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

REGIONAL BENCH- COURT NO. 3

Excise Appeal No. 10113 of 2021-DB

(Arising out of OIA-CCESA-SRT-APPEAL-PS-154-2020-21 Dated-31.12.2020 passed by Commissioner of Central Excise, Customs and Service Tax-DAMAN)

MULTIBASE INDIA LTD **........Appellant**

PLOT NO 74/5-6 DAMAN INDUSTRIAL ESTATE KADIYA NANI DAMAN
DAMAN-GUJARAT

VERSUS

C.C.E. & S.T.-Daman **........Respondent**

3RD FLOOR...ADARSH DHAM BUILDING, VAPI-DAMAN ROAD, VAPI
OPP.VAPI TOWN POLICE STATION,
VAPI, GUJARAT-396191

APPEARANCE:

Shri S.J. Vyas, Advocate appeared for the Appellant
Shri. Tara Prakash, Assistant Commissioner (Authorized Representative) for the Respondent

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

Final Order No. A/ 12287 /2022

DATE OF HEARING:22.12.2022
DATE OF DECISION:22.12.2022

RAJU

This appeal has been filed by Multibase India Limited against denial of refund of CVD paid by the appellant and claimed as cenvat credit.

2. Learned counsel for the appellant pointed out that they had failed to fulfil the export obligation against certain advance authorizations and consequently they paid the custom duty including the CVD. Learned counsel argued that they were entitled to cenvat credit of CVD and therefore, they filed refund claim before original adjudicating authority. The original adjudicating authority after issuing the show cause notice, accepted their plea and allowed the refund claim. Aggrieved by the said order, Revenue filed an appeal before Commissioner (Appeals), who set aside the order of the original adjudicating authority. He argued that the Commissioner (Appeals) has relied on the decision of this Tribunal in case of Servo Packaging 2020 (2) TMI 353-CESTAT CHENNAI. He

argued that the decision of Tribunal in the case of Servo Packaging is a Single Member Bench decision. He pointed out that different views have been taken by the Division Bench in the case of Hubergroup India 2021 (11) TMI 945-CESTAT AHMEDABAD and CPC Colour India Pvt. Ltd. 2022 (8) TMI 225 – CESTAT AHMEDABAD.

3. Learned Authorized Representative argued that the proceedings are under Section 142(3) of the CGST Act and therefore, in view of the decision of Tribunal in the case of Bosch Electricals Ltd. vide Interim Order Number No. 40019/2021 dated 22.10.2021, the matter should be adjourned sine die till the decision of Larger Bench.

4. I have considered the rival submissions. I find that the order of Commissioner (Appeals) does not actually go into the grant of refund under CST Act, but disentitles the appellant from cenvat credit relying on the decision of Tribunal in the case of Servo Packaging (Supra). In these circumstances, the decision of Tribunal in the case of Bosch Electrical Ltd. (Supra) has no application.

5. I find that the Tribunal in the case of Hubergroup India, under similar circumstances has observed as follows:

> “4. We have gone through the rival submission. We find that the impugned order the Commissioner holds that what was paid by the appellant due to failure to fulfill the export obligation in their erstwhile DTA unit were Customs recovery due to failure of assessee to comply with the conditions of the notification under advance licence scheme. We find that it may be true that the duties were paid due to failure of appellant to fulfill export obligation but that fact has no relevance. In the instance case the availability of Cenvat Credit only depends on the fact if the duties have been paid and if the inputs are Admissible inputs and the same were received by them in their limit. The fact that the duties were recovered due to failure of appellant to fulfill export obligation is irrelevant for this purpose.”

6. I find that the impugned order has been passed without taken notes of decision of Tribunal in the case of Hubergroup India and CPC Colour India (supra). In these circumstances, I set aside the impugned order and remand the matter back to the Commissioner (Appeals) to

decide afresh after considering the decision of Tribunal in the case of Hubergroup India and CPC Colour India (supra). The appeal is allowed by way of remand. All issues are kept open.

(Dictated and Pronounced in the open court)

(RAJU)
MEMBER (TECHNICAL)

NEHA