

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

REGIONAL BENCH – COURT NO. 03

EXCISE Appeal No. 258 of 2012

[Arising out of OIA-COMMR-A-/04/VDR-II/2012 dated 03/01/2012 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-II]

Schott Glass India Pvt Ltd

Village-Ankhi, Tal-Jambusar,
Bharuch,
Gujarat

.....Appellant

VERSUS

C.C.E. & S.T.-Vadodara-ii

1st Floor... Room No.101,
New Central Excise Building,
Vadodara, Gujarat-390023

.....Respondent

APPEARANCE:

Shri Vinay Kansara, Advocate for the Appellant

Shri. Rajesh K Agarwal, Superintendent (Authorized Representative) for the Respondent

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

FINAL ORDER NO.A / 11852 /2022

DATE OF HEARING: 24.11.2022

DATE OF DECISION: 01.12.2022

RAMESH NAIR

The limited issue to be decided in the present case is that whether the appellant is liable for penalty under Rule 15(2) or the charge that appellant have availed 100% credit instead of 50% and remaining 50% to be availed in the next Financial year in respect of capital goods. The appellant, as pointed out by the department, reversed the 50 % credit along with interest from the date of taking credit till the reversal thereon.

2. Shri Vinay Kansara, Learned Counsel appearing on behalf of the appellant submits that there is no wrong availment of credit. The only lapse on the part of the appellant is that instead of taking 50% credit in the year when the capital goods were received and remaining 50% was admissible in the next financial year, they have taken 100% credit. He submits that at the most this lapse attracts interest which was already paid by the appellant. He

submits that since the appellant have reversed the excess credit of 50% along with interest. The case is covered by Section 11A (2B) of Central Excise Act, 1944. According to which the appellant was not supposed to be issued any SCN. He placed reliance on the following judgments:

- Sunflag Filaments Ltd.- 2009 (245) ELT. 209 (Tri.-Ahmd.)
- Guardian Plasticote Ltd.- 2009(241) ELT. 149 (Tri.- Ahmd.)
- R.A.S.Poly Tex Pvt. Ltd.- 2009 (247) ELT. 699(Tri.- Del.)
- Indo-nippon Chemicals co. Ltd.- 2009(233) ELT. 141(Tri.-Ahmd.
- Omkar Steel Tubes (p) Ltd.-2008 (221) ELT. 200 (P & H)
- Pahwa Chemicals Pvt. Ltd.- 2005 (189) ELT. 257 (S.C)

3. On the other hand Shri Rajesh Agarwal, Learned Superintendent (Authorized Representative) appearing on behalf of the revenue reiterates the finding of the impugned order.

4. I have carefully considered that submissions made by both the sides and perused the records. I find that the appellant has not disputed the excess avilment of credit of 50% in advance. However, admitting the same lapse they have reversed the credit and also paid the interest. I also find that there is no *mala fide* can be attributed towards the appellant for this lapse as the appellant is otherwise eligible for Cenvat credit of remaining 50% within a short time i.e. in the next financial year. Therefore, this lapse is inadvertent and cannot be said that there is any intention to evade duty or fraudulent avilment of Cenvat credit. In this fact the case should have been concluded, on the basis of appellant's reversal of excess credit of 50% along with payment of interest thereon which could have resulted into non issuance of SCN and consequently no penalty should have been imposed. Therefore, in this fact since there is no *mala fide* on the part of the appellant, the case is clearly covered by Section 11A(2B).

5. Accordingly, the penalty is not imposable on the appellant. Hence the penalty is set aside. Appeal is allowed in the above terms.

(Pronounced in the open Court on 01.12.2022)

RAMESH NAIR
MEMBER (JUDICIAL)

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