**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI**
**PRINCIPAL BENCH, COURT NO. IV**

**Appeal No. E/1396/2010-CU [SM]**

[Arising out of Orders in Appeal No. 45 to 52/CE/DLH/2010 dated 05.03.2010, passed by the Commissioner (Appeals), Central Excise & ST, New Delhi.]

For approval and signature:

**Hon'ble Mr. V. Padmanabhan, Member (Technical)**

**M/s. Heat Flex Cable Pvt. Limited ....Appellant**

**Vs.**

**CCE & ST, Delhi -I ....Respondent**

**Appearance**:

Shri Sunil Khandelwal, Chartered Accountant for the Appellants
Shri R.K. Mishra, DR for the Respondent

**CORAM**:

**Hon'ble Mr. V. Padmanabhan, Member (Technical)**

**Date of Hearing: 03.01.2017**

**FINAL ORDER NO. 50133/2017-EX [SM]**

**Per V. Padmanabhan**

The present appeal has been filed against Order-in-Appeal dated 05.03.2010 passed by Commissioner (Appeals), Delhi.

2. The appellant is manufacturer of PVC Cables. For this purpose, they are receiving PVC compound. They have availed Cenvat credit on receipt of PVC compound from various suppliers. The present dispute is with respect to PVC compound received from M/s. Natraj Plast Industries Limited during the period 2005-06. In the

investigation undertaken by the Revenue against M/s. Natraj Plast Industries Limited, it was established that in addition to the PVC compound manufactured and supplied by them to various persons, they also procure the same PVC compound from the open market and supply the same under their invoices as if manufactured by them. In the present dispute, the Revenue's case is 10 such invoices issued by M/s. Natraj Plast Industries Limited on the basis of which PVC compound was received by the appellant where no goods manufactured and supplied by M/s. Natraj Plast Industries Limited. In the proceedings before the Original Authority as well as Commissioner (Appeals), demand for reversal of Cenvat credit to the extent of Rs. 1,94,690/- stands confirmed along with payment of interest and penalty. The said amount already stands paid by the appellant. However, the demands are challenged in the present appeal.

3. With the above background, heard Ms. Seema Jain, ld. Advocate for the appellant as well as Shri M.R. Sharma, ld. AR for the Revenue. The submission of the ld. Advocate is that the Cenvat credits have been taken under the bonafide belief that the goods received along with invoices from M/s. Natraj Plast Industries Limited were manufactured and supplied by them. She further submitted that in addition to these 10 disputed invoices, they have also received goods from the same supplier. Accordingly, she submits that since the Cenvat credits have been taken on the basis of bonafide transactions, reversal of the same is not justified. She also placed reliance on the decisions in *R.S. Industries vs. CCE, New Delhi – 2003 (153) ELT 114*

*(Tri. Del.) and in Luxmi Metal Industries vs. CCE, Delhi-II – 2013 (287) ELT 487 (Tri. Del.).*

4. Ld. AR supports the order by authorities below. He submitted that burden of proof regarding admissibility of Cenvat credit shall lie upon the manufacturer in terms of rule 9(5) of Cenvat Credit Rules. He further submitted that the fraud made by M/s. Natraj Plast Industries Limited in terms of issuing invoices for the goods not manufactured by them but purchased from outside, stands established in the investigation. Accordingly, he submitted that Cenvat credit is liable to be reversed along with interest and penalty is imposable.

5. The dispute is with respect to Cenvat credit amounting to Rs. 1,94,690/- availed by the appellant on the basis of invoices issued by M/s. Natraj Plast Industries Limited. Even though M/s. Natraj Plast Industries Limited are manufacturer of PVC compound but the investigation undertaken by Revenue has established that, in respect of these 10 invoices issued by M/s. Natraj Plast Industries Limited and based on which Cenvat credit have been availed, have not been manufactured by them. It is further established that these goods stand procured from the open market and supplied as the same have been manufactured by M/s. Natraj Plast Industries Limited. From the statement of Shri R.L. Gupta, Director of the appellant also has admitted in the statement before the Revenue authorities that Shri Dinesh Kumar Gupta, Director of M/s. Natraj Plast Industries Limited had told him that the material being supplied was procured by them

from some other sources. Once it has been established that the goods covered by these 10 invoices were not actually manufactured by M/s. Natraj Plast Industries Limited but were procured from outside, Cenvat credits availed on the basis of those 10 invoices will not be proper. The Commissioner (Appeals) in his order has upheld the recovery of Cenvat credit with interest and penalty. I find no reason to interfere with such order and the same is upheld.

6. The appeal is dismissed.

[Dictated and pronounced in the open Court]

(V. Padmanabhan)
Member (Technical)

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