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

REGIONAL BENCH - COURT NO. 3

EXCISE Appeal No. 896 of 2012-DB

[Arising out of Order-in-Original/Appeal No 14-COMMR-AKG-AHD-II-2012 dated 28.08.2012 passed by Commissioner of Central Excise-AHMEDABAD-II]

Commissioner of Central Excise & ST, Ahmedabad .... Appellant
Custom House, First Floor, Old High Court Road,
Navrangpura, Ahmedabad, -Gujarat-380009

VERSUS

Anil Products Limited .... Respondent
(now Anil Limited) Anil Road, Bapunagar,
AHMEDABAD, GUJARAT

APPEARANCE :

Shri Rajesh K Agarwal, Superintendent (AR) for the Appellant-Revenue
None for the Respondent- Assessee

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

DATE OF HEARING : 18.11.2022
DATE OF DECISION: 28.11.2022

FINAL ORDER NO. A/11751 / 2022

RAMESH NAIR :

This appeal has been filed by the Revenue arising from the order-in-original which is impugned herein.

2. The issue involved in the present case is that in case the assessee has reversed the proportionate credit attributed to exempted goods, whether the assessee is required to pay 10% in terms of Rule 6(3)(a) of Cenvat Credit Rules, 2004, prevailing at the relevant period January 2006 to March 2006.

3. Shri Rajesh K Agarwal, learned Superintendent (AR) appearing on behalf of the Revenue reiterates the grounds of appeal. He submits that this issue has been decided by Hon'ble Bombay High Court in the case of *CCE,*

Thane-1 vs. Nicholas Piramel (I) Limited – 2009 (244) ELT 321 (Bom.) therefore the learned Commissioner has wrongly dropped the demand of 10% of the dutiable price value of Maize starch which is exempted from payment of duty.

4. None appeared on behalf of the respondent-assessee.

5. We have carefully considered the submission made by learned Authorised Representative and perused the record. For the ease of reference, we reproduce the relevant finding of the learned Commissioner whereby he dropped the proceedings of the show cause notice.

> "**8.** I have carefully gone through the facts on record. find that the direction in Hon'ble Tribunal's Order No. A/2825/WZB/AHD/2008 dated 15.12.2008, was limited to verification of the claim of the noticee that either they had not availed Cenvat credit or, if availed, they had reversed Cenvat credit proportionately. The Hon'ble Tribunal observed that :-
>
> *"1 ... ... we find that the issue stands now decided by the Larger Bench decision of the tribunal in the case of M/s Nicholas Piramal (I) Ltd [Order No. A/823/08/LB dated 12.08.08).*
>
> *2. Appellants have taken a categorical stand before the lower authorities that either they have not availed the Cenvat credit on the inputs and if availed they have reversed proportionately. However, inasmuch as the demand was confirmed on the legal ground itself, the above statement of the appellant remains unverified. We accordingly set aside the impugned order and remand the matter to Commissioner with directions to verify the appellant's claim that either the Cenvat credit has not been availed or if availed, the same stands proportionately reversed by them. We make it clear that it is only for verifying the correctness of the reversal, for which the matter is being sent back and any shortfall in reversal would be made good by the appellant. We also do not find any reasons to impose penalty upon the appellant, which is set aside. Appeal is disposed of in above terms.*"

6. From the above finding it is observed that the Adjudicating Authority has taken congnizance of the Tribunal's remand order which recorded that the issue stand decided by the Larger Bench of the Tribunal in the case of M/s Nicholas Piramal (I) Limited. However, the learned Commissioner also

observed that controversy involved was the similar to the controversy in the case of M/s. Maize Products wherein the Hon'ble High Court of Gujarat has dismissed the department's appeal. Subsequently, the High Court order dated 14.07.2010 in the case of Maize Products was challenged before the Hon'ble Supreme Court and the Hon'ble Supreme Court vide order dated 20.11.2009 dismissed the Revenue's appeal.

7. In view of the above development, the ruling laid-down in the case of *M.s, Maize Products* will be prevalent over the judgment of M/s Nicholas Piramal (I) Limited passed by Hon'ble Bombay High Court. Moreover, this Tribunal being under the jurisdiction of Hon'ble Gujarat High Court, judgment of M/s. Maize Products is more relevant and binding than any other judgment. Therefore, we do not find any infirmity in the order of learned Commissioner. Accordingly, the impugned order is upheld and Revenue's appeal is dismissed.

(Pronounced in the open court on 28.11.2022*)*

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)

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