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

REGIONAL BENCH – COURT NO. 03

Excise Appeal No. 11914 of 2019

[Arising out of OIA-VAD-EXCUS-001-APP-596-2018-19 dated 22/02/2019 passedby Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I]

E Cube India Solutions Limited .....**Appellant**
Padra Jambusar Road,
Masar, Vadodara
Gujarat

VERSUS

C.C.E. & S.T.-Vadodara-i .....**Respondent**
1st Floor...Central Excise Building,
Race Course Circle,
Vadodara,
Gujarat-390007

APPEARANCE:
Shri Dhruvank Parikh (CA) for the Appellant
Shri. Dinesh Prithiani, (AC), Authorized Representative for the Respondent

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

FINAL ORDER NO.A / 10235 /2022

DATE OF HEARING: 02.03.2022
DATE OF DECISION: 10.03.2022

RAMESH NAIR

The brief facts of the case are that the appellant claimed the refund of Rs. 5,83,641/- against payment being made twice. The refund was rejected vide Order Dated 28th August, 2015. Against the said Order In Original, Appellant preferred appeal before the Commissioner (Appeals) who remanded the matter. The adjudicating authority Vide order dated 23rd November,2015 out of Rs. 5,83,641/- a refund of Rs. 5,47,552/- was sanctioned in Adjudication by the Adjudicating Authority. While sanctioning refund, an amount of Rs. 5,10,248/- has been detected as short payment towards Central Excise out of which already an amount of Rs.4,39,236/- has been debited from CENVAT Credit of Service Tax available and has been reflected in ST-3. The Adjudicating Authority has denied cross utilization of CENVAT Credit of Service Tax against payment of Central Excise Duty and also ordered levy of interest of Rs. 2,25,178/- and Penalty under Rule 8(3A) of Central Excise Rules,2002 vide order in original dated 5th November, 2018. This order has been challenged by filling an appeal before the Hon'ble Commissioner (Appeals) who vide order in appeal dated 22nd February, 2019 confirmed the aforementioned order in original against which the present appeal has been preferred before this tribunal.

2. Shri Dhruvank Parikh, Learned Chartered Accountant appearing on behalf of the appellant submits that the issue is that, whether the CENVAT Credit can be used for Payment of Duty of Excise, which is due before the GST. This tribunal in the case of Uttaranchal Cable Network Vs. Commissioner, Customs, Central Excise & Service Tax, Deharadun (2021) TaxCorp (ST) 37362 (CESTAT- NEW DELHI allowed such utilization. Therefore, both the orders of Adjudicating Authority as well as Commissioner (Appeals) is contrary to the said judgment.

3. Shri Dinesh Prithiani, Learned Authorized Representative appearing on behalf of the revenue reiterates the findings in the impugned order.

4. I have carefully considered the submissions made by both the sides and perused the records. I find that as per the judgment cited by the appellant in the case of Uttaranchal Cable Network (Supra), the appellant's case is prima facie covered by the judgment subject to verification of fact being common in the present case and the judgment cited. Therefore, in my view the matter needs to be remanded for fresh consideration.

5. Accordingly, the impugned order is set aside. The matter is remanded to the adjudicating authority to pass a fresh order considering the above

judgment and facts appearing in said judgment viz-a-viz the facts of the present case. Appeal is allowed by way of remand to the Adjudicating Authority.

(Pronounced in the open Court on 10.03.2022)

RAMESH NAIR
MEMBER (JUDICIAL)

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