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

REGIONAL BENCH- COURT NO. 3

Excise Appeal No. 11717 of 2018-SM

(Arising out of OIA-AHM-EXCUS-002-APP-378-17-18Dated- 09/04/2018passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)

Kevin Process Technologies Pvt Ltd **........Appellant**
Plot No. 5,6,7, Moraiya Industrial Estate,
Behind Sarvodaya Hotel, N.H. No., 8-A, Moraiya, Taluka- Sanand.,
Ahmedabad, Gujarat

VERSUS

C.C.E.-Ahmedabad-ii **........Respondent**
Custom House... First Floor,
Old High Court Road, Navrangpura,
Ahmedabad,Gujarat- 380009

APPEARANCE:
Shri Dhaval Shah, Advocate for the Appellant
Shri Sanjiv Kinker (Superintendent) Authorised Representative for the Respondent

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

Final Order No. A/ 12331 /2021

DATE OF HEARING: 24.08.2021
DATE OF DECISION:24.08.2021

RAMESH NAIR

The issue involved is that whether the appellant is entitled to Cenvat Credit on the strength of Debit Note issued by the importer in respect of import of machines and CVD paid there on was passed on to the appellant by way of Debit note.

2. Shri Dhaval Shah, Learned Counsel appearing on behalf of the appellant submits that the debit note has been held as a valid document for availing Cenvat credit in various judgments. He relied upon the following judgments:

- Mahanagar Gas Ltd Vs. CCE– 2015(6) TMI 911- Cestat Mumbai
- CCE, Jaipur –I Vs Bharti Hexacom Ltd – 2018 (6) TMI 435- Rajasthan High Court

2.2 On the query from bench that whether the importer is registered or otherwise. He has shown the registration certificate of the importer M/s CMC Machinery. He also referred to no objection certificate issued by M/s CMC Machinery wherein the IEC code of the importer is appearing. He submits that all the details such as name of the appellant, amount of duty, address of the importer is appearing on the debit note. Therefore, the debit note is a valid document for availing the Cenvat credit. He submits that there is no dispute regarding receipt of the goods as all the documents such as tax invoice, bill of entry, Cenvat credit register maintained by the appellant, Calculation of the duty elements, Lorry receipt and inward register has been maintained and copy of the same is submitted before this tribunal.

3. Shri. Sanjiv Kinker, Learned Superintendent (AR) appearing on behalf of the Revenue submits that required details are not appearing on the debit note and the debit note is not prescribed as valid document under rule 9 of Cenvat Credit Rules, 2004. Therefore, credit was rightly denied by the adjudicating authority as well as appellate authority. He reiterates the finding of the impugned order.

4. I have carefully considered the submission made by both the sides and perused the records. The Cenvat credit was denied by both the Lower Authorities interpreting the rule 9 of Cenvat Credit Rules, 2004.According to which document such as debit note not appearing in the rule 9, therefore it was held that the credit was not available to the appellant is on invalid document. I find that as per rule 9 not only invoice or bill of entry but any other document is also the valid document for availing credit. The appellant

has submitted the bill of entry of the importer M/s CMC Machinery whereby the CVD was paid and proportionate CVD has been passed on through debit note. Debit note contains all the details as required to be mentioned in Cenvatable documents. Moreover, the appellant also submitted a certificate from CMC which bears the IEC Code number of the importer. With this fact a debit note can be considered as valid documents for availing the Cenvat credit. This issue has been considered by this tribunal in the case of Mahanagar Gas Limited (Supra) wherein the tribunal has passed as under.

> *"This appeal is directed against Order-in-Appeal No. US/324/N-II/2012 dtd. 10/5/2012 passed by the Commissioner of Central Excise (Appeals-II), Mumbai, wherein Ld. Commissioner (Appeals) has rejected the appeal of the appellant and upheld the order in original NO. BB/Adj/03/CH-I/2011-12 dated 9/9/2011. The issue involved in present is whether the appellant is entitled for the Cenvat credit on the strength of debit note issued by the service provider.*
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> *2. Ms. Padmavati Patil, Ld. Counsel for the appellant submits that the appellant has availed Cenvat Credit of ₹ 3,84,369/- on the basis of debit note. The credit was denied only on the ground that debit note is not prescribed documents under Rule (9)(i) of Cenvat Rule or Rule 4(a) of Service Tax Rules 1994. She submits that as per the Rule 9 (2) Cenvat Credit rules only requirement is that documents on the basis of which Cenvat Credit is availed, should contain certain information/details such as service tax payable, description of taxable service, assessable value, service tax registration Number of the person/assessee, who issue the invoices, and the services covered by the said documents have been received and accounted for in the books of account of receiver. She submits that in the debit note the said details are correctly appearing therefore, the said document is valid*

documents for taking the Cenvat credit. She placed reliance on the following judgments, wherein Cenvat Credit on debit note has been allowed:- (a) CCE, Indore Vs. Grasim Industries Ltd – [2011(24) STR 691 (Tri-Del). (b) CCE, Salem Vs. Pallipalayam Spinners Pvt. Ltd. E/330/2010 (c) Pharmalab Process Equipments Pvt. Ltd. Vs. CCE, [2009 (242) ELT 467 (Tri.-Ahd)] (d) CCE, Nashik Vs.Graphite (India) Ltd. [2007 (212) ELT 54 (Tri-Mumbai)]. (e) The Supreme Industries Ltd. Vs. CCE, Mumbai - Appeal No.E/1448/10-Mum (f) CCE, Indore Vs. Gwalior Chemicals Industries Ltd. [2011 (274) ELT 97 (Tri.-Del.)]

3. On the other hand, Shri N. N. Prabhudesai, Ld. Superintendent (A.R.) reiterates the findings of the impugned order and submits that debit note is not prescribed documents for taking Cenvat credit, either in rule 9(i) of Cenvat Credit Rule or Rule 4(a) of Service Tax Rules 1994, therefore lower authority have correctly held that Cenvat Credit is inadmissible on the strength of debit note.

4. I have carefully considered the submissions made by both the sides and perused the record.

5. On carefully perusal of debit note, I observed that all the particulars as required under Rule 9(2) of Cenvat Credit Rules are undisputedly appearing on the debit note. Therefore the debit note is at par with the documents prescribed under Rule 9(1) of Cenvat Credit Rules, 2004. On going through various judgments relied upon by the Ld. Counsel for the appellant, I find that the ratio of those judgments are squarely applicable in the present case. There is no dispute raised by the department that the service were received and same was accounted for in the books of account of the appellant, therefore, I am of the view that debit note containing all the details as required under the rule 9(2) of Cenvat Credit Rules, 2004 is valid documents for the purpose of taking cenvat credit. As per my above discussion, I am of the view that the appellant is entitled for the Cenvat credit on the *debit note, therefore impugned order is set aside and the appeal is allowed."*

The Hon'ble Rajasthan High Court also in a question that whether the central Cenvat credit can be allowed on the basis of the document as are provided under rule 9 (1) of the Cenvat Credit Rule, 2004. The following judgment was passed.

"9. Taking into consideration the fact that even first authority while considering the matter has admitted the debit note which was produced though holding it to be in contravention under Rule 9 of the Cenvat Credit Rules , 2004 but in view of the different decisions of the tribunal and in view of the observations made by the Gujarat High Court and Delhi High Court , the view taken by the tribunal is required to be accepted and the same is accepted .

10. In that view of the matter, the issue is answered in favour of the assessee and against the department .

11. The appeal stands dismissed.

12 Needless to say that the first judgment given by the Tribunal was ex-parte and subsequently for the relevant assessment year, the view taken earlier was changed by the bench."

As per view taken by the Hon'ble High Court and this tribunal in the above cited judgment and above discussion made by me, I am of the view that the debit note is the document on the basis of which the Cenvat Credit is admissible. There is no dispute about receipt of goods. Accordingly, I set aside the impugned order to the extent it disallowed the Cenvat Credit of Rs.3,93,067/-Corresponding penalty if any and interest thereon are also set aside.

5. Accordingly, the impugned order stands modified in the above terms. The appeal is allowed in the above terms with consequential relief, if any, in accordance with law.

(Dictated and pronounced in the open court)

(Ramesh Nair)
Member (Judicial)

Geeta