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

REGIONAL BENCH- COURT NO.3

Excise Appeal No.12995 of 2019

(Arising out of OIA-VAD-EXCUS-001-APP-371-2019-20 dated 30/09/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I)

BODAL CHEMICALS LTD ....**Appellant**
Unit-Iii, 795 To 803,804,807,832, Main Road, Padra, Dudhwada, Village: Karkhadi, Taluka: Padra, Vadodara, Gujarat

VERSUS

C.C.E. & S.T.-VADODARA-I ....**Respondent**
1st Floor...Central Excise Building,
Race Course Circle,
Vadodara, Gujarat-390007

APPEARANCE:
Shri N.K.Tiwari, Advocate for the Appellant
Shri. G. Kirupanandan, Superintendent (AR) for the Respondent

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

Final Order No. A/ 10922 /2022

DATE OF HEARING: 04.08.2022
DATE OF DECISION : 04.08.2022

RAJU

This appeal has been filed by Bodal Chemicals Ltd. against order demanding reversal of Cenvat Credit on empty drums and barrels cleared by them.

02. Learned counsel for the appellant pointed out that they bring their raw material in barrels and drums and after using the raw material, the empty barrels and drums are cleared on sale from their premises. He pointed out that the revenue is seeking reversal of Cenvat credit in terms of Rule 6 of Cenvat Credit Rules, 2004. He pointed out that the issue is squarely covered by the decision of this Tribunal in the case of CADILA HEALTHCARE LTD vide Final Order No. A/10731/2022 dated 24.06.2022.

03. Learned AR reiterates the findings of the impugned order.

04. I have considered the rival submissions. I find that the issue is settled by the decision of tribunal in the case of CADILA HEALTHCARE LTD. wherein, the tribunal has observed as follows:-

4. I have carefully considered the submission made by both sides and perused the records. I find that the lower authorities have confirmed he demand only on the ground that empty drums of cenvatable input is a non excisable goods and therefore, the clearance there of will attract 6% reversal in terms of rule 6(3) of Cenvat Credit Rules, 2004. On the identical issue this Tribunal has passed the following order in the case of Banco Gasket I Ltd

> *"4. I have carefully considered the submissions made by both the sides and perused the records. I find that the Show Cause Notice was issued demanding the amount equal to 6% of the value of packaging material cleared by the appellant. The said packaging material is nothing but an empty packaging material in which input was received by the appellant. Therefore, it is the fact that the said packaging material is not arising out of manufacture process of any final product. The Show Cause Notice also invoked Explanation (1) & (2) of Rule 6(1) of Cenvat Credit Rules which is reproduced below:-*
> *"Explanation 1.- For the purposes of this rule, exempted goods or final products as defined in clauses (d) and (h) of rule 2 shall include non-excisable goods cleared for a consideration from the factory.*
>
> *"Explanation 2.- Value of non-excisable goods for the purposes of this rule, shall be the invoice value and where such invoice value is not available, such value shall be determined by using reasonable means consistent with the principles of valuation contained in the Excise Act and the rules made there under."*
>
> *On plain reading of the above explanation, I find that as per explanation (1) only goods which are defined under clause (d) and (h) of Rule 2 could be covered for the purpose of demand under Rule 6(3), for ease of reference clause (d) and (h) of Rule 2 are reproduced below:-*
> *(d) "exempted goods" means excisable goods which are exempt from the whole of the duty of excisable leviable thereon, and includes goods which are chargeable to "Nil" rate of duty [and goods in respect of which the benefit of an exemption under Notification NO.1/2011-CE, dated 1-3-2011 or under entries at S. Nos. 67 and 128 of Noti. No. 12/2012-CE dt. 17-3-2012 is availed];*
> *(h) "final products" means excisable goods manufactured or produced from input, or using input service;*
>
> *On plain reading of the above definition of „exempted goods" as well as „final product," it is clear that the said goods should be arising out of the manufacturing activity even though after that the said goods may or may not be excisable goods. In the present case, the packaging material since not arising out of any manufacturing process the same will not fall either under Sub-clause (d) or sub-clause (h) of Rule 2 of Cenvat Credit Rules, 2004. As regard explanation (2), it is only for the purpose of value of the non-excisable*

> *goods to calculate the payable amount under Rule 6(3). Since the goods does not fall under the explanation (1),* explanation (2) will obviously not be applicable therefore, the charges made in the Show Cause Notice are not tenable.

05. Relying on the aforesaid decision, appeal is allowed.

(Dictated & Pronounced in the open court)

(RAJU)
MEMBER (TECHNICAL)

Mehul