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

REGIONAL BENCH- COURT NO.3

Excise Miscellaneous (ORS) No. 10228 of 2021
in
Excise Appeal No.12430 of 2019

(Arising out of OIA-CCESA-SRT-APPEAL-PS-272-2019-20 dated 31/07/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

Garden Silk Mills Ltd. ……**Appellant**
TULSI KRUPA ARCADE, 1ST FLOOR,
PUNA- KUMBHARIA ROAD, DUMBHAL
SURAT-GUJARAT

VERSUS

C.C.E. & S.T. Surat-I ………**Respondent**
NEW BUILDING...OPP. GANDHI BAUG,
CHOWK BAZAR, SURAT, GUJARAT-395001

APPEARANCE:
Shri. Willingdon Christian, Advocate for the Appellant
Shri. R.P. Parekh, Suptd. (Authorized Representative) for the Respondent

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

Final Order No. A/ 12610 /2021

DATE OF HEARING: 02.12.2021
DATE OF DECISION: 14.12.2021

RAMESH NAIR

The issue involved is that whether the ocean freight paid for imported goods is liable to service tax in the hands of the appellant or otherwise.

2. Shri Willingdon Christian, learned counsel appearing on behalf of the appellant amongst other submissions, he filed a decision of this Tribunal on the identical issue in the case of Coromandel International Ltd. vide Final Order No. A/12453/2021 dated 13.10.2021.

3. Shri R. P. Parekh, Learned Superintendent (Authorized Representative) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. We have carefully considered the submissions made by both the sides and perused the records. we find that on the identical issue this Tribunal

has taken a view in the **Order No. A/12453/2021 dated 13.10.2021** in the case of **Coromandel International Ltd**. which is as follows:

> *"Heard both sides. We find that issue involved in the present case is refund of service tax paid on ocean freight.*
>
> *2. Shri Willingdon Christian, learned Counsel appearing on behalf of the appellant relied upon the judgment of Hon'ble Gujarat High Court in the case of SAL Steel Limited vs. UOI – 2020 (37) GSTL 3 (Guj.). He submits that as per this judgment, the levy of service tax on ocean freight itself has been held as ultra-vires. Therefore, they are eligible for refund.*
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> *3. Shri T.G. Rathod, learned Additional Commissioner (Authorised Representative) appearing on behalf of the Revenue submits that there are other issues also such as appellant have not challenged the assessment of service tax payment, therefore in the light of Hon'ble Supreme Court judgment in the case of ITC Limited- 2019 (368) E.L.T. 216 (S.C.), the appellant are not entitled for the refund.*
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> *4. After considering the submissions made by both sides, we find that this judgment of Gujarat High Court in the case of SAL Steel Limited (supra) only after the proceedings concluded by the lower authority i.e. sanctioning authority. This judgment was challenged before the Hon'ble Supreme Court by the Revenue but no stay was granted. Since the judgment was not delivered before passing the adjudication order and by the Commissioner (Appeals). Therefore, in the interest of justice, the matter needs to be reconsidered in the light of judgment of Hon'ble Gujarat High Court in the case SAL Steel Limited (supra). Appeal is allowed by way of remand to the Adjudicating Authority to pass afresh order as observed above. All the issues are kept open."*

5. In the present case also being identical issue involved, following the aforesaid decision, we allow the appeal by way of remand to the adjudicating authority to pass a fresh order, considering the observation made in the aforesaid order dated 13.10.2021. MA stands disposed of.

(Pronounced in the open court on 14.12.2021)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

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