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

REGIONAL BENCH- COURT NO.3

Excise Appeal No.430 of 2012-SM
(Arising out of OIA-16&17/2012-AHD-I-CE/MM/COMMR-A-/AHD dated 12/03/2012 passed Commissioner of Central Excise-AHMEDABAD-I)

Soma Textiles & Industries Ltd ....**Appellant**
Rakhial Road,, Ahmedabad
Gujarat

VERSUS

C.C.E.-Ahmedabad-I ....**Respondent**
C. Ex Bhavan,, Nr Panjrapole & Polytechnic, Ambavadi,
Ahmedabad,, Gujarat-380015

APPEARANCE:
Shri. Sudhansu Bissa, Advocate for the Appellant
Shri. Vijay G Iyengar, Superintendent (AR) for the Respondent

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

Final Order No. A/ 12205 /2022

DATE OF HEARING: 08.12.2022
DATE OF DECISION: 08.12.2022

Raju

This appeal has been filed by Soma Textiles & Industries Ltd against the demand of reversal of Cenvat credit availed in terms of Notification No. 35/2003-CE (NT) dated 10.03.2003.

2. Learned Counsel pointed out that when the duty was imposed on Textile Fabrics facility of deem credit was extended by virtue of Notification No. 35/2003-CE (NT) dated 10.03.2003. In terms of the said notification the appellants were entitled to take credit in respect of yarn and fabrics lying in their factory. The appellants are a composite will and they manufacture yarn, grey fabrics and process fabrics. The appellant had filed a declaration in terms of the said notification on 5th April, 2003 wherein they had declared a certain quantity of fabrics lying in their factory and availed credit in terms of Serial No. 1 of the said notification. Serial No. 1 of Notification No. 35/2003-CE (NT) prescribes admissibility of credit in respect of texturised yarn lying in the composite mill. The appellant had declared only fabric lying in their mill but availed the credit under this entry relating to the texturised yarn lying in stock in their factory. The availment of credit was examined by revenue an objection was raised by letter dated 27.01.2004. The appellant had filed letter dated 26.05.2003 and 27.05.2003 giving stock of texturised yarn and the manner in which they have availed credit. Revenue vide letter

dated 27.01.2004 pointed out some excess availment of credit amounting to Rs. 5715/- which the appellant reversed vide RG 23 A part II entry dated 01.02.2004.

2.1 Learned Counsel pointed out that the entire availment of credit under Notification No. 35/2003-CE NT was with full knowledge of revenue and as per the understanding of the appellant regarding the said notification. He pointed out that the revenue is of the opinion that the appellant should have availed the credit under serial no. 2 of the notification which relates to the finished goods lying its stock, they should not have demanded reversal of amount of Rs. 5715/-. He admitted that in the instance case that they had declared only the finished goods in their declaration dated 5th April, 2003, however, at the material time they believed that they were entitled to credit under serial no. 1. They had declared everything in the transparent manner to revenue and when the revenue pointed out the certain deficiency in the said calculation vide letter dated 27.01.2004 the appellants paid the same. He argued that in these circumstances, extended period of limitation cannot be invoked which has been done in this case.

3. Learned AR relies on the impugned order. He particularly pointed out that in para 14.4 of the impugned order where the Commissioner (Appeals) has given reasons for upholding invocation of extended period of limitation.

4. I have considered the rival submissions. I find that the show cause notice has been issued on 15.05.2006 the matter pertains to the availment of credit in April 2003. It is notice that the appellant has declared the stock in a transparent manner on 5th April, 2003. There has been correspondence with revenue regarding the said declaration dated 26th May 2003, 27th May 2003. Revenue has even raised objection regarding the return filed by the appellant in the month of May, 2003 and in respect of the credit taken in terms of Notification 35/2003-C.E and consequently the appellant has paid an amount of Rs. 5715/- demanded in the letter dated 27.01.2004. Everything was in knowledge of revenue. In these circumstances, I do not find any merit in the order upholding invocation of extended period of limitation. The impugned order is set aside, the appeal is allowed

(Dictated and pronounced in the open court)

(RAJU)
MEMBER (TECHNICAL)

Prachi