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

REGIONAL BENCH- COURT NO. 3

Service Tax Appeal No. 10303 of 2020

(Arising out of OIA-CCESA-SRT-APPEAL-PS-508-2019-20 dated- 27/11/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

COLOURTEX INDUSTRIES PVT LTD ....**Appellant**
Survey No. 91, Opp. Navin Flourine, Udhana- Navsari Road, Bhestan
Surat
Surat, Gujarat

VERSUS

C.C.E. & S.T.-Surat-I ......**Respondent**
New Building...Opp. Gandhi Baug,
Chowk Bazar,
Surat, Gujarat - 395001

Appearance:
Shri S. Suriyanarayanan, Advocate appeared for the Applicant
Shri G.Kirupanandan, Superintendent (AR) for the Respondent

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

Final Order No. A / 12179 /2022

DATE OF HEARING: 08.12.2022
DATE OF DECISION: 08.12.2022

RAMESH NAIR

Shri S. Suriyanarayanan, Learned Counsel appearing on behalf of the appellant submits that in this case the refund of ocean freight was claimed as the same was unutilized cenvat credit in terms of Section 142 (3) of CGST Act, 2017. He made additionally submission that as per Gujarat High Court judgment the ocean freight itself is not taxable and the service tax paid on ocean freight is liable to be refunded without opting for cenvat provisions.

2. Shri G.Kirupanandan, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

3. I have carefully considered the submission made by both sides and perused the records. I find that though the appellant have made a claim of refund of cenvat credit in respect of ocean freight however, now they submit that at the time of process of refund claim only stay was passed by the Hon'ble High Court . Now the final order has been passed by the High Court in the case of Sal Steel Limited – 2020 (37) GSTL 3 (Guj.) wherein the levy of service tax on the ocean freight was held unconstitutional. Therefore, they were not liable to pay service tax of ocean freight. Accordingly, they are eligible for the refund of service tax paid on the ocean freight in terms of Section 11B. On this submission of the appellant, I am of the view that the Adjudicating Authority should reprocess the refund claim

under section 11B in respect of service tax paid on the ocean freight instead of refund of cenvat credit.

4. Accordingly, the impugned order is set aside. Appeal is allowed by way of remand to the Adjudicating Authority for passing a fresh order.

(Dictated & Pronounced in the open court)

RAMESH NAIR
MEMBER (JUDICIAL)

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