

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
BANGALORE**

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 2910 of 2011

[Arising out of Order-in-Appeal No. 269/2011-CE dated 18.08.2011 passed by the Commissioner of Central Excise (Appeals-I), Bangalore]

Parallel Track Engineering Pvt Ltd

.....Appellant

No. 37/1, 6th Main, Singasandra,
Hosur Main Road, Bangalore – 560068

VERSUS

**Commissioner of Central Excise,Respondent
Bangalore-I**

Post Box No. 5400, C R Buildings
Bangalore – 560001

APPEARANCE:

Present for the Appellant: Sh. Pradyumna G. H., Advocate

Present for the Respondent: Sh. P. Sarvana Perumal, Authorized
Representative

CORAM:

HON'BLE Dr. D. M. MISRA, MEMBER (JUDICIAL)

HON'BLE Mrs. R. BHAGYA DEVI, MEMBER (TECHNICAL)

FINAL ORDER NO. 20765/2023

DATE OF HEARING: 20.06.2023

DATE OF DECISION: 20.06.2023

PER D. M. MISRA

This is an appeal filed against Order-in-Appeal No. 269/2011-CE dated 18.08.2011 passed by the Commissioner of Central Excise (Appeals-I), Bangalore.

2. Briefly stated facts of the case are that the appellant are engaged in manufacture of storage racks and material handling equipments falling under Chapter Sub-heading No. 83024900 and 84271000 of the Schedule to Central Excise Tariff Act, 1985. The appellant during the relevant period from June, 2007 to June, 2008 imported the goods namely shelves, steel upright, electric truck, fork lift, stackers and hand pallet truck and availed CENVAT Credit on the said imported inputs. Alleging that the imported goods itself being fully finished and could not be subjected to any manufacturing process; also the activities such as cutting to length, powder coating, packing, charging of batteries, testing etc do not amount to manufacture being not prescribed under the relevant Chapter Notes of Central Excise Tariff Act, 1985; hence, the CENVAT Credit availed on such inputs was irregular, accordingly total credit of Rs. 30,23,569/- was demanded from the appellant by issuing the show cause notice dated 30.01.2009. On adjudication, the demand was confirmed along with interest and penalty of equal amount imposed on the appellant. Aggrieved by the said order, the appellant filed an appeal before the Commissioner (Appeals) who in turn rejected their appeal. Hence, the present appeal.

3.1 At the outset, the learned Advocate for the appellant submits that the imported inputs on which CENVAT Credit has been availed, were subjected to various processes which amounted to manufacture. He submits that the racking systems falling under

Chapter Sub-heading No. 83014900 imported by them were only two components of the whole racking system and the same had to be used along with other items like horizontal members, cross members, lugs cladding plates etc and thereafter a fully finished product emerged after various processes and cleared, which was powder coated. Similarly, the material handling systems falling under Chapter Sub-heading No. 84271000 was received not in fully finished condition but in incomplete condition, which was later converted to finished condition through various processes. Therefore, in view of Note 6 of Section XVI of the Central Excise Tariff Act, the processes to amount to manufacture.

3.2 Further, he has submitted that since the appellant had cleared the goods after undertaking various processes on the inputs on payment of appropriate duty on the finished goods by utilizing the CENVAT Credit for the period from June, 2007 to June, 2008, hence, denial of CENVAT Credit on the inputs is contrary to the principle of law laid down in various judgments of High Courts. In support, he has referred to 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 Hon'ble Bombay High Court in the case of ***CCE Vs. Ajinkya Enterprises [2013 (294) ELT 203 (Bom.)]***.

3.3 Further, he has referred to Board's Circular No. 911/1/2010-CX dated 14.01.2010, where it is clarified that when credit was

availed on inputs used in the manufacture of finished goods and later it was found that the process undertaken by the assessee does not result into manufacture, the CENVAT Credit availed on inputs cannot be denied to the assessee.

3.4 Further, he has submitted that the demand issued invoking larger period of limitation is unsustainable as all facts were disclosed to the Department during the relevant period by indicating in the monthly returns filed with the Department.

4. The learned A.R. for the Revenue reiterates the findings of the learned Commissioner (Appeals).

5. Heard both the sides and perused the records.

6. The short issue involved in the present appeal for determination is: "whether the CENVAT Credit availed on imported inputs, namely, shelves, steel upright, electric truck, fork lift, stackers and hand pallet truck etc and subjected to process like cutting to length, powder coating, packing, charging of batteries, testing and the final product is cleared on payment of duty, is admissible or otherwise?"

7. The learned Advocate for the appellant at pains to explain that the processes carried out by them on the imported inputs to bring into existence the final product, which cleared on payment of duty, in fact, result into manufacture. He submits that the appellant have been discharging excise duty on the final products

by utilizing the CENVAT Credit availed on said inputs and declaring the same in their monthly ER-1 returns; therefore, even if, subsequently it is found that the processes did not result into manufacture as per Section 2(f) of the Central Excise Act, 194; the CENVAT Credit availed on imported inputs cannot be varied or denied to them.

8. We find that this issue has already been settled by various decisions as cited by the learned counsel for the appellant. In the case of **Ajinkya Enterprises** (supra), the Hon'ble 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 does 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 the case of ***Vishal Precision Steel Tubes and Stripes Pvt. Ltd.*** (supra). 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."

9. In view of the settled principle of law referred to above and Board's Circular dated 14.01.2010, we do not see merit in the impugned order. Consequently, the impugned order is set aside and the appeal is allowed with consequential relief, if any, as per law.

(Operative part of the order pronounced in the court)

(D. M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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