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

REGIONAL BENCH-COURT NO. 3

Excise Appeal No. 11919 of 2019– SM

(Arising out of OIA-VAD-EXCUS-001-APP-631-2018-19 dated 27/02/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I)

Champa Purie Chem Industries ....**Appellant**
262-263 Gidc Makarpura
Vadodara, Gujarat

VERSUS

Commissioner of C.E. & S.T.-VADODARA-I ......**Respondent**
1st Floor...Central Excise Building,
Race Course Circle,
Vadodara, Gujarat- 390007

APPEARANCE:
Shri Dhruvank Parikh, Chartered Accountant for the Appellant
Shri R R Kurup, Superintendent (AR) for the Respondent

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

Final Order No. 11045/2024

DATE OF HEARING: 12.04.2024
DATE OF DECISION: 14.05.2024

RAMESH NAIR

The issue involved in the present case is that whether the appellant’s refund claim under Section 142 (3) of CGST Act, 2017 read with Section 11 B can be rejected invoking Rule 9 (1) (b) of Cenvat Credit Rules, 2004.

2. Shri Dhruvank Parikh, Learned Chartered Accountant appearing on behalf of the Appellant submits, in the present case the CVD was paid against re-assessed bill of entry, therefore, this not a case of non- payment or short payment of duty by suppression of fact or malafide intention. He submits that Rule 9(1) (b) can be invoked only when supplementary invoice was issued in respect of duty/service tax not paid by reason of suppression of fact, mis- declaration, fraud, collusion etc. He submits that in the

present case neither there is any allegation by way of show cause notice nor any adjudication to allege/establish against the appellant. Therefore, for the purpose of refund, the issue of Rule 9(1)(b) of Cenvat Credit Rules, 2004 cannot be raised. He placed reliance on the following judgments:-

- Servo Packaging Ltd. Vs. Commissioner of GST & C.Ex. Puducherry- 2020(373) ELT 550 (Tri.- Chennai)
- ITCO Industries Ltd. Vs. Commissioner of GST & C.EX. Salem- (2023) 2 Centax 18 (Tri. Mad.)
- New Age Laminators Pvt. Ltd. vs. Commissioner, C.Ex., GST, Alwar 2022 (381) E.L.T. 88 (Tri.-Del.)
- Ganges International Pvt. Ltd. vs. Assistant Commr. of GST & C.Ex., Puducherry 2022 (66) G.S.T.L. 186 (Mad.)
- Sri Chakra Poly Plast India Pvt. Ltd. vs. Commissioner of Central Tax Medchal-GST (2024) TaxCorp(IDT) 132350 (CESTAT-HYDERABAD)
- Aurobindopharma Ltd. vs. Commissioner of Central Excise Hyderabad Customs and Commissioner of Central Tax Medchal-GST (2024) TaxCorp(IDT) HYDERABAD) 132464 (CESTAT-
- M/s. Clariant Chemicals India Ltd. vs. Commissioner of Central Excise & Service Tax, Raigad (2022) TaxCorp (IDT) 128764 (CESTAT-MUMBAI)
- Tobacco Pvt. Ltd. vs. Commissioner of Central Tax, Guntur (2024) TaxCorp(IDT) 132392 (CESTAT-HYDERABAD)
- Flexi Caps Polymers Pvt. Ltd. Vs. Commissioner of CGST & C. EX. Indore- 2022 (58) GSTL 545 (Tri.-Del.)
- M/s. Mithila Drugs Pvt Ltd Vs. Commissioner of CGST vide final order No. 50157-20159/2022 (Delhi Tribunal)

3. Shri R.R Kurup, Learned Superintendent (AR) appearing on behalf of the Appellant reiterates the finding of the impugned order.

4. I have carefully considered the submission made by both sides and perused the records. As regard the issue that whether the appellant's

claim of CVD and SAD is hit by Rule 9 (1) (b) or(bb) of Cenvat Credit Rules, 2004, I find that firstly there is no demand notice in respect of CVD and SAD paid by the appellants on their own and also no adjudication as regard the suppression fact, therefore, in absence of any charge by way of show cause notice or adjudication thereof, the allegation of suppression of fact only to invoke Rule 9 (1) (b) or(bb) of Cenvat Credit Rules, 2004 is on assumption and presumption which cannot be accepted. Moreover, the payment of CVD and SAD is not towards the non-payment of duty by suppression of fact. Therefore, in this fact, no suppression of fact is involved. Consequently, penal provision under Rule 9 (1) (b) or (bb) shall also not apply.

4.3 Having observed as above I find that except the legal issue there is no discussion about the fact, documents and verification thereof. Hence, the matter needs to be remanded for this limited purpose for processing their fund claim of the appellant.

5. Accordingly, I set aside the impugned order and allow the appeal by way of remand to the Adjudicating Authority.

(Pronounced in the open court on 14.05.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

Raksha