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

Excise Appeal No.52158 of 2019-SM

[Arising out of impugned Order-in-Appeal No.141-142(SM) CE/JPR/2019 dated 09.05.2019 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.52162 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.
Ms. Tamnna Alam, ld. Authorised Representative for the respondent/Department.

CORAM:

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

FINAL ORDERS NOS.50756-50757/2020

DATE OF HEARING:13.03.2020
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 09.05.2019 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.10,55,618/- along with interest and penalty of Rs.10,55,618/-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 appeals.

2. Being aggrieved with the impugned order passed by the Commissioner (Appeals), the appellants are before this Tribunal.

3. The brief facts of the case are that the appellants being registered under Central Excise Registration are engaged in the manufacture 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 19.10.2012 alleging that they had fraudulently availed Cenvat credit amounting to Rs.10,55,618/- (including cess) on the strength of three invoices bearing No.02 dated 27.10.2007, No.06 dated 27.02.2008 and No.07 dated 04.03.2008 issued by their input supplier, M/s. Star International, Jammu. It was alleged that M/s.Star International, Jammu Jammu had not purchased raw materials from their 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.

4. Shri Arun Goyal, ld. Counsel for the appellant assailing the impugned orders of both the Adjudicating Authorities urged that the goods were properly received accompanying proper documents subject to onway checks at Toll/check posts, the goods were duly entered in the records, the finished goods were cleared on payment of duty. Complete details of bill/check post

entry, copy of bilty, ledger, bank statement, RG-23-A Part-I Register were duly annexed. Despite no positive evidence, no statement of the transporters, drivers, all payments duly reflected, no evidence of any flow back of cash, no evidence of procurement of raw materials from other source, and demand is time barred as credit was reflected in returns duly filed, ld. Adjudicating Authority erroneously confirmed the demand. 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 (5)
(3) M/s.Haryana Ind. Vs. CCE, Chandigarh -2019-TIOL-1516-CESTAT-CHD-pra 3
(4) 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
(6) Nanda Mint & Pine Chemicals Ltd. Vs. CCE,Chandigarh-Para 5

Accordingly, he prays for allowing the appeals with consequential benefits.

5. Ms. Tamnna Alam, 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 for disallowing the cenvat credit is based on the report of the Additional Commissioner of Customs and Central Excise, Jammu & Kashmir, Jammu dated 17.12.2011, wherein, the genuineness of the manufacturing activities of several units located in Jammu & Kashmir, Jammu was doubted. In the said report, one of the units is mentioned as Star International, Jammu. In the course of investigation, at the end of the appellant, statement of Shri S.N. Pathak, Manager and Authorised Signatory was recorded, wherein he stated that they have procured Menthol/DMO during the period 1.4.2005 to 31.03.2008 and also stated that they have procured the Menthol

Flakes/DMO vide invoices dated 27.10.2007, 27.02.2008 and 4.3.2008 from Star International, Jammu. The appellants also produced copy of GR for transport of the goods from Jammu to their unit at Jaipur, which has been arbitrarily not accepted or believed.

7. I find that subsequently based on the plant based checks and also report from other authorities of the state like Commercial Tax Officer, Inspector of Boiler, General Manager of District Industries Centre, Jammu, the Jurisdictional Commissioner issued his report dated 21.05.2010. In this Report, it was reported that most of the consignments 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 manufactured Menthol products.

8. 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.

9. 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.