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

REGIONAL BENCH - COURT NO. 2

Excise Appeal No. 13609 of 2013

[Arising Out Of OIA-PJ/247/VDR-II/2013-14 Dated-18/07/2013 Passed By Commissioner of Central Excise, Customs and Service Tax-VADODARA-II]

Standard Radiators Pvt Ltd **.....Appellant**
1/12, Industrial Estate, Gorwa,
Vadodara Gujarat

VERSUS

C.C.E. & S.T.-Vadodara-ii **.....Respondent**
1st Floor... Room No.101,
New Central Excise Building,
Vadodara, Gujarat-390023

APPEARANCE:
Shri. Mrugesh Pandya, Advocate for the Appellant
Shri. Himanshu P Shrimali, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. SOMESH ARORA

FINAL ORDER NO.A / 12747 /2023

DATE OF HEARING:11.12.2023
DATE OF DECISION:11.12.2023

SOMESH ARORA

Learned Advocate pleads that in the instant case demand of Cenvat Credit arose due to the fact that capital goods in the form of scrap were cleared by them, after considerable usage. Department taking resort to Rule 3(5A) of the Cenvat Credit Rules, 2004 made the demand of duty even when initially, they had not availed of Cenvat Credit on these capital goods. As per his submission, this is a pre-requisite for demand of duty under Rule 3(5A) as outlined by the Hon'ble Rajasthan High Court in 2008 (225) ELT 50 (Raj) in the matter of Union Of India Vs. Hindusthan Zinc Limited. He also points out a similar decision was also taken by the Double Member Bench of this Tribunal in a matter of Gujarat State Fertilizers & Chemicals Limited Vs. C.C.E & S.T, Vadodara-2019 (9) TMI 669 - CESTAT AHMEDABAD dated 16.09.2019.

2. Learned AR on the other side relies on the finding of the learned Commissioner which points out the statutory provision of Rule 3(5A) has no such

condition as has been pointed out by the learned advocate and therefore when the capital goods are cleared as scrap and waste then irrespective of credit having been availed, the duty is liable to be paid as the Rule 3(5A) is very clear on this aspect and is unconditional. On being asked as to whether the department has challenged and obtain stay against the above cited decisions. He could not show any stay in the matter. Respectfully, following the decisions cited by the learned advocate, the relief entitlement of the appellant becomes the conclusion.

3. Accordingly, the demand for Cenvat Credit as upheld by the lower authority is set aside. Appeal is allowed.

(Dictated and pronounced in the open Court)

(SOMESH ARORA)
MEMBER (JUDICIAL)

Prachi