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

REGIONAL BENCH - COURT NO. 3

EXCISE Appeal No. 12448 of 2013-DB

[Arising out of Order-in-Original/Appeal No 24-DEM-VAPI-2013 dated 31.03.2013 passed by Commissioner of Central Excise-VAPI]

Sidhivinayak Filaments Pvt Limited .... **Appellant**
S. No. 82/1/2 & 60/2, Amli, Near Piparia Industrial
Eatate, SILVASSA, U T OF DADRA & NAGAR HAVELI
396230

VERSUS

Commissioner of Central Excise & ST, Vapi .... **Respondent**
4th Floor, Adharsh Dham Building,
Opp. Town Police Station, Vapi-Daman Road,
Vapi, Gujarat - 396191

WITH

EXCISE Appeal No. 11140 of 2014-DB

[Arising out of Order-in-Original/Appeal No VAP-EXCUS-000-APP-413-13-14 dated 16.12.2013 passed by Commissioner of Central Excise-VAPI]

Sidhivinayak Filaments Pvt Limited .... **Appellant**
S. No. 82/1/2 & 60/2, Amli, Near Piparia Industrial
Eatate, SILVASSA, U T OF DADRA & NAGAR HAVELI
396230

VERSUS

Commissioner of Central Excise & ST, Vapi .... **Respondent**
4th Floor, Adharsh Dham Building,
Opp. Town Police Station, Vapi-Daman Road,
Vapi, Gujarat - 396191

AND

EXCISE Appeal No. 10410 of 2019-DB

[Arising out of Order-in-Original/Appeal No CCESA-SRT-APPEALS-PS-701-2018-19 dated 20.12.2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I]

Sidhivinayak Filaments Pvt Limited .... **Appellant**
S. No. 82/1/2 & 60/2, Amli, Near Piparia Industrial
Eatate, SILVASSA, U T OF DADRA & NAGAR HAVELI
396230

VERSUS

Commissioner of Central Excise & ST, Daman .... **Respondent**
4th Floor, Adharsh Dham Building,
Opp. Town Police Station, Vapi-Daman Road,
Vapi, Gujarat - 396191

APPEARANCE :

Shri R. Subramanya, Advocate for the Appellant
Shri Ajay Kumar Samota, Superintendent (AR) for the Respondent

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

DATE OF HEARING : 20.10.2023
DATE OF DECISION: 20.02.2024

FINAL ORDER NO. 10440-10442/2024

RAMESH NAIR :

The brief facts of the case are that the Appellant is engaged in the manufacture of 'Polyester Texturised Yarn and Grey Knitted Fabrics' falling under the Chapter No. 54023300 and 699010000 respectively of the Central Excise Tariff Act, 1985. The Appellant have opted for availing the benefit of notification No. 29/2004–CE dated 09.07.2004 and 30/2004–CE dated 09.07.2004 from 01.03.2011. The Appellant had retained Cenvat credit balances taken on inputs and lying in balance as on 01.03.2007 and they were of the view that the said balance would not lapse as they were availing benefit of both the aforementioned notifications simultaneously whilst maintaining separate records.

2. A show cause notice dated 31.03.2012 was issued to the appellant wherein, it was contended that the Cenvat credit balance amounting to Rs. 85,65,522/- carried forward till 1.4.2011 ought to have lapsed since the appellant started to avail simultaneous benefits of Notification No. 29/2004 & 30/2004 in the month of April 2011 and that the appellant is in contravention of Rule 11(3) of the Cenvat Credit Rules, 2004.The adjudicating authority accepting the charge made in the show cause notice confirmed the demand of Cenvat credit vide Order in Original No. 24/DEM/VAPI/2013 dated 29.07.2013 along with interest and equal penalty and also imposed personal penalty of Rs.1 lakh. Hence the present Appeals.

3. Shri R Subramanya, learned Counsel appearing on behalf of the appellant submits that post audit the Appellant had reversed the Cenvat credit of Rs. 56,293/- in the month of January 2007 and thus the closing balance thus reflected a balance amounting to Rs. 85,07,096/- which was carried forward by them till 01.03.2011. He further submits that from the

said date the appellants opted for simultaneous availment of the notification No. 30/2004 – CE dated 9.07.2004 and 29/2004 – CE dated 09.07.2004 while availing Cenvat credit of inputs used for manufacture for goods cleared under the former notification and availing no Cenvat credit under the latter.

3.1 He submits that simultaneous availment of Notification No. 29/2004–CE & 30/2004–CE is allowed and has relied on Circular No. 795/28/2004–CX dated 28.07.2004 and judgment of the Hon'ble Supreme Court in Ashima Dyecot Limited vs. CCE 2009 (240) ELT A4.

3.2 Without prejudice to above he submits that their case would not be covered by Rule 3(ii) and that the unutilized credit lying as on 31.03.2006 would not lapse. He further submits that the very issue involved in the present case is no longer *res-integra* as the same is covered by many judgments as cited below:-

(a) Reliance Industries Ltd. vs. CCE 2012 (285) ELT 385 - CESTAT - Mumbai

(b) Omkar Textile Mills Ltd. vs. CCE- 2006 (198) ELT 29-CESTAT-Mumbai

(c) Shree Shyam Synthetics Limited. – 2023 (4) TMI 916

(d) Ruia Rayon Pvt. Ltd &Ors.- 2023 (1) TMI 882-CESTAT AHMEDABAD

4. Shri A.K Samota, learned Superintendent (AR) appearing on behalf of the revenue reiterates the finding of the impugned order.

5. We have carefully considered the submissions made by both the sides and perused the records. The lower authorities have denied the carrying forward of balance credit on the ground that the same shall stand lapsed as the appellant have opted for simultaneous benefits under notification no. 29/2004 & 30/2004-CE. We note that as submitted the Appellant has maintained separate records, however the adjudicating authority without verifying the said fact demanded the Cenvat of unutilsed balance while

opting for exemption notification No. 30/2004-CE by invoking the Rule 11(3)(ii) of Cenvat Credit Rules, 2004 which reads as under: -

> ***RULE 11. Transitional provision.*** —
> *(1)……..*
>
> *(2)…….*
>
> *[(3)A manufacturer or producer of a final product shall be required to pay an amount equivalent to the CENVAT credit, if any, taken by him in respect of inputs received for use in the manufacture of the said final product and is lying in stock or in process or is contained in the final product lying in stock, If,-*
>
> *(i) he opts for exemption from whole of the duty of excise leviable on the said final product manufactured or produced by him under anotificationissuedundersection5A of the Act; or*
>
> *(ii) the said final product has been exempted absolutely under section 5A of the Act, and after deducting the said amount from the balance of CENVAT credit, if any, lying in his credit, the balance, if any, still remaining shall lapse and shall not be allowed to be utilized for payment of duty on any other final product whether cleared for home consumption or for export, or for payment of service tax on any output service, whether provided in India or exported.*
>
> *(4)……]*

6. From the careful reading of the above Rule 11(3), it makes clear that the sub Rule (3)(i) covers the goods that are exempt conditionally whereas sub Rule (3)(ii) would apply to those goods to which exemption under Section 5A of the Central Excise Act, 1944 is granted absolutely. The said rule provides that in any case, the Cenvat credit on stock of input lying in stock, in process and contained in finished goods needs to be reversed however, as regard the balance Cenvat credit after such reversal shall lapse only in a case where the exemption notification is absolute. In the present case, notification no. 30/2004-CE is not an absolute notification as the same contains condition as below:

> *"Provided that nothing contained in this notification shall apply to the goods in respect of which credit of duty on input or capital goods has been taken under the provision of Cenvat Credit Rules, 2004"*

Since the above condition contained in the notification No.30/04-CE, in such case in terms of clause (ii) of Rule 11(3) of Cenvat Credit Rules, 2004, the provision of lapsing of balance Cenvat credit will not be applicable. This issue has been considered in a catena of judgments which are cited by the appellant.

7. However it is observed that the lower authority confirmed the demand of unutilized carried forward Cenvat balance only invoking the Rule 11(3) (ii) of the Cenvat Credit Rules, 2004 but not properly verified the factual aspects such as whether appellant have reversed the credit in respect of stocks as provided under Rule 11(3)(i) of the Rules, 2004, the claim of the appellant maintaining separate records and not availing the Cenvat credit on the input used in the goods cleared under Notification No. 30/2004-CE, etc. therefore we are of the view that the matter needs to be reconsidered keeping in mind our above observations.

8. In view of the above discussion and findings, the impugned order is set aside. Appeals are allowed by way of remand to the adjudicating authority.

(Pronounced in the open court on 20.02.2024*)*

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)

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