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

REGIONAL BENCH - COURT NO. 3

SERVICE TAX Appeal No. 175 of 2012-DB

[Arising out of Order-in-Original/Appeal No COMMR-A--21-VDR-I-2012 dated 10.01.2012 passed by Commissioner of Central Excise, CUSTOMS (Adjudication)-VADODARA-I]

Gail India Limited .... **Appellant**
Manisha Circle, Old Padra Road,
VADODARA, GUJARAT-390015

VERSUS

Commissioner of Central Excise & ST, Vadodara .... **Respondent**
1st Floor Central Excise Building,
Race Course Circle, Vadodara, Gujarat-390007

APPEARANCE :

Ms. Shamita J. Patel & Shri Rahul Gajera, Advocates for the Appellant
Shri Ghanasyam Soni, Joint Commissioner (AR) for the Revenue.

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

DATE OF HEARING / DECISION : 08.09.2022

FINAL ORDER NO. A/11119 / 2022

RAMESH NAIR :

In this case there is the demand proceedings of refund as recovery of erroneous refund flowing from the protective show cause notice issued for the reason that the refund sanction order was reviewed by the Commissioner and decided against the assessee. Against the revision order of the Commissioner dated 19.10.2009, the appellant filed appeal before this Tribunal. This Tribunal vide order dated 31.01.2014 reported at Gail (India) Limited vs. CCE, Vadodara – 2016 (46) STR 698 (Tri. Ahmd.) allowed the appeal of the appellant. This order attained finality as no appeal was filed by the Revenue against this order.

2. Ms. Shamita J. Patel, learned Counsel appearing on behalf of the appellant submits that since the refund matter has already attained finality on merit as per the Tribunal's order dated 31.01.2014, the impugned order whereby the department seeks to recover the refund, will not sustain.

3. Shri Ghanasyam Soni, learned Joint Commissioner, AR appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. On careful consideration of the submissions made by both the sides and perusal of record, we find that in the present proceedings, the demand was confirmed on account of recovery of erroneous refund. The refund matter has already been decided in favour of the appellant in the case reported at *Gail (India) Limited vs. CCE, Vadodara – 2016 (46) STR 698 (Tri. Ahmd.)* which attained finality. Therefore, in the present proceedings being consequent to refund matter, which attained finality, the impugned order will not survive. Accordingly, the impugned order is set-aside and the appeal is allowed.

(Dictated and pronounced in the open court)

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)

KL