

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

**Appeal Nos. E/40252 & 40256/2017**

(Arising out of Order-in-Appeal Nos. 245 & 246/2016 (CXA-I) dated 26.10.2016 passed by the Commissioner of Central Excise (Appeals – I), Chennai)

M/s. The KCP Ltd.

Appellant

Vs.

Commissioner of GST & Central Excise  
Chennai

Respondent

Appearance

Shri Ajay Kumar Gupta, Consultant for the Appellant  
Shri A. Cletus, Addl. Commissioner (AR) for the Respondent

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Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)  
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing / Decision: **20.12.2018**

Final Order Nos. **43146-43147 / 2018**

**Per Bench**

The facts of the case are that M/s. The KCP Ltd., the appellants herein, are manufacturers and exporters of machinery and parts thereof for sugar and cement industry. They were also involved in fulfilling orders for installation of sugar plants located in Vietnam for which they export machinery and components of the plant manufactured in their factory, along with bought-out machinery, components and assemblies.

The appellants had availed CENVAT credit on the bought-out components / assemblies. Department took the view that as the bought-out components are not used or intended for use in the manufacture but merely exported in the same form in which they were procured, the appellants would not be entitled to avail credit on the same. Accordingly, show cause notices dated 23.10.2014 and 12.11.2014 were issued proposing to recover CENVAT credit totaling to Rs.19,91,173/ along with appropriate interest and to impose penalty. After due process of law, the original authority confirmed the demand, interest and imposed equal penalty. In appeal, Commissioner (Appeals) upheld the demand and interest, however, reduced the penalty to Rs.2,80,000/- under Rule 15(1) of CCR, 2004. Hence these appeals.

2. On behalf of the appellant, Id. consultant Shri Ajay Kumar Gupta 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 value of the final product. In addition, he relied upon the decision in the appellant's case vide Final Order No. 42890 to 42901/2018 dated 16.11.2018 and submitted that

in the case, the very same issue has been analyzed and decided by the Tribunal wherein the credit was held to be eligible.

3. The Id. AR Shri A. Cletus 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 appellant's own case (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:-*

*"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".*

XXXX XXXXX XXXX XXXX XXXXX

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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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 the appellant's own case, we are of the view that the disallowance of credit is unjustified. The impugned order is set aside and the appeals are allowed with consequential relief, if any.

(Operative portion of the order was pronounced in open court)

**(Madhu Mohan Damodhar)**  
Member (Technical)

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

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