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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 14/11/2017

To

Appellant as per address in table below
Respondent as per address in table below

Final Order No. A/71346/2017-SM[BR] dated 20/09/2017

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the **Central Excise and Salt Act, 1944.**

Asstt. Registrar

	Application	Appeal	Name and Address of Appellant
1	E/CROSS/142/2011	E/996/2011	C.C.E, NOIDA C-56/42, Sector-62, Noida-201307
			Name and Address of Respondent
2			VICTOR PUSH IN CORDS PVT. LTD. A-52, SECTOR-80, NOIDA. (U.P.),,

Copy To
3Advocate(s) / Consultant(s):

A. P. Mathur
167, TAGORE TOWN,
Allahabad,
Uttar Pradesh

4 Bar Association, CESTAT, Allahabad

5 Director Publications, Customs, Excise. I.P. Estate, Delhi

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp ICICI Bank of Defence Colony New Delhi-3

7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

9 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

10 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

11 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

12 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

13 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

14 C.D.R. 15 Office Copy 16 Second Folder Copy 17 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD
COURT No. I
CROSS Application No. E/CROSS/142/2011 in
APPEAL No. E/996/2011-EX[SM]

(Arising out of Order-in-Appeal No. 09-CE/APPL/NOIDA/2011 dated 28/01/2011 passed by Commissioner of Central Excise & Customs (Appeals), Noida)

Commissioner of Central Excise, Customs & Service Tax, Noida

Appellant

Vs.

M/s Victor Pushin Cords Pvt. Ltd. **Respondent**

Appearance:

Shri Gyanendra Kumar Tripathi (Asst. Commr.) AR for Appellant
Shri A.P. Mathur (Advocate) for Respondent

CORAM:

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

Date of Hearing : 20/09/2017
Date of Decision : 20/09/2017

FINAL ORDER NO. 71346/2017..........

Per: Anil Choudhary

The brief facts of the case are that the respondent is engaged in the manufacture of Power Cords, Connectors & PVC Wire falling under Chapter No. 85 of the Central Excise Tariff Act, 1985 and is also availing Cenvat Credit on input used in the manufacture of their final product. The respondent had allegedly availed Cenvat Credit amounting to Rs.10,69,107/- on the strength of the invoices, as detailed below, issued by M/s V. K. Metal Works, Lane No. 6, Phase-II, SIDCO

Industrial Complex, Bari Brahmna, Jammu Tawi, J & K (hereinafter referred as M/s VKMW, for the sake of brevity) without receipt of any material:-

Sl No.	Invoice		Cenvat Credit (in Rs.)		RG 23 Pt. II Credit entry No.
	No.	Date	BED	Ed. Cess	
1	00106	16.02.2005	2,55,715	5,114	313 dt. 26.02.2005
2	00103	15.02.2005	2,55,859	5,117	304 dt. 26.02.2005
3	00314	16.11.2006	5,45,394	1,908	406 dt. 30.12.2006
Total			10,56,968	12,139	

2.2 The above allegation were levelled against the respondent in view of an investigation carried out by the Directorate General of Central Excise Intelligence, New Delhi (hereinafter referred to as 'DGCEI' for the sake of brevity) against M/s VKMW alleged supplier of the goods to the respondent. During the course of investigation it came to notice that M/s VKMW, the supplier of Goods (Copper Ingots) to the respondent, had no manufacturing facility at their declared factory premises and were engaged in issuing fraudulent invoices to their customers showing fictitious production of copper ingots in their unit, hence the goods said to be consigned on their invoices to their customers/buyers were actually not covered by such invoices, i.e. the goods covered by these invoices were not actually manufactured by M/s VKMW and only the invoices showing bogus clearance of finished goods had been issued, therefore no CENVAT credit was admissible on these invoices.

Accordingly, a Show Cause Notice vide F. No. 171/DGCEI/INT/88/2006/49-66 dated 05/01/2010 was issued to M/s VKMW by the DGCEI, New Delhi.

2.3 During the course of these investigations, it emerged that M/s VKMW had indulged in issuing invoices only, without supplying the goods as mentioned on such invoices, to their buyers so as to facilitate to their buyer to avail the CENVAT Credit. One of such buyers (of M/s VKMW) was the respondent situated under the jurisdiction of the Central Excise Commissionerate, Noida, who had allegedly purchased the Copper Ingots from M/s VKMW. Acting on the information that the respondent had availed the irregular CENVAT Credit on the strength of the invoices issued by M/s VKMW, an investigation was conducted by the Anti Evasion Wing of the Central Excise Commissionerate, Noida. During the course of further investigations it came to the notice that the respondent had shown to have purchased the Copper Ingots against the invoices as mentioned hereinabove and availed the CENVAT Credit and the said CENVAT Credit availed by the respondent was irregular as the goods i.e. Copper Ingots shown to be covered by these invoices issued by M/s VKMW had actually not been manufactured by M/s VKMW and only the invoices showing bogus clearances of finished goods had been issued to the respondent.

2. Accordingly show cause notice was issued or respondent demanding recovery of Cenvat Credit Rs.

10,69,107/- for the period February, 2005 to December, 2006 with further proposal to impose penalty under Rule 15 of CCR. The SCN was confirmed on contest and further penalty of equal amount was imposed under Section 11 AC read with Rule 15 of CCR, 2004.

3. Being aggrieved the respondent preferred appeal before learned Commissioner (Appeals) who vide the impugned order have been pleased to allow the appeal, observing that the crux of allegation is based on the show cause notice issued by DGCEI to M/s VKMW (supplier), wherein it has been alleged that M/s VKMW had no manufacturing activity in the factory premises and showed fictitious production of copper ingots/wire/rods (finished goods) in their unit and paid Central Excise Duty on the bogus clearances of finished goods. Thus, M/s VKMW issued invoices fraudulently to their buyers/customers, including the respondent who had purchased copper ingots from M/s VKMW against the invoices as detailed hereinabove. Learned Commissioner further observed that it have been stated in para-5.6 of the Order-in-Original that evidences on record indicates that the respondent was actually engaged in manufacturing activities and for the manufacture of the finished goods, they needed copper rod/copper wire, therefore, it cannot be said that copper rod/copper wire had not ever been received in the factory of the respondent. There is further evidence on record that the respondents pursuant to completion of work by the

job worker received the converted goods in the factory. It was also observed that it is admitted fact in the Order-in-Original that respondent had discharged its contractual liability by making payment of these invoices through the banking channel by cheques. Therefore, the duty paid nature of the said inputs received by the appellant is not disputed by the Revenue. So the only question which remains is whether copper ingots are the same as covered by the invoices in dispute. Learned Commissioner further observe that in the impugned order and SCN, there is no allegation that the respondent-assessee received the goods in question from any other source. Further observe that the obligation of the respondent-assessee under the scheme of the Act is to ensure that the inputs have suffered duty at the hands of the manufacturer and the inputs covered in the invoices have been received and the same have been utilized in the manufacture of the final products. In the facts of this case the respondent have purchased copper ingots from M/s VKMW a registered manufacturer of excisable goods by making payment through banking channel and the goods – copper ingots are received by the respondent's job worker on behalf of the respondent. The job worker converted the said ingots into copper wire/rod and after conversion returned it to the respondent and the same have been used by them in the manufacture of the final products. There is no evidence to the contrary on record. Further, the supplier – M/s VKMW is duly registered under the provision of Central Excise. Further reliance was placed on the CBEC Circular No. 766/82/2003 dated 15 December, 2003 on the issue of availment of credit by the user – manufacturer, clarifies that action against consignee to reverse/recover the Cenvat Credit availed in such cases need not to be reversed as long as the bona-fide nature of the consignee's transaction is not in dispute.

4. Being aggrieved the Revenue is in appeal on the ground that in the impugned Order-in-Appeal, in para-5.6, the observation – "that neither the show cause notice alleges any other source of procurement of the said ingots, received under these invoices nor the impugned order found any other source of procurement of such copper ingots", is not correct. In view of the allegation as to the source of ingots, being in dispute, wherein it has been alleged that no manufacture has taken place in the factory of M/s VKMW. Hence, this naturally implies that the goods in question had not originated in the factory of M/s VKMW. Accordingly, prays for allowing the appeal of Revenue.

5. Heard learned advocate for the respondent-assessee who has supported the findings in the impugned Order-in-Appeal.

6. Having considered the rival contentions I find that the findings of the learned Commissioner (Appeals) have not been assailed by the Revenue except bald allegation. The grounds of appeal are more or less repetition of the show cause notice.

I further find that Revenue itself under the facts and circumstances after due verification had granted registration to the said M/s VKMW. It is an admitted fact that Revenue have taken action against the said M/s VKMW only in the year 2010. Thus, during the period of transactions 2004 - 05 and 2006 - 07. The appellant have entered into transaction with the said M/s VKMW bona-fide. It is also admitted fact that neither the Revenue had cancelled the registration certificate of the said M/s VKMW nor given any public notice as to the fraud committed by the said M/s VKMW. Thus, under the scheme of the Act I find that the respondent-assessee acted and bona-fide have procured the inputs from the said M/s VKMW on payment of duty by making payment for the invoices through the banking channel. Accordingly, in this view of the matter I further hold that the respondent-assessee have discharged their onus as regards genuineness of the transactions in question. Accordingly, the appeal by Revenue is dismissed and the cross objections are disposed of. The respondent-assessee shall be entitled for the consequential benefits, if any in accordance with law.

(Dictated and pronounced in Court)

-Sd/-

(ANIL CHOUDHARY)
Member(JUDICIAL)

Ankit

प्रमाणित प्रति/Certified True Copy
05/12/18
Asstt. Registrar
(C.E.S.T.A.T.)
M. G. MARG, ALLAHABAD-211001