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

REGIONAL BENCH - COURT NO. 3

EXCISE Appeal No. 12864 of 2019

[Arising out of Order-in-Original/Appeal No VAD-EXCUS-001-APP-257-2019-20 dated 22.08.2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I]

Cosmo Films Limited .... **Appellant**
Vemardi Road, Nr. Inox, Village- Navi Jithardi, Taluka:
Karjan, Vadodara, Gujarat-391240

VERSUS

Commissioner of Central Excise & ST, Vadodara .... Respondent
1st Floor, Central Excise Building,
Race Course Circle, Vadodara, Gujarat-390007

APPEARANCE :

Shri Sanket Gupta, Advocate for the Appellant
Shri R P Parekh, Superintendent (AR) for the Respondent

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

DATE OF HEARING/ DECISION: 22.06.2022

FINAL ORDER NO. A/10717 / 2022

RAMESH NAIR :

The issue involved is that whether the appellant is entitled for Cenvat credit on Outward GTA service.

2. Shri Sanket Gupta and Shri Jigar Shah, learned Counsels submits that in the appellant's own case, the matter was remanded for deciding afresh on the basis whether the sale is on FOR basis or not. Therefore, this matter may also be remanded.

3. Shri R P Parekh, learned Superintendent (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. On careful consideration of the submissions made by both sides and perusal of record, I find that, from the order-in-original as well as order-in-appeal, it appears that appellant have not submitted documents in respect of their claim that the sale is on FOR basis. If the sale is on FOR basis Cenvat credit is admissible to the appellant on Outward GTA service. This Tribunal, in the appellant's case (Appeal No. E/12848 of 2019) vide order No. A/10212/2022 dated 22.02.2022 remanded the matter to the Adjudicating Authority with following observation:-

> **"4.** I have carefully considered the submission made by both sides and perused the record. I find that the issue relates to the Cenvat Credit on Outward GTA. In the present case it is found prima facie that the sale is on FOR, if it is so the appellant is entitled for the Cenvat Credit in the light of the judgment in case of Ultratech Cement Ltd and Sanghi Industries (Supra) upheld by the Hon'ble High Court of Gujarat. However, since the appellant has not filed the reply/any documents with regard to the nature of the sale whether it is FOR or otherwise, the matter needs to be reconsidered.
>
> **4.1** As regard the judgment cited by learned Authorized Representative, I find that the judgment of Ultratech cement of the Apex Court has been considered by this tribunal in the case of Ultratech Cement Ltd and Sanghi Industries therefore, the same stands distinguished. As regard the judgment cited by the revenue in the case of Andhra Cement Ltd – 2020-TIOL- 1309-CESTAT-HYD, I find that this judgment has not considered the judgment of this Tribunal which was upheld by The Hon'ble High Court of Gujarat. However, this tribunal falls within the jurisdiction of the High court of Gujarat, the judgment of Hon'ble High court of Gujarat is binding. Therefore the judgment of Andhra Cement Ltd (Supra) is distinguished.
>
> **5.** As per my above observation, the impugned order is set aside. Appeal is allowed by way of remand to the Adjudicating Authority to decide a fresh after verifying the documents. Needless to say, the appellant may be given sufficient opportunities for personal hearing and submitting their documents and written reply before denovo adjudication.**"**

5. Since the facts in the present case are also identical, I set-aside the impugned order and remand the matter to the Adjudicating Authority to

decide afresh by considering the observations made in above Tribunal order. Accordingly, the appeal is allowed by way of remand to the Adjudicating Authority.

(Dictated and pronounced in the open court)

(Ramesh Nair)
Member (Judicial)

KL