CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Central Excise Appeal No. 954 of 2009

(Arising out of Order-in-Original No. 11 & 12/2009 dt. 22.07.2009 passed by Commissioner of Central Excise, Bangalore)

Kavveri Telecom Products Limited,
Plot No.31-36, Arekere MICO Layout,
Bannerughatta Road,
Bangalore – 560068.

Appellant(s)

VERSUS

Commissioner of Central Excise,
Bangalore I Commissionerate,
C.R. Buildings, Queens Road,
Bangalore – 560001.

Respondent(s)

WITH

(i) Central Excise Appeal No.956/2009 (M/s. Kavveri Telecom Products Limited)

(Arising out of Order-in-Original No. 11 & 12/2009 dt. 22.07.2009 passed by Commissioner of Central Excise, Bangalore)

(ii) Central Excise Appeal No.1711/2010 (M/s. Kavveri Telecom Products Limited)

(Arising out of Order-in-Original No. 22 & 23/2010 dt. 04.05.2010 passed by Commissioner of Central Excise, Bangalore)

(iii) Central Excise Appeal No.1712/2010 (M/s. Kavveri Telecom Products Limited)

(Arising out of Order-in-Original No. 22 & 23/2010 dt. 04.05.2010 passed by Commissioner of Central Excise, Bangalore)

APPEARANCE:

Mr. N. Anand, Advocate and Mr. Akbar Basha, Chartered Accountant for the appellant.
Mr. H. Jayathirtha, Superintendent(AR) for the respondent.

CORAM:
HON'BLE Dr. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE Mrs. R. BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 20761 to 20764 / 2023

Date of Hearing: 31/05/2023
Date of Decision: 31/05/2023

Per : DR. D.M.MISRA

These four appeals are filed against the respective Orders-in-Original. Since the issue involved is common, the appeals are taken up together for hearing and disposal.

2. Briefly stated the facts of the case are that the appellant are engaged in the manufacture of excisable goods falling under Chapter Heading 8544 of CETA, 1985. The appellant imported the inputs viz. 7/8 Radio Frequency (RF) Cables on payment of appropriate applicable customs duties on the same. The said inputs are processed and converted into two types viz. Jumper Cables and RF Feeder Cables. They have availed and utilised cenvat credit on various duties paid at the time of import, which were later utilised in the clearance of the finished goods, after carrying out the process like connectorising, testing, repacking and relabelling on the said feeder cables in their factory. On the basis of statements of two transporters, it is alleged that the said cables have not been received by the appellant in their factory but transferred out-and-out from the place of import to the

customers' premises for its installation/use and alternatively alleging that the activities carried out by the appellant do not result into manufacture, show-cause notices were issued for recovery of the credit for the period February 2007 to March 2009 amounting to Rs.32,75,68,671/-. On adjudication, the demands were confirmed with interest and penalties. Hence, the present appeals.

3.1. The learned advocate for the appellant has submitted that on import of the inputs viz. 7/8 Radio Frequency Cables (RF cables), the appellant had discharged applicable customs duty including additional duty of customs (CVD), Special Additional Duty (SAD) under the relevant provisions of Customs Tariff Act on the same. On receipt of inputs in their registered factory, it was converted into two types viz. Jumper cables and RF Feeder cables depending on the customers requisitions. The inputs are subjected to various processes viz. fitting of connectors, screening, calibration, testing etc. using testing equipments and other plant and machinery installed inside the factory. The processed final products thereafter removed / sold to the customers, who are mainly telecom service operators, on payment of applicable Central Excise duty on the transaction value determined under Section 4A of the Central Excise Act. They have filed periodical monthly returns viz. ER-1 with jurisdictional Central Excise authorities showing the clearances on payment of duty. Consequent to the audit of their records between February 2007 to May 2007, it was opined that the cables imported by the appellant on which they availed credit was not an input as no activity of manufacturing carried out on the said imported items. Later, statements of the General Manager was taken and also of two transporters viz. M/s. Vishnu Roadways & Logistics Services and M/s. Dhawan Roadways Services. The allegation of the Department was that the inputs were not received inside the factory and secondly, assuming that the inputs in question were brought into the factory, but the processes undertaken on the said inputs did not result into manufacture. The Department was not clear as to what should be the charge against the appellant.

3.2. Assailing the finding of the learned Commissioner, the learned advocate submitted that the approach of the Department is ambivalent inasmuch as on one go, it is observed that the inputs were not received in the factory and alternatively it is held that even if the goods are received in the factory but the processes undertaken on such inputs did not result into the manufacture, hence credit is inadmissible. Learned advocate has submitted that the first allegation is without any basis as the transporters examined by the Department have transported goods mostly during the initial period and for the subsequent period, their services were not availed. It is his contention that out of 13 to 14 transporters engaged by them during the entire period of dispute, statements of other transporters were not at all taken nor investigated by the Department except that of two transporters. The second alternative allegation of the Department also cannot stand to the scrutiny of law that the processes undertaken by the appellant since not resulted into manufacture, but the duty discharged on the final products were not objected by the Department. He has submitted that during the period under dispute, the appellants were duly registered with the Department for manufacturing of goods and also incurred expenditure towards electricity consumption, fuel consumption, factory overheads, salaries and wages paid to workers and employees, claimed depreciation on plant & machinery. All these evidences though produced before the authorities below, the same were not considered and discarded. He has submitted that once the Department has accepted the duty on the final products considering the fact that the inputs processed resulted into dutiable product later, the Department cannot be allowed to deny cenvat credit on the inputs alleging the processes carried out not amount to manufacture. In support, he has referred to the judgment of this Tribunal and High Courts, particularly the judgment of Hon'ble Karnataka High Court in the case of ***CCE Vs. Vishal Precision Steel Tubes & Strips Pvt. Ltd.*** [2017(349) ELT 686 (Kar.)], which followed the ratio of Bombay High Court in the case of ***CCE Vs. Ajinkya Enterprises*** [2013(294) ELT 203 (Bom.)].

4. Learned AR for the Revenue reiterated the findings of the learned Commissioner.

5. Heard both sides and perused records. We find that the issue revolves in a narrow compass. The Department have proposed to deny cenvat credit availed on imported inputs alleging that firstly the inputs were not received in the factory and cleared out-and-out from the place of import to the customers' premises; and alternatively the processes undertaken by the appellant on the inputs do not result into manufacture; hence credit on input is inadmissible. We find the approach of the Department is ambivalent and not clear as which charge they intend to pursue for denying the cenvat credit availed by the appellant on imported inputs. Both stands taken by the Department are contrary to each other. If the Department alleges that the inputs were not received in the factory and leads evidence in this regard, then there was no need to make an allegation that after receipt of the inputs in the factory, the inputs then subjected to certain processes do not result into 'manufacture' as defined under Section 2(f) of the Central Excise Act, 1944. Assailing the stand of the Department that the inputs have not been received in the factory, the learned advocate for the appellant furnished data relating to activity of manufacture carried out by them i.e. amounts spent on electricity consumption, fuel consumption, factory overheads etc., which indicate that processes on the inputs were undertaken in their factory premises after the inputs brought into their factory. Also, the statements of two transporters relied upon by the learned Commissioner do not inspire confidence inasmuch as further investigation was not carried out by the Department and the

transporters have not categorically claimed to have not transported the goods during the period they have employed by the appellant. Besides, the statements of two transporters among 13 to 14 transporters cannot be generalised and made applicable to the entire period. In these circumstances, the alternative argument pursued by the Department in denying the credit that the processes do not result into manufacture needs to be examined.

6. We find that this issue has already been settled by various decisions as cited by the learned counsel for the appellant. In ***Ajinkya Enterprises*** case, the Bombay High Court taking note of the arguments of the Revenue more or less in the same line observed as follows:-

> ***10.*** *Apart from the above, in the present case, the assessment on decoiled HR/CR coils cleared from the factory of the assessee on payment of duty has neither been reversed nor it is held that the assessee is entitled to refund of duty paid at the time of clearing the decoiled HR/CR coils. In these circumstances, the CESTAT following its decision in the case of Ashok Enterprises - 2008 (221) E.L.T. 586 (T), Super Forgings - 2007 (217) E.L.T. 559 (T), S.A.I.L. - 2007 (220) E.L.T. 520 (T) = 2009 (15) S.T.R. 640 (Tribunal), M.P. Telelinks Limited - 2004 (178) E.L.T. 167 (T) and a decision of the Gujarat High Court in the case of CCE v. Creative Enterprises reported in 2009 (235) E.L.T. 785 (Guj.) has held that once the duty on final products has been accepted by the department, CENVAT credit availed need not be reversed even if the activity docs not amount to manufacture. Admittedly, similar view taken by the Gujarat High Court in the case of Creative Enterprises has been upheld by the Apex Court [see 2009 (243) E.L.T. A121] by dismissing the SLP filed by the Revenue.*

The said principle later followed by the Hon'ble Karnataka High Court in Vishal Precision Steel Tubes and Stripes Pvt. Ltd. case. Their Lordships at para 7 observed as follows:-

> ***7.*** *It is an undisputed position that the final product is treated as dutiable and duty is paid by the assessee. When once duty is paid by the assessee treating the activity as manufacturing activity by the Department, Cenvat credit is available and there is no question of reversion of Cenvat credit. As such, in view of the aforesaid two decisions of the High Court namely, Bombay High Court and Gujarat High Court, we do not find any question of law would arise for consideration as sought to be canvassed.*

7. In view of the settled principle of law referred to above, we do not see merit in the impugned orders. Consequently, the impugned orders are set aside and the appeals are allowed with consequential relief, if any, as per law.

(Operative part of this order was pronounced in open court
on conclusion of the hearing)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

Raja...