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

REGIONAL BENCH- COURT NO.3

Excise Appeal No.10196 of 2013

(Arising out of OIA-SRP/135/DMN/2012-13 dated 25/10/2012 passed by Commissioner of Central Excise-DAMAN)

Bilag Industries P Ltd **........Appellant**
Plot No. 306/3, 2nd Phase, Gidc,
VAPI, GUJARAT

VERSUS

C.C.E. & S.T.-Daman **.......Respondent**
3rd Floor...Adarsh Dham Building, Vapi-Daman Road, Vapi
Opp.Vapi Town Police Station,
Vapi, Gujarat-396191

APPEARANCE:
Shri S. Suriyanarayanan, Advocate for the Appellant
Shri G. Kirupanandan, Superintendent (AR) for the Respondent

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

Final Order No. A/11337/2022

DATE OF HEARING: 12.09.2022
DATE OF DECISION: 02.11.2022

RAJU

This appeal has been filed by M/s. Bilag Industries Pvt. Ltd. against denial of refund of excise duty.

02. Learned counsel pointed out that they had paid a certain amount during investigation conducted by Central Excise Authorities which culminated into issue of show cause notice demanding duty. Later on, the said demand was upheld on merits but only for the period within the limitation vide order No A/443/WZB/AHD/2009 by CESTAT. The revenue challenged the said order of tribunal before Hon'ble High Court of Gujarat which was dismissed by the Hon'ble Court vide Order No. O/3246/2011 dated 21.12.2010. Consequently, the appellant filed a refund claim of the duty deposited under protest during investigation. The said refund was rejected by lower authorities and hence this appeal.

2.1 Learned counsel pointed out that the lower authorities rejected the claim mainly by relying on the decision of Larger Bench of tribunal in the case of INDIA CEMENTS LIMITED- 1984 (18) ELT 499 (T). Learned counsel argued that the decision of the tribunal in the case of INDIA CEMENTS LIMITED (supra) is not applicable to the present case. He argued that in the aforesaid decision, the assessee had paid the duty which was payable on merits and afterwards the assessee had filed refund claim stating that the duty was incorrectly paid as demand was barred by limitation. He argued that in the said case the assessee had not contested the demand on merit. He argued that in the case of INDIA CEMENTS LIMITED (supra) decision cited on merit of the demand. He argued that in the said case, the demand was solely challenged on limitation whereas, the appellant had challenged both on limitation as well as on merits. He argued that the department cannot deprive right to get refund merely on the ground that the demand has not been set aside on merit but only on limitation.

03. Learned AR relies on the impugned order. He pointed out that the decision of larger bench of tribunal in the case of INDIA CEMENTS LIMITED is clearly applicable to the facts of the present case. He pointed out that the duty was paid under protest in the case of INDIA CEMENTS LIMITED as well which is like in the instant case.

04. We have considered the rival submissions. We find that the larger bench of tribunal in the case of INDIA CEMENTS LIMITED in the final order, para 22 following has been observed:-

> *22. With respect, I think the result of the proposition that limitation does not extinguish the right but only bars the remedy would be that the Respondent, in this case, had a right to recover the amount by recourse to any other legal course open to him but not by recourse to Central Excise Rule 10 since limitation had, as on the date of invoking the right to demand the amount by recourse to that rule, extinguished that remedial right. To quote the Kerala High Court in AIR 1966 Kerala 121-*
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> > *"But, in so far as the particular remedial right to which it applies is concerned, limitation undoubtedly extinguishes the right. It is , however, important to remember that limitation extinguishes only the particular remedial right which is its victim and that, since it leaves the substantive right unaffected, that right can still be enforced in other ways, if other ways are available, not merely indirectly by the enforcement of lien or by obtaining a fresh promise, or by reason of payment notwithstanding the bar being safe from recall, but also in a positive and direct manner."*

Reliance has been placed on the decision of Hon'ble High Court of Kerala-*AIR 1966 Kerala 121.*

4.1 Learned counsel has sought to distinguish the decision of the tribunal in the case of INDIA CEMENTS LIMITED on the ground that in the said case no challenge was made by the appellant on merits. We find that this is not correct, in para 3 of the tribunal's order, it is apparent that the appellant only had challenged the demand on merits as well. Para 3 of the said order is reproduced below:-

> *3. The learned counsel for M/s. India Cements Ltd. argued before us that the lower authorities were wrong in their understanding of the law. If notification 198/76-CE was meant to exclude cement reprocessed and cleared under rule 96ZV, there would have been a specific provision to such effect. The factory crossed its base clearance on 17-2-79. The scheme was to encourage factories to produce more and more and to do this, duty concession was made on certain clearances. There was nothing anywhere that would allow an interpretation that clearance of reprocessed cement under rule 96ZV would be outside the scope of the concession. The counsel read out notification 198/76-CE to demonstrate that even clearances under rule 96ZV was not disentitled to its benefits. He pointed out that the notification makes special mention whenever any category of goods are to be excluded. He also read rule 96ZV to emphasize his point.*

It is also a fact that duty was paid under protest in case of INDIA CEMENTS LIMITED which is also true in the instant case and therefore, the arguments made by the learned counsel to distinguish the decision of tribunal in the case of INDIA CEMENTS LIMITED is not correct. Relying on the decision of larger bench in case of INDIA CEMENTS LIMITED, we find that the appellants are not entitled to refund of the duty paid.

05. Appeal is consequently dismissed.

(Pronounced in the open court on 02.11.2022)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Mehul