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

REGIONAL BENCH : COURT NO. 3

EXCISE Appeal No. 10333 of 2020-SM

[Arising out of Order-in-Original/Appeal No RAJ-EXCUS-000-APP-191-2019 dated 11.12.2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-RAJKOT]

OASIS VITRIFIED PVT LTD ...Appellant
Survey No. 27/1 & 2, At-Timbadi, National Highway-8a,
Morbi,
Gujarat-363642

VERSUS

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

APPEARANCE:
Present For the Appellant : Shri P. D. Rachchh, Advocate
Present For the Respondent : Shri G. Kirupanandan, Superintendent(AR)

CORAM:

HON'BLE MEMBER (JUDICIAL) ,RAMESH NAIR

FINAL ORDER NO. A/ 12280 /2022

DATE OF HEARING: 23.12.2022
DATE OF DECISION:23.12.2022

RAMESH NAIR

In this appeal the appellant have challenged the order of Commissioner (Appeals), who upheld the rejection of refund claim in respect of the excess reversal of Cenvat Credit in terms of Rule 6.

2. Shri P D Rachchh, Learned Counsel appearing on behalf of the appellant pointed out in order in appeal that the Learned Commissioner (Appeals) that the rejection of refund claim was passed on two grounds. One is that, the appellant have not complied with the provision under Rule 6 in as much as they have not given option for reversal Cenvat Credit under rule 6 and second, the amount paid by them as per audit objection was not made under protest.

It is his submission that the failure to give option is a procedure lapse and in number of judgments this lapse has been condoned. As regard the second ground, the appellants have filed the refund within 1 year. Therefore, whether the reversal was made under protest or otherwise, on this ground refund cannot be rejected. He placed reliance on the following judgments:

- Commissioner of Sales Tax, U.P. V.s Auriaya Chamber of Commerce, Allahabad- 1986 (25) ELT 867 (SC)
- Commissioner of Central Excise, Nasik Vs. Nasik SSK Ltd.- 2017 (358) ELT 664 (Tri-Mumbai)
- Hindustan Aeronautics Ltd. Vs. Commissioner of C. Ex., Kanpur- 2017 (49) STR 417 (Tri.- All)
- Reliance Life Insurance Comapany Ltd. Vs. Commissioner of Service Tax, Mumbai- 2017 – TIOL-3839- CESTAT- Mum.
- International Trimmings and Labels India PVt. Ltd. Vs. Commissioner of Central Tax, Bangalore- 2018- TIOL-1794-CESTAT- Bang.
- Jai Balaji Industries Ltd. Vs. Commissioner of C. Ex. & ST, Raipur- 2017 (352) ELT 86 (Tri- Del.)
- Commissioner Vs. Jai Balaji Industries Ltd.-2017 (356) ELT A48 (Chattisgarh)

3. Shri G. Kirupanandan, Learned Superintendent (Authorized Representative) appearing on behalf of the revenue reiterates the findings of the impugned order.

4. On careful considering the submissions made by both the sides and perusal of records, I find that the appellant have reversed the entire credit in respect of the common input service used in the manufacture of dutiable

goods as well as the trading activity (exempted service), however they are supposed to reverse the proportionate credit, thus there is an excess reversal of credit. The Learned Commissioner (Appeals) has denied the refund on the ground that the procedure for giving option under Rule 6 was not followed by the appellant. In my view this is a procedure lapse and so long the appellant have reversed the credit on this procedure lapse refund cannot be rejected. As regard the payment on reversal without protest, I find that there is no condition under Section 11B that for claiming any refund duty has to be paid under protest. The concept of under protest is only applicable if the refund is claimed after more than year from relevant date. In this case admittedly refund was claimed within 1 year therefore, even payment made without protest also can be claimed. Accordingly, both the grounds on which the Learned Commissioner (Appeals) rejected the refund claims are not sustainable. However, the quantification of the actual proportionate reversal is required and if there is excess reversal, the same should be given as refund to the appellant. Accordingly, I set aside the impugned order and remand the matter to the adjudicating authority only for the purpose of calculation. The appeal is allowed by way of remand.

(RAMESH NAIR)
MEMBER (JUDICIAL)

Palak