IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

REGIONAL BENCH - COURT NO. – III

Excise Appeal Nos. 40354 and 40355 of 2013

(Arising out of Order-in-Original No. 2 & 3/2012 dated 5.12.2012 passed by the Commissioner of Central Excise, Madurai)

M/s. Naga Ltd. (Detergents) **Appellant**
No. 3/1, Oddanchatram Road
Vedasandur, Dindigul – 624 710.

Vs.

Commissioner of GST & Central Excise **Respondent**
4, Lal Bhagadur Sastri Road
Bibikulam, Madurai – 625 002.

APPEARANCE:

Ms. Padmavathi Patil, Advocate for the Appellant
Shri S. Govindarajan, AC (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri P. Venkata Subba Rao, Member (Technical)

Final Order No. **41234-41235 / 2019**

Date of Hearing: 30.10.2019
Date of Decision: 30.10.2019

Per Ms. Sulekha Beevi C.S

Brief facts are that the appellants are job workers who manufactured soap and detergents for principal manufacturer M/s. Hindustan Uni Lever Ltd. (HUL). They were availing CENVAT credit of duties paid on inputs received indigenously as well as imported goods. It was noticed that they availed CENVAT credit of duties paid on imported raw materials on Bills of Entry consigned to HUL, which was accompanied by separate declaration filed by HUL that they are not availing the CENVAT credit. Department entertained a view that the Bills of Entry having not been issued or consigned to the appellant herein is not a valid document for availing credit as per Rule 9 of CENVAT Credit Rules, 2002. Show Cause Notice was issued proposing to disallow the credit and also for recovering the same along with interest and for imposing penalty. After due process of law, the Commissioner confirmed the demand along with interest and imposed penalty. Aggrieved, the appellant is now before the Tribunal.

2. On behalf of the appellant, ld. counsel Ms. Padmavathi Patil appeared and argued the matter. It is submitted by her that credit can be availed by the job worker based on duty paying document which is in the name of principal manufacturer. Rule 9(1) of CENVAT Credit Rules prescribes the documents on which credit can be taken. It is not stated in Rule 9 that the document should contain the name of the person availing the credit. Further, all particulars required for availing credit such as description of goods, value of the goods, duty paid etc. are clearly mentioned in the Bills of Entry. The department does not dispute the receipt of the goods, use of such goods in the manufacture of final product or the duty paid character of the documents. The only allegation is that the Bills of Entry are in the name of HUL and therefore the appellant is not eligible for credit. Each Bill of Entry carried a separate declaration to the effect that goods imported would be sent directly from the port of importation and credit would be taken by the appellant. She relied upon the decisions in the cases of Commissioner of Central Excise, Vadodara Vs. Eupec Welspun Pipe Coatings India Ltd. – 2010 (260) ELT 381 (Guj.) which has been upheld by the Hon’ble Supreme Court as

reported in 2010 (260) ELT A83 (SC) and Marmagoa Steel Ltd. Vs. Union of India – 2005 (192) ELT 82 (Bom.).

3. The ld. AR Shri S. Govindarajan appeared on behalf of the department. He submitted that the requirement that the name of the appellant has to be mentioned in the document on which credit is availed is a substantial condition and which has to be fulfilled. Therefore the credit has been rightly disallowed. He relied upon the decisions of the Hon'ble Supreme Court in the cases of Mangalore Chemicals & Fertilizers Ltd. Vs. Deputy Commissioner – 1991 (55) ELT 437 (SC) and Commissioner of Central Excise, New Delhi vs. Hari Chand Shri Gopal – 2010 (260) ELT 3 (SC) to argue that non-mention of name of the appellant in the Bill of Entry is not a procedural lapse that can be condoned. .

4. Heard both sides.

5. The issue is whether the credit taken by the appellant who are job workers of HUL on the basis of Bills of Entry showing M/s. HUL as the importer is eligible or not. The department does not dispute that the appellant have used the inputs in the manufacture of final products and also the duty paid character of the documents. The only allegation is that the bills of entry contain the name of HUL and not that of the appellant. It is pertinent to note that HUL has given a separate declaration to the effect that the goods are to be sent directly to the appellant's premises and that credit would be taken by the appellant. We find that the provisions contained in Rule 9 does not make any requirement that the name of the person who is availing the credit has to be mandatorily mentioned therein. Further,

in Commissioner of Central Excise Vs. Eupec Welsupun Pipe (supra), the issue has been analyzed by the Hon'ble Gujarat High Court wherein it was held that credit is eligible. The said decision has been upheld by the Hon'ble Supreme Court cited supra. Similar view is taken in Marmagoa Steel Ltd. (supra).

6. After appreciating the facts and also following the above decisions, we are of the considered opinion that credit is eligible. The impugned order is set aside and the appeal is allowed with consequential relief, if any.

(Dictated and pronounced in open court)

(**SULEKHA BEEVI C.S.**)
Member (Judicial)

(**P. VENKATA SUBBA RAO**)
Member (Technical)

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