CUSTOMS EXCISE & SERVICE TAX APPLELLATE,
New DELHI.
PRINCIPAL BENCH –COURT NO.II.

Excise Appeal No.52157 of 2019-SM

[Arising out of common Order-in-Appeal No.143-144(SM) CE/JPR/2019 dated 10.05.2019 passed by the Commissioner (Appeals), Central Excise & Central Goods & Service Tax, Jaipur]

M/s. Kaizen Organics Pvt.Ltd. **Appellant**
G-17 & 18, RIICO Industrial Area,
Bagru Extn-II, Bagru,
Jaipur (Rajasthan).

Versus

Commissioner of Central Goods & Service Tax, **Respondent**
Customs & Central Excise,
NCR Building, Statute Circle,
C-Scheme, Jaipur,
Rajasthan.

AND

Excise Appeal No.52186 of 2019-SM

Shri Vikash Bajoria, Director **Appellant**
M/s. Kaizen Organics Pvt.Ltd.
G-17 & 18, RIICO Industrial Area,
Bagru Extn-II, Bagru,
Jaipur (Rajasthan).

Versus

Commissioner of Central Goods & Service Tax, **Respondent**
Customs & Central Excise,
NCR Building, Statute Circle,
C-Scheme, Jaipur,
Rajasthan.

APPEARANCE:

Shri Arun Goyal, Advocate for the appellant.
Shri P. Juneja, ld. Authorised Representative for the respondent/Department.

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDERS NOS.50754-50755/2020

DATE OF HEARING:26.02.2020
DATE OF DECISION:01.09.2020

ANIL CHOUDHARY:

The appellant company and its Director, Shri Vikas Bajoria are in appeals against the common impugned order-in-appeal dated 10.05.2019 passed by the Commissioner (Appeals), whereby affirming the order of the Adjudicating Authority, he was pleased to direct the appellant company to pay wrongly availed cenvat credit amounting to Rs.11,67,818/- along with interest and penalty of Rs.11,67,818/- under Rule 15 of the Cenvat Credit Rules, 2004 read with Section 11 AC of the Central Excise Act, 1944 and imposed penalty of Rs.50,000/- upon Shri Vikash Bajoria, Director of the appellant company under Rule 26(2) of the Central Excise Rules, 2002 and rejected their appeal.

2. The brief facts of the case are that the appellants being registered under Central Excise Registration are engaged in the manufacture of Menthol Powder, Menthol Cyrstal and De-mentholised Oil falling under Heading No.29061100 of the Schedule to the Central Excise Tariff Act, 1985 and were issued a show cause notice dated 3.8.2012 alleging that they had fraudulently availed Cenvat credit amounting to Rs.11,67,818/- (including cess) on the strength of invoice bearing nos.006 dated 4.7.2007 issued by the input supplier, M/s. Abhay Chemicals, Jammu. It was alleged that M/s.Abhay Chemicals, Jammu had not purchased raw materials from their stated suppliers and therefore they could not have manufactured any finished goods in the absence of procurement of raw materials, with the sole intent to facilitate undue cenvat credit to their buyers.

3. Shri Arun Goyal, ld. Counsel for the appellant assailing the impugned orders of both the Adjudicating Authorities urged that the goods were properly received under proper documents subject to onway checks at Toll/check posts, the goods were entered in the statutory records, that finished goods were manufactured and cleared on payment of duty. No statement of the transporter as well as driver was taken on record, and the payments were duly reflected in the records; no evidence of any flow back of cash was found as well as no evidence of procurement of raw materials

from any other source, etc. In support of his contentions, he relied upon the following case laws:-

(1) *M/s.Automax – 2019-TIOL-1477-CESTAT-CHD-Para 20*
(2) *M/s.Ess Bee Techno Cast Pvt. Ltd. -2020-TIOL-196-CESTAT-AHM-para (3)*
(3) *Hindustan Mint & Agro Products Ltd. Vs. CCE, Chandigarh 2019-TIOL-3167-CESTAT-CHD-para 6*
(4) *Neeru Enterprises & M/s.Abhay Chemicals Vs. CCE, Chandigarh 2019-TIOL-3071-CESTAT-CHD-Para 12*
(5) *Fine Organics Vs. CCE, Chandigarh – 2019-TIOL-2471-CESTAT Paras 12, 13*

4. From the ruling of the Division Bench of this Tribunal in the case of **Abhay Chemicals & Others,** ld. Counsel points out that this Tribunal, taking notice of various documents and evidences of manufacture by Abhay Chemicals like Certificate of Commercial Tax Officer, Jammu, Certificate of General Manager, District Industries Centre, Jammu, Permission for running the factory in three shifts throughout the year from Inspector of Factories and Boilers, Jammu, Permission for installation of additional machinery for enhancing its capacity and/for manufacturing additional products, inter alia, on the condition that the unit will operate on DG sets and Annual Financial Statement in Form ER-4, Periodical Statement submitted to the Inspector of Factories, Annual Returns filed under ESI and EPF, audited financial statements for 3-4 years, permission letter of Inspector of Factories, Jammu, permitting installation of boiler, etc., has held that Abhay Chemicals was engaged in the production and regularly running their factory. Reliance was also placed on the plant based checks done by the Central Excise Department and mentioning the report of the jurisdictional Commissioner to the Chief Commissioner dated 21.05.2010. In this Report, it was reported that most of the consignment of raw materials were found entered at the toll barrier. The officers of DIC, Jammu have assessed and fixed the capacity of manufacturing units and have been regularly verifying the receipt of the purchase consignments. The Range staff had also been visiting these units for plant based checks, verification of

plant & machinery and there has never been any adverse report. Thus, the jurisdictional Commissioner also reported that Abhay Chemicals was very much found in operation along with other 27 units located at Jammu engaged in similar activities of receiving inputs being Crude Mentha Oil and have not manufactured Menthol products. Accordingly, he prays for allowing their appeals with consequential benefits.

5. Shri P. Juneja, ld. Authorised Representative for the respondent/Department reiterated the findings of the Commissioner (Appeals) and prays for dismissal of the appeal.

6. Having considered the rival contentions, I find that the allegations in the show cause notice of taking irregular cenvat credit is based on a communication dated 30.02.2012 received from the Additional Commissioner, Customs & Central Excise, J & K, Jammu, stating that the several units in their jurisdiction located in Jammu & Kashmir appear to be not actually engaged in the manufacturing activities. I further find that the appellants have led evidence that they have received the inputs along with duty paying documents. Further, the appellants have made payments for receipt of inputs by cheque. Further, the appellants have manufactured finished products from the inputs and cleared the same on payment of duty, which is an admitted fact. Further, Revenue has not identified any alternate source of receipt of raw materials clandestinely. Further, the Division Bench of this Tribunal in the appeal of **Abhay Chemicals** along with **Neeru Enterprises – 2019-TIOL-3071-CESTAT-CHD** has held that Abhay Chemicals as well as other units are genuine units engaged in manufacture. Thus, the allegation of Revenue are vague and are proved wrong. Accordingly, I allow these appeals and set aside the impugned order. The appellants shall be entitled to consequential benefit in accordance with law.

7. The Adjudicating Authority is directed to grant the refund of disputed cenvat credit in cash along with interest as per Transitory Provisions under CGST Act.

[Order pronounced on 01.09.2020]

(Anil Choudhary)
Member (Judicial)

Ckp.