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

REGIONAL BENCH- COURT NO.1

Excise Appeal No.11590 of 2017

(Arising out of OIA-AHM-EXCUS-002-APP-06-17-18 dated 29/05/2017 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD-II)

Parikh Packaging Pvt Ltd **.........Appellant**
Opp.rotomac Pens, Sarkhej-bavla Highway,
Moraiya, Sanand, AHMEDABAD
GUJARAT

VERSUS

C.C.E.-Ahmedabad-ii **.........Respondent**
Custom House... First Floor,
Old High Court Road, Navrangpura,
Ahmedabad, Gujarat-380009

WITH
Excise Appeal No.11591 of 2017

(Arising out of OIA-AHM-EXCUS-002-APP-06-17-18 dated 29/05/2017 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD-II)

Parikh Packaging Pvt Ltd **.........Appellant**
Opp.Rotomac Pens, Sarkhej-Bavla Highway,
Moraiya, Sanand, Ahmedabad
Gujarat

VERSUS

C.C.E.-Ahmedabad-ii **.........Respondent**
Custom House... First Floor,
Old High Court Road, Navrangpura,
Ahmedabad, Gujarat-380009

AND
Excise Appeal No.11592 of 2017

(Arising out of OIA-AHM-EXCUS-002-APP-06-17-18 dated 29/05/2017 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD-II)

Parikh Packaging Pvt Ltd **.........Appellant**
Opp.Rotomac Pens, Sarkhej-Bavla Highway,
Moraiya, Sanand, Ahmedabad
Gujarat

VERSUS

C.C.E.-Ahmedabad-ii **.........Respondent**
Custom House... First Floor,
Old High Court Road, Navrangpura,
Ahmedabad, Gujarat-380009

APPEARANCE:
Shri. K. J. Kinariwala, Consultant for the appellant
Shri. R.R. Kurup, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. SOMESH ARORA

Final Order No.11731-11733/2024

DATE OF HEARING: 07.08.2024
DATE OF DECISION:07.08.2024

SOMESH ARORA

This issue involved in this case is availment of credit when the job worker had paid the duty and passed on the duty paid invoice to the appellant. The department was of the view that where no duty was required to be paid by the job worker as it had the benefit of Exemption Notification No. 08/2005-ST dated 01.03.2005 available and therefore the goods being exempted the Cenvat Credit Rules did not provide for benefit of Cenvat Credit on duty paid.

2. The advocate pleading for the appellants seek to rely on the decision of this Tribunal in their own matter delivered vide Order No. A/10409/2018 dated 26.02.2018 which is of subsequent period i.e. from 01.02.2015 to 30.11.2015. Whereas, the period involved in this cases is .01.01.2010 to July 2015. He pleads that the decision cited was based on the Judgment of Hon'ble Supreme Court in COMMISSIONER OF CENTRAL EXCISE AND CUSTOMS VS. MDS SWITCHGEAR LTD. reported in 2008 (229) ELT 485

(S.C) which was also subsequently followed in the matter of COMMISSIONER OF CENTRAL EXCISE, AHMEDABAD-III VS. NAHAR GRANITES LTD., as reported in 2014 (305) ELT 9 (Guj.).

3. The Learned AR reiterated the findings of the appellate authority and also seeks to rely on the decision of the Apex Court as reported in the matter of VARIETY METALS PVT. LTD Vs. COLLECTOR OF CENTRAL EXCISE- PUNE reported in 2004 (174) ELT 16 (S.C.).

4. The Learned Advocate after going through the Apex Court decision, seeks to counter it with the submission that the decision of the AR is not only prior to the decision of Apex Court relied in MDS SWITCHGEAR LTD (cited supra) but is also distinguishable as the decision in the VARIETY METALS PVT. LTD (cited supra) dealt with an un-conditional notification. Whereas, in the present case the notification involved i.e. 08/2005-ST is a conditional notification as is clear from the wording of the proviso it contains.

5. Considered the rival submissions, this Court finds that the decision in their own case as relied upon by this learned Advocate has relied on the case law (cited supra) of MDS SWITCHGEAR LTD and NAHAR GRANITES LTD (cited supra). Following observations made by the court in para 5 and which are relevant are reproduced below:-

> *"5. I find that undisputedly the job worker of the appellant in providing the service of re-engraving the printing cylinders, discharged service tax. The service tax so paid was availed as credit by the appellant, since, re- engraved cylinder were used in the manufacture of finished products by the appellant in their factory. Following the ratio laid down in the aforesaid cases, I do not find any justification in denying the credit to the appellant in absence of evidence that the job worker has claimed refund of the service tax paid. In the result, the impugned order is set-aside and the appeal is allowed with consequential relief, if any, as per law."*

5.1 In view of the foregoing, the appeal deserves to be allowed and is allowed with consequential relief.

(Dictated and pronounced in the open court)

(SOMESH ARORA)
MEMBER (JUDICIAL)

Prachi