IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. E/3310/2009-EX[SM]

(Arising out of Order-in-Appeal No. 289-CE/APPL/Noida/09 dated 30/09/2009 passed by Commissioner of Central Excise & Customs (Appeals), Noida)

M/s Hi-Tech Surfactants (P) Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Noida **Respondent**

Appearance:

Shri R. Krishnan, Advocate, for Appellant
Shri Sandeep Kumar Singh, Deputy Commissioner (AR), for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)

Date of Hearing & Date of Decision : 19/12/2017

FINAL ORDER NO. **70728/2018**

Per: Anil Choudhary

The issue in this appeal is, whether the appellant a manufacturer of detergent and registered with the Department, have contravened the provisions of Rule 9(1)(b) of Cenvat Credit Rules, 2004, as it appeared to Rvenue that they have taken wrong Cenvat credit on the strength of supplementary invoice No. 528 dated 16th of February, 2007 issued by one M/s R. K. Industries, Pondicherry for Rs1,59,571/-. Vide RG-23A Part-II Entry No. 981 dated 15/03/2007.

2. The brief facts are that the appellant had taken Cenvat credit on the aforementioned supplementary invoice, which came to notice when the Judicial Supdt. – in charge of M/s R. K. Industries, Pondicherry (hereinafter referred as “M/s RKI” for short) vide his office letter dated 22/08/2007 informed to the Supdt., Central Excise, Range 33, Secunderabad, Bulandsahar have under whose jurisdiction the appellant factory falls, that a case of undervaluation has been booked against M/s RKI, Pondicherry alleging that they had raised supplementary invoice as aforementioned against the differential duty, collected from them and on the receipt of the said supplementary invoice, appellant Hi-Tech have taken the Cenvat credit thereof. Accordingly, pursuant to show cause notice vide Order-in-Original dated 31/12/2008. The Cenvat credit of Rs.1,59,571/- was disallowed and further penalty Rs.10,000/- was imposed under Rule 15 of CCR, 2004 along with interest. Being aggrieved, the appellant preferred appeal before ld. Commissioner (Appeals) who vide the impugned order was pleased to reject the appeal.

3. Being aggrieved the appellant/assessee is before this Tribunal. The learned counsel for the appellant informs that a case was also booked against M/s RKI as well as Hindustan Unilever Ltd. with respect to the same facts and investigation and/or allegations. The said matter finally reached before the Chennai Bench of this Tribunal in appeal No. E/117 and 118/2008 and vide final order No. 41869–41870/2017, dated

23/08/2017. This Tribunal has held as follows:–

> *"7. The ld. Counsel has submitted that the appellant is not contesting the demand of duty or the interest thereon and has confined his arguments on the penalties imposed. He has submitted that out of the 15 products of Mixed Odoriferous Substances (perfumes) manufactured by appellant, the allegation of undervaluation is only with respect of two products. It is also brought out from the facts that M/s. HLL was providing the costing to the appellant based on which the goods were cleared by the appellant. That immediately, after being pointed out by the audit, the appellants have paid the duty along with interest. In such a case, the show cause notice ought not to have issued. So also the intention to evade payment of duty cannot be alleged when the job worker/vendors/HLL is eligible to take Cenvat credit on the duty paid. Thus, the situation would give rise to Revenue neutral and therefore, in our opinion, as laid down in the case of Prakash Industries Ltd. (supra), the demand is unsustainable. Since the demand and interest are paid by the appellant and the ld. Counsel for the appellant has not challenged the duty demand and interest appropriated are sustainable. However, we set aside the penalties imposed on both the appellants."*

4. Accordingly the ld. counsel states that the issue being

settled and there being no finding of fraud or any contumacious conduct on the part of Hindustan Unilever and RK Industries. Thus, there is no irregularity in taking of Cenvat credit by this appellant vide supplementary invoice as aforementioned.

5. The learned A. R. for Revenue relied on the impugned order.

6. Having considered the rival contentions, I find that the present proceedings have been initiated by way of sequel to the proceedings initiated at Pondicherry in the case of RK Industries and Hindustan Unilever Ltd. As the proceedings at the end of RK Industries and Hindustan Unilever Ltd. stands settled vide final order of this Tribunal (supra) I hold that the allegations against this appellant also do not stand as to any irregularity in taking of Cenvat credit. Accordingly I hold that the appellant is entitled to take the Cenvat credit under dispute. Accordingly this appeal is allowed with consequential benefits to the appellant.

(Dictated in Court)

Sd/-
(Anil Choudhary)
Member (Judicial)

Ansari