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

REGIONAL BENCH- COURT NO. 3

Service Tax Appeal No. 10235 of 2020

(Arising out of OIA-VAD-EXCUS-001-APP-488-2019-20 Dated- 24.12.2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I)

RUBAMIN PRIVATE LTD. **........Appellant**
PLOT NO. 1, SHREE KRISHNA INDUSTRIAL ESTATE, GORWA
VADODARA-GUJARAT

VERSUS

C.C.E. & S.T.-Vadodara-I **........Respondent**
1ST FLOOR...CENTRAL EXCISE BUILDING,
RACE COURSE CIRCLE,
VADODARA, GUJARAT-390007

APPEARANCE:
Shri Surabh Dixit (Advocate) for the Appellant
Shri G. Kirupanandan, (Superintendent) Authorised Representative for the Respondent

CORAM: HON'BLE MR. RAJU, MEMBER (TECHNICAL)

Final Order No. A/ 10779/2022

DATE OF HEARING:06.07.2022
DATE OF DECISION:06.07.2022

RAJU

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. Heard both the sides.

3. I find that the identical issue of this Tribunal in the case of Galaxy Poly Plast Industries vide Final Order No. A/10715/2022 has remanded the matter for following reasons:

> *"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 3 EXCISE Appeal No. 10266 of 2020-SM 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."*

Respectfully following the said order, the matter is remanded to the original authority.

(Dictated & Pronounced in the open court)

(RAJU)
MEMBER (TECHNICAL)

Neha