CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Appeal(s) Involved:

E/20176/2019-SM

[Arising out of Order-in-Appeal No. COC-EXCUS-000-APP-1001-2018 dated 08/11/2018 passed by Commissioner of Central Tax , COCHIN(Appeal)]

M/s Apollo Tyres Ltd
Kalamassery
ERNAKULAM
KERALA
683104

Appellant(s)

Versus

Commissioner Of Central Tax & Central Excise, Cochin
C.R. Buildings, I.S Press Road
Cochin
Kerala
682018

Respondent(s)

Appearance:

Mr. Joseph Marcos, Advocate
JOSEPH &KURIYAN
42/2260, PROVIDENCE ROAD
KOCHIN
KERALA
682018

For the Appellant

Mrs. Kavita Podwal, Superintendent, AR

For the Respondent

Date of Hearing: 19/03/2019
Date of Decision:21/03/2019

CORAM:
HON'BLE SHRI S.S GARG, JUDICIAL MEMBER

Final Order No.20282/2019

Per : S.S GARG

The present appeal is directed against the impugned order dated 08/11/2018 passed by the Commissioner (A) whereby the Commissioner (A) has rejected the appeal of the appellant.

2. Briefly the facts of the present case are that the appellant is engaged in the manufacture of automotive tyres at its factory at Kalamassery. The appellant purchases various inputs for the purpose of manufacture of tyres for which full consideration is paid and the appellant avails CENVAT credit on these inputs which is subsequently being utilized for the payment of duty. The appellant also received inputs from its sister concern M/s. Apollo Tyres, Perambra and has taken CENVAT credit on the same and utilized the same for payment of Central Excise Duty. The appellant was issued SCN dated 04.07.2014 proposing to demand and recover the CENVAT credit availed on inputs under Section 11A of the Central Excise Act read with Rule 14 of the CCR and also proposing to levy interest and penalty on the ground that the duty paid on inputs is in excess of the actual duty liability and the said excess duty has been wrongly taken as CENVAT credit. After following the due process, the original authority confirmed the demand for CENVAT credit availed by the appellant under Section 11A of the Central Excise Act and also levied interest under Section 11AA but dropped the proposal for imposing penalty. Aggrieved by the said order, the appellant filed

appeal before the Commissioner who upheld the Order-in-Original.

3. Heard both the parties and perused the records.

4. Learned Counsel for the appellants submitted that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the law and binding judicial precedents. He further submitted that the credit taken is on the duty actually paid and no refund was sought. Moreover, the whole issue is revenue neutral. He further submitted that the Commissioner (A) has wrongly held that the credit eligible to the appellant is only to the extent of duty leviable on input received by them that the availment and utilization of credit on the duty actually paid is without authority and liable to be disallowed. He further submitted that this issue is no more *res integra* and has been settled in favour of the assessee by various decisions cited below:

- *IPF Vikram India Ltd. v. Commissioner of Central Excise & Service Tax, Indore, 2016 (343) ELT 540 (Tri. Del.)*
- *V.G. Steel Industry v. Commissioner of Central Excise, 2011 (271) ELt 508 (P&H)*
- *Commissioner of Central Excise & Custom v. Purity Flexpack Ltd., 2008 (9) STR 125 (Guj.)*
- *Ran India Steels Pvt. Ltd., Unit-II v. Commissioner of Custom & C.Ex. Salem, 2016 (344) ELt 440 (Tri. Chennai)*
- *Cipla Ltd. v. Commissioner of Custom & C.Ex., Pune-III,*

2011 (273) ELT 391 (Tri. Mumbai)

5. On the other hand, Learned AR defended the impugned order and submitted that the appellant can claim CENVAT credit of the duty actually payable and not paid by the supplier of the goods. She also submitted that sister concern from whom the appellant has purchased the goods could have filed the refund claim but the appellant cannot claim CENVAT credit on excess duty paid by the sister concern of the appellant.

6. After considering the submissions of both the parties and perusal of the material on record, I find that the appellants have purchased the inputs from its sister concern situated in Perembra and has taken the CENVAT credit on the basis of invoice issued by the sister concern. Further, I find that the appellant has taken the CENVAT credit on the duty actually paid by them to the sister concern. Further, I find that in the case of *CCE v. MDS Switchgear Ltd., 2008 (229) ELT 485 (SC),* the Apex Court has held that recipient manufacturer is entitled to avail the benefit of duty and quantum of duty already determined by the jurisdictional officer of the supplier unit cannot be contested or challenged by the officer incharge of the recipient unit. Further, I also note that in the case of *Cipla Ltd*. (supra), the Tribunal has held that credit cannot be varied at the recipient's end on the

ground that the supplier should have paid lesser duty. Further, in the case of *IPF Vikram India Ltd*. (supra), the Tribunal has followed the judgment of *VG Steel Industry v. Commissioner reported in 2011 (271) ELT 508* and held that the assessee is entitled to take CENVAT credit of the duty paid on the inputs as per Rule 3 of the Central Excise Rules. In view of the decisions cited supra, I am of the considered view that this issue is squarely covered in favour of the assessee and by following the ratios of the above said decisions, I hold that the impugned order is not sustainable in law and therefore the same is set aside by allowing the appeal of the appellant. Hence, the appeal is allowed.

(Order was pronounced
in Open Court on **21/03/2019**)

S.S GARG
JUDICIAL MEMBER

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