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

REGIONAL BENCH - COURT NO. 1

EXCISE Appeal No. 10274 of 2021-SM

[Arising out of Order-in-Original/Appeal No VAD-EXCUS-002-APP-212-2020-21 dated 25.02.2021 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-II]

Yamir Packaging Pvt. Limited .... Appellant
10-11, Yes House, Shivalik Plaza, Opp. AMA, IIM Road
Panjarapole, Ahmedabad, Gujarat-380015

VERSUS

Commissioner of Central Excise & ST, Vadodara .... Respondent
1st Floor, Room No.101, New Central Excise Building,
Vadodara, Gujarat-390023

APPEARANCE :

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

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

DATE OF HEARING/ DECISION: 06.01.2023

FINAL ORDER NO. A/10025/2023

RAJU :

This appeal has been filed by M/s. Yamir Packaging Pvt. Limited against the demand of reversal of Cenvat credit, interest and imposition of penalty.

2. Learned Counsel pointed out that they had availed 100%Cenvat credit on wooden dies, aluminum litho plates and rubber blanket under the category of inputs. The Revenue is of the view that these are capital goods and therefore only 50% credit should have been taken in first year. He pointed out that these items are consumable in nature and have short life. He further pointed out that in any case they were entitled to credit of 50% in the first year and 50% in the next financial year even if the goods are

considered as capital goods. He argued that this issue has been considered by the Tribunal in the case of *Guardian Plasticote Limited vs.CCE, Daman – 2008 (12) TMI 534 – CESTAT Ahmedabad.* Learned Counsel stated that they are ready to pay interest for the period for which the Revenue has claimed that excess credit has been availed. He argued that this is in line with the decision of this Tribunal in the case of *Guardian Plasticote Limited vs.CCE, Daman (supra).*

3. Learned Authorised Representative relies upon the impugned order.

4. I have considered the rival submissions. I find that the issue involved in the case *Guardian Plasticote Limited vs.CCE, Daman* is similar to the issue involved in the instant case that using engraved printed cylinder is an inputs. The Tribunal in the said order observed as under:-

> “**3.** After considering rival submissions, I agree with the Id. Advocate for the appellants that extended period could not have been invoked in this case in view of the defacement of the invoices relating to the cylinders up to 30-3-2000 and also in view of the fact that there can be difference of opinion as to whether cylinder is a consumable or not. In view of the above, on the ground of limitation, the demand for the period beyond one year from the date of show cause notice fails. I also agree with the Id. Advocate's argument that the lower authorities have not considered as to whether the cylinder can be considered as an input. This aspect needs to be considered in detail. Therefore the matter has to go back to the Original Adjudicating Authority to consider whether cylinder can be considered as an input or it has to be treated as capital goods. More over even if it is considered as capital goods; at best the demand can be only for interest for the period during which excess 50% credit was availed and It cannot be for the full amount of Cenvat credit that has been taken: "Even in respect of capital goods, the credit is available to the extent of 100% but in two financial years. Therefore there is a need to re-quantify the demand and it has to be limited only to the interest. For these two purposes, the matter has to be remanded back to the Original Adjudicating Authority with a direction that appellants shall be given an opportunity to present their case before a final decision is taken if they desire to do so.”

5. It is noticed that in the instant case also, the nature of goods being capital goods or inputs, can be a matter of opinion. Relying on the decision of the Tribunal in the case of *Guardian Plasticote Limited vs.CCE, Daman (supra)* and the fact that the learned Counsel has admitted that they are ready to pay interest for the disputed period, the appeal is partly allowed. The matter is remanded to the Adjudicating Authority to calculate the amount of interest involved. In the facts of the case, the penalty is set-aside.

6. The appeal is allowed by way of remand to the Adjudicating Authority, in the above terms.

(Order dictated and pronounced in the open court)

(Raju)
Member (Technical)

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