In the said case, following was observed:

*4. On careful consideration of the submissions made by both the sides, I find that the restriction provided in Rule 3 of Cenvat Credit Rules is as under:-*

*" Rule 3. (i) the duty of excise specified in the First Schedule to the Excise Tariff Act, leviable under the Excise Act;*
*[Provided that Cenvat credit of such duty of excise shall not be allowed to be taken when paid on any goods –*
*(a) ….. ….*
*(b) specified in serial numbers 67 and 128 in respect of which the benefit of an exemption under Notification No. 12/2012-CE, dated 17th March, 2012 is availed;]"*

*From the above Rule, it is observed that even if any duty is paid by availing exemption Notification No. 12.2012-CE dated 17.03.2012, the same will not be available as Cenvat credit for the user of the goods. In the present case, admittedly, the appellant have imported Coal and CVD of 2% is leviable in* *terms of Customs Notification No. 12/2012-Cus. There is no restriction provided in Rule 3 as regards duty paid under Customs notification. This restriction is applicable only in case of indigenous goods on which the excise duty @ 2% was paid availing Notification No. 12/2012-CE, which is not a case here. Therefore, the appellant is entitled for Cenvat credit in respect of CVD paid under Notification No. 12/2012- Cus. Moreover, since the Notification No. 12/2012-CE is applicable only in respect of indigenously manufactured coal and not in respect the imported coal as held by the Hon'ble Supreme Court in the case SRF Limited vs. CC, Chennai – 2015 (318) ELT 607 (SC). Therefore, even if the importer wants to avail the exemption of Notification No. 12/2012-CE for payment of CVD, the same will not be available to the importer. Therefore, in any case, in the case of import the Notification No. 12/2012-CE is not relevant."*

2. In view of above, the appeal is allowed and the impugned order is set aside.

*(Dictated and Pronounced in the open court)*

**(RAJU)**
**MEMBER (TECHNICAL)**

**Diksha**