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

REGIONAL BENCH-COURT NO. 3

Excise Appeal No. 10283 of 2017 - DB

(Arising out of OIA-AHM-EXCUS-002-APP-055-056-16-17 dated 08/11/2016 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD-I(Appeal))

Archem Industries **........Appellant**
Plot No. B/39 & 50, Arvind Indstries Estate
B/h Anil Starch, Bapu Nagar
AHMEDABAD, GUJARAT

VERSUS

Commissioner of C.E.-Ahmedabad-ii **......Respondent**
CUSTOM HOUSE... FIRST FLOOR,
OLD HIGH COURT ROAD, NAVRANGPURA,
AHMEDABAD,GUJARAT-380009

APPEARANCE:
Shri Prashant V Sadavarte, Advocate, Appeared for the Appellant
Shri A R Kanani Superintendent (AR) Appeared for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. C L MAHAR

Final Order No.12399/2024

DATE OF HEARING: 30.07.2024
DATE OF DECISION: 18.10.2024

RAMESH NAIR

The brief facts of the case are that the appellant have cleared the excisable goods to M/s. Raymond Uco Denim Pvt. Ltd. without payment of duty, on the basis of Annexure 45 provided by M/s. Raymond Uco Denim Pvt. Ltd under Notification No.12/2012-CE dated 17.03.2012 serial No.133. The said Annexure 45 issued by the Jurisdictional Central Excise officer of M/s.Raymond Uco Denim Pvt. Ltd was cancelled consequentlythe foregone duty was demanded from the appellant in the present case.

2. Shri Prashant VSadavarte, Learned Counsel appearing on behalf of the appellant submits that a show cause notice in the present case was issued consequent to cancellation of Annexure 45 on the basis of letter issued by the jurisdictional officer of the M/s. Raymond Uco Denim Pvt. Ltd. He submits that the case of M/s.Raymond Uco Denim Pvt. Ltd against the cancellation of annexure 45 is pending before CESTAT Mumbai in Appeal No. E/87163/2016.He submits that in the identical case of the appellant itself the

matter was remanded to the adjudicating authority vide Final order No.10514/2024 dated 21.02.2024. He requests that this matter may also be disposed of in the line of this Tribunal's earlier order dated 21.02.2024.

3. Shri A R Kanani Learned 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 the records, we find that in the identical case of appellant itself this Tribunal vide Final Order No.10514/2024 dated 21.02.2024remanded the matter to the adjudicating authority. The said order is reproduced below:-

> *The brief facts of the case are that the appellant have availed exemption Notification No. 12/12-CE dated 17.03.2012 Sr. No. 133 under nil rate of duty to M/s. Raymond Uco Denim P Ltd against Annexure-45. The case of the department is that as per Sr. No. 133 of Notification No. 12/12- CE the goods should have been used within the factory of the appellant and there is no exemption for claim of the goods, outside the factory.*
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> *2. Shri P V Sadavarte, Learned Counsel appearing on behalf of the appellant submits that the show cause notice in the present case was issued consequent to the cancellation of Annexure-45 on the basis of letter issued by the Jurisdiction Officer of M/s. Raymond Uco Denim P Ltd that certificate issued wrongly. He further submits that subsequent to that letter the Annexure-45 itself was cancelled against which the appeal filed before the Commissioner (Appeals) which was rejected. Therefore, the appeal before the CESTAT Mumbai filed by the M/s. Raymond Uco Denim P Ltd vide Appeal No. E/87163/2016 and the same is pending. He request that since this case is consequential to the cancellation of the Annexure-45 and the matter of cancellation of Annexure-45 is pending before the CESTAT Mumbai, this matter may be remanded to the Adjudicating Authority for passing a denovo order after the outcome of the CESTAT appeal in the case of M/s. Raymond Uco Denim P Ltd.*
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> *3. Shri Rajesh K Agarwal, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.*
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> *4. On careful consideration of the submission made by both the sides and perusal of record, we find that the present proceeding is on the ground that the Annexure-45 was wrongly issued by M/s. Raymond Uco Denim P Ltd (buyer of the goods) and the matter with regard issue of Annexure-45 is presently pending before the CESTAT, Mumbai in Appeal No. E/87163/2016. In our view, this matter can finally be decided only after the outcome of the appeal of M/s. Raymond Uco Denim P Ltd pending before the CESTAT, Mumbai. Therefore, we are of the view that this matter should go back to the Adjudicating Authority awaiting outcome of the CESTAT, Mumbai decision in the matter M/s. Raymond Uco Denim P Ltd.*
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> *5. Accordingly, we set aside the impugned order and allow the appeal by way of remand to the Adjudicating Authority to pass a fresh order, after the decision of the CESTAT, Mumbai in the matter of M/s. Raymond Uco Denim P Ltd. in Appeal No. E/87163/2016."*

In view of the above, the present case being based on the same issue and identical fact this matter should also go back to the adjudicating authority to be decided a fresh as per the observation of the above decision of this Tribunal.

5. Accordingly, we set aside the impugned order and allow the appeal by way of remand to the adjudicating authority for passing a fresh order considering the observation made in the above Tribunal's decision.

(Pronounced in the open court on 18.10.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(C L MAHAR)
MEMBER (TECHNICAL)

Bharvi