CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL NEW DELHI.

PRINCIPAL BENCH – COURT NO. II

Excise Appeal No. 50008 of 2023 (SM)

(Arising out of Order-in-Appeal No.IND-EXCUS-000-APP-26-2022-23 dated 14.09.2022 passed by the Commissioner (Appeals), Customs, Central Goods & Service Tax and Central Excise, Indore (M.P.).

M/s. Kehems Technologies Pvt. Ltd. **Appellant**
(Earlier Known as Cristopia Energy Systems (I) Pvt. Ltd.)
Village Umrikheda, 12th KM, Indore Khandwa Road,
Indore-452 001 (M.P.)

Versus

Commissioner of Central Goods & Service Tax and Central Excise, **Respondent**
Post Box No.10, Manik Bagh Road,
Manik Bagh Palace,
Indore,, Madhya Pradesh-452 001.

APPEARANCE:

None for the appellant.
Shri Viswa Jeet Saharan, Authorised Representative for the respondent.

CORAM:

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

FINAL ORDER NO.50506/2023

DATE OF HEARING/DECISION: 13.04.2023

ANIL CHOUDHARY:

The appellant is absent on call. As the issue lies in a narrow compass, the amount of dispute is only Rs.77,446/-, it is decided to take up the appeal for hearing with the assistance of ld. Authorized Representative. The issue involved in this appeal is whether the appellant have rightly taken cenvat credit on the basis of 'courier bill of entry' for import of their inputs – spare parts.

2. The brief facts are that the appellant have availed cenvat credit on the strength of photocopies of six Courier Bills of Entries of CVD and ADC and thus, have taken a total cenvat credit of Rs.77,446/-.

3. It appeared to Revenue (pursuant to Audit) that under the provisions of Rule 9(1)(c) of CCR, Bill of entry is one of the documents, on which cenvat credit can be taken. However, photocopy of bill of entry is not a prescribed document. The credits were taken during the period May, 2016 to November, 2016. Show cause notice dated 28.06.2019 was issued invoking the extended period of limitation, proposing to disallow cenvat credit of Rs.77,446/- further proposing equal amount of penalty.

4. The appellant contested the show cause notice by filing the defence reply, *inter alia,* urging that they had imported spare parts – inputs through Courier Agency viz. DHL Express India Pvt. Ltd. As per the Customs procedure, in case of import through courier, consolidated bill of entry (for more than one importer) was being filed by the Courier Agency. In the case of the imports in question, the Bill of Entry was filed by the Courier Agency, which is the normal practice under the Courier Import and Export Regulations. Under such circumstances, the Courier Agency could not hand over the original Courier bill of entry, but gave photocopy of the same to the appellant. Further, there is no procedure, by which the appellant can get the photocopy of the courier bill of entry, further authenticated. The appellant also relies on the ruling of this Tribunal, wherein cenvat credit was held permissible on the

basis of the photocopy of the bill of entry, as has been held in the following cases:-

(1) CCE, Lucknow Vs. Fusion Electronics (P) Ltd.

-2011 (264) ELT 513 (Tri.-Delhi).

(2) Controls & Drives Coimbatore (P) Ltd. Vs. CCE, Coimbatore

-2008(222) ELT 470 (Tri.-Chennai)

(3) CCE, Dibrugarh Vs. Tata Tea Estate

-2004 (177) ELT 716 (Tri.-Kolkata)

(4) Matsushita Television & Audio India Ltd. Vs. CCE, Noida

-2004 (177) ELT 716 (Tri.-Kolkata).

5. The appellant also pointed out that there is no allegation in the show cause notice about non-receipt of the inputs or non-use of the said inputs in the factory of the appellant. The appellant have maintained proper records of receipts of such inputs in their statutory records. Further payment of CVD and ADC is not in dispute. The appellant also produced copies of purchase invoices of the foreign suppliers. Further, urged that as the duty paid nature of inputs and their receipt and use in their factory is not in dispute, the credit may be allowed in terms of Rule 9(2) of CCR, which provides that the Adjudicating Authority may allow the cenvat credit, even if invoices do not contain all the details, upon verification and on being satisfied that the assessee have received the input and its use in the factory of production.

6. Show cause notice was adjudicated vide order-in-original dated 30.03.2021, relying on CBEC Circular no. 31/2007-Cus, wherein the Board appreciating the difficulty in case of courier

import, had clarified that authorized courier may be permitted to file 'regular bill of entry' or 'shipping bill', as the case may be, and proposed demand was confirmed along with amount of equal amount of penalty under Rule 15 (2) of CCR, read with Section 11 AC of the Act.

7. Being aggrieved, the appellant preferred appeal before the Commissioner (Appeals), who was pleased to dismiss the appeal on the ground of non-making of the pre-deposit.

8. Perused the appeal records. Ld. Authorised Representative for Revenue, have relied on the impugned order.

9. Having considered the rival contentions, I find that it is not in dispute that the appellant /assessee have imported spare parts, which are inputs used in the factory for production of excisable goods. The appellant have led sufficient evidence by way of purchase invoices, entry of the spare parts received through courier in the statutory records and utilization of the same. I further find that under the similar disputes, this Tribunal have allowed the benefit of cenvat credit on the basis of photocopies of the bill of entries. I further find that the Board have also appreciated the difficulty in case of imports of inputs through courier in availing cenvat credit, and have given directions that the importer may request courier agency to file separate bill of entry instead of consolidated courier bill of entry, for many importers. I take judicial notice of the fact that in our country such beneficial circulars and notifications are not given wide publicity by publishing in the National and local newspapers. Further, admittedly, under

the Courier Import & Export Regulations, the filing of bill of entry is the work of Courier Agency. Accordingly, as per the procedures, the Courier Agency files consolidated bills of entry in respect of several import parcels, belonging to several importers. Accordingly, I find that there is no malafide on the part of the appellant in taking cenvat credit on the basis of photocopy of the courier bill of entry.

10. In view of my observation and findings, I allow this appeal and set aside the impugned order. The appellant is entitled to consequential benefits in accordance with law.

[Order dictated & pronounced in open court].

(Anil Choudhary)
Member (Judicial)

Ckp.