CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R.K.Puram, New Delhi

COURT-II

Date of hearing/decision: 06.06.2017

Appeal No. E/1363/2012 EX [SM]
[Arising out of the Order in Original No.2/2012/C Ex/JPR-II dated 02/03/2012, passed by the Commissioner, Customs & Central Excise, Jaipur.

M/s P.I. Industries Ltd. …… Appellant

Vs.

C.C.E Delhi-III …… Respondent

Appearance:

Present Shri Dhruv Tiwar, Ms. Sukriti Das Advocate for the appellant
Present Shri G.R. Singh, AR for the respondent

Coram: Hon'ble Mr.Ashok K. Arya, (Technical Member)

FINAL ORDER No. 53802/2017

Per Ashok K. Arya:

1. The appellant namely P. I. Industries Ltd. is in appeal against Order in Original No.2/2012/C Ex/JPR-II dated 30.01.2012 whereunder inter alia Cenvat credit amounting to Rs. 45,56,207/- has been denied in respect of inputs sent directly to the premises of job worker.

2. The brief facts are that;

i. The appellant is manufacturing insecticides falling under chapter 38 of Central Excise Tariff.

ii. The appellant was granted permission by Deputy/ Assistant Commissioner for sending inputs directly to the premises of job worker and further permission for removing finished goods directly from the premises of job worker under Rule 4 (6) of Cenvat Credit Rules, 2004.

iii. However, the Department issued show cause notice dated 14/06/2010 to the appellant inter alia proposing recovery of Cenvat credit namely on the ground that appellant did not receive the input goods in the factory but sent them directly to the job worker and the appellant did not comply with the conditions imposed upon them in terms of Rule 4 (6) of Cenvat credit Rules.

iv. The impugned order in original passed by the Commissioner confirmed the demand of Rs. 45,56,207/- along with interest and penalty.

v. The appellant is in appeal against the said Order in Original before the Tribunal.

3. With the background of above facts, both sides represented by Ld. Counsels, Shri Dhruv TIwari for the appellant and Shri G.R. Singh for the revenue have been heard.

4. After having carefully considered the facts of the case and submissions of both sides, it appears that the matter is covered by the Tribunal's decisions in cases of *Bharat Heavy Electricals Ltd. Vs CCE,* Bhopal 2011(274) ELT 359 (Tri-Del) and *Air Pac Filters & Systems Pvt. Ltd. Vs CCE, Mumbai-I,* 2015 (329) ELT 437(Tri-Mumbai).

4.1. The Tribunal in the decision in case of *Bharat Heavy Electricals Ltd*. (supra) has observed as follows;

> 7.2As regards the material procured from Hindustan Copper Limited, the submissions of the appellant that they were sent directly to M/s. Ken Electricals on behalf of BHEL, Bhopal who were undertaking job work for the appellant and received the processed material in terms of Notification No. 214/86 dated 25-3-86 has been duly noted by the Commissioner. Under these circumstances, the explanation that the appellant have taken constructive delivery of the inputs and instead of receiving it in their factory and then again sending to the job worker has directly sent it to the job worker deserves to be accepted. The fact that the job worker has processed the material and sent the intermediate goods manufactured using the inputs following Notification No. 214/86 has not been refuted. In the given facts and circumstances of the case, the transport of material directly to the job worker's premises to avoid payment of extra period and same time, cannot lead to denial of credit.
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> 8.In view of the above, we find that the appellants have in the facts and circumstances of the case complied substantially with the conditions for availing the cenvat credit and minor aberations in not following the procedure prescribed by the Board cannot stand in the way of availing the credit by the appellant.

4.**2**. The Tribunal in the case of *Air Pac Filters & Systems* Pvt*. Ltd (supra),* for similar facts observed as under;

> **5.**I have carefully considered the submissions made by both the sides. I find that when the final product of the appellant was decided to be manufactured on job work basis by the job worker, the input need not come to the factory of the appellant and in any case it has to be supplied to the job worker. There is no dispute that the input used in the manufacture of final product by the job worker was purchased by the appellant. The final product manufactured on behalf of the appellant and the said goods were exported by the appellant. Under this

> undisputed fact, I am very clear in my mind that the appellant is legally entitled for the Cenvat credit. The movement of input for job work is governed by Rule 4(5)(a) of the Cenvat Credit Rules, 2002. Under this provision, no statutory procedure was prescribed. However, on the basis of documents otherwise available, it can be satisfied that the input belonging to the appellant was sent for job work and the final product was exported by the appellant, in my considered view, no further procedure is required to be followed.
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> **6.** As regards direct supply of input from the supplier to the job worker, this Tribunal in various judgment held that even if the input is supplied directly from supplier to the job worker, the Cenvat credit cannot be denied.

Following the ratio of the Tribunal's decisions (supra) the appellant is entitled to the subject Cenvat credit.

5. In the result, the impugned order is modified to above effect and appeal allowed accordingly with consequential relief, if any, to the appellant.

[Order dictated and Pronounced in the open court]

(Ashok K. Arya)

Member (Technical)

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