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

REGIONAL BENCH- COURT NO.3

Excise Appeal No.10139 of 2013-SM
(Arising Out Of OIA-819-820-RAJ-CE-AK-COMMR-A-AHD Dated 25/10/2012 Passed Commissioner of Central Excise-RAJKOT)

Rudraksh Detergent Chemicals Pvt Ltd ....**Appellant**
S No 157, Village Padana, Gandhidham
Kutch, Gujarat

VERSUS

C.C.E. & S.T.-Rajkot ....**Respondent**
Central Excise Bhavan,
Race Course Ring Road...Income Tax Office,
Rajkot, Gujarat-360001

APPEARANCE:
Shri. S. J. Vyas, Advocate for the Appellant
Shri. Rajesh K Agarwal, Superintendent (AR) for the Respondent

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

Final Order No. A/ 12217 /2022

DATE OF HEARING: 15.12.2022
DATE OF DECISION: 15.12.2022

Raju

This appeal has been filed by M/s. Rudraksh Detergent Chemicals Pvt Ltd.

2. Learned Counsel for the appellant pointed out that demand of interest has been raised against them. The appellants were availing area base exemption and they are entitled to refund of certain amounts after they pay duty in cash after utilization of the entire Cenvat Credit availed by them. Revenue is of the opinion that if an invoice is received by the appellant on a particular date then they should avail and use the credit on the same month and not later month. Revenue is of the view that since the appellant has availed the credit in a later month they have availed refund in an earlier month. Thus, according to revenue has resulted in loss of interest to revenue. Learned Counsel pointed out that the issue is squarely covered by the decision of Tribunal in the case of SOLARIS CHEMTECH INDUSTRIES LIMITED-2022 (9) TMI-266. He particularly relied on the para 7. He also relied on the decision of the Chandigarh-I Tribunal in the case of Medley Pharmaceuticals Limited vide Final Order No. A/62265/2018 dated 23.04.2018.

3. Learned AR relies on the impugned order.

4. I have considered the rival submission. I find that the issue is squarely covered in by the decision of Tribunal in the case of SOLARIS CHEMTECH INDUSTRIES LIMITED (Supra). In the said order following has been observed:-

> *"7. It is apparent that the reason for introducing the restriction of full utilization of credit available is that the assessee does not misuse the exemption by taking credit and not using the same. Thereby, accumulating the credit and using it on a letter date when they et out of the notification no. 39/2001-CE. It is seen that if the appellant does not take any credit then no such mal-practice can happen and no credit can be accumulated. Moreover, it also implies that the credit "available" would mean the Cenvat credit taken and available in the credit of Cenvat account and not the credit that the appellant could have possible taken but did not avail. Moreover. In the instant case, since by not taking the credit the quantum of refund admissible to the appellant remains as same as it would have had the appellant taken the credit and utilized the same. In this background, we find rejection of rebate claim on this ground is without any basis".*

5. I find that the order has been issued in similar circumstances. Relying on the aforesaid order of the Tribunal in the case of SOLARIS CHEMTECH INDUSTRIES LIMITED, the appeal is allowed.

(Dictated and pronounced in the open court)

(RAJU)
MEMBER (TECHNICAL)

Prachi