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

REGIONAL BENCH-COURT NO. 3

EXCISE APPEAL NO. 10554 of 2019- DB

(Arising out of OIO-BVR-EXCUS-000-COMM-13-17-2018-19 dated 30/11/2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-BHAVNAGAR)

Gujarat Sidhee Cement Limited **........Appellant**
Off Veraval Hodinar Highway Road
Sidheegram P.o. Sideegram
SOMNATH, GUJARAT

VERSUS

Commissioner of C.E. & S.T.-Bhavnagar **......Respondent**
PLOT NO.6776/B-1...SIDDHI SADAN,
NARAYAN UPADHYAY MARG,
BESIDE GANDHI CLINIC, NEAR PARIMIAL CHOWK,
BHAVNAGAR, GUJARAT, 364001

WITH

(i) Excise Appeal No. 10555 of 2019- DB(Gujarat Sidhee Cement Limited)
(ii) Excise Appeal No. 10557 of 2019- DB(Gujarat Sidhee Cement Limited)
(iii) Excise Appeal No. 10558 of 2019- DB (Gujarat Sidhee Cement Limited)
(iv) Excise Appeal No. 10559 of 2019- DB(Gujarat Sidhee Cement Limited)

APPEARANCE:
Shri Saurabh Dixit, Advocate appeared for the Appellant
Shri Rajesh Nathan, Assistant Commissioner (AR), appeared for the Respondent

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

Final Order No. 12668-12672/2024

DATE OF HEARING:03.09.2024
DATE OF DECISION:12.11.2024

RAMESH NAIR

In this bunch of appeals following common issues involved:-

1. Whether the appellant is entitled for the Cenvat Credit on outward transportation when the sale of excisable goods is on FOR basis.
2. Whether the Cenvat Credit can be denied to the appellant, availed on the strength of the invoices after 6 months/ 1 year from the date of invoices, in terms of Rule 4(1) of Cenvat Credit Rules, 2004.

2. Shri Saurabh Dixit, Learned Counsel appearing on behalf of the appellant at the outset submits that as regard the issue of Cenvat Credit on outward transportation, the same is covered by this Tribunal's decision in the case of Ultratech Cement Limited, 2019-TIOL-1420- CESTAT-AHM which has been upheld by the Hon'ble High Court of Gujarat. He placed reliance on the following judgments:-

- M/s. Ultratech Cement Ltd 2019 (2) TMI 1487- CESTAT-Ahm.
- M/s. Sanghi Industries Ltd. 2019(2) TMI 1488- CESTAT- Ahm.
- M/s. Vardhman Plasto chem Pvt. Ltd 2022(3) TMI 188-CES. AT- Ahm
- Schaeffler India Ltd 2022(4) TMI 514- CESTAT Ahm
- Prestress Wire Industries 2022(6) TMI 1179- CESTAT Ahm

As regard the second issue whether the appellant's Cenvat Credit can be denied as the same was availed after 6 months/ 1 year from the date of invoices, he submits that all the invoices on which Cenvat Credit has been taken were of dates prior to the amendment in Rule 4 of Cenvat Credit Rules, 2004vide Notification No.21/2014-C.E.(N.T.)w.e.f 11.07.2014. Therefore, the limitation of 6 months/ 1 year as prescribed under Rule 4(1) cannot be applied retrospectively for the invoices dated prior to such amendment. He placed reliance on the following judgments:-

- Essel Proback Ltd. 2022(379) ELT 123 (Tri-Ahmd)
- Alok Master Batches Pvt. Ltd. v. CCE & ST, Daman - 2021-VIL-170 CESTAT-AHD
- Industrial Cables 2009 (236) ELT 658-(P&H)
- Ram Sawrup Electricals Ltd. 2007 (217) E.L.T. 12(All)
- Indian Potash Ltd. 2019(369) ELT 742 (Tri-All)
- Voss Exotech Automotive P. ltd. 2018(363) ELT 1141 (Tri-Mumbai)

3. Shri Rajesh Nathan, Learned Assistant Commissioner (AR) appearing on behalf of the revenue, reiterates the findings of the impugned order.

4. We have carefully considered the submissions made by both the sides and perused the records. We find that on the issue of admissibility of Cenvat Credit on outward transportation certain facts needs to be ascertained in order to allow the Cenvat Credit as prescribed under Board Circular No.1065/4/2018-CX dated 08.06.2018. Though, the appellant have vehemently submitted that the sale is on FOR basis and the price of goods is inclusive of excise duty, the same needs to be verified. We find that the adjudicating authority has heavily relied upon the Hon'ble Supreme Court judgment in the case of Ultratech Cement Limited judgment dated 01.02.2018 in Civil Appeal No.11261/2016. However, after considering the said judgment, this Tribunal in the case of Ultratech Cement Limited itself has allowed the Cenvat Credit which was upheld by the Hon'ble High Court of Gujarat in the judgment (supra). However, this subsequent development has not come in the light of the learned adjudicating authority. Therefore, the overall matter after considering the subsequent development and verification of facts needs to be reconsidered. As regard the issue of denial of Cenvat Credit on the ground that appellant have taken the Cenvat Credit after 6 months/ 1 year from the date of invoices, we find that this is the submission of the appellant that all the invoices pertains to the period prior to the amendment in 2014, whereby, the limitation of 6 months/ 1 year for availment of Cenvat Credit from the date of invoice was prescribed. He submits that even the Cenvat Credit was also availed prior to such amendment, therefore, the limitation prescribed in Rule 4 of Cenvat Credit Rules, 2004 cannot be applied retrospectively. We prima facie agree with the submission of the appellant, however, the facts of date of invoices availment of the Cenvat Credit, the amended provision of Rule 4 of Cenvat Credit Rules needs to be verified and the judgment relied upon by the appellant which prima facie covers the issue herein also to be considered.

5. Accordingly, we set aside the impugned order and allow the appeals by way of remand to the adjudicating authority for passing a fresh order, keeping in mind our above observations.

(Pronounced in the open court on 12.11.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(C L MAHAR)
MEMBER (TECHNICAL)

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