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

REGIONAL BENCH- COURT NO.3

Excise Appeal No.781 of 2012

(Arising out of OIO-14/DEM/VAPI/2012 dated 31/07/2012 passed by Commissioner of Central Excise, Customs and Service Tax-VAPI)

Sunrise Containers Ltd **........Appellant**
(Unit-Iii) F-Wing, Gala No. 18-26 And G1-4, Zero Tax Industrial Estate, Near Check Post,
DADRA, DADRA & NAGAR HAVELI

VERSUS

C.C.E. & S.T.-Vapi **.......Respondent**
4th Floor...Adharsh Dham Building,
Opp. Town Police Station, Vapi-Daman Road, Vapi
Vapi, Gujarat-396191

WITH
Excise Appeal No.853 of 2012

(Arising out of OIO-14/DEM/VAPI/2012 dated 24/08/2012 passed by Commissioner of Central Excise, Customs and Service Tax-VAPI)

Ramesh Pawle **........Appellant**
General Manager Cum Authorised Sognatory, Of M/S, Sunrise Containers Ltd,
F-Wing, Gala No. 01-26, G-1-04, Zero Tax Industrial Estate,Near Chek Post,
DADRA, U T OF DADRA & NAGAR HAVELI

VERSUS

C.C.E. & S.T.-Vapi **.......Respondent**
4th Floor...Adharsh Dham Building,
Opp. Town Police Station, Vapi-Daman Road, Vapi
Vapi, Gujarat-396191

APPEARANCE:
Shri S J Vyas, Advocate for the Appellant
Shri Kalpesh Shah, Superintendent (AR) for the Respondent

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

Final Order No. A/ 11386-11387 /2022

DATE OF HEARING: 09.11.2022
DATE OF DECISION: 15.11.2022

RAMESH NAIR

The brief facts of the case are that the appellant are engaged in the manufacture of Pet preforms falling under chapter heading number 396230 of the Central Excise Tariff Act, 1985. The appellant have purchased the input on payment of central excise duty from M/s. Reliance Industries Ltd.

against invalidation of advance authorization under various advance licenses. Against such payment of duty by M/s. Reliance Industries Ltd., the appellant has availed cenvat credit during the period August-2010 to October-2010. The case of the department is that the purchase against advance authorization are exempted under para 4.1 of FTP 2009-14 which enables duty free import of inputs required for production of goods to be exported. Therefore, the duty paid by M/s. Reliance Industries Ltd. is incorrect consequently, the appellant are not entitled for the cenvat credit. Accordingly, the adjudicating authority demanded the amount of cenvat credit vide Order-In-Original dated 31.07.2012. Being aggrieved by the said order, the appellant filed the present appeals.

02. Shri S J Vyas, learned counsel appearing on behalf of the appellants submits that once the input is received duty paid, that duty is available as a cenvat credit to the recipient. There is no restriction for such cenvat credit even though it was not payable by the supplier of input. He submits that the issue is squarely covered by the following judgments:-

- SHRIRAM CONSOLIDATED PVT. LTD.- 2017 (8) TMI 886- CESTAT NEW DELHI
- MDS SWITCHGEAR LTD.- 2008 (8) TMI 37- SUPREME COURT
- NAHAR GRANITES LTD.- 2014 (5) TMI 57- GUJARAT HIGH COURT

03. Shri Kalpesh Shah, learned Superintendent (AR) appearing on behalf of the revenue reiterates the finding of the impugned order.

04. We have carefully considered the submissions made by both the sides and perused the records. We find that there is no dispute on the fact that the supplier M/s. Reliance Industries Ltd. has discharged the duty as per law. The inputs were received by the appellant for use in the manufacture of final product therefore, the sufficient compliance of the provision of Cenvat Credit Rules, 2004 stood made. It is settled law that at the end of the service recipient of input, cenvat credit cannot be disputed on the ground that whether the said input is liable to duty or otherwise at the end of the supplier. Once the supplier has paid the duty whether it is payable or otherwise, the said duty is clearly admissible as cenvat credit. In other words the assessment of duty payment on the part of the supplier cannot be disputed at the end of the recipient of the input therefore, there is no reason to deny the cenvat credit once the duty paid inputs were received by the appellant. The particular issue that in case of advance license, whether the

duty payment is available as cenvat credit has been considered in the case of DCM SHRIRAM CONSOLIDATED PVT. LTD.(supra) wherein, the following judgment was passed :-

4. In the instant case, it appears that the assessee-respondents have availed and utilized the Cenvat credit during the period from 1-2-2007 to 31-3-2007 on the duty paid indigenous inputs procured against the invalidated Advance Licence. The issue pertaining to the Notification No. 44/2001-C.E. (N.T.) has already come up before the Apex Court in the case of CCE & C v. MDS Switchgear Ltd., 2008 (229) E.L.T. 485 (S.C.), wherein it was observed that the recipient manufacturer is entitled to avail the benefit. A quantum of duty, already determined by the jurisdictional officer of the supplier unit, cannot be contested or challenged by the officer of recipient unit.

5.In the light of above discussion and considering the totality of the case, we are of the view that the credit, so availed, amounting to 7 10,68,037/- in respect of duty paid indigenous inputs procured against the invalidated advance licence/authorization, is admissible and is in order. Hence, we find no merit in the appeal filed by the Department and uphold the impugned order along with the reasons mentioned therein.

6.In the result, the appeal filed by the Department is dismissed and the cross-objections also stand disposed of accordingly.

The above judgment is based on the hon'ble Supreme Court judgment in the case of MDS Switchgear (supra) wherein, the hon'ble Apex Court has passed the following order:-

7.The Tribunal has come to the conclusion that in fact there was no loss of revenue. It accepted the appeal by recording the following reasons :

"Reasons given by the appellants for the alleged inflation of the value of the intermediate goods are logical. What was required of the Commissioner was to examine the quantum of the, loading of the assessable value by the Modvat credit on the earlier inputs. That exercise has nowhere been done. If the department was of the opinion that the value of the final product was depressed, then they could have charged the Jalgaon unit with under-invoicing of their product. That has also not been done. The valuation as given by the Sinnar unit was duly approved by the department and the payment of duty was also duly accepted. We find absolutely no substance in the attempt of the learned Commissioner to convert a part of the duty so paid into 'deposit of duty'. There is no legal basis for such presumption. The rules entitled the receipt manufacturer to avail of the benefit of the duty paid by the supplier manufacturer. A quantum of duty already determined by the jurisdictional officers of the supplier unit cannot be con tested or challenged by the officers in charge of recipient unit [2000 (38) RLT 179]."

8. Counsel appearing for the Revenue could not assail any of the findings recorded by the Tribunal.

9. That being the position, we agree with the view taken by the Tribunal and find no merit in these appeals which are dismissed leaving the parties to bear their own costs.

The identical issue has been considered by the jurisdictional Gujarat High Court in the case of NAHAR GRANITES LTD. which is reproduced below:-

7.Rule 3 of the Cenvat Credit Rules, 2004 allows a manufacturer or producer of final product or a provider of taxable service to take cenvat credit of the duty of excise specified in the First Schedule to the Excise Tariff Act. Rule 4 of the Cenvat Credit Rules, 2004 lays down the conditions for allowing cenvat credit. Subrule (1) thereof provides that cenvat credit in respect of inputs may be taken immediately on receipt of the inputs in the factory of the manufacturer or in the premises of the provider of output service. Proviso to subrule (1) puts certain limitations on such immediate availability of cenvat credit. We are however, not concerned with the proviso.

8.In terms of rule 3 and 4 of the Cenvat Credit Rules, 2004, a manufacturer would be entitled to avail the cenvat credit in respect of the inputs used for the manufacture of a final product or in providing taxable service of the excise duty specified in First Schedule to the Excise Tariff Act. Insofar as the respondent is concerned, he had purchased the inputs and utilised the same for manufacture of a final product. Such goods were duty paid. Rule 3 and 4 of the Cenvat Credit Rules, 2004, thus would enable him to avail the cenvat credit. It is a different thing that the supplier of the goods to the respondent paid excise duty on such product under mistaken belief. In law as declared by the Supreme Court in case of Collector of Central Excise, Patna. v. Tata Iron and Steel Co. Ltd (supra), no duty was payable on such product. Strictly speaking therefore, such amount deposited by the original manufacturer would not partake the character of excise duty. However, when the department did not dispute the classification of such manufacturer, accepted the declarations and duties, cenvat credit on such duty cannot be declined to the purchaser of the goods who otherwise fulfilled all conditions for availing cenvat credit thereof.

9.Case is substantially similar to one before the Supreme Court in case of MDS Switchgear Ltd (supra). In the said case, the tribunal while accepting the department's allegation of inflation of the value of intermediate goods to load the assessable value, observed that if the department was of the opinion that the value of the final product was depressed, it could have charged the original manufacturer unit in under invoicing their product. This was however, not done. Valuation was duly approved and the payment duty was also accepted. The tribunal further observed that "We find absolutely no substance in the attempt of the learned Commissioner to convert a part of the duty so paid into deposit of duty. There is no legal basis for such presumption. The rules entitled the receipt manufacturer to avail the benefit of the duty paid by the supplier manufacturer. A quantum of duty already determined by the jurisdictional officers of the supplier unit cannot be contested or challenged by the officers in charge of recipient unit."

10. This judgment by speaking order was upheld by the Supreme Court.

11. In the result, tax appeal is dismissed.

In view of the above judgments, the issue is settled that once the duty was paid by the supplier even though the same was payable or otherwise the same cannot be disputed at the end of the recipient of input accordingly, the cenvat credit cannot be disputed.

05. Considering the above judgment, we are of the clear view that in the present case duty was paid by M/s. Reliance Industries Ltd. against invalidation of advance authorisation, the cenvat credit to the appellant is admissible. Accordingly, the impugned order is set aside. As regard the appeal against the personal penalty filed by Shri Ramesh Pawle, we find that since the demand itself is not sustainable, the penalty being consequential will also not sustain. Accordingly, the penalty is set aside. Both the appeals are allowed.

(Pronounced in the open court on 15.11.2022)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Mehul