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

REGIONAL BENCH-COURT NO. 3

SERVICE TAX Appeal No. 11015 of 2019– SM

(Arising out of OIA-CCESA-SRT-APPEALS-PS-824-2018-19 dated 28/02/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

Payal Polyplast Pvt Ltd **........Appellant**
Unit-ii, Part Of Plot No 87,103
Panchal, Udyog Nagar, Bhimpore
Daman, Daman and Diu

VERSUS

Commissioner of C.E. & S.T.-Surat-i **......Respondent**
New Building...Opp. Gandhi Baug,
Chowk Bazar,
Surat, Gujarat-395001

APPEARANCE:
Shri Amber Kumrawat, Advocate for the Appellant
Shri R R Kurup, Superintendent (AR) for the Respondent

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

Final Order No. 11722/2024

DATE OF HEARING: 12.04.2024
DATE OF DECISION: 07.08.2024

RAMESH NAIR

The issue involved in the present case is that whether the appellant is entitled for the refund of service tax paid on ocean freight as refund of Cenvat credit in terms of Section 142 (3) of CGST Act, 2017. In the impugned order, Learned Commissioner (Appeals) has observed that as the service tax was paid belatedly, no credit on service tax was admissible in terms of Rule 9(1) (bb) of Cenvat Credit Rules, 2004. Therefore, no refund could be paid.

2. Shri Amber Kumrawat, Learned Counsel appearing on behalf of the Appellant at the outset submits that in this appeal the issue involved is that whether the appellant's refund is hit by Rule 9 (1)(b) or (bb) of Cenvat Credit Rules, 2004. He submits that there is no suppression of fact

or *malafide* intention alleged/established against the appellants. He also submits that as per the overall facts of the case, there is no *malafide* on the part of the appellant as the appellant have legally fulfilled their obligation of payment of Service Tax on their own *suo-moto* without any notice of the department. For this reason also Rule 9 (1) (b) and (bb) has is not applicable.

2.2 He placed reliance on the following judgments:-

- M/s. Bosch Electrical Drive India Pvt. Ltd. Vs. Commissioner of GST & C.E., Chennai- 2021 (10) TMI 1345-CESTAT Chennai
- NICO Extrusions Ltd. v. Commissioner of Central Excise & Service Tax, Daman, 2024 (3) TMI 756
- Pacific Harish Industries Limited v. Commissioner of Central Excise & Service Tax, Surat -2019 (10) TMI 626
- Nissan Motor India Private Ltd. v. Commissioner of Service Tax, Chennai, 2019 (2) TMI 1299
- Jagannath Polymers Pvt. Ltd Vs CCGST 2021-VIL-740-CESTAT-DEL-ST
- Amzole India Pvt Ltd Vs CCGST 2021-VIL-737-CESTAT-DEL-ST
- J.P.P. Mills Pvt. Ltd Vs CCE 2016 (46) STR 317 (T)
- Ganges International Pvt Ltd Vs CGST 2022 (3) TMI 544-Madras High Court

3. Shri R.R Kurup, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. I have carefully considered the submission made by both sides and perused the records. I find that as regard the issue that whether the appellant's claim of Cenvat of Service Tax paid on ocean freight is hit by Rule 9 (1) (b) or(bb) of Cenvat Credit Rules, 2004, I find that firstly there is no demand notice in respect of Service tax on ocean freight which was paid by the appellants on their own and also there is no adjudication as regard the suppression fact, therefore, in absence of any charge by way of show cause notice or adjudication thereof, the allegation of suppression of fact only to invoke Rule 9 (1) (b) or (bb) of Cenvat Credit Rules, 2004

is on assumption and presumption which cannot be accepted. Moreover, the payment of service tax is not towards the non-payment by reason of suppression of fact. In the present case the service tax was paid *Suo-moto* for which no offence was made out by the department. Therefore, in this fact, no suppression of fact is involved. Consequently, penal provision under Rule 9 (1) (b) or (bb) shall not apply.

4.1 Having observed as above, I find that except the legal issue there is no discussion about the fact, documents and verification thereof, hence the matter needs to be remanded for this limited purpose for processing the refund claim of the appellant.

5. Accordingly, the impugned order is set aside. Appeal is allowed by way of remand to the Adjudicating Authority.

(Pronounced in the open court on 07.08.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

Raksha