CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>BANGALORE</u>

REGIONAL BENCH - COURT NO. 1

Central Excise Appeal No. 1814 of 2012

(Arising out of Order-in-Original No. 15/2012 dated 28.03.2012 passed by the Commissioner of Central Excise-II, Bangalore.)

Universal Power Transformers Pvt. Ltd. Appellant(s)
A-46, II Stage,
Peenya Industrial Estate,
Bangalore – 560 058.

VERSUS

The Commissioner of Central Excise-II Respondent(s)
C. R. Building, Queens Road,
Bangalore – 560 001.

<u>APPEARANCE:</u>

Shri N. Anand, Advocate for the Appellant

Shri K. Vishwanath, Superintendent, Authorised Representative for the Respondent

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

<u>Final Order No. 20483 /2024</u>

DATE OF HEARING: 10.06.2024
DATE OF DECISION: 10.06.2024

PER : D.M. MISRA

This is an appeal filed against Order-in-Original No.15/2012 dated 28.03.2012 passed by the Commissioner of Central Excise, Bangalore.

2. Briefly stated the facts of the case are that during the course of audit of the records of the appellant, it was noticed that they had imported batteries of small capacities which are used in UPS and also imported home UPS etc., and availed

CENVAT credit of CVD, Education Cess, Secondary Higher Education Cess and the imported items were cleared on payment of duty. After carrying out the process of testing the batteries and labelling their brand name, appellants cleared the same to their customers on payment of duty. Alleging that the process carried out by the appellant do not result into manufacture, show-cause notice was issued to them on 01.12.2011 for recovery of CENVAT credit of Rs.79,53,925/- availed on the imported components with interest and penalty. On adjudication, the demand was confirmed with interest and penalty. Hence, the present appeal.

3. At the outset, the learned advocate for the appellant submitted that the appellants are undertaking processes on the imported inputs such as testing, labelling and branding and the finished goods had been cleared on payment of appropriate excise duty. They have filed periodical returns with the department indicating the payment of Central Excise duty on the finished goods cleared from their premises. They have availed CENVAT credit on the imported goods and utilized the same in the discharge of applicable excise duty on the finished goods. He submits that once the department has accepted the processes carried out as manufacture and not disputed payment of the duty, subsequently demanding the CENVAT credit availed on the imported goods utilized towards payment of duty on the processed/manufactured is contrary to the principles of law laid down by the Hon'ble Bombay High Court in the case of **Commissioner of Central Excise, Pune-III and Ajinkya Enterprises: 2013 (294) ELT 203 (Bom.)** and Karnataka High Court in the case of **CCE vs. Vishal Precision Steel Tubes & Strips Pvt. Ltd.: 2017 (349) ELT 684 (Kar.)**. Also, this Tribunal in the case of **Komet Precision Tools Pvt. Ltd. vs. CCE** in similar circumstances reported as **2023 (9) Centax (Tri.-Bang.)** following the aforesaid judgment held that CENVAT credit cannot be denied when department accepts duty on the finished goods considering the same as manufacture.

4. The learned Authorized Representative for the Revenue reiterated the findings of the learned Commissioner.

5. We find that the issue is clearly covered by the judgment of this Tribunal in **Komet Precision India Tools Pvt. Ltd.** (supra). This Tribunal taking note of the judgments of the Hon'ble Bombay High Court in the case of **Ajinkya Enterprises** (supra) case and Hon'ble Karnataka High Court in the case of **Vishal Precision Steel Tubes & Strips Pvt. Ltd.** latter upheld by the Hon'ble Supreme Court held as follows:

> "5. Heard both sides and perused the records. We find that the short issue involved in the present appeals is: whether the cenvat credit availed on imported/locally procured inputs when subjected to the processes by the appellant, disputed not to be a process of manufacture by the Revenue, then the cenvat credit availed on such inputs and utilised in discharging duty applicable on the processed goods be recoverable. In the present case, the appellants are engaged in the manufacture of various high precision tools, and also import certain parts used as inputs from their group companies located in Germany, Sweden and Italy. The tools were customised and sold by the appellant on payment of appropriate duty of excise on its transaction value, which was more than the credit availed on the inputs. The Revenue disputed the processes undertaken on the imported items alleging the same do not result into manufacture of a new item different from the inputs; hence the activity undertaken by the appellant purely in the nature of trading; therefore cenvat credit availed on the inputs cannot be admissible. 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:-
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> > "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."

6. Following the aforesaid precedents, we set aside the impugned order and allow the appeal with consequential relief, if any, as per law.

(Operative portion of the order was pronounced in open court on conclusion of hearing.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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