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

REGIONAL BENCH - COURT NO. 2

EXCISE Appeal No. 11092 of 2019-SM

[Arising out of Order-in-Original/Appeal No CCESA-SRT-APPEAL-PS-915-2018-19 dated 29.03.2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I]

Kabra Extrusion Technik Limited .... Appellant

Kabra Industrial Estate, Kachigam
DAMAN, DAMAN AND DIU-396210

VERSUS

Commissioner of Central Excise & ST, Daman.... Respondent

3rd Floor, Adarsh Dham Building, Vapi-Daman Road,
Opp.Vapi Town Police Station, Vapi, Gujarat-396191

APPEARANCE :

Shri Saurabh Dixit, Advocate for the Appellant
Shri Dinesh M. Prithiani, Assistant Commissioner (AR) for the Respondent

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

DATE OF HEARING/ DECISION : 27.01.2022

FINAL ORDER NO. A/10053 / 2022

RAJU :

This appeal has been filed by M/s. Kabra Extrusion Technik Limited against the denial of refund claim.

2. Learned Counsel for the appellant pointed out that appellant had filed refund claim of the service tax paid on reverse charge basis of ocean freight paid by them for import of goods. The refund claim was filed under sub Section 3 of Section 142 of CGST Act, 2017 as claim of refund of admissible Cenvat credit. However, subsequently, Hon'ble Gujarat High Court in the case of SAL Steel Limited – 2020 (37) GSTL 3 (Guj.) held that such service tax is not payable. Learned Counsel pointed out that Division Bench, in the case of Coromandel International Limited vide order No. A/12453/2021 dated 13.10.2021 and in the case of Garden Silk Mills Ltd vide order No.

A/12610/2021 dated 14.12.2021 has remanded the matter to the original adjudicating authority to examine the matter afresh relying on the decision of the Hon'ble Gujarat High Court in the case of SAL Steel Limited - 2020 (37) GSTL 3 (Guj.).

3. Learned Authorised Representative pleads that the refund claim is not filed under Section 11B but under Section 142(3) of CGST Act. The jurisdiction of CESTAT to deal with such cases where claim was filed under said Section of CGST Act, has been referred to the Larger Bench.

4. I find that in exactly identical situation, Division Bench of this Tribunal in the case of Coromandel International Limited (supra) and in the case of Garden Silk Mills Limited (supra) has remanded the matter to the original adjudicating authority to decide the issue afresh in the light of the decision of Hon'ble Gujarat High Court in the case of SAL Steel Limited. Learned Authorised Representative pointed out that the matter should be kept pending in view of the reference to Larger Bench wherein the jurisdiction of CESTAT in deciding the issues relating to section 142(3) of CGST Act, has been referred to the Larger Bench.

5. I find that the appellant has already filed refund claim prior to the decision of Hon'ble Gujarat High Court. The lower authorities did not get an opportunity to consider the impact of the said decision of Hon'ble Gujarat High Court while deciding the refund claim. I consider it judicious to remand the matter back to the Adjudicating Authority for deciding the issue after considering the decision of Hon'ble Gujarat High Court.

The appeal is allowed by way of remand to the Adjudicating Authority to decide the matter afresh after considering the judgment of Hon'ble Gujarat High Court.

(Dictated and pronounced in the open court)

(Raju)
Member (Technical)

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