

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

E/124/2009

(Arising out of Order-in-Appeal No. 118/2008 (P) dated 30.09.2008
passed by the Commissioner of Central Excise (Appeals), Chennai)

M/s. Tejas Networks Ltd

: Appellant

Vs.

CCE & ST, Pondicherry

: Respondent

Appearance

Ms. Rukmani Menon, Advocate
for the appellants

Shri S. Govindarajan, AC (AR)
for the Respondent.

CORAM :

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

Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing/Decision: **17.08.2017**

FINAL ORDER No. 41764 /2017

Per Bench

The issue involved is the availment of Cenvat credit on inputs
procured by the appellants from an EHTP unit during the period
from December 2005 to January 2006.



2. The brief facts are that the appellants are engaged in the manufacture of multiplexers and are availing facility of Cenvat Credit on inputs viz., printed circuit boards supplied by M/s. Solelectron Centum Electronics Ltd., which is the EHTP unit. The Department was of the view that the appellant is not eligible to take 100% of the Cenvat credit of duty paid on inputs and instead they are eligible to avail only 50% as provided under Sub Rule 7 of Rule 3 of Cenvat Credit Rules, 2004. On being pointed out, the appellants reversed 50% of the alleged excess credit to the tune of Rs.80,40,659/- under protest. A Show Cause Notice was issued as to why the protest should not be vacated. After due process of law, the original authority disallowed the excess credit of 50% availed by the appellants and demanded interest thereon thereby vacating the protest. Aggrieved, the appellants filed appeal before the Commissioner (Appeals) who upheld the order passed by the adjudicating authority. Hence this appeal.

3. On behalf of the appellant, the Ld. Counsel Ms. Rukmani Menon adverted to Sub Rule 7 of Rule 3 of CCR, which is reproduced as under:-

“(7) Notwithstanding anything contained in sub-rule (1)[, sub-rule (1a)] and sub-rule (4), -

(a) CENVAT credit in respect of inputs or capital goods produced or manufactured, by a hundred per cent. export-oriented undertaking or by a unit in an Electronic Hardware Technology Park or in a Software Technology Park other than a unit which pays excise duty levied under section 3 of the Excise Act read with serial numbers 3, 5, 6 and 7 of Notification No.



23/2003-Central Excise, dated the 31st March, 2003 [G.S.R. 266(E), dated the 31st March, 2003] and used in the manufacture of the final products or in providing an output service, in any other place in India, in case the unit pays excise duty under section 3 of the Excise Act read with serial number 2 of the Notification No. 23/2003-Central Excise, dated the 31st March, 2003 [G.S.R. 266(E), dated the 31st March, 2003], shall be admissible equivalent to the amount calculated in the following manner, namely :-

Fifty per cent. of $[X \text{ multiplied by } \{(1+BCD/100) \text{ multiplied by } (CVD/100)\}]$, where BCD and CVD denote *ad valorem* rates, in per cent. of basic customs duty and additional duty of customs leviable on the inputs or the capital goods respectively and X denotes the assessable value :

She submitted that the said rule that only 50% credit can be availed is applicable only when the EHTP unit who has supplied the goods to the appellant pays duty under Section 3 of Central Excise Act availing the exemption in terms of Sl.No. 2 of Notification No. 23/2003 dated 31.03.2003. That in the present case the EHTP had not paid duty on the goods supplied to the appellant under Sl.No. 2 of the Notification N o. 23/2003. This is clear from the invoices of the supplier. Thus, without availing the exemption under Sl.No.2, the EHTP has paid the entire duty and therefore the appellant is also eligible to take the credit of duty paid by them. Thus, the department cannot direct the appellants to restrict the credit to 50% of the duty paid by EHTP. She relied upon the judgment in the case of *Molex (India) Pvt. Ltd. Vs. CCE, Bangalore* - 2016 (341) ELT 464 (Tri.-Bang.).

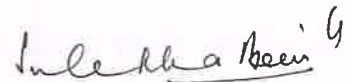


4. Against this, the Ld. AR Shri S. Govindarajan, AC, reiterated the findings in the impugned order.
5. Heard both sides. It is indeed clear from the records as well as from the submissions made by both sides that the EHTP unit has not paid duty by availing the exemption under Sl.No. 2 of the Notification No. 23/2003. The primary purpose and scope of Cenvat Credit scheme is to neutralize the cascading effect of duty portion on inputs suffered by the manufacturer. It is not disputed that appellant was borne the full quantum of duty amount passed on to him by the EHTP unit. In such a case, when the EHTP has paid duty the appellant is eligible to avail credit of the entire duty paid on the goods. The department cannot restrict the credit availed to 50% when the EHTP has not applied the notification for the purpose of paying duty. The said proposition is discussed in the decision in the case of Molex (India) Pvt. Ltd. (supra) relied by the Ld. Counsel for the appellants.
6. From the above discussions, we find that the demand is unsustainable. The impugned order is set aside and the appeal is allowed with consequential relief.

(Order pronounced in the open Court)



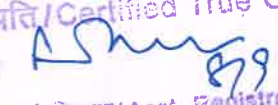
(MADHU MOHAN DAMODHAR)
MEMBER (TECHNICAL)



(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

BB



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