

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

Appeal No. E/10885, 11558/2018-SM

[Arising out of OIA-CCESA-SRT-APPEAL-PS-237-238-2017-18 dated 16.11.2017 passed by
Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I]

M/s Filatex India Ltd
Shri Vimal Kedia

Appellant

Vs

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

Respondent

Represented by:

For Appellant: Sh. S.J. Vyas (Advocate)

For Respondent: Shri T.K. Sikdar (AR)

CORAM:

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

Date of Hearing/Decision: 01.01.2019

Final Order No. A / 10096-10097 /2019

Per: Ramesh Nair

The issue involved in the present case is that whether appellant have correctly availed the cenvat credit on the invoices issued by 100% EOU as per the formula prescribed in Rule 3(7) of Cenvat Credit Rules, 2004.

2. Sh. S.J. Vyas Ld. Counsel appearing on behalf of the appellant submits that the appellant have aggrieved that the credit was not taken as per formula prescribed, however the formula applied by the department while issuing an SCN was not correctly applied. Accordingly, the demand was raised for Rs. 21,19,058/-. He submits that if the formula is correctly applied then demand will only be limited to Rs, 3,79,645/-. He submits that there are various discrepancies in applying the formula. He placed reliance on the following judgments:

- Jindal Saw Ltd 2018 (3) TMI 693
- Metaclad Ind. 2012 (11) TMI 244

- Vivacity Woven Sacks 2012 (7) TYMI 607
- SV. Sales Corp. 2013 (9) TMI 209
- Micro Labs Ltd 2015 (10) TMI 1788

3. Sh. T.K. Sikdar Ld. Assistant Commissioner (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. On careful consideration of the submissions made by both the sides and perusal of the records, I observe that there is an apparent error in applying the formula on the following counts as submitted by the appellant:

- a) The credit availed by the appellant is wrongly reported in Annexure-A. The credit of 2% Ed. Cess +1% Ed. Cess which is part of the CVD is correctly taken as the credit under the head of the BED in accordance with the said payment made by M/s Reliance Industries Ltd as BED which is wrongly reported as credit of Ed. Cess.
- b) While working out the eligibility amount as per the formula, the rate of the Basic Custom duty was wrongly adopted as 2.5% instead of correct rate of 5%.
- c) While working out the eligibility as per the formula, the effective duty for the purpose of CVD was considered by adopting only BED and by ignoring 3% Ed. Cess thereon which is also part of the CVD.
- d) Full credit of 2% Ed. Cess and 1% S&H Ed. Cess separately paid on BED computed is entitled as it has no relevance with Not. No. 23/2003-CE and formula prescribed under Cenvat credit Rule 3(7) and paid as 3rd time Ed. Cess under the independent acts of Ed. cess. No effect is given about such credit entitlement in Annexure-A.

5. I find that the demand quantified in the SCN appears to be prima facie incorrect. The lower authority submits that the judgments relied upon by the appellant only by saying that facts are different, however, nothing was discussed how the facts in the relied upon judgments and of this case are different. In view of the above position, the matter needs to be re-considered, accordingly, the impugned order is set aside. The appeals are allowed by way of remand to the adjudicating authority. All other issues including limitation, penalty, and penalty on the employees are kept open.

(Dictated & pronounced in the open court)

(Ramesh Nair)
Member (Judicial)

Seema