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

REGIONAL BENCH- COURT NO.3

Excise Appeal No. 11473 of 2019
(Arising out of OIA-CCESA-SRT-APPEAL-PS-039-2019-20 dated 26/04/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

Vardhman Plastochem Pvt Ltd ......**Appellant**
Survey No 226, Near Pooja Weigh Bridge, Village Dhabel
Daman, Daman And Diu

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:
Shri Uday B Kadu, Advocate for the Appellant
Shri Ghanshyam Soni, Joint Commissioner (Authorized Representative) for the Respondent

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

Final Order No. A/ 10210 /2022

DATE OF HEARING: 22.02.2022
DATE OF DECISION: 22.02.2022

RAMESH NAIR

This appeal is directed against the order of the Commissioner (Appeals) whereby the he upheld the order of the original authority rejecting the refund claim of an amount which was reversed as Cenvat Credit on Outward GTA. The appellant has sought refund of the amount which they have taken as Cenvat credit on Outward GTA on the objection raised by the Audit. Subsequently they realized that the Outward GTA related to the sale which is of FOR sale hence they are entitled for Cenvat Credit in the light of this Tribunal judgment in the case of Ultratech Cement Ltd- 2019 (2) TMI 1487- CESTAT and Sanghi Industries- 2019 (369) ELT 1424 (T) which was upheld by the Hon'ble high Court of Gujarat reported at 2020(3) TMI 1206(Guj.). The Adjudicating Authority has rejected the claim on the ground that once the appellant has voluntarily reversed the Cenvat credit they cannot claim the refund. The Learned Commissioner (Appeal) after considering the documents submitted by the appellant rejected the appeal not only on the ground that the appellant had paid the amount voluntarily but also on merit citing the Judgment of the Hon'ble Supreme Court in the case of Ultratech Cement Ltd- 2018 (9) GSTL 337 (SC). Therefore, the appellant filed the present appeal.

2. Shri Uday B Kadu, Learned Counsel appearing on behalf of the appellant submits that even though the appellant have reversed the Cenvat Credit on the audit objection and subsequently, when they realize that on merit they are entitled for the Cenvat credit they filed a refund claim therefore the same could not have been rejected on the ground that the appellant had paid the amount voluntarily.

3. Shri Ghanshyam Soni, Learned Joint Commissioner (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. On careful consideration of the submission made by both the sides and perusal of record, I find that even though the appellant has paid the amount on observation of the audit team but subsequently they realized that the amount was not payable, accordingly, they had filed a refund claim. The refund claim should have been decided on merit by the Adjudicating Authority. The appellant have the statutory right that the benefits due to them can be claimed at any stage and the same need to be disposed in accordance with law on merit. The Learned Commissioner (Appeals) has though considered the documents submitted by the appellant but citing the judgment of the Hon'ble Supreme Court in the case of Ultratech Cement Ltd rejected the appeal. We find that as regard merit of the case the fact that the sale of goods in relation to which they incurred the expenditure of outward transportation is on FOR sale and the freight amount is included in the price of the goods on which excise duty was paid. This Tribunal Considering the very same fact, allowed the Cenavt credit in the

case of Ultratech Cement Ltd and Sanghi Industries (Supra) and the same was upheld by the Hon'ble Jurisdictional High Court of Gujarat.

4.1 As regard the reliance placed by the Learned Commissioner on Hon'ble Supreme Court Judgment in the case of Ultratech Cement. This Tribunal in the case of Sanghi Industries and Ultratech Cement Ltd after considering the said Hon'ble Supreme Court's Judgment respectfully distinguished in the light of the board circular No. 1065/4/2018 –CX, dated 08.06.2018.

5. Accordingly, the appellant is entitled for the Cenvat credit in respect of the Outward Transportation and consequently they are also entitled for the refund of the same as the same was reversed by them .

6. The impugned order is set aside and appeal is allowed with consequential relief.

(Dictated & Pronounced in the open court)

RAMESH NAIR
MEMBER (JUDICIAL)

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