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

REGIONAL BENCH : COURT NO. 3

EXCISE Appeal No. 1703 of 2009-DB
[Arising out of Order-in-Original/Appeal No 488--420-RAJ--2009-COMMR-A--RAJ dated 13.10.2009 passed by Commissioner of Central Excise, Customs and Service Tax-RAJKOT]

Rangani Engineering P Ltd **...Appellant**
Survey No. 267/2, Plot No. 7/8, Shapar (veraval)
RAJKOT, GUJARAT

VERSUS

C.C.E. & S.T.-Rajkot **...Respondent**
Central Excise Bhavan,
Race Course Ring Road...Income Tax Office,
Rajkot, Gujarat-360001

WITH
EXCISE Appeal No. 1704 of 2009-DB
[Arising out of Order-in-Original/Appeal No 488--420-RAJ--2009-COMMR-A--RAJ dated 13.10.2009 passed by Commissioner of Central Excise, Customs and Service Tax-RAJKOT]

Kanjibhai B Rangani **...Appellant**
Director, Rangani Engineering P Ltd.,
Survey No. 267/2, Plot No. 7/8, Shapar (Veraval)
Rajkot, Gujarat

VERSUS

C.C.E. & S.T.-Rajkot **...Respondent**
Central Excise Bhavan,
Race Course Ring Road...Income Tax Office,
Rajkot, Gujarat-360001

APPEARANCE:
Present For the Appellant : Shri R. Subramanya, Advocate
Present For the Respondent: Shri D. Kanjani Superintendent (AR)

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

FINAL ORDER NO. A/12634-12635 / 2021

DATE OF HEARING:03.12.2021
DATE OF DECISION:03.12.2021

RAMESH NAIR

The brief facts of the case are that the appellant have two units, unit no. I and unit no. II. Vide letter dated 12.06.2003 they had applied for registration of unit no. 2 whereas they availed the SSI exemption under notification 08/2003-CE dated 01/03/2003 in respect of unit no. I. While applying for registration for unit no. II, they had made it clear vide letter dated 12.06.2003 that in Unit no. 1, they will avail SSI exemption under notification 08/2003-CE dated 01/03/2003 without availing Cenvat credit and in respect of Unit II, they will avail Cenvat Credit and clear the goods for export and in respect of domestic clearances they will pay full rate of duty. Show cause notice has been issued on 15.10.2007 covering the period 12.06.2003-17.11.2005 alleging that since the appellant are availing the Cenvat credit and paying full duty in respect of unit no. II, the exemption availed under notification no. 08/2003-CE dated 01/03/2003 shall not be allowed to unit no. I. Accordingly, the demand of excise duty was proposed. The Adjudicating Authority has confirmed the demand which was upheld by the Learned Commissioner (Appeals) by the impugned order. Therefore, the present appeals filed by the assessee.

2. Shri R. Subramanya, learned Counsel appearing on behalf of the appellants submits that it is permitted to claim the Cenvat credit on the input used in the manufacture of claim the goods for export simultaneously while availing SSI exemption under notification no. 08/2003-CE dated 01/03/2003. He relied upon the Board�s circular no. 323/39/97-CX dated 14/07/1997. He also relied upon following case laws:

1. Vijay Industrial Corporation v/s CCE 2010 (258) ELT (Tri-Ahmd) Upheld by Hon'ble Supreme Court cited in 2016 (342) ELT A55 (SC)

2. Accent Microtech Inds. Vs Commissioner of C. Ex., Ahmedabad

He further submits that the arrangements of their availing exemption under notification 08/2003 for unit I and duty payment in other unit has been declared to the department right from the time when they had applied for registration on 12.06.2003. Therefore, there is no suppression of facts on their part and the entire demand raised for invoking extended is time barred.

3. Shri D. Kanjani Superintendent (Authorised Representative) appearing on behalf of the Revenue reiterated the findings of the impugned order and further submits that the department came to know of the fact only when the appellant had applied for registration in respect of unit no. I by adding the unit no. II in the year 2005. Therefore, there was a suppression of fact by the appellant before they had applied for registration in 2005.

4. We have carefully considered the submission made by both the sides and perused the records. We are of the view that this matter can be disposed of on limitation itself. Therefore, we are not going in the merits of the case. As regards the time bar, we find that the appellant has made it very clear to the department in their letter dated 12.06.2003 about the facts of their working, scanned copy of which is reproduced below:

In Para 3 of the above letter, the appellant has clearly declared that they are availing exemption under notification 08/2003-CE dated 01.03.2003 in respect of unit no. I and they will pay full duty in respect of domestic clearance in respect of unit no. II. With this fact, department was very well in knowledge that simultaneously availment of Cenvat credit and exemption under notification no.08/2003 was being availed by the appellant. Despite having clear knowledge of this fact, the department has not taken any action. The application for registration in 2005 for taking common registration does not disclose any new facts. Department was not prevented from issuing the Show cause right at the time when the application for registration was given in 2003. In view of this fact, there is no suppression of facts on the part of the appellant. Therefore, the demand for the period 12.06.2003-17.11.2005 was raised by issuing show cause notice dated 15.10.2007, the entire period is beyond one year, accordingly, the demand is time bar. The impugned order is set aside and appeals are allowed on limitation.

(Dictated and pronounced the open court.)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Diksha