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

REGIONAL BENCH : COURT NO. 3

SERVICE TAX Appeal No. 10154 of 2019-SM

[Arising out of Order-in-Original/Appeal No CCESA-SRT-APPEAL-PS-383-2018-19 dated 04.09.2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I(Appeal)]

Vardhman Plastochem Pvt Ltd ...Appellant

S No 205/3 Kasturi Hingraj Industrial Estate Athiayawad
Dabhel
DAMAN, GUJARAT-396210

VERSUS

C.C.E. & S.T.-Daman ...Respondent

3RD FLOOR...ADARSH DHAM BUILDING, VAPI-DAMAN ROAD, VAPI
OPP.VAPI TOWN POLICE STATION,
VAPI, GUJARAT-396191

APPEARANCE:

Present For the Appellant : Shri Uday B Kadu, Advocate

Present For the Respondent : Shri R.P. Parekh, Superintendent(AR)

CORAM:
HON'BLE MEMBER (TECHNICAL), RACHNA GUPTA

FINAL ORDER NO. A/12506 / 2021

DATE OF HEARING/DECISION : 21/10/2021

RACHNA GUPTA

In the present appeal a show cause notice dated 15.03.2017 was served upon the appellant after the audit objection regarding the documents i.e. separate ledger accounts for unit-I & unit-II and groupings of balance sheet were not certified by authorized authority despite that the assessees had themselves discharged their liabilities. But the payment was made in excess. However, the refund claim of Rs. 3,70,477/- towards the excess payment of service tax, interest and penalty was proposed to be rejected. The proposal was accepted by the order in original no 18-003 dated 28.3.18. The appeal thereof has been rejected as well. Still being aggrieved the appellant is before this Tribunal.

2. I have heard Shri Ishan Bhatt, learned counsel for the appellant and Shri RP Parekh, learned Superintendent (Authorised Representative).

3. Learned Counsel for the appellant has mentioned that the only ground for which show cause notice was issued was that the documents were not certified by the authorized authority. It was nowhere being denied that the appellant had made excess payment of service tax, interest and penalty. Learned counsel further impressed upon that all the documents were subsequently tendered before the Original Adjudicating Authority itself after getting those documents duly certified by the chartered accountant, the authorised person for the same. It is submitted that the excess payment which was made under some mistake on part of the appellant has to be refunded to the appellant. The rejection of the refund claim is therefore, liable to be set aside. Appeal is prayed to be allowed.

4. Per contra, learned DR has submitted that the adjudicating authorities below have clearly held that though the documents such as ledger, balance sheets, groupings for the year 2015-16 have been submitted showing Rs. 3,70,477/- as excess service tax paid but no corroboratory evidence to prove the claim of said excess payment has been reduced. As such there is no infirmity in the order, the appeal is prayed to be dismissed.

5. After hearing the rival contentions and perusing the records, I am of the opinion that there is no denial on the part of the department that the appellant had made the excess payment of the service tax due to the reason that the appellant was functioning with its two units, however, with its two different excise registrations. The only discrepancy noticed since the stage of show cause notice apparently & admittedly, was that the documents showing the said excess payments were not certified by the authorized person.

6. I further observe from the records that the documents duly certified by the chartered accountant of the appellant were made available by the appellant before the original adjudicating authority itself. The complete silence for acknowledging the said tender on part of the adjudicating authority below, is held to be unreasonable. The burden was otherwise of revenue to prove that the payment made by the appellant was not over and above his service tax liability. There is no such evidence. The fact remains is that the extra payment has been made by the appellant under mistake which occurred due to the appellant having two separate units. The law has

squarely been settled on the issue that there cannot be an estoppel against the assessee to not to claim the payment of duty made in excess. I draw my support from the decision of the decision of the Hon'ble High Court of Bombay in the case of **Hero Cycles Ltd. vs Union of India cited as 2009 (240) ELT 490** wherein it was held that duty paid under mistake or by oversight cannot result in being assessed to duty which was otherwise not payable. The said decision has been upheld by the Hon'ble Apex court in the case of **Union of India vs Hero Cycles Ltd. cited as 2010 (252) ELT A103 (SC)**. I do not find any difference in the circumstances and the facts of the present case so as to differ from the aforesaid decisions. It is accordingly held that claim of refund of excess amount of service tax paid by the appellant has wrongly been rejected by learned Commissioner (Appeals), despite that duly certified documents were tendered before the authorities below.

7. As a result, the order under challenge is set aside, appeal stands allowed.

(Dictated and pronounced in the open court)

(RACHNA GUPTA)
MEMBER (JUDICIAL)

Diksha