IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL SOUTH ZONAL BENCH, CHENNAI

Appeal Nos. E/40790 to 40792/2018

(Arising out of Order-in-Appeal Nos.2, 3 & 4/2018 (CTA-I) dated 4.1.2018 passed by the Commissioner of GST & Central Excise (Appeals – I), Chennai)

M/s. Fives Cail KCP Ltd. Appellant

Vs.

Commissioner of GST & Central Excise
Chennai North Respondent

Appearance

Shri Senthil Nathan, Consultant for the Appellant
Shri L. Nandakumar, AC (AR) for the Respondent

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Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)

Date of Hearing / Decision: **11.12.2018**

Final Order Nos. **43075-43077 / 2018**

Brief facts are that the appellants are manufacturers of machineries for sugar and cement industry. They export the impugned goods to Vietnam and other countries. The appellant availed CENVAT credit in respect of certain items which were not manufactured by them but were purchased and cleared along with the final product which was exported. The department was of the view that the appellants are not eligible for CENVAT credit on the bought out items. Show cause notices were issued for

different periods proposing to disallow the irregularly availed credit of inputs and also to recover the same along with interest and for imposing penalties. After due process of law, the original authority confirmed the demand, interest and imposed penalties. In appeal, Commissioner (Appeals) upheld the demand and interest, however, set aside the penalties. Hence these appeals.

2. On behalf of the appellant, ld. consultant Shri Senthil Nathan submitted that the appellant had rightly availed the CENVAT credit on bought out items, though the goods were cleared as accessories / parts of the final products manufactured by the appellant. He adverted to the definition of 'inputs' with effect from 31.3.2000 and argued that the definition of inputs would include such goods which are cleared along with the final product and also whose value has been added in the assessable vale of the final product. In addition, he relied upon the decision in the case of KCP Ltd. vide Final Order No. 42890 to 42901/2018 dated 16.11.2018 and submitted that in the case of their own sister concern, the very same issue has been analyzed and decided by the Tribunal wherein the credit was held to be eligible.

3. The ld. AR Shri L. Nandakumar supported the findings in the impugned order.

4. Heard both sides.

5. The issue is with regard to the eligibility of credit on certain items which are brought into the factory by the appellant and cleared along with the final product which was exported to Vietnam. The very same issue has been analyzed in the case of KCP Ltd. (supra) and the Tribunal has held that the credit to be eligible. The decision in the case of Thermax Ltd. Vs. Commissioner of Central Excise, Pune – 2016 (337) ELT 456 (Tri. Mum.) was relied by the Tribunal to decide the eligibility of credit. The relevant portion of the order is extracted below:-

> *"5.12 As per the undisputed facts of the case, the appellant had entered into a contract with the buyers located in Vietnam to supply and erect complete sugar plant. In para 6 of our Final Order No. 41661 to 41669/2018 dated 31.5.2018 on nine appeals emanating from the very same impugned order, for earlier periods, we had held as under:-*
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> *"6.6 Indubitably, the appellants have exported the entire Sugar Plant to Vietnam with core machineries manufactured by the appellant along with other bought out duty paid items brought into the factory; thereafter both categories of goods cleared and agglomerated together for the purpose of export. There is also no allegation that the combined value of both manufactured as well as bought out items have not been included in the export price declared by the appellants. There also appears to be no dispute that the assemblage of goods at the point of export was an omnium gatherum gathered of both self-manufactured and bought out items, all duty paid by the respective manufacturers, which was intended to constitute a complete sugar plant in Vietnam. The show cause notice dated 29.3.1996 at para 2.0, also narrates that the disputed bought out goods were "used only for receipt and export, as such".*
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> *xxxx xxxxx xxxx xxxx xxxxx*
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> *6.2 Ld. counsel has also drawn our attention to Board's clarification No. 607/44/2001-CX dated 13.12.2001, clarifying the scope of the said Rule 16. Ld. counsel has also pointed out that the said Rules was further amended vide Central Excise Rules, 2002, which made the scope of Rule 16 even wider.*
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> *xxxx xxxxx xxxx xxxx xxxxx*

> *8.3 The ratio laid down by the Hon'ble Supreme Court in their subsequent judgment in Thermax Babcock & Wilcox Ltd. (supra), has been followed by the Tribunal in Thermax Ltd. Vs. Commissioner of Central Excise, Pune – 2016 (337) E\|LT 456 (Tri. Mum.) wherein it has been held that bought out items used in erection of boilers at customer's site are inputs and cannot be distinguished from inputs used in manufacture of components within the factory, as both have gone into manufacture of final product."*

6. Following the said decision in KCP Ltd. (supra), I am of the view that the disallowance of credit is unjustified. The impugned orders are set aside and the appeals are allowed with consequential relief, if any.

(Dictated and pronounced in open court)

(**Sulekha Beevi C.S.**)
Member (Judicial)

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