

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

REGIONAL BENCH - COURT NO. 3

EXCISE Appeal No. 13910 of 2013-DB

[Arising out of Order-in-Original/Appeal No VAP-EXCUS-000-COM-047-13-14 dated 03.10.2013 passed by Commissioner of Central Excise, Customs and Service Tax-VAPI]

Aarti Industries Limited

.... Appellant

(Nascent Division) Plot No. 24,
1st Phase, GIDC, VAPI, GUJARAT

VERSUS

Commissioner of Central Excise & ST, Vapi

.... Respondent

4th Floor, Adharsh Dham Building, Opp. Town Police
Station, Vapi-Daman Road, Gujarat-396191

AND

EXCISE Appeal No. 13911 of 2013-DB

[Arising out of Order-in-Original/Appeal No VAP-EXCUS-000-COM-047-13-14 dated 03.10.2013 passed by Commissioner of Central Excise, Customs and Service Tax-VAPI]

Shri Omdev R Mishra

.... Appellant

M/s Aarti Industries Limited,
(Nascent Division) Plot No. 24,
1st Phase, GIDC, VAPI, GUJARAT

VERSUS

Commissioner of Central Excise & ST, Vapi

.... Respondent

4th Floor, Adharsh Dham Building, Opp. Town Police
Station, Vapi-Daman Road, Gujarat-396191

APPEARANCE :

Shri PS Namboodiri & Ms. Ruhi Jhota, Advocates for the Appellant
Shri Rajesh K Agarwal, Superintendent (AR) for the Respondent

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

DATE OF HEARING : 18.04.2023

DATE OF DECISION: 27.04.2023

FINAL ORDER NO. A/11025-11026 / 2023

RAMESH NAIR :

Brief facts of the case are that the appellant were holding advance license which has been authorised to M/s. Reliance India Limited by invalidation of advance authorization in their favour, against the said invalidation, Reliance Industries Limited has supplied the inputs on payment

of duty. The appellant has availed Cenvat credit of such duty. The case of the department is that supplies made to Reliance Industries Limited is against invalidation of advance authorization in their favour therefore, the supplies are governed by Notification No. 44/2001-CE (NT) dated 26.06.2001 under which the supplier was not supposed to pay any excise duty and they were compulsorily to take exemption under the said notification therefore, the supplies made without availing exemption on payment of duty, on such duty Cenvat credit is not admissible to the appellant.

2. Shri PS Namboodiri learned Counsel along with Ms. Ruhi Jhota learned advocate appearing on behalf of the appellant submits that the Notification No. 44/2001-CE (NT) is the conditional notification and it is open to the supplier whether said exemption is to be availed or not. In the present case, the supplier of inputs without availing said notification, cleared the goods on payment of duty therefore, the appellant is correctly entitled for the Cenvat credit. He further submits that once the duty was paid by the supplier irrespective to the fact that the same is payable or not, recipient of the inputs cannot be denied Cenvat credit. The assessment of duty at the supplier end cannot be questioned at the recipient end for allowing Cenvat credit. He placed reliance on the following judgments:-

- (a) Oleofine Organics (India) Pvt. Limited - 2014 (299) ELT 91 (Tri.-Mum)
- (b) Balakrishna Industries Limited - 2014 (309) ELT 354 (Tri.- Del.)
- (c) Shree Syam Filaments - 2014 (310) ELT 801 (Tri.-Del.)
- (d) Shakun Polymers Limited - 2009 (241) ELT 250 (Tri.- Ahmd.)
- (e) CCE vs. India Nestle - 2012 (275) ELT 49 (Bom.)
- (f) CCE vs. DCM Shriram Consolidated Pvt. Limited - 2017 (349) ELT 326 (Tri. Del.)
- (g) CCE vs. MDS Switchgear Limited - 2008 (229) ELT 485 (S.C.)

- (h) Pearl Polymers Limited - 2016 (342) ELT 600 (Tri.-Chan.)
- (i) Paramount Communication Limited - 2016 (337) ELT 283 (Tri. Del)
- (j) CC vs. Nucon Switch Gears Pvt. Limited - 2016 (331) ELT 593 (Tri.- Del.)
- (k) Neuland Laboratories Limited - 2015 (317) ELT 705 (Tri-Bang.)
- (l) CCE vs. GKW Limited -2014 (308) ELT 759 (Tri.- Mumbai)
- (m) CCE vs. Kitchen Appliances India Limited - 2013 (288) ELT 567 (Tri.-Kolkata)
- (n) SDL Auto Pvt. Limited - 2013 (294) ELT 577 (Tri.- Del.)
- (o) Hero Honda Motocorp Limited – 2014 (310) ELT 364 (Tri.- Del.)

3. Shri Rajesh K Agarwal, learned Superintendent (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. We have carefully considered the submissions made by both the sides and perused the record. We find that the department has denied the credit only on the ground that supplier was supposed to avail exemption Notification No. 44/2001-CE (NT) dated 26.06.2001 and since the supplier has not availed exemption, duty paid on the said goods shall not available Cenvat credit to the appellant as recipient of the goods. We find that the Notification No. 44/2001-CE (NT) is indisputably a conditional one. In terms of Section 5A of Central Excise Act, 1944 it is not compulsion for the assessee to avail a conditional notification. The said Section is reproduced below:-

“SECTION [5A. Power to grant exemption from duty of excise. — (1) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette exempt generally either absolutely or subject to such conditions (to be fulfilled before or after removal) as may be specified in the notification, excisable goods of any specified description from the whole or any part of the duty of excise leviable thereon :

Provided that, unless specifically provided in such notification, no exemption therein shall apply to excisable goods which are produced or manufactured —

(i) in a [free trade zone [or a special economic zone]] and brought to any other place in India; or

(ii) by a hundred per cent export-oriented undertaking and [brought to any place in India].

Explanation. — In this proviso, [“free trade zone”, [“special economic zone”]] and “hundred per cent export-oriented undertaking” shall have the same meanings as in *Explanation 2* to sub-section (1) of section 3.

[(1A) For the removal of doubts, it is hereby declared that where an exemption under sub-section (1) in respect of any excisable goods from the whole of the duty of excise leviable thereon has been granted absolutely, the manufacturer of such excisable goods shall not pay the duty of excise on such goods.]

.....”

From the plain reading of Section 5A, sub section (1A) it is clear that only compulsion on the assessee is to avail exemption which is absolute and the said compulsion is not applicable in respect of conditional notification. In the present case, Notification No. 44/2001-CE (NT) being a conditional one, it is optional for the assessee to either avail the said conditional notification or not. Therefore, when the supplier has not availed exemption notification 44/2001-CE (NT) and cleared the goods on payment of duty, such payment of duty cannot be disputed. Consequently, appellant’s availment of Cenvat credit of such duty cannot be questioned. Moreover, irrespective of the fact that whether at the supplier’s end duty is payable or otherwise, if the duty has been paid on the goods at the recipient end, for the purpose of availment of Cenvat credit, no question can be raised. As per Cenvat Credit Rules, there is no bar for the input received by an assessee that such input is otherwise dutiable or not for availing Cenvat credit. The only condition attached to the Rules is that the input received by the assessee shall be duty paid. Therefore, for this reason also Cenvat credit at the appellant’s end cannot be denied. The issue related to Notification 44/2001-CE (NT) specifically dealt with in the following decisions:-

(a) Oleofine Organics (India) Pvt. Limited (supra)

“5. We have considered the submission of the both the sides. There is no dispute that appellants had taken invalidation letter/ARO. These documents were handed over to

the suppliers who in turn would have taken the benefit available to them. These have not been cancelled or withdrawn by the appellants. However, it is also observed from the impugned orders itself that the suppliers have not availed the refund of terminal excise duty. We also find from the documents submitted along with the appeal papers that the suppliers have in the relevant years paid very substantial duty from PLA and, therefore, the Revenue's contention regarding shifting of credit does not hold water. We have asked the Id. AR to show any specific provisions under Central Excise law requiring the appellants to clear the goods in the said situation under Notification No. 44/2001-C.E. (N.T.), dated 26-6-2001 *only*. We have also seen the Notification and the connected rules. These rules do not require the appellants to *necessarily* clear the goods duty free by following the procedure under Notification No. 44/2001-C.E. (N.T.), dated 26-6-2001. We also note that overall there is no loss to the Revenue as the credit is being taken of the duty paid. If the appellants could have followed the Notification No. 44/2001-C.E. (N.T.), dated 26-6-2001, no duty would have been paid by the suppliers and appellants would also have not got any credit. We also note that in the impugned order, Tribunal judgment in the case of *M/s. Reliance Industries Ltd.* reported in [2009 \(244\) E.L.T. 254](#) (Tri.-Ahd.) have been cited with lot of force. We have gone through the said judgment and we find that the issue involved in the said judgment was different and are not relevant to the facts of the present case. In fact, in the case of *M/s. Reliance Industries Ltd.*, duty was being paid by the supplier and no objection was raised by the Department. Objection raised was relating to valuation of supplies made. We also find the issue is exactly the same as decided by the Tribunal in the case of *Shakun Polymers Ltd. v. CCE* reported in [2009 \(241\) E.L.T. 250](#) (Tri.-Ahd.). We do not find any reason not to follow the same.

6. In view of the above , we allow both the appeals.”

The above decision of the Tribunal has been upheld by the Hon'ble Bombay High Court which is reported as *Commissioner vs. Oleofine Organics (India) Pvt. Limited – 2015 (319) ELT A192 (Bom.)* wherein the following observation was made by Hon'ble High Court while dismissing the Revenue's appeal :-

Cenvat credit not deniable on exempted goods if duty is paid against Advance Licence/Authorisation

The Bombay High Court Bench comprising Hon'ble Mr. Justice S.C. Dharmadhikari and Hon'ble Mr. Justice A.K. Menon on 13-10-2014 **dismissed** the Central Excise Appeal No. 297 of 2013 with Central Excise Appeal No. 1 of 2014 filed by Commissioner of Central Excise & Customs, Thane-1 against the CESTAT Final Order Nos. A/300-301/2013-WZB/C-II(EB), dated 10-4-2013 as reported in [2014 \(299\) E.L.T. 91](#) (Tri.-Mumbai) (*Oleofine Organics (India) Pvt. Ltd. v. Commissioner*). While dismissing the appeals, the High Court passed the following order :

“In both these appeals, the revenue is aggrieved by the fact that the Tribunal had allowed the assessee's appeal without satisfying itself as to whether the Notification and which was specifically pointed out has been complied with by the party or not. This notification No. 44/2001-CE (NT) dated 26th June, 2001 is the notification in question.

2. *In the light of the conclusion reached by the Tribunal, particularly in para 5 of the impugned order, we enquired with Mr. Rao as to what is the substantial question of law*

arising for determination and consideration in this appeal. He submits that the assessee had not complied with the procedure and, therefore, not entitled to avail of the exemption or the benefit of the notification.

3. Upon careful perusal of the order and particularly, para 5, we are of the opinion that the anxiety of the revenue is that the appellant should avail of the benefit of this notification only on satisfaction of the conditions therein. Since the supplier who has supplied the goods and which are stated to excisable, to the assessee before us, he has recovered the price and on such recovery including of the Tax component divested itself completely of the title in the goods, then, the apprehension of the revenue has no basis. In the given facts and circumstances, the anxiety is taken care of. Any larger issue or wider controversy can be gone into and in an appropriate case. Thus, we find that no substantial question of law arises in the present appeals. The appeals fail and are dismissed. No costs."

The Appellate Tribunal in its impugned order had held that there is no specific provision under Central Excise Law or Rules requiring necessarily to clear goods under Notification No. 44/2001-CE (NT) covering clearance against Advance licence/Authorisation by receiver and supplier of goods disregarding entitlement. Overall, no loss of revenue as credit taken of duty paid by supplier. Credit allowable following decision on similar issue.

(b) Similarly in the case of Balakrishna Industries Limited (supra), while dealing with the same issue, the Tribunal has passed the following order:-

"6. After appreciating the submissions made by both the sides, we find that the Tribunal in the case of *Oleofine Organics (India) Pvt. Ltd. v. CCE, Thane-I* reported in [2014 \(299\) E.L.T. 91](#) (Tri.-Mumbai) has dealt with the same issue and has observed as under :-

*"5. We have considered the submission of the both the sides. There is no dispute that appellants had taken invalidation letter/ARO. These documents were handed over to the suppliers who in turn would have taken the benefit available to them. These have not been cancelled or withdrawn by the appellants. However, it is also observed from the impugned orders itself that the suppliers have not availed the refund of terminal excise duty. We also find from the documents submitted along with the appeal papers that the suppliers have in the relevant years paid very substantial duty from PLA and, therefore, the Revenue's contention regarding shifting of credit does not hold water. We have asked the Id. AR to show any specific provisions under Central Excise law requiring the appellants to clear the goods in the said situation under Notification No. 44/2001-C.E. (N.T.), dated 26-6-2001 only. We have also seen the Notification and the connected rules. These rules do not require the appellants to necessarily clear the goods duty free by following the procedure under Notification No. 44/2001-C.E. (N.T.), dated 26-6-2001. We also note that overall there is no loss to the Revenue as the credit is being taken of the duty paid. If the appellants could have followed the Notification No. 44/2001-C.E. (N.T.), dated 26-6-2001, no duty would have been paid by the suppliers and appellants would also have not got any credit. We also note that in the impugned order, Tribunal judgment in the case of *M/s. Reliance Industries Ltd.* reported in [2009 \(244\) E.L.T. 254](#) (Tri.-Ahd.) have been cited with lot of force. We have gone through the said judgment and we find that the issue involved in the said judgment was different and are not relevant to the facts of the present case. In fact, in the case of *M/s. Reliance Industries Ltd.*, duty was being paid by the supplier and no objection was raised by*

the Department. Objection raised was relating to valuation of supplies made. We also find the issue is exactly the same as decided by the Tribunal in the case of Shakun Polymers Ltd. v. CCE reported, in [2009 \(241\) E.L.T. 250](#) (Tri.-Ahd.). We do not find any reason not to follow the same”.

As is seen from above, the Tribunal has taken note of the earlier decision of the Tribunal in the case of *Shakun Polymers Ltd. v. CCE & Cus., Daman* reported in [2009 \(241\) E.L.T. 250](#) (Tri.-Ahmd.). The appeal filed by the Revenue against the said decision before the Hon’ble Gujarat High Court was rejected, though on a technical ground.

7. We note that when the above decision of the Tribunal was brought to the notice of the Adjudicating Authority he choose not to follow the same by observing as under :-

“.....During the personal hearing on 17th May, 2013, the Advocate Shri Prakash Shah who appeared on behalf of the main noticee also relied on the order dated 5-4-2013 of the Mumbai Bench of the Hon’ble CESTAT in the case of Oleofine Organics (India) Pvt. Ltd. v. C.C.E., Thane. These orders have also been relied upon by some co-noticees. I have gone through this order and there is no doubt that the issue before the Hon’ble Tribunal was same as here. The thrust of the Hon’ble Tribunal was that there is nothing in Notification No. 44/2001 which requires the manufacturer to clear the goods without payment of duty only. It was also observed that there is revenue neutrality and no loss to the revenue. It is evident that the policy Circular No. 16 (RE-2012/2009-14), dated 15th March, 2013 which has been issued recently by the D.G.F.T. was not brought to the notice of the Hon’ble Tribunal. In fact, before the Hon’ble Tribunal, the case was not presented in its entire gamut but as a simple case of payment of duty where it was not required to be paid and availment of credit of this duty by the recipient of goods. Similarly, the learned Commissioner of Central Excise, Belapur who dropped the demand in the case of M/s. I.G. Petrochemicals in an identical matter, also did not have the benefit of contents of the D.G.F.T. Policy Circular No. 16 (RE-2012/2009-14), dated 15th March, 2013. Therefore, in view of subsequent development both these orders cannot be applied to the instant case.”

8. As is seen from above, the Commissioner is not disputing the fact that the issue stands covered by the precedent decision of the Tribunal in the case of *Oleofine Organics (India) Pvt. Ltd. v. CCE, Thane-I* (supra), but has chosen not to follow the same by making a reference to the policy circular issued by DGFT.

We have seen the said circular. For better appreciation, we reproduce the same :-

Policy Circular No. 16 (RE-2012)/2009-14, dated 15-3-2013

To,

All Regional Authorities
All Development Commissioners, SEZ.

Subject : Clarification regarding TED Refund where TED exemption is available.

It has come to the notice of this Directorate that some RAs of DGFT and the Offices of Development Commissioners of SEZ are providing refund of TED even in those cases where supplies of goods, under deemed exports, is *ab initio* exempted.

2. There are three categories of supplies where supply of goods, under deemed exports, are *ab initio* exempted from payment of excise duties. These are as follows :

(i) Supply of goods under Invalidation letter issued against Advance Authorization [Para 8.3(c) of FTP];

(ii) Supply of goods under ICB [Para 8.3(c) of FTP]; and

(iii) Supply of goods to EOUs [Para 6.11(c)(ii) of FTP]

3. Prudent financial management and adherence to discipline of budget would be compromised if refund is provided, in cases, where exemption is mandated. In fact, in such cases the relevant taxes should not have been collected to begin with. And if, there has been an error/oversight committed, then the agency collecting the tax would refund it, rather than seeking reimbursement from another agency. Accordingly, it is clarified that in respect of supplies, as stated in Para 2 above, no refund of TED should be provided by RAs of DGFT/Office of Development Commissioners, because such supplies are *ab initio* exempted from payment of excise duty.

4. This issue with the approval of DGFT.

(Jay Karan Singh)
Joint Director of Foreign Trade
Telephone No. 23063249
E-mail : Jaykaran.singh@nic.in

9. As is seen from the above Circular, the same relates to the refund of the terminal excise duty and is nowhere concerned about the availment of the Cenvat credit of duty paid on the inputs by the input supplier. As such, we find that the Commissioner reliance on the said Circular was not called for.

10. Apart from above, we also note that this is well settled law that a manufacturer is entitled to avail the credit of duty **“paid”** by the input manufacturer and the assessments at his end cannot be reopened on the ground that input supplier should not have paid duty in which case the credit of the same would be available to the manufacturer/exporter. Reference can be made to the decisions in the cases of :-

- (i) *CCE & Cus. vs. MDS Switchgear Ltd.* reported in [2008 \(229\) E.L.T. 485](#) (S.C.);
- (ii) *CCE, Chennai-I vs. CEGAT, Chennai* reported in [2006 \(202\) E.L.T. 753](#) (Mad.);
- (iii) *MDS Switchgear Ltd. vs. CCE & Cus., Aurangabad* reported in [2001 \(132\) E.L.T. 405](#) (Tri. - Mumbai);
- (iv) *CCE, Goa vs. Nestle India Ltd.* reported in [2012 \(275\) E.L.T. 49](#) (Bom.);
- (v) *CCE, Delhi-III vs. Neel Metal Products Ltd.* reported in [2009 \(237\) E.L.T. 270](#) (P & H);
- (vi) *CCE & Cus. vs. Purity Flexpack Ltd.* reported in [2008 \(223\) E.L.T. 361](#) (Guj.) = [2008 \(9\) S.T.R. 125](#) (Guj.);
- (vii) *Sarvesh Refractories (P) Ltd. vs. CCE & Cus.* reported in [2007 \(218\) E.L.T. 488](#) (S.C.).

11. Though we have made a reference to the facts as involved in the case of M/s. Balakrishna Industries Limited, the identical facts and/or observations of the Commissioner are available in the other matters also and the legal issue involved is identical. In view of the foregoing discussion, the impugned orders are liable to be set aside. We order accordingly and allow all the appeals with consequential relief to the appellants. Miscellaneous applications for early hearing are also disposed of.”

The above decision was also upheld by Hon’ble Rajasthan High Court reported as *Commissioner vs. Balkrishna Industries Limited* – 2019 (366) ELT A23 (Raj)

(c) In another judgment in the case of Shree Syam Filaments (supra) the Tribunal taken consistent view :-

“3. Heard both the sides. Though today the matter was listed for hearing of the stay application, since only a short issue is involved, after hearing the matter for some time, the Bench of the view that the matter can be taken up for final disposal. Accordingly, the requirement of pre-deposit is waived and with the consent of both the sides, this appeal is heard for final disposal.

4. Shri Hemant Bajaj, Advocate, the learned Counsel for the appellant, pleaded that the issue involved in this case stands decided in the appellant's favour by Mumbai Bench of the Tribunal in the case of *M/s. Oleofine Organics (India) Pvt. Ltd. & M/s. Fine Organics (India) Pvt. Ltd. v. CCE, Thane-I* reported in 2013-TIOL-896-CESTAT-MUM = [2014 \(299\) E.L.T. 91](#) (Tribunal), wherein it has been held that the Rules do not require an assessee to necessarily clear the goods duty free by following the procedure under Notification No. 44/2001-C.E. (N.T.) and accordingly the buyer of the goods would be eligible to avail Cenvat credit of the duty paid on the inputs procured indigenously against invalidated Advance Authorization, that same view has been taken by the Tribunal in the case of *Shakun Polymers Ltd. v. CCE & CUS, Daman* reported in [2009 \(241\) E.L.T. 250](#) (Tri.-Ahmd.), that in any case, it is settled law that for the purpose of Cenvat credit in respect of some inputs, the quantum of duty already determined by the Jurisdictional officers of the supplier's unit cannot be contested or challenged by the officers incharge of the recipient unit and in this regard reliance is placed on the Apex Court judgment in the case of *CCE & CUS v. MDS Switchgear Ltd.* reported in [2008 \(229\) E.L.T. 485](#) (S.C.) and that in view of the above submissions, the impugned order is not correct.

5. Shri Pramod Kumar, learned Jt. CDR, defended the impugned order by reiterating the findings of the Commissioner.

6. We have considered the submissions from both the sides and perused the records.

7. The appellant had been issued Advance Authorization and since they did not use those Advance Authorization for duty free import of inputs, they got the same invalidated and obtained invalidation letters in favour of certain domestic suppliers for duty free supply of the inputs. However, domestic suppliers instead of supplying the inputs duty free in terms of Notification No. 44/2001-C.E. (N.T.), dated 26-6-2001 supplied those inputs on payment of duty. The appellant took Cenvat credit of that duty. The Department's contention is that the domestic suppliers in whose favour the invalidation letters had been obtained by the appellant from DGFT for duty free supply, should have supplied the inputs without payment of duty, but since they have paid the duty on these inputs, the amount paid towards duty cannot be treated as Central Excise duty and hence the appellant would not be eligible for its Cenvat credit. We find that this very issue has been considered at length of the Tribunal in the case of *M/s. Oleofine Organics (India) Pvt. Ltd. & M/s Fine Organics (India) Pvt. Ltd. v. CCE, Thane-I* (supra) and the same stands decided in the favour of the appellant. Not only this, as held by the Apex Court in the case of *CCE & CUS v. MDS Switchgear Ltd.* (supra), while considering availability of Cenvat credit to a manufacturer in respect of some inputs procured by him from another manufacturer, the quantum of duty already determined by the jurisdictional officers of the supplier unit cannot be contested or challenged by the officials incharge of the recipient unit. In this case, there is no evidence produced that the assessment of duty at the end of the domestic suppliers had been reviewed and the duty paid by them has been refunded to them. When this is so, there is no question of

denying the Cenvat credit to the appellant. In view of this, the impugned order is not sustainable. The same is set aside. The appeal as well as stay application are allowed.”

5. On the issue that whether the payment of duty can be disputed while allowing Cenvat credit at the recipient end of the inputs, in the case of *Pearl Polymers Limited (supra)*, the Tribunal has held as under:-

“The appellant is in appeal against the impugned order.

2. The facts of the case are that during the period of July, 2004 to August, 2004, the appellant procured certain inputs from the 100% EOU. The EOU cleared inputs to the appellant by paying duty under Serial No. 3 of the Notification No. 23/2003-C.E., dated 31-3-2003. The appellant availed Cenvat credit of duty paid by the supplier as per Rule 3 of the Cenvat Credit Rules, 2002, thereafter, a show cause notice was issued to the appellant alleging that as the supplier of goods was not established that they have not procured indigenously inputs manufactured the goods supplied to the appellant. Therefore, the duty is not payable by the supplier under Serial No. 3 of the Notification. In that circumstance, the appellant is not entitled to avail 100% credit of duty paid by the supplier. The matter was adjudicated, the demand was confirmed along with interest and penalty was also imposed on the appellant. Aggrieved from the said order, the appellant is before me.

3. The Id. Counsel for the appellant submits the fact that the supplier has paid duty under Serial No. 3 of Notification 23/2003-C.E. is not disputed. In that circumstances, whatever the duty has been paid by the appellant is entitled for Cenvat credit as per Rule 3 of the Cenvat Credit Rules, 2002. Therefore, the impugned order is to be set aside.

4. On the other hand, the Id. AR opposed the contention of the Id. Counsel and submits that as per Rule 14 of the Cenvat Credit Rules, 2004 duty cast on the appellant that they have to verify supplier of the goods (in case of 100% EOU) that EOU has manufactured the goods supplied to the appellant by using indigenously manufactured inputs which the appellant have failed to do so. In that circumstance, the appellant is not entitled for 100% EOU credit.

5. Heard the parties and considered the submissions.

6. In this case the payment of duty under Serial No. 3 of Notification 23/2003 is not disputed by the parties. The duty cast on the appellant is to verify that the 100% EOU has paid duty under Sr. No. 3 of the said notification when the duty has been paid under Sr. No. 3 of Notification 23/2003-C.E., the same is sufficient to entitlement to the credit to the appellant. In that circumstance, I hold that the appellant has correctly availed the Cenvat credit. Therefore, the impugned order deserves no merits, hence set aside. Consequently, the appeal is allowed with consequential relief, if any.”

6. In view of the above judgments, it can be seen that on both the counts i.e. on the issue of availment of exemption Notification No. 44/2001-CE (NT) dated 26.06.2001 by the supplier and also where even if the duty is not payable by the supplier but the same was paid, Cenvat credit cannot be

denied at the recipient end. Consequently, the personal penalty on Shri Omdev R. Mishra is also not imposable. Accordingly, the impugned orders are set-aside and the appeals are allowed.

(Pronounced in the open court on 27.04.2023)

(Ramesh Nair)
Member (Judicial)

(C L Mahar)
Member (Technical)

KL