

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

REGIONAL BENCH- COURT NO.3

Excise Appeal No.11103 of 2016

(Arising out of OIO-SUR-EXCUS-001-COM-032-15-1 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

**The Surat District Co Operative
Milk Producers Union Ltd**

Post Box No. 501, Sumul, Sumul Dairy Road,
Surat, Gujarat

.....Appellant

VERSUS

C.C.E. & S.T.-Surat-i

New Building...Opp. Gandhi Baug,
Chowk Bazar,
Surat,
Gujarat- 395001

.....Respondent

APPEARANCE:

Shri Akshay Modi, Chartered Accountant for the Appellant
Shri G. Jha, Superintendent (AR) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU**

Final Order No. A/ 12551 /2019

DATE OF HEARING: 20.12.2019
DATE OF DECISION:20.12.2019

RAMESH NAIR

The brief facts of the case are that the appellant have availed exemption under Notification No. 01/2011-CE dated 1st March, 2011 in respect of excisable goods namely Flavoured Milk. The case of the department is that the appellant availed the Cenvat Credit and they violated the condition of Notification accordingly, the appellant is liable to pay the duty. Therefore denying exemption notification, the Adjudicating Authority has confirmed the demand in the impugned order, therefore, the appellant filed the present appeal.

2. Shri Akshay Modi, Learned Chartered Accountant appearing on behalf of the appellant submits that they had availed credit during period 2009-10 to 2013-14 but the same was not utilized and subsequently the said credit was reversed, therefore, the condition of Notification stand complied with by not utilizing the credit and subsequently reversal thereof. He placed reliance on the following judgments:-

- HELLO MINERALS WATER (P) LTD. Vs. UNION OF INDIA, 2004 (174) E.L.T. 422(All.).
- COMMISSIONER OF CENTRAL EXCISE & CUSTOMS Vs. PRECOT MERIDIAN LTD. 2015 (325) E.L.T. 234 (S.C.)

3. Shri Gobind Jha, Learned Superintendent (AR) appearing on behalf of the revenue reiterates the finding of the impugned order. He submits that he appellant have not submitted all the documents to substantiate their claim of not utilizing and reversal of Cenvat credit.

4. Heard both the sides and perused the records we find that there is no clarity on the fact claimed by the appellant that they had not utilized the Cenvat Credit and subsequently reversed the same. We are of the view that even if the Cenvat Credit was availed at the time of receipt of Input & Services but if the same was not utilized and reversed, subsequently, the appellant is prima facie entitled for the exemption under notification. However, the fact of non utilization and reversal of credit needs to be verified. The Adjudicating Authority must verify these facts and if even the Cenvat Credit availed but not utilized and the same was reversed. Subsequently, the exemption notification should be extended to the appellant.

5. Accordingly, We set aside the impugned order and allow the appeal by way of remand to the Adjudicating Authority for passing a fresh order after conducting the verification as discussed above.

(Dictated & Pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)