CUSTOMS EXCISE & SERVICE TAX APPLELLATE TRIBUNAL NEW DELHI.
PRINCIPAL BENCH – COURT NO.II

Excise Appeal No.53620 of 2018 (SM)

[Arising out of Order-in-Appeal No.DDN/CE/000/APPL-DDN/RDR/143/2017-18 dated 22.06.2018 passed by the Commissioner (Appeals), Central Tax, Dehradun.]

M/s. Advik Hi Tech Private Limited (Plant No.9), **Appellant**
Plot No.7A, Plot No.09, IIE-SIDCUL,
Pant Nagar, Rudrapur,
Uttarakhand.

Versus

Commissioner of Central Goods &, **Respondent**
Service Tax, Customs and Central Excise,
Dehradun, E-157-158, E-Block, Nehru Colony,
Dehradun.

APPEARANCE:

Shri R.M. Saxena, Advocate for the appellant.
Shri Ravi Kapoor, Departmental Representative for the respondent.

CORAM:

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

FINAL ORDER NO.51935/2021

DATE OF HEARING/DECISION:08.11.2021

ANIL CHOUDHARY:

The assessee, M/s. Advik Hi Tech Private Limited is in appeal against the impugned order-in-appeal, by which disallowance of cenvat credit of Rs.17,07,064 has been upheld, which is with respect to the receipt of inputs (raw materials) for the manufacturing unit.

2. The brief facts are that the appellant is a manufacturer of automobile components/parts, which are excisable. The appellant has got two plants located at the same plot number at Pant Nagar, manufacturing similar /identical goods. One of these plants is known as Plant No.9, which is paying excise duty. The other plant is known as Plant No.3, which is availing Area Based Exemption under Notification No.50/2003-CE. The appellant have

also another plant at Pune, which is referred to as Plant No.1 manufacturing similar goods. Pursuant to audit, vide show cause notice dated 17.09.2015 relating to the period March, 2011 to September, 2014, it was alleged that the appellant has availed inadmissible cenvat credit (on inputs) amounting to Rs.17,07,064/- on improper and inadmissible documents inasmuch as:

(i) on the strength of invoices, which do not pertain to them, i.e. M/s. Advik Hi-Tech Pvt.Ltd. (Plant No.9) Plot No.7 A, Sector-9, IIE, SIDCUL, Pantnagar, having Central Excise Registrion No.AACCA3106EEM004, but these pertain to their sister concern/unit, namely M/s. Advik Hi-Tech Pvt. Ltd. (Plant No.3), situated in the same premises, which is availing exemption from Central Excise duty under Notification No.49 and 50/2003-CE dated 10.06.2003, and thus, the unit, Plant No.9 was not entitled for availing CENVAT credit on the strength of such invoices (list enclosed in Annexure to show cause notice);

(ii) on the strength of invoices bearing Central Excise Registration No.AACCA3106EXM001, i.e. Plant No.1, another sister concern unit of the party situated in Pune (list enclosed at Annexure B to show cause notice); and

(iii) on the strength of invoices on which neither Registration No. nor Plant No. of the party is mentioned, or wrong Plant No. of the party is mentioned; (list at enclosed Annexure C to show cause notice);

3. Show cause notice was adjudicated on contest, wherein the appellant demonstrated that the admittedly, there is clerical error on the part of the vendors. Such clerical error is also not intentional, as the same vendors are supplying to more than one unit(s) of the company. However, the goods have admittedly been received in the Plant No.9 of the appellant, and have been utilised for manufacture of output or goods, and the appellant have

paid through bank transfer to the vendors from the bank account of Plant No.9. Admittedly, all the three plants have got separate central excise registration nos., wherein PAN No. is the same for all the three plants. It has also demonstrated from the PAN based Excise Registration number. The Adjudicating Authority confirmed the demand along with interest and further imposed equal amount of penalty under Rule 15 (2) of Central Credit Rules.

4. Being aggrieved, the appellant preferred appeal before the Commissioner (Appeals), who was also pleased to reject the appeal upholding the rejection of credit.

5. Being aggrieved, the appellant has filed the appeal before this Tribunal.

6. In the course of hearing, ld. Counsel for the appellant has demonstrated with respect to the sample invoices from each of the three annexures to the show cause notice, that there is only a clerical error in mentioning the exact Plant No., but otherwise, he has been able to correlate with the purchase order number, inward receipt document(s) (generated on SAP) showing the goods have been received in their Plant No.9 and have further demonstrated that the payment has been made from the Bank Account of Plant No.9. The appellant's counsel has also demonstrated that there are separate bank accounts etc. and separate set of accounts at each of the plants, having the SAP System of accounting. Accordingly, he prays for allowing their appeal with consequential benefits in accordance with law.

7. Ld. Counsel for the appellant urges that the show cause notice is also bad as part of the demand is hit by limitation. Further, they have admittedly maintained proper accounts of transactions and same are found duly entered in the books of accounts maintained in the normal course of business.

8. Ld. Authorised Representative for the respondent/Department relies on the impugned order.

9. In view of the arguments and demonstration of evidence/documents by the counsel for the appellant, ld. Departmental Representative urges that the matter may be remanded with direction to the Adjudicating Authority.

10. Having considered the rival contentions, I find that disallowance under each of the annexures to the show cause, is of similar nature. Further, I am satisfied from the demonstration made by the counsel for the appellant, that this is a case of only clerical error and the appellant's Plant No.9 has received the inputs in question, making the proper entries in the records and have further made the payments through its bank accounts. I also find that there is no other allegation as to diversion of raw materials or of any fraudulent activity on the part of the appellant.

11. In view of my findings, I hold that extended period of limitation is not available to the Revenue. I further hold that cenvat credit in dispute is allowable to the appellant/assessee. Accordingly, this appeal is allowed. The impugned order is set aside. The appellant is entitled to consequential benefits in accordance with law.

[order dictated & pronounced in open court]

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Ckp.