

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Zonal Bench, Ahmedabad

Appeal No. E/11092/2018-SM

(Arising out of OIA No. VAD-EXCUS-002-APP-586-2017-18 dated 06/11/2017 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-Vadodara-ii)

Evonik Speciality Silica India P. Ltd. - **Applicant**

Vs.

C.C.E. - Ahmedabad-ii - **Respondent**

Represented by:

For the applicant : Shri Vinay Kansara, Advocate
For the respondent : Shri Amit Kumar Mishra, Asst. Commr. (AR)

CORAM:

Hon'ble Mr. Raju, Member (Technical)

Date of Hearing/Decision: 28/12/2018

ORDER NO. **A/12995 / 2018**

Per: Raju

The present dispute involves is demand of Central Excise duty and Cenvat Credit on clearance of packing material, capital goods as scrap.

2. Ld. Counsel argued that the packing material cleared by them is the packing material in which they have received raw material and the same has been cleared as scrap. He also argued that the capital goods cleared by them is scrap of Capital goods on which no credit is availed by them. He argued that in these circumstances, there cannot be any demand of Cenvat credit or Central Excise Duty. He relied on the decision of Hon'ble Apex Court in the case of West Coast Industrial Gases Ltd. 2003 (155) ELT 11 (SC). He also argued that these circumstances the onus is on Revenue to establish that the goods which have been cleared are the ones on which the credit is available. For this purpose, he relied on the case of Auto Ignition 2008 (226) ELT

14(SC). He also relied on the circular of CBEC 721/37/2003-CX dated 06.06.2003.

3. Ld. AR relies on the impugned order. He pointed out that the Commissioner (A) has in his order pointed out that the appellant has failed to produce evidence that the goods/packing materials were not the ones on which they had availed the credit.

4. I have considered rival submissions. I find that in terms of the decision of Hon'ble Apex Court in the case of West Coast Industries Pvt. Ltd. (supra) no demand can be made in respect of clearance of packing material in which the raw materials were received. In terms of decision of Hon'ble Apex Court in the case of Auto Ignition Ltd (supra), the onus to establish that the Cenvat credit has been availed in respect of goods cleared lies with Revenue. In the facts of the case, I find that there is no such evidence produced that the packing material cleared by them is the packing material on which they have availed the credit as packing material. There is no evidence that the capital goods cleared by them as scrap were the capital goods on which they had availed Cenvat credit. In absence of evidence, this demand cannot be sustained. The appeal is consequently allowed.

(Dictated and pronounced in the open Court)

(Raju)
Member (Technical)

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