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

REGIONAL BENCH-COURT NO. 3

EXCISE Appeal No. 10088 of 2017 - DB

(Arising out of OIA-VAD-EXCUS-003-APP-113-114-16-17 dated 13/10/2016 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I(Appeal))

Universal Comfort Products Ltd **........Appellant**
Having Its Registered Office At Voltas House B,
T.b. Kadam Marg, Chinchpokli,
Mumbai, Maharashtra

VERSUS

Commissioner of C.E & S.T.-Silvasa **......Respondent**
Commissioner Central Excise, Customs & Service Tax,
Silvassa, 4th floor, Adarsh Dham Building,
Vapi Daman Road Vapi
Opp. Old Town Police Station
Vapi, Gujarat

With

EXCISE Appeal No. 10382 of 2017 - DB

(Arising out of OIA-VAD-EXCUS-003-APP-113-114-16-17 dated 13/10/2016 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I(Appeal))

Shri Chandrakant Mane **........Appellant**
Authorised Signatory Universal Comfort Products Ltd,
Having Its Registered Office At Voltas House B,
T.b. Kadam Marg, Chinchpokli,
Mumbai, Maharashtra

VERSUS

Commissioner of C.E & S.T.-Silvasa **......Respondent**
Commissioner Central Excise, Customs & Service Tax,
Silvassa, 4th floor, Adarsh Dham Building,
Vapi Daman Road Vapi
Opp. Old Town Police Station
Vapi, Gujarat

APPEARANCE:

Ms. Lakshmi Menon, Advocate for the Appellant
Shri A R Kanani, Superintendent (AR) for the Respondent

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

Final Order No. 12357-12358/2024

DATE OF HEARING: 03.10.2024
DATE OF DECISION: 10.10.2024

RAMESH NAIR

The brief facts of the case are that the appellant have cleared capital goods after use for almost more than 10 years in their factory without payment of duty on the basis that as per Rule 3 (5A) Second proviso by reducing the percentage points as per the rate given in clause (b) of Rule 3(5), after 10 years nothing is required to pay.

1.1 The case of the department is that since the appellant have cleared the capital goods after use of more than 10 years, the same is waste and scrap of capital goods and on the clearance of the same appellant is required to pay the duty on the transaction value in terms of Rule 3 (5A) of Cenvat Credit Rules, 2004.

2. Ms. Lakshmi Menon Learned Counsel appearing on behalf of the appellant submits that even though the capital goods were removed after 10 years of use, those plant and machinery were being used and the removal of capital goods were made due to the closer of the appellant company. The said capital goods were cleared to customers who include all industries for their use of operation, the capital goods were not sold as waste and scrap. She also submits that the invoice copies along with details of customers shows goods are used capital goods and not waste and scrap.

2.1 She submits that even in the sale invoice also the actual name of the capital goods was declared for the reason that the same were not sold as waste and scrap. She submits that the department has raised the demand only on assumption that used capital goods are waste and scrap without any evidence. Therefore, as per Rule 3 (5A) Second Proviso clause (b) of Cenvat Credit Rules, 2004 after deducting 2.5% in each quarter, no amount of Cenvat credit left to be paid for removal of used capital goods. Therefore, the demand is not sustainable. She also submits that there is no suppression of fact on the part of the appellant therefore, the demand is also not sustainable on limitation. She placed reliance on the following board circular and judgments:-

- Order F.No.267/41/2009-CX8 dated 7th December 2009
- Shree Kamrej Vibhag Sahakari Khand, Udyog Mandali Limited vs. C.C.E & S. Tax Surat- II, 2017(11) TMI 758 AHMEDABAD CESTAT
- Karnal Co-Operative Sugar Mills Ltd. Vs. Commr. of C. Ex, 2010(11) TMI 268 - CESTAT NEW DELHI
- M/s. Manglam Cement Ltd vs. C.C.E. Jaipur, 2016(8) TMI 234 - CESTAT NEW DELHI
- M/s. Intas Pharmaceuticals Ltd vs. Commissioner, central Excise & Service Tax Ahmedabad, 2015(9) TMI 1021 AHMEDABAD CESTAT
- United White Metal Ltd. Vs. Commissioner of Central Excise, Mumbai, 2015(10) TMI 1984- CESTAT MUMBAI
- M/s. U.P. State Sugar Corporation Ltd. Vs. Commissioner of central Excise, Meerut-I, 2017 (5) TMI 1374 ALLAHABAD
- M/s. Kores (India) Ltd. Vs. Commissioner of CGST & Central Excise, Division - I Pithampur, 2023 (10) TMI 868 - CESTAT NEW DELHI
- M/s. Navin Fluorince International Ltd. Vs. Commissioner of Central Excise & C.E Indore, 2017 (11) TMI 22 - CESTAT NEW DELHI
- M/s. Nitta Gelatin India Limited vs. Commissioner of Central Tax & Central Excise, Cochin, 2019 (6) TMI 182 BANGALORE CESTAT
- Orinet Glaze Pvt. Limited vs. Commissioner of Central Excise & St. Anand, 2024 (4) TMI 902-CESTAT AHMEDABAD
- M/s. Thyssenkrupp Industries India Pvt. Ltd. Vs. CCE & ST, Pune-I, 2018(11) TMI 1041 - CESTAT MUMBAI
- Amrit Foods vs. Commissioner of Central Excise, UP, 2005 (10) TMI 96-SUPREME COURT

3. Shri A R Kanani, Ld. Superintendent (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. On careful consideration of the submission made by both the sides and perusal of record, we find that the appellant have dismantled their used capital goods after 10 years of their use and sold in the form of plant and machinery, as per the declaration made in their sale invoices. All the customers of the used capital goods are industrial customer which shows that the capital goods were useable and for further use in the customers factory. Therefore, from the records and evidence, it is clear that the appellant have cleared used capital goods and not waste and scrap.

4.1 Moreover, the show cause notice issued to the appellant does not have any support of any single evidence which shows that the used of capital goods cleared by the appellant are waste and scrap. Therefore in the absence of any evidence the declaration made by the appellant in their invoice and the status of the customer, it is clearly established that the capital goods were cleared as used capital goods for more than 10 years and therefore, the same is covered under Rule 3 (5A) Second Proviso clause (b) according to which the duty is required to be paid after reducing the Cenvat credit by 2.5% per quarter. Since, all the capital goods were cleared almost after 10 years after reducing 2.5% per quarter, no amount left for payment in terms of the said proviso. Accordingly, we do not agree with the Revenue that the used capital goods cleared are waste and scrap. Therefore, the entire demand raised on this basis will not sustain. Since, we decide the matter on merit we are not incline to give a independent finding on limitation, the issue on limitation is left open.

5. Accordingly, we set aside the impugned order and allow the appeals with consequential relief.

(Pronounced in the open court on 10.10.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Raksha