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CUSTOMS. EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/6127/2004 - EX[DB] Date 27/05/2009

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S KUNSTSOFF POLYMERS LTD.
PLOT NO.9 &12 A-I,NEW INDUSTRIAL
AREA,MANDIDEEP
M/S KUNSTSOFF POLYMERS LTD. Appellant

Vs

C.C.E.BHOPAL Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 385/2009-EX **EX[DB]** dated 26-5-09
passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
   C.C.E.BHOPAL
   HOSHANGABAD ROAD,BHOPAL
2. Adv. / Consult SH. P.C. KASHIV, CON.
   E-3/49, KAMDAR APARTMENT,
   BHOPAL (MP)
3 C.D.R
~~4 J.C.D.R.~~
5 Bar association. CESTAT. New Delhi
6 Director Publications. Customs. Excise. I.P. Estate. New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B. Regal Flat,Shipra Suncity. Indirapuram - 201010,Ghaziabad. DT. U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd. B-XI/8183,Vasant Kunj. New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd., 21/35. West Punjabi Bagh. New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15 LAWCRUX Advisors Pvt Ltd. LAW House,1-8,Sector - 10. Faridabad 121003 (Haryana)
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18. HON'BLE PRESIDENT.

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. I

Excise Appeal No. 6127 of 2004

[Arising out of the Order-in-Appeal No. 633/CE/BPL/2004 dated 20/08/2004 passed by The Commissioner (Appeals-II), Customs & Central Excise, Bhopal.]

For Approval and signature :

Hon'ble Justice R.M.S. Khandeparkar, President
Hon'ble Shri Rakesh Kumar, Member (Technical)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	:
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:
3.	Whether their Lordships wish to see the fair copy of the order?	:
4.	Whether order is to be circulated to the Department Authorities?	:

M/s Kunststoff Polymers Ltd. — Appellant

Versus

CCE, Bhopal — Respondent

Appearance

Shri P.C. Kashiv, Consultant – for the appellant.

Shri S.N. Srivastava, Authorized Representative (DR) – for the Respondent.

CORAM : **Hon'ble Justice R.M.S. Khandeparkar, President**
Hon'ble Shri Rakesh Kumar, Member (Technical)

DATE OF HEARING : 20/03/2009.
DATE OF DECISION : ~~26/5/09~~ 26/5/09

FINAL Oral Order No. 385/09-EX Dated : ______

Per. Rakesh Kumar :-

This is an appeal against order in appeal No. 633/CE/BPL/2004 dated 20th August 2004 passed by CCE (Appeals), Bhopal, upholding order-in-original dated 30/10/03 passed by Deputy Commissioner, Central Excise Division – II, Bhopal confirming Cenvat credit demand of Rs. 17,44,200/- alongwith interest against appellant under Rule 12 of Cenvat Credit Rules readwith Section 11A and 11AB of Central Excise Act, 1944 and imposing penalty of Rs. 10,000/- on the appellant under Rule 13 of the Cenvat Credit Rules, 2002.

2. The facts of the case in brief leading to this appeal are, in brief, as under :-

> The appellant in their factory in Distt. Raisen (M.P.) are engaged in the manufacture of Mosquito Repellant Coils for which they require an input – a chemical called Esbiothrin Technical [d-trans Allethrin]. During period from 30/07/02 to 08/01/03, this chemical was acquired by the appellant from M/s SC Enviro Agro India Pvt. Ltd., a second stage dealer through M/s Sumitomo Chemicals India Pvt. Ltd. The goods have been received by the appellant under the invoices issued by M/s SC Enviro Agro India Pvt. Ltd. while mentioning the appellant's name and address as the consignee, mention M/s Sumitomo Chemicals India Pvt. Ltd. as the customer and there is no dispute about the fact that the appellant had purchased the goods through M/s Sumitomo Chemicals India Pvt. Ltd. and payment for the goods had also been made to M/s Sumitomo Chemicals India Pvt. Ltd. only. The Department is of the view that since the appellant have purchased the goods from M/s Sumitomo Chemicals India Pvt. Ltd. and not from second stage dealer, they are not eligible for Cenvat credit. It is on this ground that the Deputy Commissioner vide order-in-original dated 30/10/03 confirmed the Cenvat credit demand of Rs. 17,44,200/- alongwith interest under Rule 12 of the Cenvat Credit Rules, 2002 readwith Section 11A and

11AB of the Central Excise Act, 1944 and beside this also imposed penalty of Rs. 10,000/- on the appellant. The Deputy Commissioner's order was uphold by the Commissioner (Appeals) vide the impugned order-in-appeal dated 20th August 2004. It is against this order-in-appeal that the present appeal has been filed.

3. Heard both the sides.

3.1 Shri P.C. Kashiv, Consultant, the learned Counsel for the appellant pleaded that Rule 7 (1) of the Cenvat Credit Rules, 2002 mentions the invoices issued by first stage dealer or a second stage dealer as the valid documents for taking Cenvat credit, that in this case, there is no dispute about the fact that the invoices have been issued by M/s SC Enviro Agro India Pvt. Ltd. who are a second stage dealer, that, in view of this, Cenvat credit cannot be denied just because the goods had been procured by the appellant through a third person M/s Sumitomo Chemicals India Pvt. Ltd. as the invoice clearly mentions the appellant as the consignee, that there is no dispute about the receipt of the inputs by the appellant and the duty paid character of the goods, and that Tribunal in the case of **Prakash Cotton Mills Ltd. vs. CCE, Bombay** reported in **1996 (85) E.L.T. 149 (Tri. – Bom.)** has held that when the inputs were received by an assessee from a trader, who, in turn, had procured the same from another manufacturer and the goods had been received alongwith the manufacturer's invoice issued to the trader, the Cenvat credit cannot be denied when co-relation of the goods received under trader's invoices is established with the goods received by the trader from the manufacturer under that manufacturer's invoice. Judgment of the Tribunal in the case of **Malwa Cotton Spg. Mills Ltd. vs. CCE, Chandigarh** reported in **2002 (144) E.L.T. 645 (Tri. – Del.)** was cited, wherein the Tribunal relying upon the Board's Circular No. 96/7/95-CX dated 13/02/95 held that if any dealer places an order on a manufacturer for supplying the goods directly to a manufacturer's premises without bringing the same to his premises, the Cenvat credit cannot be denied to the manufacturer receiving the goods even though the invoice mentions the words "on account of the dealer" and the name of the dealer on the invoice in itself would not make the invoice, ineligible document for availing Cenvat credit. In view of the above, it was pleaded that the impugned order is not correct.

3.2 Shri S.N. Srivastava, the learned Departmental Representative defending the impugned order reiterated the Commissioner (Appeals)'s findings and emphasised that since the invoices issued by M/s SC Enviro Agro India Pvt. Ltd. mention M/s Sumitomo Chemicals India Pvt. Ltd. as the customer and since admittedly, the payment for the goods has been made by the appellant to M/s Sumitomo Chemicals India Pvt. Ltd., the goods have been purchased through a third stage dealer and hence Cenvat credit is not available to the appellant.

4. We have carefully considered the submissions from both the sides and have pursued the records. There is no dispute about the fact that the goods have been procured by the appellant through M/s Sumitomo Chemicals India Pvt. Ltd. However, from the records, it is seen that M/s Sumitomo Chemicals India Pvt. Ltd. had placed the order for the goods with M/s SC Enviro Agro India Pvt. Ltd., a second stage dealer who supplied the goods directly under their invoices to the appellant, mentioning the appellant's name as the consignee while at the same time mentioning M/s Sumitomo Chemicals India Pvt. Ltd. as the customer. It is on this basis that Cenvat credit has denied to the Appellant in respect of these invoices.

5. As per Rule 7 (1) of the Cenvat Credit Rules, 2002, the invoices issued by a first stage dealer or a second stage dealer are valid documents for taking Cenvat credit. In this case, there is no dispute about the fact that M/s SC Enviro Agro India Pvt. Ltd., who had issued the invoices and on the basis of which the Cenvat credit was taken by the appellant, are a second stage dealer. We find that Tribunal in the case of Malwa Cotton Spg. Mills Ltd. vs. CCE, Chandigarh (supra), relying upon the Board Circular No. 96/7/95-CX dated 13/02/95 has held that "mere mention of the words 'on account of the dealer' on the invoices or the name of the dealer on the invoice, in itself, would not make the invoices ineligible documents for availing Modvat credit", so far as the goods have been directly received in the user's premises. Similar view has been taken by the Tribunal in the case of Prakash Cotton Mills Ltd. vs. CCE, Bombay (supra), wherein the Tribunal held that in a situation where the inputs were received from a manufacturer but through a dealer, the Cenvat credit cannot be denied so long as the co-relation between goods received by the user manufacturer from the dealer under the dealer's invoice can be established with the goods received by the dealer from the manufacturer. This judgment of the Tribunal has been followed in the cases of **Beepee Coatings Ltd. vs. CCE, Vadodara** reported in **1997 (92) E.L.T. 223 (Tri. – Bom.)** and **Ashok Leyland Ltd. vs. CCE, Chennai** reported in **2003 (161) E.L.T. 710 (Tri. – Chennai)**. In this case it is not the case of the Department that the goods were not received directly by the appellant from a second stage dealer M/s SC Enviro Agro India Pvt. Ltd. In view of these circumstances, just because the invoices issued by M/s SC Enviro Agro India Pvt. Ltd. mention M/s Sumitomo Chemicals India Pvt. Ltd. as the customer, while at the same time mentioning the appellant

as the consignee, will not become invalid document for taking Cenvat credit, we therefore, hold that the impugned order is not sustainable. The same is set aside and the appeal is allowed.

(Pronounced in open court on 26-5-09)

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Member (Technical)

PK