CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL AHMEDABAD
REGIONAL BENCH, COURT NO. 2

EXCISE APPEAL NO. 12793 OF 2018-DB

(Arising out of OIA-79-AGU-ADT-VAD-2017-18 dated 11/07/2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-Vadodara-I)

Choksi Silk Mills ....**Appellant**
Udhna Magdalla Road,
Surat, Gujarat

Versus

C.C.E. & S.T.-Surat-I ......**Respondent**
New Building...Opp. Gandhi Baug,
Chowk Bazar,
Surat, Gujarat-395001

Appearance:
Shri Amal Dave, Advocate for the Appellant
Shri Sanjay Kumar, Superintendent (AR) for the Respondent

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

Final Order No. 11974/2024

DATE OF HEARING: **24/06/2024**
DATE OF DECISION: **11.09.2024**

RAMESH NAIR

The issue involved in the present case is that whether the appellant is liable to pay the duty on annual production capacity or on actual production capacity after Section 3A Central Excise Act, 1944 along with Rule 96ZQ were omitted by the Finance Act, 2001.

2. Shri Amal Dave, learned Counsel appearing on behalf of the appellant submits that the issue is no longer res integra as held by Hon'ble Gujarat High Court as well as Supreme Court in various judgments that after Section 3 along with Rule 96ZQ were omitted by the Finance Act, 2001, payment of duty made by the appellant on actual production capacity is correct, no further demand will sustain. He placed reliance on the following judgments :-

- M/s. Gopal Iron & Steel Co (Gujarat) Ltd. Vs. Union of India Hon'ble High Court order dated 09.02.2024
- CCE V/s. Cosmo Denim 2017(1) TMI 1021- Gujarat High Court
- UOI V/s. Supreme Steel and General Mills 2001(133) ELT 513 (S.C.)
- Hon'ble Gujarat High Court order dated 02.08.1999 in case of M/s. Choksi Silk Mills V/s. UOI
- Hon'ble Gujarat High Court order dated 11.12.2002 in case of M/s. Somnath Steel Industries V/s.UOI
- Mahalaxmi Fibers Pvt.Ltd. V/s. UOI 2019(366) ELT 810 (Guj.)

3. Shri Sanjay Kumar, learned Superintendent (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. We have carefully considered the submission made by both the sides and perused the records. We find that in view of the judgments cited by the learned Counsel the issue is prima facie settled in favour of the assessee. However, all the judgments have not been considered by the Adjudicating Authority. Therefore, for overall analysis of the fact of the present case and applicability of judgments cited above the matter needs to be remitted back to the Adjudicating Authority.

5. Accordingly, we set aside the impugned order and allow the appeal by way of remand to the Adjudicating Authority to decide afresh within a period of one month from date of this order.

(Pronounced in the open court on **11.09.2024** *)*

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

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