

Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad
REGIONAL BENCH- COURT NO.3

Excise Appeal No.13689 of 2013

(Arising out of OIO-87/COMMR/2013 dated 20/08/2013 passed by Commissioner of Central Excise and Service Tax-RAJKOT)

Acme Ceramics

8-A, National Highway
Lalpar, MORBI, GUJARAT

.....Appellant

VERSUS

C.C.E. & S.T.-Rajkot

Central Excise Bhavan,
Race Course Ring Road...Income Tax Office,
Rajkot, Gujarat-360001

.....Respondent

APPEARANCE:

Shri P D Rachchh, Advocate for the Appellant
Shri Kalpesh Shah, Assistant Commissioner (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. C.L. MAHAR

Final Order No. A/ 11080 /2023

DATE OF HEARING: 20.03.2023
DATE OF DECISION: 02.05.2023

RAMESH NAIR

The brief facts of the case are that the appellant was engaged in the manufacture of ceramic glazed tiles falling under chapter 69 of the First Schedule to Central Excise Tariff Act, 1985. They were availing the benefit of partial exemption under notification no. 5/2006-CE dated 01.03.2006. The benefit of the said notification was available to ceramic tiles manufactured in a factory if not using electricity for firing the kiln subject to fulfilment of condition no. 7 of the said notification which stipulated that no credit of the duty paid on the inputs used in or in relation to the manufacture of ceramic tiles has been taken under Rule 3 or Rule 11 of the Cenvat Credit Rules, 2004.

02. The appellant had availed credit of duty paid on ceramic roller treating them as capital goods, it had availed cenvat credit of 50% of the duty on such capital goods in the year of receipt i.e. 2007-08 and balance credit was availed in the subsequent year in accordance with the provision of Cenvat credit Rules applicable to capital goods. On the audit of the appellant's record, the officers of central excise found that appellant had availed cenvat

credit of Rs.91,236/- on ceramic roller used for construction of roller kiln in the factory at its own during 2007-08 and 2008-09 which was intended to be used further as capital goods in the manufacture of excisable goods.

03. The case of the department is that the ceramic roller on which the credit was availed is an input used in the manufacture of capital goods i.e. kiln therefore, the ceramic roller being input and credit on which was availed there is a violation of condition no.7 of the notification No.5/2006-CE dated 01.03.2006 therefore, the appellant is not entitle for the said notification, accordingly, a show cause notice was issued demanding differential Central excise duty of Rs. 76,76,500/- with interest and also proposed to impose equal amount of penalty on the sole ground that the appellant had by availing cenvat credit on parts of capital goods had violated condition no. 7 of the Notification No. 05/2006-CE (Sr. No.13) dated 01.03.2006 as amended. The said show cause notice was confirmed by the Commission vide Order-in-Original No. 87/COMMR/2013 dated 21.08.2013 therefore, the present appeal filed by the appellant.

04. Shri P.D. Rachchh, learned counsel appearing on behalf of the appellant submits that the ceramic roller on which the appellant had availed the cenvat credit was used in the manufacture of kiln therefore, it is a part of the capital goods which is covered under the definition of capital goods hence, it cannot be said that the appellant have availed the cenvat credit on input. He further submits that even if it is assumed that the ceramic roller is an input but the same was used in the manufacture of kiln and not used in the manufacture of ceramic tiles. The only input which is used in the manufacture of ceramic tiles, credit cannot be availed therefore, there is no violation of condition no.7 of notification No.5/2006-CE dated 01.03.2006.

4.1 Without prejudice to the above submission, he further submits that the appellant at the time of stay in this appeal deposited Rs. 2 lacs, the total credit availed is Rs. 91,236/- therefore, the amount of Rs.91,236/- can be adjusted against the availment of cenvat credit thus, the situation will be as if no cenvat credit was availed. He submits that the reversal of cenvat credit can be made even at the stage of appeal before this tribunal therefore, as of now the amount of cenvat credit and interest thereon stand paid. Accordingly, the condition of notification stood complied hence, the demand is not sustainable. He placed reliance on the following judgments:-

- Hello Minerals Waters Pvt. Ltd.- 2004 (174) ELT 422 (HC- Allahabad)
- CCE Vs. Ashima Dyecot Ltd.- 2008 (232) ELT 580 (Guj)

- Face Ceramic Pvt. Ltd.- 2010 (249) ELT 119 (Tri.-Ahmd.)
- Commissioner of Central GST and CX Vs. Himmat Glazed Tiles- 2018 (15) GSTL 486 (Guj.)

05. Shri Kalpesh Shah, learned Assistant Commissioner (AR) appearing on behalf of the revenue reiterates the finding of the impugned order.

06. On careful consideration of the submission made by both the sides and perusal of records, we find that the case can be disposed of without going into the merit only on the basis that the reversal of credit and payment of interest thereon, can be adjusted from the payment of Rs. 2 lacs already made by the appellant. We find that the Tribunal/Court in the judgments cited by the appellant held that even if the assessee agreeing to reverse the cenvat credit availed at the stage of appeal before the tribunal, then also the condition of the notification which prescribes that no cenvat credit should be availed on the input will stand complied with accordingly, this case can be decided on the submission of the appellant that they are prepared for payment of cenvat credit along with interest and the same can be adjusted against the amount of cenvat credit and interest thereon. And if it is found that the amount of cenvat credit availed by the appellant along with interest is adjusted within the amount of Rs. 2 lacs paid by the appellant then the case can be decided on that basis.

07. Accordingly, we set aside the impugned order and remand the matter to the adjudicating authority for passing afresh order considering our above observations. Appeal is allowed by way of remand to the adjudicating authority.

(Pronounced in the open court on 02.05.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(C.L. MAHAR)
MEMBER (TECHNICAL)