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

REGIONAL BENCH- COURT NO.3

Excise Appeal No. 12434 of 2019-SM
(Arising out of OIA-CCESA-SRT-APPEALS-PS-565-2018-19 Dated-26/11/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

Westrock India Pvt Ltd **.....Appellant**
Survey No. 56/1, Vatar Road, Marai
Vapi, Gujarat

VERSUS

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

APPEARANCE:
None appeared for the Appellant
Shri. Dinesh Prithiani, Assistant Commissioner (Authorized Representative) for the Respondent

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

Final Order No. A/ 10699 /2022

DATE OF HEARING: 15.06.2022
DATE OF DECISION:15.06.2022

RAMESH NAIR

The issue involved in the present case is that the appellant have availed the Cenvat Credit on the common input service attributed to the four units. The case of the department is that the appellant is entitled only to the proportionate credit attributed to their unit only, accordingly the Cenvat credit attributed to the appellant's unit was disallowed and the penalty of 50 % was imposed and interest was also demanded. In the present appeal the appellant is seeking waiver of penalty on the ground that though they have availed the credit but the same was paid back without utilization.

2. When the matter was called out none appeared on behalf of the appellant.

3. Shri. Dinesh Prithiani, Learned Assistant Commissioner (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order. He submits that the appellant have not disputed the wrong availment of credit. As regard the penalty, he submits that the appellant have admittedly availed the wrong credit, therefore, the penalty of 50% was rightly imposed.

4. I have carefully considered the submission made by Learned Authorized Representative and perused the records. I find that the limited issue to be decided is that whether the appellant have availed Cenvat credit which is attributed to another unit is right or wrong and whether the consequential penalty can be imposed. I find that the appellant have already reversed the cenvat credit along with payment of interest and contesting only imposition of penalty. From the records, it is observed that the appellant have though availed the credit but reversed the same before utilising as they have huge accumulated Cenvat credit balance in their account.

5. In this position, the malafide intention cannot be attributed to the appellant as the credit was not utilized by the appellant.

6. In my considered view, in the facts of the present case the appellant is not liable for penalty. Accordingly, the penalty is set aside and appeal is allowed in above terms.

(Dictated & Pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

Prachi