CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT NO. I

Excise Appeal No. 42758 of 2018

(Arising out of Order-in-Appeal No. 521/2018 (CTA-I) dated 28.09.2018 passed by the Commissioner of G.S.T. & Central Excise (Appeals-I), 26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai – 600 034)

M/s. K.L.M. Pack, **: Appellant**
Plot No. B-45, PIPDIC Industrial Estate,
Mettupalayam, Puducherry – 605 009

VERSUS

The Commissioner of G.S.T. & Central Excise, **: Respondent**
Puducherry Commissionerate,
No. 1, Goubert Avenue, Beach Road,
Puducherry – 605 001

APPEARANCE:

Shri. R. Janardhanan Pillai, Consultant for the Appellant

Shri. M. Jagan Babu, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

FINAL ORDER NO. 41268 / 2019

DATE OF HEARING: 03.10.2019

DATE OF DECISION: **08.11.2019**

The only issue involved in this assessee's appeal is - "whether it was required for the assessee to reverse the CENVAT Credit in its closing stock of inputs and inputs contained in the final/finished goods as on 31.03.2005" ?

2. When the matter was taken up for hearing, Shri. R. Janardhanan Pillai, Ld. Consultant, appeared for the assessee and Shri. M. Jagan Babu, Ld. Departmental Representative, appeared for the Revenue.

3. The Show Cause Notice came to be issued demanding the reversal of CENVAT Credit since the appellant had moved out of CENVAT scheme and opted for exemption under Notification No. 08/2003-C.E. dated 01.03.2003. Both the Original Authority as well as the First Appellate Authority have found that the appellant had partially reversed the CENVAT Credit, but not the full/correct amount as per Rule 11 (2) of the CENVAT Credit Rules, 2004, the appellant was not allowed to utilize the same for payment of duty; and that the appellant was required to expunge the credit in respect of entire inputs lying in stock or final products lying. The demand, therefore, came to be confirmed whereby the appellant was held liable to pay amount equal to the CENVAT Credit on the closing stock as on 31.03.2005. Suppression was alleged since, according to the Revenue, the Profit and Loss (P&L) Account of the appellant showed a different amount against which the appellant paid a different amount.

4. The Revenue's allegations emanate from the verification of the P&L Account for the year ending 31.03.2006, to which the Show Cause Notice (dated 09.01.2008) itself considers the reply of the appellant dated 22.03.2007. The common undisputed fact is that both the allegations of the Revenue as well as the reply of the appellant revolve around the P&L Account/balance-sheet and no document other than these.

5. Highlighting the above points, Ld. Consultant for the appellant also submitted that the issue as regards the reversal has already been settled by the very Apex Court in the case of ***Collector of Central Excise, Pune Vs. M/s. Dai Ichi Karkaria Ltd.*** *reported in* ***1999 (112) E.L.T. 353 (S.C.)***, which in fact has been followed by various judicial fora across the country like in the cases ***of M/s. Tansi Fabrication Works Vs. Jt. Commr. of C.G.S.T. & C.Ex., Tirunvelveli*** *reported in* ***2018 (17) G.S.T.L. 429 (Mad.)***, ***M/s. Ranbaxy Laboratories Ltd. Vs. Commissioner of C.Ex., Chandigarh*** *reported in*

2012 (279) E.L.T. 194 (H.P.) and ***M/s. Eltek Circuits Vs. Commissioner of Central Excise, Meerut-II*** *reported in* ***2017 (352) E.L.T. 231 (Tri. – All.)***

6. Ld. A.R. appearing for the Revenue supported the findings of the lower authorities.

7. Heard both sides, perused the documents placed on record and have also gone through the decisions relied on and referred to during the course of arguments.

8.1 At the outset, I find that the issue is no more *res integra*, as submitted by the Ld. Consultant for the appellant, since the very jurisdictional High Court in the case of *M/s. Tansi Fabrication Works (supra)* after considering the decision of the Hon'ble Apex Court in *M/s. Dai Ichi Karkaria Ltd. (supra)* and also the decision of the Hon'ble Punjab and Haryana High Court in the case of ***Commissioner of C.Ex., Chandigarh Vs. M/s. C.N.C. Commercial Ltd.*** *reported in* ***2008 (224) E.L.T. 239 (P & H)*** has concluded that the petitioner therein having rightly availed the CENVAT Input Credit originally, could not be called upon to reverse the same merely because it was stepping into exemption regime, in the following words :

> " ***8.*** *The core argument of the Learned Counsel appearing for the petitioner is based on the decision of Hon'ble Supreme Court reported in 1999 (122) E.L.T. 353 (S.C.) (Collector of Central Excise, Pune v. Dai Ichi Karkaria Ltd.). This decision is relied upon for the proposition that a credit once validly availed is indefeasible. Paragraph No. 17 of the said decision reads as under :-*
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> > *"17. It is clear from these Rules, as we read them, that a manufacturer obtains credit for the excise duty paid on raw material to be used by him in the production of an excisable product immediately it makes the requisite declaration and obtains an acknowledgement thereof. It is entitled to use the credit at any time thereafter when making payment of excise duty on the excisable product. There is no provision in the Rules which provides for a reversal of the credit by the Excise authorities except where it has been illegally or irregularly taken, in which event*

> *it stands cancelled or, if utilised, has to be paid for. We are here really concerned with credit that has been validly taken, and its benefit is available to the manufacturer without any limitation in time or otherwise unless the manufacturer itself chooses not to use the raw material in its excisable produce. The credit is, therefore, indefeasible. It should also be noted that there is no co-relation of the raw material and the final product; that is to say, it is not as if credit can be taken only on a final product that is manufactured out of the particular raw material to which the credit is related. The credit may be taken against the excise duty on a final product manufactured on the very day that it becomes available."*

9. *This decision of the Hon'ble Supreme Court was followed by the Hon'ble Division Bench of Punjab and Haryana High Court in the decision reported in 2008 (224) E.L.T. 239 (P. & H.) (Commissioner of Central Excise, Chandigarh v. C.N.C. Commercial Ltd.). The said case is more or less similar to the facts obtaining on hand. In that case also, the assessee was a small scale unit that was entitled to exemption under the very same notification.*

10. *The Hon'ble Division Bench of Himachal Pradesh High Court had also taken a similar view in favour of the assessee and the said judgment is reported in 2010 (250) E.L.T. 338 (H.P.) (Commissioner of Central Excise, Chandigarh v. Tyre Tops). The Himachal Pradesh High Court had followed the decisions of the Kerala High Court and Rajasthan High Court which also run on the same lines. The Learned Counsel for the petitioner brought to the notice of this Court, the recent decision rendered by the Hon'ble Division Bench of Madras High Court reported in 2015 (320) E.L.T. 357 (Mad.) (Tractor and Farm Equipment Ltd. v. The Commissioner of Central Excise, Madurai). After surveying all the earlier case laws including the one, that are apparently in favour of the Revenue, the Hon'ble Division Bench held as follows :-*

> *"Once it is held that no co-relation between the raw material and the final product is required, the appellant's plea stands answered. If credit can be taken against excise duty on a final product manufactured on the very day, it makes it abundantly clear that there need not be co-relation between the input and the goods cleared and as a result, validly taken credit need not be reversed. The Central Excise Rules would come into play in the following manner, that is to say, on the date when the final goods become exempt from payment of duty, for the inputs received on and after the said date, no credit can be taken.*

> *This would be the correct method of understanding of the position of law."*
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> ***11.*** *Therefore, this Court has to necessarily sustain the contention of the petitioner's Counsel that the writ petitioner having rightly availed the Cenvat input credit originally, cannot be called upon to reverse the same, merely because it was stepping into exemption regime."*

8.2 In view of the above, I am of the considered opinion that there was no reversal required, as demanded by the Revenue. The impugned order therefore cannot sustain and is accordingly set aside.

9.1 This apart, I also find that the Revenue has even failed to justify invoking the extended period of limitation since, as noted in the earlier paragraphs, the Show Cause Notice is issued beyond the normal period; the period is 01.04.2005 whereas the Show Cause Notice came to be issued in January 2008 i.e., after nearly three years and that the appellant had at least a year before filed its reply. Moreover, the alleged suppression is based on statutory documents like P&L Account and balance-sheet and no new or external materials/documents were used or even an independent report for that matter, to allege such suppression.

9.2 In the light of the above peculiar facts, I am of the considered opinion that the impugned order cannot be sustained even on this ground.

10. The appeal stands allowed with consequential benefits, if any, as per law.

(Order pronounced in the open court on **08.11.2019**)

Sd/-

(P. DINESHA)
MEMBER (JUDICIAL)

Sdd