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

REGIONAL BENCH- COURT NO.3

Excise Appeal No. 11826 of 2014
(Arising out of OIA-DMN-EXCUS-000-APP-313-314-13-14 dated 12.02.2014passed by Commissioner of Central Excise, Customs and Service Tax-Daman)

SHANTI INTERMEDIATE PVT LTD **.........Appellant**
PLOT NO. 1001/9, 3rd FLOOR,
GIDC, VAPI-GUJARAT

VERSUS

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

WITH

Excise Appeal No. 11827 of 2014
(Arising out of OIA-DMN-EXCUS-000-APP-313-314-13-14 dated 12.02.2014 passed by Commissioner of Central Excise, Customs and Service Tax-Daman)

SHANTI INTERMEDIATE PVT LTD **.........Appellant**
PLOT NO. 1001/9, 3rd FLOOR,
GIDC, VAPI-GUJARAT

VERSUS

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

APPEARANCE:
Shri J. Surti, Advocate appeared for the Appellant
Shri H. P. Shrimali, Superintendent (AR) for the Respondent

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

Final Order No. A/ 12776-12777 /2023

DATE OF HEARING: 28.11.2023
DATE OF DECISION:28.11.2023

RAMESH NAIR

The issue in the present case is that whether the appellant being a job worker carrying out a job work under notification 214/86 is eligible for cenvat credit in respect of input service and capital goods. The case of the department is that since the appellant's activity is exempted under Notification No. 214/86, they are not entitled for cenvat credit in terms of Rule 6(1) of Cenvat Credit Rules, 2000.

2. Shri J. Surti, learned counsel appearing on behalf of the appellant submits that manufacture carried out under Notification 214/86 cannot be said to be exempted under Notification 214/86, the goods are very much liable for duty in the case of principle manufacturer. Therefore, the cenvat credit is available on input service and capital goods used in the manufacture of goods on job work basis under Notification 214/86. He placed reliance on the Larger Bench Judgment in the case of Sterlite Industries vs CCE-Pune 2005 (182) ELT 353 (Tri. LB) which was upheld by the Hon'ble Bombay High Court reported at Commissioner vs Sterlite Industries Ltd. 2009 (244) ELT A86(Bom).

3. Shri H.P. Shrimali, learned (superintendent) Authorized Representative appearing on behalf of the Revenue reiterates the findings of the impugned order. He further submits that activity carried out by the appellant is a service activity, since it is carried out on job work basis it is exempted under Notification No. 8/2005-ST, therefore, in case of exempted service cenvat credit cannot be availed.

4. On rejoinder Shri J. Surti, learned counsel submits that this charge is not raised in the show cause notice, moreover the appellant are carrying out the manufacturing activity of Dye which is excisable manufacturing activity hence, the ground in the impugned order is not relevant.

5. I have carefully considered the submissions made by both the sides and perused the records. I find that as per the show cause notice the denial of cenvat credit on input service and capital goods is that the appellant are manufacturing the goods availing the exemption Notification No. 214/86 and in terms of Rule 6(1) cenvat credit is not admissible on the exempted activity. I find that this issue has been considered by the Larger Bench of this Tribunal in the case of Sterlite

Industries (supra) which was upheld by the Hon'ble Bombay High Court that in respect of the activities carried out by job work under Notification No. 214/86, cenvat credit is admissible. Therefore, the issue is no longer res-integra and stand decided in favour of the appellant. As regard, the submission of learned authorized representative that the activity is in the nature of service and the same is exempted under Notification 8/2005-ST, I find that firstly there is no charge in the show cause notice on this count, the entire basis for denial of credit is that the appellant are manufacturing on job work basis under notification 214/86, therefore, on this ground itself the issue raised in the impugned order will not sustain. Moreover, the activity of the appellant is dye manufacturing which is a manufacturing activity in terms of section 2(f) of Central Excise Act which is excluded in the definition of Business Auxiliary Service under which the demand was raised. For this reason also the finding of the impugned order as regard the service provided by the appellant has no basis. Accordingly, I am of the view that the appellant have rightly availed the credit in respect of input service and capital goods for manufacturing of excisable goods even though on job work basis under Notification 214/86. Accordingly the impugned orders are set aside. Appeals are allowed.

(Dictated & Pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

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