CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
SCO 147-148, SECTOR 17-C, CHANDIGARH-160017

DIVISION BENCH
Court-I

Appeal No. E/1698-1699, 1803,1843-1850/2012

(Arising out of OIO No.15/Ldh/2012 dt.3.4.2012 passed by the CCE, Ludhiana)

Date of hearing/ Decision :21.02.2019

Asian Tire Factory Limited **Appellant**
Vinko Auto Industries Limited
Windsor Exports
Kohinoor India Pvt.Ltd.
Kohinoor Rubber Mills
Oswal Enterprises
Aman Singhal, Partner
Kimtillal, Authorised Signatory
Rakesh Gupta
S.P.Jain, Partner
Nipun Jain, Partner

Vs.
CCE & ST, Chandigarh-II **Respondent**

Present for the Appellant:S/Shri K.K.Anand & A.K.Prasad, Advocates
Present for the Respondent: Shri Tarun Kumar, AR

Coram: Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr.Bijay Kumar, Member (Technical)

FINAL ORDER NO. 60312-60322/2019

PER: ASHOK JINDAL

These appeals are filed against the impugned order denying Cenvat credit, recovery thereof and imposing penalties.

The facts leading to these appeals are, in brief, as under.

2.1 The main appellant M/s Windsor Exports, Phase-VII, Focal Point, Ludhiana [hereinafter referred to as M/s Windsor], is a partnership concern with Shri Aman Singhal as its Partner. Shri

Kimti Lal, is an employee of M/s Windsor. M/s Windsor on 05/8/08 applied for Central Excise registration certificate to the Jurisdictional Central Excise authorities, stating that they intend to manufacture synthetic rubber compound. The required registration certificate was issued to them on 6/8/08. M/s Windsor on the basis of their export performance had been issued a target plus licence in terms of the provisions of foreign trade policy. The goods imported against target plus licence could not be sold and were required to be used by the importer for production of the goods. On 1/8/08 M/s Windsor cleared five consignments of synthetic rubber imported against their target plus licence under Notification No. 32/2005-CUS in respect of which additional custom duty had been paid. Subsequently on 6/8/08, 16/8/08, 21/8/08 and 30th September, 2008, five more consignments were imported under Notification No. 32/2005-CUS in respect of which additional custom duty had been paid. These imports had been made by buying the goods on high sea sale basis through M/s Kohinoor International.

2.2 On 14/8/08, the Jurisdictional Central Excise Superintendent, visited the unit of M/s Windsor at C-203/1, Phase VII, Focal Point, Ludhiana and found that there was no machinery installed there for manufacture of any goods. The unit was not even having power connection. M/s Windsor were asked in writing for clarification on this point and under letter dated 15/12/08, they informed the Jurisdictional Central Excise officers that they had arranged to get the goods manufactured on job work basis. Subsequent, the inquiry revealed that M/s Windsor after importing the synthetic rubber under target plus scheme under Notification No. 32/2005-CUS dated 8/4/05, had availed Cenvat credit of Rs. 59,72,605/- and thereafter had issued 35 job work challans showing the sending of the imported synthetic rubber alongwith carbon black and silica procured from other sources to M/s Kohinoor India Pvt. Ltd., Jallandhar for manufacture of compounded rubber on job work basis. In the ER-1 returns filed by M/s Windsor during August 2008 to November 2008, they showed the manufacture of synthetic rubber compound and its clearance to M/s Kohinoor Rubber Mills and M/s Oswal Enterprises [a registered dealer] on payment of duty amounting of Rs. 60,15,875/- out of which the duty of Rs. 59,72,510/- had been paid through Cenvat credit availed in respect of imported synthetic rubber. Since the job work challans had the truck numbers also mentioned therein in which the goods were claimed to have been transported, the officers conducted inquiry with the Toll Plaza on Ludhiana – Jallandhar National Highway and inquiry revealed none of those truck passed either way through the Toll Plaza. From these circumstances it appeared that the transaction of job-work with M/s Kohinoor India Pvt. Ltd. were bogus and M/s Windsor had illicitly sold the imported synthetic rubber while the goods imported under target plus scheme could not be sold, and to cover up the sale they have shown the transaction of job work through M/s Kohinoor India Pvt. Ltd. and sale of rubber compound to several parties. Inquiry was made with Shri Kimti Lal, Authorised Signatory of M/s Windsor who stated that it is he who had signed letter dated 15/12/08 stating that there was no manufacture of synthetic rubber compound in the factory of M/s Windsor, that he being a non-technical person was not aware of the full facts and that there was indeed manufacturing activity for manufacture of fully finished synthetic rubber compound.

Inquiry was made with Shri Aman Singhal, Partner of M/s Windsor who in his statement stated that the compounded rubber was being manufactured by M/s Kohinoor India Pvt. Ltd on job work basis, that the same was being received back and thereafter the same was being subjected to the process of mixing and testing of its properties and that it is only after these processes that the same had been sold. The testing machinery was claimed to have been taken on lease from M/s Eastman International whose partner is Shri Rakesh Gupta and two mixing mills were claimed to have been purchased from M/s Kohinoor India Pvt. Ltd., Jallandhar. Inquiry at Ludhiana – Jallandhar Highway Toll Plaza revealed that no truck carrying mixing mills from Jallandhar to Ludhiana had passed through the Toll Plaza.

2.3 The records of M/s Windsor showed that synthetic rubber compound involving duty of Rs. 16,13,060/- had been sold to M/s Kohinoor Rubber Mills [Proprietor Shri Nipun Jain], the synthetic rubber compound involving duty of Rs. 44,02,815/- had been sold to registered dealer M/s Oswal Enterprises [Proprietor Shri S.P. Jain] and thereafter, M/s Oswal Enterprises had issued invoices showing the sale of synthetic rubber compound involving duty of Rs. 37,73,889/- to M/s Asian Tire Factory Ltd. and synthetic rubber compound involving duty of Rs. 6,28,926/- to M/s Vinko Auto Industries Ltd. Both these units being manufacturer had availed Cenvat credit of Rs. 37,73,889/- and Rs. 6,28,926/- respectively on the basis of invoices issued by M/s Oswal Enterprises. Similarly, M/s Kohinoor Rubber Mills had taken Cenvat credit of Rs. 16,13,060/- on the basis of invoices issued regarding sale of synthetic rubber compound issued by M/s Windsor. However, since, the manufacturing unit of M/s Windsor was in existence only for a very short period from 6/8/08 to 1/12/08 and the physical verification at this unit had showed that there was neither power connection nor any machinery for manufacture of synthetic rubber compound and since the claim of M/s Windsor to have got the compounded rubber manufactured on job work basis through M/s Kohinoor India Pvt. Ltd. also appeared to be false, as there was no entry of the trucks on the national highway Toll Plaza in which the raw material was claimed to have been sent, it appeared that neither any synthetic rubber had been sent to M/s Kohinoor India Pvt. Ltd. nor any synthetic rubber compound had manufactured, and that only bogus transactions regarding job work through M/s Kohinoor India Pvt. Ltd. and sale of synthetic rubber compound to M/s Kohinoor Rubber Mills and M/s Oswal Enterprises had shown and the imported synthetic rubber had illicitly sold somewhere.

2.4 Since, the transactions of M/s Windsor with M/s Oswal Enterprises appeared to be bogus, the transaction of M/s Oswal Enterprises with M/s Asian Tire Factory Ltd. and M/s Vinko Auto Industries Ltd. also appeared to have been bogus and Cenvat credit of Rs. 37,73,889/- availed by M/s Asian Tire Factory Ltd. and Rs. 6,28,926/- availed by M/s Vinko Auto Industries Ltd. appears to be recoverable from them and both of them appeared to be liable for penalty.

2.5 In view of the above investigation, a show cause notice was issued to the appellants for –

(a) recovery of allegedly wrongly taken Cenvat credit of Rs. 59,72,510/- from M/s Windsor alongwith interest and imposition of penalty on them under Rule 15 of Cenvat Credit Rules, readwith Section 11AC of the Central Excise Act, 1944 ;

(b) imposition of penalty under Rule 26 (2) (ii) and Rule 25 of the Central Excise Rules, 2002 on M/s Kohinoor India Pvt. Ltd., Jallandhar ;

(c) recovery of wrongly taken Cenvat credit of Rs. 16,13,060/- from M/s Kohinoor Rubber Mills alongwith interest and imposition of penalty on them under Rule 15 of Cenvat Credit Rules, 2004 readwith Section 11AC ibid ;

(d) imposition of penalty on the registered dealer M/s Oswal Enterprises under Rule 26 (2) (i) and (ii) of the Central Excise Rules, 2002 ;

(e) imposition of penalty on Shri Aman Singhal, Partner and Shri Kimti Lal, Authorised Signatory M/s Windsor under Rule 26 (2) of Central Excise Rules, 2002 ;

(f) imposition of penalty on Shri Rakesh Gupta of M/s Eastman International, Focal Point, Ludhiana under Rule 26 (2) (II) of Central Excise Rules, 2002 for abetment in the offence M/s Windsor ;

(g) imposition of penalty on Shri S.P. Jain, Proprietor M/s Oswal Enterprises under Rule 26 (2) of Central Excise Rules, 2002 ;

(h) recovery of allegedly wrongly availed Cenvat credit of Rs. 37,73,889/- from M/s Asian Tire Factory Ltd. under Rule 14 of Cenvat Credit Rules, 2004 alongwith interest and also for imposition of penalty on them under Rule 15 of Cenvat Credit Rules, 2004 readwith Section 11AC of the Central Excise Act ;

(i) recovery of allegedly wrongly taken Cenvat credit of Rs. 6,28,926/- from M/s Vinko Auto Industries Ltd., Jallandhar alongwith interest and also for imposition of penalty on them under Rule 15 of Cenvat Credit Rules, 2004 readwith Section 11AC of the Act ; and

(j) imposition of penalty under Rule 26 (2) of Central Excise Rules, 2004 on Shri Nipun Jain, Partner M/s Kohinoor Rubber Mills.

2.6 The above show cause notice was adjudicated by the Commissioner, Central Excise, Ludhiana vide order-in-original dated 3rd April, 2012 by which –

(a) the Commissioner held that the transactions of M/s Windsor with M/s Kohinoor India Pvt. Ltd. regarding job work and the transactions of M/s Windsor with M/s Kohinoor Rubber Mills and M/s Oswal Enterprises regarding sale of synthetic rubber compound are bogus transactions ;

(b) confirmed the Cenvat credit demand of Rs. 59,72,510/- against M/s Windsor alongwith interest and imposed penalty of equal amount on them under Rule 15 of Cenvat Credit Rules, 2004 readwith Section 11AC of the Act;

(c) imposed penalty of Rs. 59,72,510/- on M/s Kohinoor India Pvt. Ltd. under Rule 26 (2) and Rule 25 of the Central Excise Rules, 2002 ;

(d) ordered recovery of Cenvat credit of Rs. 16,13,060/- from M/s Kohinoor Rubber Mills alongwith interest and imposed penalty of equal amount on them under Rule 15 of Cenvat Credit Rules, 2004 readwith Section 11AC ;

(e) confirmed Cenvat credit demand of Rs. 37,73,889/- from M/s Asian Tire Factory Ltd. alongwith interest and imposed penalty of equal amount on them under Rule 15 of the Cenvat Credit Rules, 2004 readwith Section 11AC ;

(f) confirmed Cenvat credit of Rs. 6,28,926/- from M/s Vinko Auto Industries Ltd. alongwith interest and imposed penalty of equal amount on them under Rule 15 of Cenvat Credit Rules, 2004 readwith Section 11AC ; and

(g) imposed the following amounts of penalty on other noticees :-

(1) M/s Oswal Enterprises – penalty of Rs. 44,02,815/- under Rule 26 (2) (i) and (ii) of Central Excise Rules, 2002;

(2) Shri Aman Singhal, Partner of M/s Windsor – penalty of Rs. 30,00,000/- under Rule 26 (2) of Central Excise Rules, 2002;

(3) Shri Kimti Lal, Authorised Signatory – M/s Windsor – penalty of Rs. 30,00,000/- under Rule 26 (2) of Central Excise Rules, 2002;

(4) Shri Rakesh Gupta, Partner – M/s Eastman International – penalty of Rs. 30,00,000/- under Rule 26 (2) of Central Excise Rules, 2002;

(5) Shri S.P. Jain, Proprietor – M/s Oswal Enterprises, Jallandhar, a registered dealer – penalty of Rs. 22,00,000/- under Rule 26 (2) of Central Excise Rules, 2002;

(6) Shri Nipun Jain, Partner – M/s Kohinoor Rubber Mills – penalty of Rs. 8,00,000/- under Rule 26 (2) of Central Excise Rules, 2002;

2.7 Against the above order of the Commissioner, these appeals have been filed.

3. Heard the parties at length.

4. We find that in the case, the sole allegation is that M/s. Windsor had imported synthetic rubber in terms of Notification No.32/2005-Cus for which additional customs duty paid and the

said goods were sent by M/s. Windsor to M/s. Kohinoor India for job work and received back by M/s. Windsor. Thereafter did certain processes, sold to Kohinoor Rubber Mills, Jalandhar and M/s. Oswal Enterprises who further sold to M/s.Vinko Auto Industries and M/s. Asian Tire Factory Limited, Jalandhar. The first allegation is that in terms of Notification No.32/2005-Cus, the importer shall not transfer or sale the imported goods. Admittedly, in this case, the goods have been transferred by the appellant to the job worker for further processing but no demand has been raised under Customs Act, 1962 for contravention of conditions of Notification No.32/2005-Cus. Therefore, on that count, no demand is sustainable against the appellant.

5. We further take note of the fact that the allegation of the department is that systematic rubber has been sent by Windsor was not received back and no machinery installed in the factory, therefore no manufacturing process can take place in the factory of M/s. Windsor. Therefore, the credit availed by M/s. Windsor sought to be denied for violation of condition of Notification No.32/2005-Cus dt.8.4.2005. It was also alleged that no vehicle carrying job work goods or finished goods were travelled from Ludhiana to Jalandhar or Jalandhar to Ludhiana and it is alleged that there was paper transactions. It was also alleged that M/s. Windsor have sold the goods to Kohinoor Rubber Mills, Jalandhar and M/s. Oswal Enterprises on payment of duty. There was mere paper transactions as the goods never travelled from Ludhiana to Jalandhar or Jalandhar to Ludhiana.

6. As we have already held that for violation of conditions of Notification No.32/2005-Cus dt.8.4.2005, there is no demand notice has been issued for recovery of customs duty, therefore, import cannot be held irregular. We hold that the credit cannot be denied on the allegation of violation of conditions Notification No.32/2005-Cus dt.8.4.2005. Therefore, the allegation is not sustainable.

7. We further find that it has been alleged that there is no entry of passing of vehicle on the basis of report of NHAI. Therefore, the job worked challan from Jalandhar to Ludhiana and on finished goods from Ludhiana to Jalandhar alleging there is no movement of vehicles and it was only paper transaction. We find that the Revenue has failed to show the evidence except the report of NHAI in the form of the statements/records of vehicle owner to ascertain the fact to came to the conclusion that these goods vehicles in question have not transported the goods from Ludhiana to Jalandhar or Jalandhar to Ludhiana. Except from the report of NHAI, no documents has been placed by the Revenue whether it is mere paper transaction, therefore the credit cannot be denied when the goods have been cleared on payment of duty. Otherwise the payment of duty shall amount to reversal of Cenvat credit as alleged no manufacturing took place in the light of the decision of this Tribunal in the case of Ajinkya Enterprises which has been affirmed by Hon'ble Bombay High Court reported in 2013 (294) ELT 203 (Bom.).

8. Further, we take note of the fact that the credit sought to be denied to M/s. Kohinoor Enterprises, M/s. Asian Tire Factory

Limited and M/s. Vinko Auto Industries on the ground that no goods have been travelled from M/s. Windsor and only invoices have been moved. There is no record of passing of toll barrier were recorded therein. In this case, except the report from the toll barrier, no efforts were made by the Revenue to ascertain whether the entries are of found at toll barrier and whether the goods fond travelled from Ludhiana to Jalandhar or Jalandhar to Ludhiana or not. In fact, investigation with regard to the transporter is essential to ascertain whether they have transported the goods from Windsor to the buyer's premises or not.

9. We further take note of the fact that no efforts were made by the Revenue to ascertain the fact whether the buyers of the goods from M/s. Windsor have actually been received the goods or it is merely paper transactions to cleared the goods and when cleared goods have not been received by the buyers premises and how they procured the goods which have been used in the manufacture of dutiable goods cleared on payment of duty. In that circumstance, we hold that the credit cannot be denied to M/s. Kohinoor Enterprises and M/s. Asian Tire Factory Limited M/s. Vinko Auto Industries. As he have held that the credit cannot be denied and therefore no proceedings initiated against M/s. Windsor Exports under Customs Act, 1962 as no cogent evidence has been produced by the appellant for non movement of the goods along with invoices, the benefit of doubt goes in favour of the appellants. Consequently, we hold that no penalty is imposable on the appellants.

10. In the result, the impugned order is set aside and the appeals are allowed with consequential relief, if any.

(Operative par of order was pronounced in the court)

(BIJAY KUMAR)	**(ASHOK JINDAL)**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

mk