CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. III

Excise Appeal No. 51459 of 2022 (SM)

(Arising out of Order-in-Appeal No. 322 (CRM)/CE/JPR/2019 dated 09.12.2019 passed by the Commissioner (Appeals), CGST, Jaipur.)

M/s Revex Polymer Pvt Ltd **Appellant**
A-528, Chopanki, RIICO
Industrial Area, Bhiwadi,
District-Alwar
Rajasthan-301019

VERSUS

Commissioner of Central Excise **Respondent**
& CGST- Jaipur I
NCR Building, Statue Circle,
C-Scheme, Jaipur
Rajasthan- 302005

APPEARANCE:

Mr. P. Srivastava, Advocate for the Appellant
Mr. Mahesh Bhardwaj, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER: 50845 / 2022

Date of Hearing: 08/09/2022
Date of Decision: 13.09.2022

AJAY SHARMA:

This appeal has been filed against the impugned Order dated 9.12.2021 passed by the Commissioner (Appeals), CE & CGST in Order-in-Appeal No. 322 (CRM)/CE/JPR/2019 , Jaipur by which the learned Commissioner rejected the appeal filed by the appellant by holding that there is no infirmity in the order passed by the Adjudicating Authority.

2. According to Revenue, the appellant herein had wrongly availed Cenvat Credit of Service Tax on the invoices issued by the principal importers from whom the appellant purchased the inputs on high sea import basis. As per revenue, the importers raised invoices to the appellant for storage/demurrage charges for the inputs at JRE Kandla for the services incurred by the principal importer prior to the date of agreement with the appellant whereas the agreement for transfer ownership of the goods to the appellant was entered on subsequent date and since the appellant did not avail the impugned services directly from the actual service provider and did not pay any amount in lieu of impugned services to the actual service provider and since the principal importer was not an agent for the purpose of passing on such credit of service tax paid before the date of the agreement therefore the same does not qualify as input service as per Rule 2(l) of Cenvat Credit Rules, 2004. The Revenue therefore demanded the wrongly availed Cenvat credit of such Service Tax by the appellant amounting to Rs.59,640/- for the period from January, 2016 to June, 2017.

3. I have heard learned counsel for the appellant and learned Authorised Representative and perused the case records. The issue involved herein is no more *res integra* in view of the decision of the Tribunal in appellant's own case for the earlier years i.e. December, 2010 to December, 2015 in the matter of *M/s. Rovex Polymers Pvt.*

Ld. Vs. Commr. (Appeals), DGGSTI, Jaipur.; Final order No. 50351-50352/2019 dated 26.2.2019 in which this Tribunal while deciding the issue *whether the appellants are entitled to Cenvat credit on such storage or warehousing charges paid on inputs,* held as under:-

> "2. Brief facts of the case are that the appellant is engaged in the manufacture of PVC resin falling under Chapter sub heading 39079120 of the First Schedule to the Central Excise Tariff Act, 1985. In the course of audit, it was observed that the appellant was purchasing inputs on high sea sale basis from importers or in transit, and were filing Bill of Entry. It was also noticed that the appellant have purchased the goods from importers after entering into a contract, by way of signing of an agreement, which stipulated, the ownership of the goods will be transferred on the date of agreement by way of endorsement on the bill of lading i.e. sale in transit. Under such agreement of purchase of goods in transit, the appellant was required to make its own arrangement for obtaining delivery of the goods from the Custom/ Port for taking care of clearance, handling and transport charges at their own risk and responsibility and cost. Further, they were required to make full payment of cost of documents comprising and inclusive of CIF value, L/C opening / amendment charges/ bank interest/ commission and other charges for retirement of documents, service charges, import licence charges, to the seller at once, on presentation of duplicate set of import documents. As the input namely polypropylene glycol etc. are imported in liquid state in tanks, the said tanks are required to be emptied in tanks which are available at the port for storage, on payment of storage charges. As the appellant purchased goods in transit under the terms of agreement, they paid various charges for taking out or delivery of the goods, including the storage charges 3 for warehousing of the goods at Port by way of reimbursement and also paid service tax being applicable on such storage or warehousing charges. The issue is whether the appellant are entitled to cenvat credit on0020such storage or warehousing charges paid on inputs.
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> 3. Heard the parties.
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> 4. Rule 2(k) of Cenvat Credit Rules defines input, means goods used in the factory by the manufacturer of the final product. Admittedly, the warehouse or the storage charge paid by the appellant is part of the input cost. Accordingly, such charges are essential and accordingly I hold that the appellant is entitled to avail cenvat credit on storage or warehouse charges incurred in the course of acquisition of inputs. Accordingly, these appeals are allowed and appellants are held entitled to consequential benefit in

accordance with law."

4. The aforesaid decision of the Tribunal has not been challenged anywhere and there is no reason for me not to follow the same. Therefore without going into other details of the matter the appeal filed by the Appellant is allowed, with consequential relief, if any, as per law.

(order pronounced in the open court on 13.09.2022)

(Ajay Sharma)
Member(Judicial)

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