CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Appeal No.E/36/2016 -[SM]

(Arising out of Order-in-Appeal No. LUD-EXCUS-000-APP-123-124-15-16 dated 18.11.2015 passed by the Commissioner (Appeals), Chandigarh-I)

M/s Lok Nath Varinder Kumar Impex Limited **......Appellant**
(632, Mandi Kesar Ganj, Ludhiana)

VERSUS

Commissioner of Central Excise & S.T. Ludhiana **......Respondent**
(Central excise House, F-Block Rishi Nagar, Ludhiana)

WITH

Appeal No. E/60894/2017 -[SM]

(Arising out of Order-in-Appeal No. LUD-EXCUS-001-APP-110/17-18 dated 13.10.2017 passed by the Commissioner (Appeals), Ludhiana)

M/s National Soap Mills **......Appellant**
(village Pawa, G.T. road near Civil Airport Ludhiana, Punjab)

VERSUS

Commissioner of Central Excise & S.T. Ludhiana **......Respondent**
(Central excise House, F-Block Rishi Nagar, Ludhiana)

APPEARANCE:

Shri Naveen Bindal, Shri R.K. Hasija, Advocate for the Appellant

Shri Vijay Gupta, Authorised Representative for the Respondent

CORAM: **HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)**

FINAL ORDER NO. 60485-60486 of 2019

DATE OF HEARING: 08.05.2019
DATE OF DECISION: 08.05.2019

PER ASHOK JINDAL:

The appellants are in appeal against the impugned orders wherein Cenvat credit has been denied to M/s National Soap Mills and penalty has been imposed on M/s Lok Nath Varinder Kumar Impex Limited.

2. The facts of the case are that on the basis of the investigation conducted at the end of manufacturer supplier of Palm Fatty Acid (one of the input) to be used by M/s National Soap Mills to manufacture soap has been diverted to the Himachal Pradesh units and only invoices has been issued to M/s National Soap Mills to avail inadmissible Cenvat credit. On the basis of this allegation, the show cause notice were issued to M/s National Soap Mills to deny Cenvat credit and to impose penalty on M/s Lok Nath Varinder Kumar Impex Limited as they are the dealer who had issued the invoice. The main allegation in the show cause notice is that M/s Lok Nath Varinder Kumar Impex Limited has received the goods from the manufacturers, the said goods have been diverted to Himachal Pradesh units who are not required to take Cenvat credit and another invoice has been issued to the appellant namely, National Soap Mills to avail inadmissible Cenvat credit without accompanying the goods. The matter was adjudicated, the Cenvat credit was denied and penalty on both the appellants were imposed. Against the said orders, the appellants are before me.

3. Heard the parties and perused the record.

4. On the basis of the arguments heard by both the sides, I find that in this case, investigation was conducted at the end of M/s National Soap Mills and no discrepancy in the stock was found, moreover, sample of inputs were drawn and sent to the laboratory for test but there is no wisper about the same in the show cause notice, allegation was made merely on the basis of the statement of the

dealer that they have diverted the goods to Himachal Pradesh units but no evidence has been brought for record to show that the goods in question has not received by National Soap Mills. As no evidence on record to show that National Soap Mills have not received the goods or if goods were not received against the invoices in question from where National Soap Mills received the inputs to manufacture the goods which has been cleared on payment of duty. In that circumstances, Cenvat credit cannot be denied to M/s National Soap Mills, therefore, the case against National Soap mills is not sustainable. Accordingly, the impugned order qua National Soap mills is set aside.

5. With regard to penalty imposed on M/s Lok Nath Varinder Kumar Impex Limited, I find that the penalty has been imposed on a company which is jurisdic person on which penalty cannot be Imposed as held by this Tribunal in the case of ***C.C.E., Rohtak Vs. DR Polymers vide Final Order No. 60025-60027/2019*** dated 11.01.2019 relying on the decision of the Larger Bench of this Tribunal in the case of ***Steel Tubes Of India Ltd. Vs. commissioner of C.Ex. Indore reported in 2007 (217) E.L.T. 506 (Tri. –LB),*** therefore, no penalty can be imposed on M/s Lok Nath Varinder Kumar Impex Limited.

6. In view of the above, the appeals are allowed with consequential relief.

(Dictated and pronounced in the open court)

(ASHOK JINDAL)
MEMEBR (JUDICIAL)

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