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

REGIONAL BENCH- COURT NO.3

Excise Misc. Application (EH) No. 10177 of 2022
Excise Misc. Application (ORS) No. 10234 of 2022

(On behalf of Applicant)
in
Excise Appeal No.10049 of 2020
(Arising out of OIA-VAD-EXCUS-002-APP-451-2019-20 dated 14/11/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-II)

FILATEX INDIA LIMITED ....**Appellant**
Plot No. D-2/6, Vill- Jolva, Dahej Road, Dahej
Bharuch, Gujarat

VERSUS

C.C.E. & S.T.-VADODARA-II ....**Respondent**
1st Floor... Room No.101,
New Central Excise Building,
Vadodara, Gujarat-390023

APPEARANCE:
Shri Vinay Kansara (Adv.) for the Appellant
Shri Vinod Lukose, Superintendent (AR) for the Respondent

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

Final Order No. A/ 11059 /2022

Miscellaneous Order No. M/ 10452- 10453 /2022

DATE OF HEARING: 04.08.2022
DATE OF DECISION: 04.08.2022

RAMESH NAIR

This early hearing application is filed by the applicant. Shri Vinay Kansara, learned counsel appearing on behalf of the applicant submits that the issue whether the ocean freight is liable to service tax or not has been decided by the Hon'ble Gujarat High Court in the case of M/s Sal Steel Limited Vs. UOI – 2020 (37) GSTL 3 (Guj.). Accordingly, the early hearing application is allowed.

2. Since the limited issue is involved, appeal itself is taken up for disposal. The miscellaneous application for additional ground was filed. As per the additional ground Shri Vinay Kansara, learned counsel submits that in the present case, the refund was sought in respect of service tax paid mainly on ocean freight including other services namely Man power service

and legal services. He submits that the refund was sought under Section 142(3) of CGST Act, 2017 against the available cenvat credit of the service tax paid by them on ocean freight. By this miscellaneous application he submits that now they are entitled for refund of service tax itself which was paid by them on ocean freight without opting for Section 142(3) of CGST Act.

3. I find that since before the adjudicating authority as well as Commissioner (Appeals), the appellant have claimed refund under 142(3) as against the accrued Cenvat credit and issue that whether the refund of service tax paid on ocean freight is eligible or not has not been examined by both the lower authorities therefore, in my considered view the matter has to go back to the adjudicating authority to examine whether the ocean freight is liable to service tax and consequently, whether the appellant is eligible for the refund of service tax paid on ocean freight in terms of Section 11B of Central Excise Act, 1944.

4. Accordingly, I set aside the impugned order and remand the matter back to the adjudicating authority for passing a fresh order in terms of the judgment of the Hon'ble Gujarat High Court in the case of M/s Sal Steel Limited Vs. UOI – 2020 (37) GSTL 3 (Guj.) Miscellaneous Application also stands disposed of.

(Dictated and pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

Geeta