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

REGIONAL BENCH - COURT NO. 3

EXCISE Appeal No. 12322 of 2013-DB

[Arising out of Order-in-Original/Appeal No 77-DEMAND-2012 dated 19.03.2013 passed by Commissioner of Central Excise, CUSTOMS (Adjudication)-SURAT-I]

Commissioner of Central Excise & ST, Surat-i .... **Appellant**
New Building, Opp. Gandhi Baug,
Chowk Bazar, Surat, Gujarat-395001

VERSUS

Baba Silk Mills .... **Respondent**
F-52, Silver Point,
Opp. Vidya Bharti School, Bhatar Road,
SURAT, GUJARAT.

APPEARANCE :

Shri Anoop Kumar Mudvel, Superintendent (AR) for the Appellant
Shri S. Suryanarayanan, Advocate for the Respondent

CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)

DATE OF HEARING : 01.08.2024
DATE OF DECISION: 14.08.2024

FINAL ORDER NO. 11770/2024

RAMESH NAIR:

Revenue has filed the present appeal on the ground that the Adjudicating Authority has though disallowed Cenvat credit of Rs. 74,18,279/- but reduced an amount of Rs. 73,86,002/- for the reason that said amount already stand confirmed and ordered to be recovered from the said beneficiaries namely Shri Sunil Malpani, Shri Rakesh Sharma and Shri Girdhari Dadich and again ordered recovery of Rs. 73,86,002/- from the said three persons would amount to duplication of the amount.

2. Shri Anoop Kumar Mudvel, learned Superintendent (AR)appearing on behalf of the Revenue reiterates the grounds of appeal. He submits that recovery of erroneous amount is still pending yet to be recovered therefore reduction of amount in the impugned order from the total demand of disallowed Cenvat credit is not correct and legal.

3. Shri S. Suryanarayanan, learned Counsel appearing on behalf of the respondent submits that the amount of erroneous rebate ordered to be recovered is nothing but amount utilised against the disallowed Cenvat credit therefore if amount is not reduced in the present demand there will be duplication of the demand for the same amount. Therefore the learned Adjudicating Authority has rightly reduced the amount of demand i.e. the recovery of erroneous refund.

4. On careful consideration of the submissions made by both the sides and perusal of record, we find that the order of recovery of wrong refund was made in respect of the amount of duty paid by utilisation of Cenvat credit which was disallowed in the present case. We find that the Adjudicating Authority has clearly held that the Cenvat credit availed by the respondent is illegal and incorrect and same was disallowed. Therefore, Cenvat credit in the present appeal stand disallowed. So far as the recovery is concerned, in the earlier order for recovery of erroneous refund, the recovery was already ordered. The said amount is nothing but for utilisation of the erroneous availment of Cenvat credit which was disallowed in the present case. Therefore if in both the orders, the amount is allowed to be recovered then there will be double jeopardy against the one demand only. Therefore, in our view the Adjudicating Authority has rightly reduced the amount of erroneous refund ordered to be recovered. In view of the above, we do not find any merit in the Revenue's appeal hence the impugned order is upheld and Revenue's appeal is dismissed.

(Pronounced in the open court on 14.08.2024*)*

(Ramesh Nair)
Member (Judicial)

(C L Mahar)
Member (Technical)

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