CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST ZONAL BENCH : AHMEDABAD

REGIONAL BENCH - COURT NO. 3

EXCISE Appeal No. 10266 of 2020-SM

[Arising out of Order-in-Original/Appeal No VAD-EXCUS-002-APP-392-2019-20 dated 14.10.2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-II]

Galaxy Poly Plast Industries .... **Appellant**
33, Gidc Manhusar, Savli
Vadodara, Gujarat-391775

VERSUS

Commissioner of Central Excise & ST, Vadodara .... **Respondent**
1st Floor, Room No.101, New Central Excise Building,
Vadodara, Gujarat -390023

APPEARANCE :

Shri Dhruvank Parikh, Chartered Accountant for the Appellant
Shri G. Kirupanandan, Superintendent (AR) for the Respondent

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

DATE OF HEARING/ DECISION: 22.06.2022

FINAL ORDER NO. A/10715 / 2022

RAMESH NAIR :

The issue involved in the present case is whether the appellant is entitled for refund of service tax paid on ocean freight on the ground that appellant is entitled for Cenvat credit of service tax paid on ocean freight and accordingly, they are entitled cash refund under Section 142(3) read with Section 11B.

2. Shri Dhruvank Parikh, learned Chartered Accountant appearing on behalf of the appellant submits that though they have made refund on the ground of Cenvat credit admissible of service tax paid on ocean freight. However, as on date there is decision of Hon'ble Gujarat High Court in the case of *SAL Steels Limited vs. UOI – (2020) TaxCorp(ST) 35989 (HC-*

GUJARAT) and according to which refund of service tax paid on ocean freight is eligible. Accordingly, service tax refund claim is admissible under Section 11B of Central Excise Act, 1944. On a query, he submitted that this issue was not raised before the lower authorities, as the judgment of Hon'ble Gujarat High Court was delivered subsequently.

3. Shri G. Kirupanandan, learned Superintendent (AR) appearing on behalf of the Revenue submits that as regards the refund of Cenvat credit under Section 142(3), this Tribunal has referred the matter to the Larger Bench on the issue of jurisdiction. Therefore, this Tribunal cannot decide the issue of refund under Section 142(3).

4. I have considered the submissions made by both the sides and perused the record. I find that both the lower authorities passed the order on the ground that the refund which were claimed than cash refund of Cenvat credit of service tax paid on ocean freight in terms of Section 142(3) read with Section 11B is not admissible. I find that as regard the said issue this Tribunal's Division Bench has referred the matter to the Larger Bench in the case of *Bosch Electrical Drive India Private Limited vs. Commissioner of GST and Central Excise, Chennai* vide Interim Order No. 40019/2021 dated 22.10.2021. Therefore, I am not inclined to pass any order on cash refund of Cenvat credit governed under Section 142 (3) of CGST Act, 2017. Since the appellant have made claim on the basis of Hon'ble Gujarat High Court judgment in the case of SAL Steels Limited (supra) that levy of service tax itself is illegal. Their refund claim of service tax paid by them is not on this ground. I am of the view since now appellant argued that they are entitled to refund of service tax paid on ocean freight there will not have any effect on reference made by the Division Bench. Further this issue was not

examined by the lower authorities about the levy of service tax on ocean freight and also the judgment of Hon'ble Gujarat High Court was not available before the lower authorities.

5. Accordingly, I remand the matter to the Adjudicating Authority to decide the case afresh under Section 11B that whether the service tax paid by the appellant on ocean freight is legal and correct or otherwise. Issue of refund of Cenvat is also kept open. Hence the appeal is allowed by way of remand to the Adjudicating Authority.

(Dictated and pronounced in the open court)

(Ramesh Nair)
Member (Judicial)

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